



# Regulation of Enforcement Agents

**Consultation Paper**

CP2/07

30 January 2007

This consultation will end on 25 April 2007



# Regulation of Enforcement Agents

A consultation produced by Her Majesty's Courts Service,  
part of the Department for Constitutional Affairs.

It also available on the dca website at [www.dca.gov.uk](http://www.dca.gov.uk) Home Office website at  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) and the SIA website at [www.the-sia.org.uk](http://www.the-sia.org.uk)



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## Ministerial Foreword

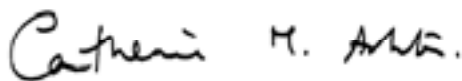
The regulatory structure for enforcement agents in England and Wales is currently very fragmented and only applies to some parts of the industry. We are satisfied that regulation of this area is needed to establish reasonable standards and to protect vulnerable members of society.

At the time of the White Paper *Effective Enforcement* published in March 2003, the Security Industry Authority (SIA) was considered as a means of establishing a regulatory regime. However, it was at that time a new organisation, still establishing its position and dealing with those security sectors for which it was already responsible, so it was not then well placed to regulate this sector. Now, as a well established regulator, we consider the SIA is better placed to regulate in this area, and it has contributed to the development of this consultation document.

This paper sets out the options and gives a clear indication of our preference in the light of our previous consultations and the evidence set out in this document, which is regulation by the SIA.

We would ask that you consider the evidence on all the options carefully, and we would welcome your views.

We will analyse responses and publish the findings within three months of the closing date of the consultation.



Parliamentary Under Secretary of State  
Department for Constitutional Affairs



Parliamentary Under Secretary of  
State  
Home Office

## **Executive summary**

### **The main proposals of the consultation**

1. As described in this document, we have previously consulted on the broad proposals for licensing enforcement agents and these have been generally supported. The main proposals of this consultation are the options for the future regulation of enforcement agents. Three options are explored. The preferred option is regulation by the Security Industry Authority (option 3). Our aim here is to set out our case for the preferred option which has been arrived at in the light of comments received and discussions within Government. However, we would welcome wider comment which we will also take into account.

### **Background**

2. Civil enforcement as a whole has been subject to at least four reviews since the late 1960s. Each review, however, dealt with different aspects of court enforcement with some successes. Changes have been made to court enforcement procedure but we recognise that more needs to be achieved in reforming the complex areas of enforcement agent law and the regulation of enforcement agents.
3. The regulatory structure for enforcement agents in England and Wales is currently very fragmented. Whilst there are some elements within the industry that are quite strictly regulated, there are others that are only subject to informal regulation through trade associations, and others that appear to be subject to no regulation at all. There is clearly a need for a more formalised structure to regulate the industry, which would raise standards of professionalism within the industry, and give the public greater confidence in it.
4. We estimate that there are currently 5,200 enforcement agents operating within England and Wales. This figure is made up of approximately 600 County Court bailiffs, 1,600 other state employed enforcement agents (such as tax collectors, customs officers etc), 200 local authority employed enforcement agents, 1,600 certificated private bailiffs and 1,200 non-certificated private bailiffs. We further

estimate that there are approximately 150 firms operating within the industry. Many of these currently operate without any formal or statutory regulation.

5. In general terms, there is currently no formal complaints process for private enforcement agents. There are existing professional associations which individual bailiffs or bailiff firms may belong to. The professional associations are independent from government and have their own internal complaints and disciplinary procedures. Enforcement agents are expected to comply with the guidelines laid down in the *National Standards for Enforcement Agents* <http://www.dca.gov.uk/enforcement/agents02.htm>, published by the then Lord Chancellor's Department (LCD) in April 2002. This was, however, intended to be guidance on good practice that was endorsed by many bodies working within the industry, and has no legal force behind it.
6. As an interim measure to address some of the shortcomings, an enhanced and extended certification procedure for those enforcement agents who take control of goods is currently being taken forward in the *Tribunals, Courts and Enforcement Bill*. This will give equal access to a complaints mechanism, exercised by a judge at the court that issued the certificate, to anyone who wishes to complain about the actions of all private bailiffs.
7. The Green Paper *Effective Enforcement* was published in July 2001 <http://www.dca.gov.uk/enforcement/enfrev01/index.htm>. This paper outlined options for, and canvassed views upon, a future structure for the regulation of enforcement services, a single piece of enforcement agent law, and a single, simplified fees structure.
8. Responses to the Green Paper were published in *Towards Effective Enforcement: Responses to Consultation* in April 2002 <http://www.dca.gov.uk/enforcement/teeresp.htm>. Eighty-four responses were received. A breakdown by sector of number of respondents is set out in Annex A of the response document. There was a large consensus among the respondents that enforcement services in England and Wales are in need of regulation. There was also considerable support for a single piece of enforcement agent law, and for a single, simplified fee structure which is currently being taken forward in the *Tribunals Courts and Enforcement Bill*.
9. Options for regulation that had been proposed included increased court-based regulation; voluntary self-regulation; compulsory self-regulation; or statutory regulation through a Commission, based upon the model provided by a body such as the Financial Services Authority or the Immigration Services

Commission. Most respondents favoured regulation by way of a statutory body such as a Commission. The Department for Constitutional Affairs subsequently identified the Security Industry Authority (SIA) as an existing body whose functions and responsibilities have broad synergies with the stated intentions for the regulation of enforcement activities.

10. Proposals for regulating the enforcement industry through the SIA were therefore included in the White Paper *Effective Enforcement* published in March 2003 <http://www.dca.gov.uk/enforcement/wp/index.htm>. This included a partial Regulatory Impact Assessment (RIA), as well as proposals for a single piece of enforcement agent law and a single, simplified fee structure.
11. Since publication of the White Paper we have considered some of the detail of regulation and this has resulted in several policy changes being made:
  - The regulatory body would:
    - **not** be responsible for administering training and qualifications. They would however, need to develop and approve (in consultation with existing stakeholders) the content and level of competence (training/qualifications) in line with the SIA Competency for Licensing Strategy. Any training would need to be consistent (accredited vocational qualification) with all other regulated sectors. The SIA would also only accept training from training bodies approved by Awarding bodies which were in turn endorsed by them. The SIA would also need to understand the existing training to agree with the stakeholder an appropriate level of exemption against the competency standard set for licensing;
    - **not** oversee a complaints scheme and establish a Complaints Board. This is due to a legal concern in respect of Article 6 of the European Convention on Human Rights that complaints should not be allowed to bypass the court, even where a right of appeal on the decision to the courts exists;
    - **not** accredit the functions of professional associations;
    - **not** have the power to make recommendations to the Lord Chancellor on fees charged by the enforcement agents for their services. That would remain the role of policy officials within this department; or
    - **not** introduce a compulsory Approved Contractor Scheme.

12. One of the underlying principles of the Private Security Industry Act 2001 is that it does not apply to Crown Servants when performing the activities required of them in their professional capacity. The regulation of enforcement agents will only apply to the private sector. Crown employees will therefore not be included in this regulatory regime.
13. The regulation of enforcement agents is complex and fragmented and only applies to some parts of the industry. In addition, anecdotal evidence from organisations such as Citizens Advice strongly suggests that debtors are vulnerable to abuse by unregulated enforcement agents.
14. The Government believes that the proposals set out in this paper are consistent with the Better Regulation Agenda. This included the five principles of Better Regulation:
  - Proportionality
  - Accountability
  - Consistency
  - Transparency
  - Targeting.

## Introduction

15. This paper sets out for consultation the options for the future regulation of enforcement agents. The need for regulation was identified in 2003 in the White Paper *Effective Enforcement*.
16. At the time of the original consultation in 2003 the Security Industry Authority (SIA) was seen as an existing licensing body which might be suitable for the regulation of this sector. The government is now consulting on this, as a preferred option, together with other options set out in this Regulatory Impact Assessment (RIA). Stakeholders are asked to consider and respond to the evidence presented in the RIA. The consultation is aimed at all individuals and groups that have an interest in warrant enforcement in England and Wales and those who have expressed an interest in SIA regulatory issues.
17. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 32 have been followed.
18. Copies of the consultation paper are being sent to:
  - The High Court Enforcement Officers' Association
  - The Enforcement Services Association
  - The Association of Civil Enforcement Agencies
  - The Local Authority Civil Enforcement Forum
  - The London Motorists Action Group
  - Enforcement Law Reform Group
  - Zacchaeus Trust 2000
  - Citizens Advice
  - Money Advice
  - Civil Court Users Association

- MIND
- Age Concern
- Small Business Service
- Her Majesty's Revenue and Customs
- Department for Communities and Local Government
- Commission for Racial Equality
- Better Regulation Executive
- Better Regulation Commission.

19. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

## The proposals

### Partial Regulatory Impact Assessment

#### Title of proposal

#### Regulation of enforcement agents

20. This includes bailiffs and any other agents who carry out the following activities:

- take control of goods using the powers and procedures laid down in Schedule 12 to the (*Tribunals, Courts and Enforcement Bill currently progressing through Parliament*);
- take control of land as ordered by the county court or High Court; and
- arrest and commit persons as ordered by the High Court, county court or Magistrates Court.

21. We propose to take this forward by affirmative order under paragraph 1(2) of Schedule 2 to the Private Security Industry Act 2001 (PSIA) which will add the above activities to those which fall within the remit of the PSIA. As the proposal is also to require in-house enforcement agents to be regulated, the affirmative order will further need to amend Part 2 of Schedule 2 to the PSIA to make the activities subject to Additional Controls.

#### Purpose and intended effect

##### Objective

- To ensure that enforcement agents are fit and proper persons, thereby raising public confidence in the industry and those who work within it.
- Ensure that all those who work in the industry are adequately trained and are subject to appropriate regulatory structures and disciplinary procedures.

## **Devolution**

22. These proposals apply to England and Wales only. Certain parts of the Private Security Industry Act 2001 also apply to Scotland. This will not be the case for regulation of enforcement agents as the roles they play and how they are currently regulated differ.
23. The Bankruptcy and Diligence etc. (Scotland) Bill, which is expected to get Royal Assent in January 2007, will reform the system which enforces civil obligations in Scotland and the profession who currently carry out enforcement.
24. The Bill will modernise diligence (the enforcement tools) to make a better balance between debtor and creditors' rights. A new public body, the Scottish Civil Enforcement Commission, will oversee the reform. The current offices of messengers-at-arms and sheriffs' officers will be fused into a unified profession called judicial officers who will be trained to operate at messenger level. The Commission will recommend officer commissions, investigate complaints and regulate officer business, publish standards for officer activities and practices (including informal debt collection) set fees and carry out a range of related functions.
25. Any decision on the timing for implementing the diligence provisions in the Bill are likely not to be taken until after the forthcoming Scottish Parliamentary elections in May.
26. In Northern Ireland the court is responsible for enforcement and private individuals do not enforce court debt.

## **Rationale for Government Intervention:**

### **Identified problems within the industry**

27. Enforcement agent law is currently very complex and confusing, and comes from a number of sources in both statutory and common law. The regulation of the enforcement profession is currently fragmented, with some individuals operating outside of any structures and evidence of threats and intimidation being used against vulnerable people in their own homes. The enforcement agent fee structure is similarly flawed and open to abuse, whilst there are concerns about whether some parts of the existing enforcement agent law are ECHR compliant.

### **The scale of those problems**

28. We do not have accurate statistical information on the scale of the problem, precisely because the enforcement agents in question operate outside of any control or regulation.
29. Anecdotal evidence is contained in the report *Undue Distress*, published by the National Association of Citizen Advice Bureaux in May 2000. This report also confirmed that 96% of complaints made by the public to them about the activities of civil enforcement agents are about private bailiffs (i.e. only 4% are about public sector officers, such as county court bailiffs). Whilst the introduction of a single piece of enforcement agent law and a revision of the fee structure will address some of the areas of malpractice, without increased regulation the impact of these changes would be diminished.
30. The enhanced and extended certification procedure being taken forward in the *Tribunals, Courts and Enforcement Bill* as an interim measure will, for the first time, give equal access to a complaints mechanism to anyone who wishes to complain about the actions of all private bailiffs. This will provide us with the opportunity to gather evidence on disability and ethnicity of the complainant.

### **Will these problems worsen without Government intervention?**

31. It has been suggested by the advice sector that the full scale of the issues is not apparent, as debtors are not aware of their rights. The voluntary sector is responsible for advising debtors of their rights and is therefore paying the price in terms of the demand for their services.
32. Not only is there a fear that without this reform incidences of malpractice and fee scale abuse will increase, but also that ineffective and oppressive enforcement of debts by unscrupulous agents will exacerbate the problems of escalating debts and social exclusion. On 25 September 2006 Citizens Advice launched a campaign to tackle unfair bailiff practices  
[http://www.citizensadvice.org.uk/index/campaigns/social\\_policy/parliamentary\\_briefings/pb\\_consumerandebt/tribunals\\_courts\\_and\\_enforcement\\_bill-2](http://www.citizensadvice.org.uk/index/campaigns/social_policy/parliamentary_briefings/pb_consumerandebt/tribunals_courts_and_enforcement_bill-2)

### **What other methods have been used to address this problem?**

33. In April 2002 the Lord Chancellor's Department published *National Standards for Enforcement Agents*. This laid down a code of minimum standards of

behaviour for enforcement agents, and was endorsed by all the major stakeholders within the industry. It was the first document of its kind. But it was voluntary guidance – nobody was obliged to abide by its contents and it did not replace existing local agreements, codes of practice or legislation. Although it was well publicised and was endorsed by major stakeholders, correspondence from the advice sector suggests that the guidance is insufficient. There are no penalties for not maintaining the standards and there are no formal monitoring procedures in place to record its use. The document was produced to encourage best practice.

## **Consultation**

### **Regulation of enforcement services**

34. Options for regulation were submitted for public consultation in the Green Paper *Towards Effective Enforcement* (July 2001) and the responses were published in the post consultation report (May 2002). 40 respondents commented on the question of regulation and 34 respondents favoured the statutory regulation of enforcement services. Subsequent to that consultation exercise, policy officials identified the possibility for regulation through the SIA, which could carry out the same functions as a statutory Commission through an existing Non-Departmental Public Body (NDPB).
35. The industry has generally been supportive of the proposals. In particular they were supportive of regulation by the SIA rather than an independent commission, mainly due to a desire to see increased professionalism within the industry. The SIA also met with approval because with its existing infrastructure and economies of scale it would be able to set lower fees than would a new body.

## **Options**

### **Option 1 – No change**

36. At present the enforcement profession is fragmented, with some individuals operating outside of any structures and some evidence of threats and intimidation being used against vulnerable people in their own homes.

37. As a result of the lack of regulation or membership of trade associations of some enforcement agents it is difficult to quantify the scale of the problem. However, anecdotal evidence from bodies such as Citizens Advice suggests strongly that existing perceived problems would continue unchecked if some form of regulation is not introduced, to the detriment of confidence in the justice system.

### **Option 2 – The creation of a new regulator, the Enforcement Services Commission**

38. There was a large consensus among the respondents that enforcement services in England and Wales are in need of regulation. Most favoured regulation by way of a new statutory body such as a Commission.
39. It was originally proposed in the Green Paper that regulation would be by way of an independent, statutory, self-financing NDPB. This was tentatively given the title of the Enforcement Services Commission, and would be modelled upon, for example, the Financial Services Authority or the Immigration Services Commissioner. It would regulate Crown Servants as well as private enforcement agents and be designed to ensure that all those licensed to provide enforcement services were fit and competent to do so and were suitably trained and qualified. It would also approve companies that provided enforcement services, accredit professional associations and training providers, oversee a national data access scheme for enforcement agents, investigate complaints, and carry out research and make recommendations with regard to possible changes in enforcement agent law and fees.
40. It was envisaged in July 2001 that initial set up costs would be around £1.1m whilst annual running costs were estimated to be £1.7m. Using Average Earnings Index and the Retail Price Index, the updated estimates for 2006 are that initial set up costs would be around £1.34 m and the annual running costs around £2.11m.

### **Option 3 - Regulation by the Security Industry Authority (SIA)– this is the preferred option**

41. The SIA was set up under the Private Security Industry Act 2001 by the Home Office in April 2003 as an NDPB to regulate and license security operatives, including door supervisors, wheel clampers and security guards. With some broadening of its scope, the SIA could provide a cost-effective means of

regulating the enforcement industry. This would be less expensive than setting up a wholly separate commission dedicated to the enforcement industry.

42. The aim of regulation, through a statutory body, is to ensure that warrant enforcement is carried out appropriately, effectively and fairly in relation to both debtors and creditors. In accordance with the broadened remit of the Enforcement Review, announced by the Lord Chancellor on 6 March 2001, the Authority would regulate all public and private enforcement services. As already stated, the Private Security Industry Act 2001 does not cover Crown Servants. It is therefore proposed that the Authority will regulate all in-house and contracted enforcement agents. There is a need to regulate both in-house and contracted staff to ensure that regulation captures all enforcement agents. The evidence of the risk to the public is the same whether the enforcement agents are in-house or under contract. Therefore our principles apply across the following areas of warrant enforcement: High and county courts, Magistrates' courts, parking charges, local and national taxes and duties, maintenance and child support. It will aim to maintain and raise standards across the profession, and promote best practice, fostering public confidence and creating a level playing field across the industry.
43. A regulatory body would license enforcement agents carrying out legislatively defined and designated licensable activities. The activities we regard as licensable will be added to the Private Security Industry Act 2001 (through an Affirmative Order amending Schedule 2 as appropriate). Following that the SIA will address the regulation in the same consultative manner as they have with the other sectors they currently regulate or have the remit to. At that stage options of regulation will be examined in greater depth including the "no change" approach.

## **Costs and Benefits**

### **Sectors and groups affected by these proposals:**

- Enforcement agents
- Debtors
- Defendants
- Creditors

- The advice sector
- The courts
- The judiciary

### Equality and Social Impacts

44. We consider that options 2 and 3 would not have an adverse impact on different groups of people, including minority groups. However with the ‘no change’ option, anecdotal evidence referred to throughout this paper mentions threats and abuses by enforcement agents against vulnerable people.

45. The only published information which may assist in identifying the groups of people that may be enforced against is in respect of fines. We are aware that the Total Number of fines in England and Wales 2005 broke down as follows:

Male	802,747
Female	213,461
Other	8,856
<b>Total</b>	<b>1,025,064</b>

46. Persons fined at Magistrates’ courts by outcome and ethnic appearance of defendant, in selected areas (Dorset, Lancashire, Leicester, Northamptonshire, Northumbria and Nottinghamshire) 2004 were:

White	4,836
Black	208
Asian	185
Other	30
Unknown	443
<b>Total</b>	<b>5,702</b>

Figures supplied by Home Office RDS.

47. We will need to investigate any research on debt to identify what evidence is available to provide information on gender, disability, age or race.

**Question 1: Do you think that better regulation of enforcement agents would have a positive impact for different groups of people including minority groups? If so, why?**

**Question 2: Do you disagree that regulation of enforcement agents would have a positive impact for different groups of people including minority groups? If so, please provide specific details.**

### **Administrative Burdens and Simplification**

48. The proposals outlined in options 2 and 3 of this RIA will allow the regulation of private enforcement agents who currently do not fall under existing regulation or legislation. One of the options above also proposes the creation of a new regulator.

49. The decision to bring certain private enforcement agents under regulatory control is based on a number of factors. These are:

- the fragmented and complex nature of enforcement law which can only be corrected by government;
- anecdotal evidence suggesting vulnerable debtors are at risk.

50. As explained elsewhere, enforcement agent law and regulation is fragmented and inconsistent with enforcement agents being treated by different standards. By introducing this change, one simple regulatory framework will apply in England and Wales.

51. The preferred option to take this forward is regulation through an existing body rather than creating a new regulator. It will provide benefits which may be difficult to quantify monetarily such as ensuring that all private enforcement agents are fit and proper persons when dealing with vulnerable debtors.

52. Although it will provide some simplification in the regulation of enforcement agents, this may create administrative burdens where none existed for some enforcement agents or across borders where other regulatory schemes exist. The Government believes that this risk is offset by a number of likely benefits for the profession. These include increased confidence in the behaviour and

professional standards of agents, greater consistency in the treatment and regulation of enforcement agents under one framework and in the social benefits likely to emerge.

### **Option 1 - No change.**

#### **Costs**

53. This option would incur no additional costs to debtors or creditors. There would, however, be a continuing cost to voluntary and charitable organisations in dealing with concerns about enforcement action and agents. There is widespread concern that the present unregulated system allows the unscrupulous to exploit the vulnerable, as identified by Citizens Advice.

#### **Benefits**

54. The status quo would remain: there would be no extra cost to business and benefits would be neither enhanced nor diminished. The enforcement agents are, however, familiar with the current system and have developed working practices to deal with the number of warrants issued. We are unable to ascertain how much debt is covered by these warrants but as an indication, the level of debt successfully recovered between January 2003 and December 2003 in the county courts was £49.8 million from 355,476 warrants issued worth a total of £186.3 million.

### **Option 2 – The creation of a new regulator, the Enforcement Services Commission**

#### **Costs**

55. Regulation through an Enforcement Services Commission would incur costs through the establishment and running of a new NDPB. The cost figures in 2001 were outlined in the Green Paper. The most recent estimates are as follows and were set out as:

- set up costs of £1.34 million;
- staff costs of £1.56 million per annum;

- accommodation costs of £350,000 per annum;
- other recurring costs including ongoing IT, research, support services, travel and subsistence, marketing, publicity and recruitment of an estimated £200,000 per annum.

56. Total estimated cost for regulation through an Enforcement Services Commission was therefore estimated at **£2,110,000** per annum plus one-off set up costs of **£1,340,000**. The figures may be reduced on the basis that the Commission is expected to be self-financing but not profit making.

### **Costs on Individual Agents**

57. Any separate Commission would have to be self-financing. Therefore, the costs would be shared between the approximate 5,200 enforcement agents (including 2,200 Crown Servants) that would apply for a licence. To recover the annual running costs the probable licence fee would need to be a minimum £400 for one year each, giving a total annual income from fees of £2.08 million. In addition there will be training costs which have not been quantified.

### **Costs on Business**

58. Enforcement agencies would also be obliged to pay for approvals. Businesses may wish to pay for the licence of employees and training but they would not be obliged to do so. The Approved Contractor Scheme by the SIA is voluntary and it is therefore difficult to estimate at this time the cost to business of a Compulsory Approved Scheme. There will also be cost of lost opportunity during the training of enforcement agents.

### **Benefits**

59. A separate Commission to regulate enforcement services would ensure that all enforcement agents would be required to balance their duties to the court, the creditor and the debtor. A regulatory body would embrace enforcement in the public and private sectors, applying uniform standards and sharing best practice, so ensuring a level playing field across the profession.

60. Under a regulatory framework, enforcement agents and service providers would raise standards and operate on a professional level through:

- guidance in a published Code of Practice, and

- transparency through a register that would be available to the public.
61. The courts, by imposing appropriate penalties for misbehaviour, would effectively curtail the oppressive activities of unscrupulous enforcement agents. The Commission would ensure that all enforcement agents are licensed and meet the licence criteria. As we are unable to quantify the level of unscrupulous activity, we are unable to estimate the reduction or change.
62. Those in debt, who are often among the most vulnerable and socially excluded, would have protection and better information about their rights and advice about coping with their responsibilities. The regulator would work with the advice sector to identify the most appropriate methods of communication to ensure that all debtors are aware of their rights and the options available if they have a complaint and who would deal with it.

### **Option 3 – Regulation by the Security Industry Authority**

#### **Benefits**

63. Regulation through the SIA would achieve the same benefits as a separate Commission, namely that debtors would benefit from a regulated system where enforcement agents are licensed. Enforcement agents who do not abuse the system would not therefore be undercut by those acting in an unscrupulous manner.

#### **Costs**

64. As the regulatory infrastructure is already in place, regulation through the SIA would invoke fewer additional financial burdens than a separate commission, albeit that it would need to be expanded to include enforcement agents.
65. There would be additional development costs to the Authority if it were to regulate enforcement services. The development which includes issues of competency through training will cover the role, responsibility and obligations of the individual agents responsible for performing the activity. This will include for example, equal opportunity and diversity awareness in relation to this role. These costs are not quantifiable at this stage, and would have to be met by the DCA.

### Costs on individual agents

66. Under SIA regulation, the licence is the property of the individual. The current cost of a licence lasting three years is £190<sup>1</sup>. As part of the sector development, the risk assessment would also need to consider if enforcement agents require yearly licence renewals as with Vehicle Immobilisers to ensure that Criminal Record Bureau checks are carried out at more regular intervals than a standard three year licence. Such a move could have significant cost implications on the individual.
67. The regulatory framework of the Private Security Industry Act 2001 also requires managers and supervisors of front line operatives to require Non Front Line Licences (NFL). Although there is no training requirement for an NFL licence, the cost for a three-year licence is the same. Additionally, Directors and Partners of firms which provide licensed individuals will also require NFL licences. Because the intention is that both in-house and contracted staff will be subject to regulation, this requirement for managers, supervisors, directors and partners is wider than would be the case if only contracted staff were subject to regulation.
68. The cost of training, where applicable, will also fall to the individual. These costs are market driven, and SIA accredited training may be more comprehensive than that currently undertaken as it will need to be part of the nationally recognised and accredited vocational qualification. Such costs might also be off-set through accreditation of prior learning where existing qualifications count towards some or all of the training requirements. Costs at this stage cannot be accurately estimated and will be dependent on the duration and complexity of the approved training. In the light of the relatively small number of agents there may also be issues with the number of training providers who are prepared/able on a cost effective basis to offer the training to such a small base.

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<sup>1</sup> An increase to £245 is planned from 6 April 2007. This is conditional upon the making of a section 102 Order under the Finance (No 2) Act 1987, followed by the appropriate negative regulations under the Private Security Industry Act 2001. The relevant Regulatory Impact Assessment can be found on the Home Office Website at <http://www.homeoffice.gov.uk/documents/ria-sia-industry-licence-fee/ria-licence-fee2.pdf?view=Binary>

### **Costs on business**

69. Costs on business may also be dependent on:

- whether businesses choose to pay for the training and licence costs of their staff;
- lost opportunity costs while staff are trained;
- whether businesses choose to join the voluntary Approved Contractor Scheme, although there are also business benefits here, not least because of Licence Dispensation.

### **Costs on any charities**

70. Once the sector is regulated (and dependent on what conditions are imposed as a condition of the licence), complaints and concerns about the industry and individuals may ease, thereby reducing the resultant burden on charity and voluntary organisations. However, as there are no plans to require the SIA to set up a Complaints Board, these organisations will still have to advise on those issues relating to civil and criminal matters. Breaches of licence conditions will be able to be reported direct to the SIA although they are not able to respond to individual complaints/cases.

**Question 3: Which of the options do you prefer? Please provide specific reasons why.**

**Question 4: Are there any particular issues that the Government should be aware of?**

### **Small Firms Impact Test**

71. There are currently approximately 150 firms that employ certificated enforcement agents in the private sector. The majority of the firms are small as some employ a small number of agents and others contract with self employed agents. Licensing and training costs will fall on individuals rather than firms although firms may choose to meet such costs. Costs are therefore proportionate. The more staff a business has the greater the potential cost.

**Question 5: It would be helpful to receive specific information from small businesses as to what you estimate the cost implications of the proposals**

**will be. Please give your views on whether they will have a greater impact on small firms than large ones.**

### **Competition Assessment**

72. The establishment of regulatory powers to ensure that enforcement is carried out by licensed enforcement agents, introduced by whatever means, should not have a significant effect on competition within the enforcement industry. The industry currently comprises 5,200 enforcement agents. About 2,200 are crown employees, 200 are local authority employees, and 2,800 are private employees, spread between approximately 150 business entities.
73. The enforcement industry consists of a number of different market segments, which consist of High Court and county court writs and warrants, magistrates' court fines, parking charges, local and national taxes and duties, maintenance and child support. Each debt stream has its own characteristics in terms of the nature of competition, number of firms operating and the nature of competition. In some sectors e.g. enforcement of county court warrants of execution, the work is wholly within the public sector, whilst in others, such as High Court writs, the work is wholly contained within the private sector and is divided between approximately 70 High Court Enforcement Officers. But looking across the industry as a whole, it is estimated that there are generally five firms with larger market shares within each debt stream open to the private sector, holding a combined market share of at least 50%.
74. The licence fee would be payable by individual enforcement agents. The current fee is £190 for a three year licence<sup>2</sup>. This is sufficiently low that it is considered unlikely to affect significantly either the number of individual enforcement agents, or the number of businesses, operating in the market. The increase in costs would not represent any significant increase in barriers to entry, although it is possible that some may find that they face some additional training costs, especially those entering the industry for the first time. All their enforcement agent employees would require training to meet the required

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<sup>2</sup> An increase to £245 is planned from 6 April 2007. This is conditional upon the making of a section 102 Order under the Finance (No 2) Act 1987, followed by the appropriate negative regulations under the Private Security Industry Act 2001. The relevant Regulatory Impact Assessment can be found on the Home Office Website at <http://www.homeoffice.gov.uk/documents/ria-sia-industry-licence-fee/ria-licence-fee2.pdf?view=Binary>

competency standard (set by the SIA) for licensing, and be licensed before they could work (unless their employee is an approved contractor and has authority to use License Dispensation Notices). Employees of existing firms may already have achieved levels of competency through previous training that will be acceptable as prior learning for some or all of the new competence. Those individuals with no prior training would need to undertake new training, in its entirety to reach the necessary standard before applying for an SIA licence. In addition to the market led costs of training, the lost opportunity costs caused by the time spent undertaking the training must also be considered.

75. If enforcement agencies choose to cover some or all of these costs for the individual enforcement agents employed by them, this could potentially create significant new costs for those employing large numbers of enforcement agents. However, such costs would be proportionate to the size of the firms involved and would, nevertheless, represent a very small part of agencies' total costs of retaining the enforcement agents employed by them.

#### **Enforcement sanctions and monitoring**

76. The SIA has a published enforcement code which can be seen at [http://www.the-sia.org.uk/home/licensing/enforcement\\_060320.htm](http://www.the-sia.org.uk/home/licensing/enforcement_060320.htm). This code is relevant to all sectors as it follows the Intelligence model and would be applied to enforcement agents.

## Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

<p><b>Question 1: Do you think that better regulation of enforcement agents would have a positive impact for different groups of people including minority groups? If so, why?</b></p>	
<p><b>Question 2: Do you disagree that regulation of enforcement agents would have a positive impact for different groups of people including minority groups? If so, please provide specific details.</b></p>	
<p><b>Question 3: Which of the options do you prefer? Please provide specific reasons why.</b></p>	
<p><b>Question 4: Are there any particular issues that the Government should be aware of?</b></p>	
<p><b>Question 5: It would be helpful to receive specific information from small businesses as to what you estimate the cost implications of the proposals will be. Please give your views on whether they will have a greater impact on small firms than large ones.</b></p>	

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**Thank you for participating in this consultation exercise**

## About you

Please use this section to tell us about yourself

Full name	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	(please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## **How to respond**

Please send your response by 25 April 2007 to:

**Anne Marie Goddard  
Her Majesty's Courts Service  
Enforcement Programme  
4<sup>th</sup> Floor  
Steel House  
11 Tothill Street  
London  
SW1H 9LJ**

**Tel: 020 7210 0425**

**Fax: 0870 739 4268**

**Email: [regenforceria@hmcourts-service.gsi.gov.uk](mailto:regenforceria@hmcourts-service.gsi.gov.uk)**

### **Extra copies**

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>

### **Publication of response**

A paper summarising the responses to this consultation will be published in summer 2007. The response paper will be available on-line at <http://www.dca.gov.uk/index.htm>

### **Representative groups**

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

### **Confidentiality**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to

information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## Partial Regulatory Impact Assessment Table

Cost	Benefit
<p><b><u>Option 1 – No change</u></b></p> <p><b>Private Sector</b> – None.</p> <p><b>Public Sector</b> – None.</p>	<p><b>Private Sector</b> – None.</p> <p><b>Public Sector</b> – None.</p>
<p><b><u>Option 2 – The creation of a new regulator the Enforcement Services Commission</u></b></p> <p><b>Private Sector</b> –</p> <p>Individual</p> <ul style="list-style-type: none"> <li>• The licensing costs will be a minimum of £400.</li> <li>• The cost of training which is not yet quantifiable</li> </ul> <p>Business</p> <ul style="list-style-type: none"> <li>• Approvals the cost of which is not yet quantifiable</li> <li>• Lost opportunity during training of enforcement agents</li> </ul> <p><b>Public Sector</b> –</p> <ul style="list-style-type: none"> <li>• The set up costs will fall to DCA this is currently estimated at 1.34m</li> <li>• HMRC, HMCS and local Authorities may need to licence their employees and a minimum cost of £400</li> <li>• HMRC, HMCS and local Authorities may need to cover the training cost for their employees</li> </ul>	<p><b>Private Sector</b> – Not quantifiable in financial terms.</p> <p><b>Public Sector</b> - Not quantifiable in financial terms.</p>



## The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at: [consultation@dca.gsi.gov.uk](mailto:consultation@dca.gsi.gov.uk)

Alternatively, you may wish to write to the address below:

**Laurence Fiddler**  
**Consultation Co-ordinator**  
**Department for Constitutional Affairs**  
**5th Floor Selborne House**  
**54-60 Victoria Street**  
**London**  
**SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 28.

