

## Prisons and Courts Bill

### Equalities Statement: Automatic online convictions and standard statutory penalty

#### Policy change summary

1. For certain routine, low-level summary, non-imprisonable offences with no identifiable victim, we are implementing a system which will allow defendants to resolve their cases entirely online without the involvement of the court. Defendants who wish to plead guilty will have the option to go through the online system where they can view the penalty, be given any other relevant information and accept the conviction and penalty. This will allow some cases to be resolved immediately and entirely online, with no need for the involvement of a magistrate.
2. The objectives of this policy were set out in the *Transforming our Justice System*<sup>1</sup> consultation document published on 29<sup>th</sup> September. The consultation response published on x sets out the government response to issues raised in the course of the consultation.

#### Equality duties

3. The Public Sector Equality Duty comprises three limbs, set out in section 149(1) of the Equality Act 2010 whereby a public authority must, in the exercise of its functions, have due regard of the need to:
  - i. Eliminate discrimination (both direct and indirect), harassment, victimization and any other conduct that is prohibited by the Act;
  - ii. Advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not. This includes removing or minimizing disadvantages suffered by people due to their protected characteristic (PC), taking steps to meet the needs of people who share a particular PC, and encouraging participation in public life.
  - iii. Foster good relations between persons sharing a relevant PC and persons who do not. This includes tackling prejudice and promoting understanding.
4. Paying “due regard” needs to be considered against the nine “protected characteristics” under the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, and pregnancy and maternity.

#### Equality considerations

##### Direct discrimination

5. The proposal to introduce automatic online convictions and standard statutory penalty is not directly discriminatory within the meaning of the Equality Act as it is equally available to those with and without protected characteristics.

##### Indirect discrimination

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<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting\\_documents/consultationpaper.pdf](https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/supporting_documents/consultationpaper.pdf)

6. We recognise, however, that the digitisation and automation of HMCTS systems could indirectly affect users according to protected characteristics. For example such changes have the potential to have adverse effects on the basis of age, disability, and ethnicity (linked to socio-economic disadvantage) to the extent that some groups are less internet or digitally enabled than others. We will be mitigating these effects by ensuring that there is reasonable provision of assisted digital support for those who may struggle or would not otherwise be able to use the service.
7. Overall however, the changes will improve accessibility from the current model, as new online tools improve navigation and advice, reduce reliance on paper (allowing people to get information in formats more suitable to them), reduce reliance on representation (allowing justice to be accessible to those populations who may not have the money to do so – which is not standard across protected characteristics).
8. Where we are introducing automation into the system, as with the online conviction process, this involves little change for the end user except an increase in speed and certainty. For those engaging with the system there will continue to be support to understand the impact of decisions – in fact this may improve for many users, as the design of digital services allows us to ask whether information is understood before progressing and if it is not the user will be pointed towards sources of assistance.
9. The approach is designed to make the process easier for all court users by offering other enforcement options to significantly improve user experience and reduce user costs by making an effective form of enforcement more readily available.
10. It is unknown whether particular groups will be more or less likely to use the new online system. As it is an online service, the following categories of person may be less likely to engage with the automatic online conviction procedure, although assisted digital services will be in place to prevent this where possible:
  - i. Age: A 2016 survey by the Office of National Statistics<sup>2</sup>, shows that Age is a key factor as to whether an individual has ever used the Internet. Of the 5.3 million adults who had never used the internet in 2016, just over half (2.8 million) were aged 75 years and over.<sup>3</sup> Only 38.7% of those aged 75 and over had used the internet in the last 3 months.<sup>4</sup> This indicates that older people are less likely to engage with the automatic online conviction and standard statutory penalty process.
  - ii. Race: The March 2011 Census showed that 92.3% of people in England and Wales stated English or Welsh as their first language<sup>5</sup>. The digital service is currently designed to only operate in English. For those who do not speak English, or at least prefer to use another language, this may result in a system which is less accessible to them.
  - iii. Disability: Those with learning difficulties or mental health issues may obtain unsatisfactory outcomes from the system if they are unaware of, or fail to utilise the assisted digital services available to them. Those with other disabilities may find using a computer difficult.

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<sup>2</sup><https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2016>

<sup>3</sup> See Note 2

<sup>4</sup> See Note 2

<sup>5</sup><https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/language/articles/languageinenglandandwales/2013-03-04>

A higher proportion of those with disabilities recognised under the Equality Act do not use the internet compared to the population with no disability (see Analysis, below).

11. We will take steps to ensure that the groups identified above are not disadvantaged as a result of their lack of digital skills or access, including:
12. Although this scheme will exist purely online assisted digital provisions will allow such individuals to interact with the system. A range of support channels will be available, from web chat or telephone assistance to more intensive face to face assistance. The procedure would also be available to professional users acting on behalf of their client. Access to paper channels will also be maintained in some services for those users that require them.
13. We will build the system so that it ascertains, at an early stage, whether or not users require interpretation services. If they do, it will direct them to contact the customer service centre to arrange these facilities with Assisted Digital Services.
14. We will provide for those who cannot engage with the online system, through HMCTS' Assisted Digital provision (as set out in the recent consultation proposal<sup>6</sup>) which will address the digital access needs of individuals who are unable to engage with online services, ensuring they will not be denied access to justice, and will mitigate any risk of discrimination arising from digitising our services. We expect a range of support channels to be available, from web chat or telephone assistance to more intensive face to face assistance. This would also be available to professional users acting on behalf of their client. Access to paper channels will also be maintained in some services for those users that require them.
15. Those who cannot engage with the online system will not be disadvantaged because all the existing procedures which are available for dealing with a charge will continue to be available to them.
16. Another potential effect on those with protected characteristic relates to income. The standardised nature of penalties issued by the automatic online conviction and standard statutory penalty procedure will mean that those of a higher income are likely to be offered the option of a lower fine than they would under the status quo and that those of a lower income are likely to be offered the option of a higher fine than they would under the status quo. This issue is likely to affect those with the following protected characteristics in particular, as those with these protected characteristics are disproportionately found to have low incomes:
  - i. Disability: There is a 30.1 percentage point gap in employment between disabled and non-disabled people, representing over 2 million people<sup>7</sup>.
  - ii. Race: The UK economic activity rate for 16-64 year olds from ethnic minorities is 14% lower than the 16-64 UK economic activity rate for the population as a whole<sup>8</sup>.

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<sup>6</sup> 'Transforming our Justice System: assisted digital strategy, online conviction and statutory fixed fines', <https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/>

<sup>7</sup> <https://www.gov.uk/government/publications/disability-facts-and-figures/disability-facts-and-figures#fn:3>

<sup>8</sup> Nomis annual population survey.

<http://www.nomisweb.co.uk/query/construct/summary.asp?mode=construct&version=0&dataset=17>

- iii. Gender: The UK economic activity rate for 16-64 year olds is 10.5% lower for women than it is for men<sup>9</sup>.
17. The online system will make clear to defendants the standard statutory penalty which is to be imposed and will provide information about how a court would normally decide on the correct penalty. Lower income defendants should be motivated to opt out of the system whilst those on a higher income should be encouraged to consider what may be a faster and less expensive option
18. Respondents to the consultation who commented on the online conviction equalities impacts stated that full consideration needed to be given to those who would not be able to engage with this procedure, in particularly the elderly or disabled; some respondents, however, commented that disabled users may benefit from online convictions as they would no longer have to travel to attend court. Some respondents also suggested that there might be a negative impact on those for whom English is not their first language.
19. Any of the potential effects on those with protected characteristics, which are set out above are justified by the fact that the proposals are a proportionate means of achieving the legitimate aim of supporting citizens to present their own cases simply and to obtain justice more swiftly whilst reducing the costs of the courts and tribunals to taxpayers. There will therefore be no indirect discrimination as a result of these proposals.

#### Discrimination arising from disability and duty to make reasonable adjustments

20. We do not consider that the proposed online system for pleas will result in any discrimination in relation to disability for either offenders or other court users for the reasons set out above. The proposals are considered to be a proportionate means to achieving our legitimate aim of modernising the court service to save time and expense. We will continue to make reasonable adjustments for offenders and other court users with disabilities.

#### Harassment and victimisation

21. We do not consider there to be a risk of harassment or victimisation as a result of these measures.

#### Advancing equality of opportunity

22. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of offenders and other court users who share a protected characteristic, where those needs are different from the needs of those who do not share a protected characteristic. The potential effect on those with protected characteristics is set out above and the assisted digital service will be set up with their needs in mind in order to reduce any possible disadvantage that might be experienced by these groups. The existed procedures that exist for dealing with a criminal charge will continue to be available to all groups should they be unable to engage with the online procedure.

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<sup>9</sup> See Note 8

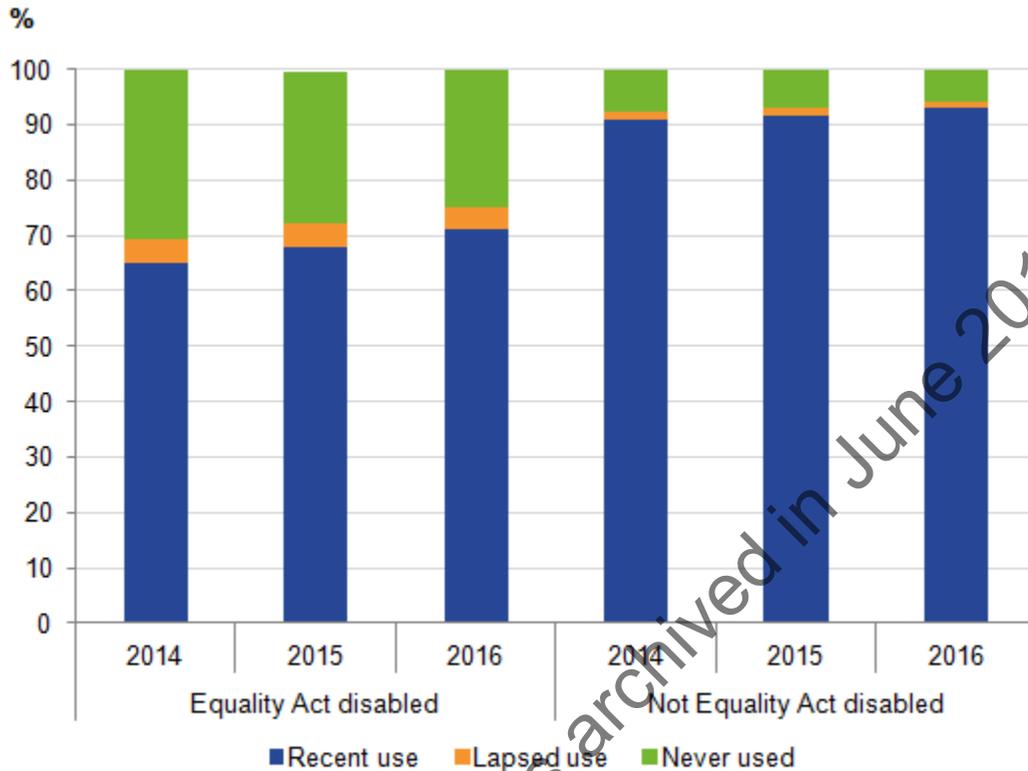
Fostering good relations

23. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposals.

This publication was archived in June 2017.

## Analysis

### Internet Non-Use by Disability Status (%)



**Source:** 'Internet Users in the UK: 2016', Statistical Bulletin, Office of National Statistics, <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2016#25-of-disabled-adults-had-never-used-the-internet>