

Criminal Justice Bill 2002

Full Regulatory Impact Assessment

A. Issue and objectives

1. This regulatory impact assessment (RIA) estimates the costs likely to be imposed on business by the Government's proposals, contained in the Criminal Justice Bill 2002, for reform of the jury summoning system. These proposals have their origin in Sir Robin Auld's review of the criminal courts system, published in October 2001.¹ The review looked, inter alia, at the composition and use of juries in the Crown Court, and made a number of recommendations for improving jury service procedures and increasing the pool of potential jurors.

2. Sir Robin Auld noted that while juries are broadly representative of the population as a whole, the evidence suggests that they still do not properly reflect the diversity of the communities from which they are drawn. He considered that one reason for this is that certain groups of people are currently not required to do jury service, chiefly (although not exclusively) by virtue of their occupation. Schedule 1 to the Juries Act 1974 provides that various classes of person either must not or need not serve on a jury. Those who are "ineligible" – that is, not qualified to serve – include the judiciary, others concerned with the administration of justice, the clergy and the mentally ill. Certain other groups of people are "excusable as of right" – that is, they have the right to refuse to do jury service if they so wish. These include those aged between 65 and 69, members of Parliament, the armed forces, members of the medical and similar professions, and people with religious objections.

3. Sir Robin Auld argued that these exemptions and excusals deprive juries of the experience and skills of a wide range of professional people. He recommended that the categories of ineligibility and excusal as of right set out in Schedule 1 to the Juries Act should be abolished, with one exception: those with mental disorders should continue to be ineligible for jury service.² The effect of this would be that people in these categories would in future be required to do jury service when summoned, unless they could successfully apply for "discretionary" deferral or excusal. That is, they would have to demonstrate that there was a "good reason" – for example, pressing work or caring commitments, or a medical condition – why they should be excused from jury service, or allowed to defer it until a later date. In its criminal justice white paper, *Justice for all* (July 2002), the Government signalled its acceptance of Sir Robin Auld's recommendations, and its intention to give them legislative effect.³

4. The Criminal Justice Bill will also impose a duty on the Lord Chancellor (in whom responsibility for jury summoning is vested) to publish guidance on the exercise of the power of discretionary excusal for "good reason" by the Jury Central Summoning Board (JCSB), which administers jury summons on behalf of the Crown Court in

England and Wales. The purpose in doing this is to ensure clarity and transparency of the discretionary excusal system. Further details on this and on the other proposals can be found in the Explanatory Notes to the Bill.

5. The proposal to abolish the list of exemptions and excusals is one of a number of policies which the Government is pursuing as part of its reform of the jury system. The Government wishes to reinforce the message that jury service is an important civic duty, and a valuable way in which members of the public can contribute to, and participate in, the administration of justice. It therefore believes that members of the community have a responsibility to undertake jury service if they possibly can. The purpose of the proposal is to expand the pool of potential jurors and, in so doing, to ensure that juries better reflect the communities from which they are drawn. Its intended effect is to increase public confidence in the criminal justice system as a whole.

B. Options

6. Three main options have been identified:

- (i) **leave the list of exemptions and excusals as of right as it is at present.** Retaining the status quo would mean that juries would continue to be deprived of the contributions of a range of people within the community. It would undermine the message that jury service is an important civic duty.
- (ii) **abolish the current list of exemptions and excusals as of right.** The Government favours this option for the reasons given above. Furthermore, as Sir Robin Auld pointed out, it is extremely difficult to draw a line between those whose work is and is not so crucial that it would be against the public interest to compel them to serve as jurors. Invidious choices would be avoided, and the jury strengthened, if the right of excusal which is enjoyed by certain occupations were to be replaced with discretionary excusal or deferral of service.
- (iii) **abolish exemption and excusal as of right for certain groups, and retain it for others.** This option was advanced by a number of those responding to the consultation on the Partial Regulatory Impact Assessment on the grounds that jury service would impose a disproportionate burden on certain professionals and their clients. The Government considers, however, that the arguments listed in (i) and (ii) militate against this option, and has selected option (ii).

C. Benefits

7. The proposals will help to ensure that juries are more representative of the communities from which they are drawn, and more diverse. It will also underline the

important message that jury service is a universal civic commitment, and will provide more people with the opportunity to participate in, and gain an understanding of, the criminal justice system. Expanding the pool from which jurors could be selected would have the practical benefit of reducing the frequency with which people are summoned for jury service (see paragraph 12 below).

8. From a business perspective, the proposals create a level playing field in the sense that it makes those individuals and businesses currently exempt from jury service costs subject to a (potential) cost burden which is borne by the overwhelming majority of the private sector.

9. It is difficult to quantify these benefits in precise terms. Their value lies in the general contribution they will make to strengthening the jury system, and to increasing public trust and confidence in the criminal justice system as a whole. Sir Robin Auld emphasised the importance of the institution of the jury to the British criminal justice system in his review:

‘...jury tradition is not only about the right of the citizen to elect trial but also about the juror’s duty of citizenship. It gives people an important role as jurors – as stakeholders – in the criminal justice system. Seeing the courts in action and participating in that process maintains public trust and confidence in the law’.⁴

D. Compliance cost estimates

Business sectors affected

10. The proposals will affect those private and voluntary sector workers who are currently exempt or excused from jury service, but who will be expected to serve in future, if summoned, unless they can show good reason for being excused. These comprise the following:

- defence barristers, lawyers and solicitors and their staff
- barristers acting for the Crown and their staff
- people in charge of, or employed by, forensic science laboratories
- the clergy
- doctors, dentists, nurses and midwives in private practices
- vets and veterinary surgeons
- pharmaceutical chemists.

Chances of being called to do jury service

11. During the year from April 2001 – March 2002 the JCSB summoned approximately 553,000 potential jurors. Seventeen per cent of those summoned were either ineligible, disqualified, or exercised their right to be excused. Twenty-five percent of those summoned were excused at the discretion of the JCSB. On a rough calculation, a person’s chances of doing jury service during their lifetime are one in six.⁵

12. As noted above, the Government's plans to abolish exemptions and excusals as of right will increase the pool of potential jurors. The Government is also planning to increase magistrates' sentencing powers to twelve months. This will have the effect of reducing the number of jury trials (and therefore, the requirements for jurors). Other ongoing reforms to the summoning system, such as improved management of discretionary excusal and deferral of service, will also increase the pool, and thereby also decrease the odds of being summoned. A significant number of individuals and organisations will never, or rarely, incur the cost of jury service.

13. The nature of random selection from the electoral roll means that it is possible that an individual may be summoned for jury service on more than one occasion, irrespective of previous service. However, they will be entitled to be excused if they have served on a jury at any point during the past two years.

14. The Jury Central Summoning Bureau was established in October 2000 to provide a national summoning service. This centralisation is promoting consistent consideration of excusal requests. More of those summoned to serve who might otherwise have been excused are being given the opportunity to suggest alternative suitable dates for service.

15. Clearly the JCSB will be flexible, as it is now, in cases where there is compelling evidence that it would be in the public interest for someone to be excused jury service on account of their work, or where significant financial or other work-related hardship would result. There is a right of appeal against a refusal by the JCSB to grant an excusal or deferral. This is considered, in the first instance, by the JCSB. The appeal can often be resolved at this stage; for instance, the appellant provides additional information relating to their request for deferral or excusal which allows the initial decision to be reversed. Where the JCSB upholds an original decision to refuse excusal or deferral, the matter will be referred to the court for a final decision. The trial judge additionally has discretion to excuse or discharge a juror if he considers that circumstances warrant it.

Requirements of jury service

16. The period for which people are required to do jury service varies from a few hours to ten days (the length of service for which jurors are normally called) or longer. A small number of very complex trials – most notably, serious fraud – can take six months or longer. The Government recognises that this places an unacceptable burden on individual jurors. It intends to legislate to provide that such trials are heard by a judge sitting alone without a jury.

17. It is an offence under section 20 of the Juries Act 1974 to fail to attend for jury service if summoned. The offence is punishable summarily by a fine of up to £1,000 or as a contempt of court. If the juror can show reasonable cause for his failure to attend he is not liable to any penalty.

18. Sir Robin Auld drew attention to the problem of failure to attend court in response to a jury summons, and recommended that consideration should be given to the introduction of a system of fixed penalties, subject to a right of appeal to the magistrates. The Government will be looking at this as part of a wider review of fixed penalties to take place later this year.

Compliance costs

19. The table at **Annex A** gives a very rough indication of the likely costs of jury service to the professions affected by the proposals. It is extremely difficult to determine overall compliance costs. They will depend upon a number of factors, chiefly the cost to the company/organisation of losing the services of a particular employee for a period of time. The size of the business is also an important factor. The impact of a requirement to do jury service on a small or a one-person business, as opposed to a medium or large-sized business, may differ substantially.

20. It should be noted that there may be offsetting savings because the numbers of other working people called will be reduced. For example, a businessman who previously could have been selected for jury service may not now be selected because a lawyer has been called instead.

21. Jurors receive an allowance for jury service. The current allowance is up to £52.63 per day for the first 10 days of jury service, and up to £105.28 per day thereafter. In order to receive the allowance, both the juror and their employer must complete a loss of earnings certificate.

22. A number of courts have arrangements whereby jurors who have not been selected to sit on a case on their first day may return to their place of work and telephone periodically to check whether and, if so, when they are required. This may reduce the cost to a business of an absent employee, although it will not do so in circumstances where an employer has hired a temporary replacement to cover the work of their regular employee for the expected duration of their period of jury service. The Loss of Earnings Certificate issued to the juror asks the employer whether they would allow the juror to return to work on any full or part days that they are not required for jury service.

23. We have carried out a competition filter and results show there is unlikely to be a negative competitive impact on business. The filter is attached at **Annex B**.

E. Results of consultation

24. A partial Regulatory Impact Assessment was published on 25 September 2002. Copies were sent to organisations representing the groups affected by the proposals, organisations representing areas of the criminal justice system, small business organisations and other Government departments. The consultation also took account of responses received during the consultation exercise following publication of the Auld review which raised issues relevant to the Partial RIA.

25. Responses were received from a variety of organisations and individuals. Most supported the objectives of the reforms. Concerns centred around the financial impact on the business of the absence of key employees on jury service. Those organisations representing members of the medical, dental and pharmaceutical professions emphasised the difficulties in finding locums to replace absent employees, particularly in the light of staff shortages in these professions. They also expressed concern about the impact of the reforms on patient/client treatment and services. The Government has noted these concerns and will seek to address them in the guidance on discretionary deferral and excusal described in paragraph 4 above, on which there will be further consultation in due course.

Consultation with small business

26. The Small Business Service of the Department of Trade and Industry were involved in the consultation on the Partial RIA, in which a number of responses received commented on general matters concerning jury service as well as the specific issues raised in the Partial RIA. Representations from small or sole businesses emphasised the financial and personnel difficulties that would be presented as a result of the absence of an employer/employee on jury service. As noted above, the Government is alert to the risk that the likely burden of jury service might be more onerous for those small or sole businesses affected by the proposals outlined in the RIA.

27. In their response to the Partial RIA, the Small Business Service commented that the proposals should reduce the probability of someone from the wider small business community being summoned for jury service and welcomed this. They noted, however, that a number of members of the professions, who it is proposed will no longer be exempt, operate small businesses in their own right. They commented that the effects on these people and their businesses, as for other sole traders and small business-people, is disproportionate compared to others, and they expressed the hope that applications for excusal from these groups would receive a sympathetic hearing, and be reflected in guidance being drafted for the Jury Central Summoning Bureau. The Small Business Service also commented that the proposals make no provision to compensate the newly eligible professionals according to their costs. They urge that this is given further consideration.

Endnotes

¹ Auld LJ, *Review of the criminal courts of England and Wales* (The Stationery Office, October 2001).

² *Review of the criminal courts*, recommendations 20-22.

³ See Chapter 7, *Justice for all* (The Stationery Office, July 2002)

⁴ Quote from Baroness Kennedy, September 2000, in Auld, *Review of the criminal courts*, p. 139.

⁵ Based on calculation by Penny Darbyshire (“Strengthening the argument in favour of the defendant’s right to elect”, *Criminal Law Review* 1997, p. 913).

F. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

David Blunkett
Secretary of State
Home Office

Date: [XX] November 2002

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Annex A

**JURY SUMMONING PROPOSALS: COSTS TO PROFESSIONS PREVIOUSLY
INELIGIBLE/EXCUSED AS OF RIGHT**

Business Sector	Approx. numbers (England & Wales)¹	Estimated annual salary (£s)	Estimated annual cost of employee to company (£s)²	Approx. number of employees under-taking jury service per year³	Estimated average cost to company for 10 days jury service (£s)⁴	Estimated average cost for employees predicted to undertake 10 days' service (£s)
Barristers	13,000	80,000	104,000	65	4,000	260,000
Lawyers and solicitors	109,553	45,254	58,830	548	2,262	1,239,576
People in charge of / employed by forensic science labs	2,800	29,837	38,788	14	1,492	20,888
The clergy (Anglican)	13,046	17,030	22,139.	65	851	55,315
Doctors	99,169	59,391	77,208	496	2,970	1,473,120
Nurses and midwives	632,050	23,396	30,415	3,160	1,170	3,697,200
Pharmaceutical chemists	12,125	32,951	42,836	61	1,648	100,528
Vets and veterinary surgeons	15,000	50,000	65,000	75	2,500	187,500
Dentists	22,124	50,000	65,000	111	2,500	277,500
TOTAL	918,876	-	-	4,595	-	7,311,627

1. Estimated figures represent 2001/2002 and were obtained from: the Bar Council, Law Society, Forensic Service, British Dental Association, Nursing and Midwifery Council, British Veterinary Association, Department of Health, and the Home Office. The figure for doctors represents the total

number of doctors registered in Great Britain. This also includes doctors who work for the NHS and those who are retired, and remain on the register. Some doctors work for both the NHS and in private practice. It is therefore very difficult to calculate the exact number of doctors in private practice.

2. Assuming that the average person works 260 days per year.
3. It is difficult to predict how many of those who may presently be excused jury service will actually serve on a jury. It has been estimated (research by Penny Darbyshire, see endnote 5) that there is a one in six probability that someone will do jury service in their lifetime, based on court sitting days, which converts to 1 in 312 per year. However, some allowance needs to be made for the 15% or so of the eligible population who cannot be identified for the purposes of summoning, leading to an annual probability of serving on a jury of 1 in 265.

(ii) An alternative means of calculating this would be to use court summoning data. There are about 550,000 summonses per year of which roughly about 30% or 165,000 people will serve, and the available eligible population will be 85% of the 34 million people in the appropriate age range. This leads to the probability of serving on a jury as 1 in 165. Thus, for the purposes of this assessment it has been assumed that the annual probability will be between these two estimates at 1 in 200, uncertain to plus or minus 25%.

4. It has been assumed that a juror will serve an average of ten days. It should be noted that not all those summoned would serve the full ten days.

Sample calculation:

Estimated annual cost of jury service for predicted number of barristers actually undertaking jury service:

- 65 barristers x £400 x 10 days = £260,000

COMPETITION ASSESSMENT

The competition filter	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No*
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No*
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No*
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the market characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

* The answer to the first three questions in respect of the independent health care sector is “no”.