



Ministry of  
**JUSTICE**

# Tribunals, Courts and Enforcement Bill

## Detailed Policy Statement on Delegated Powers

**May 2007**

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## **Introduction**

1. The purpose of this policy statement on the Tribunals, Courts and Enforcement Bill is to detail the delegated powers contained within each part of the Bill and to explain their intended use.

## **Background**

2. The Tribunals, Courts and Enforcement Bill will:
  - Create a new, simplified statutory framework for tribunals to provide coherence and enable future reform;
  - Unify the tribunals judiciary under a Senior President;
  - Amend the existing threshold criteria for eligibility for appointment to judicial office in order to enable a wider range of applicants to apply.
  - Unify the law relating to enforcement by seizure and sale of goods, including powers of entry to premises, and provide for greater regulation of enforcement agents;
  - Allow creditors with judgments to enforce them more effectively and to have the means to find out relevant information about debtors so as to decide on appropriate enforcement mechanisms;
  - Introduce a package of measures to help those who are willing and able to pay off their debts over time and a new personal insolvency procedure for those who have fallen into debt but have no foreseeable way out of it; and
  - Provide immunity against seizure to objects which have been lent to the UK from overseas to be included in a temporary, public exhibition at a museum or gallery.

## **Delegated Powers**

3. The Bill contains 144 clauses and 23 Schedules, some of which contain powers to make orders, rules or regulations by Statutory Instrument. It also contains clauses which provide the powers to make tribunal procedural rules.
4. In the absence of draft regulations, this paper provides a comprehensive description of how the Government intends to use the delegated powers in the Bill. The statement should be read in conjunction with the memorandum on delegated powers, published by the Delegated Powers and Regulatory Reform Committee on 30 November 2006, and the Committee's subsequent reports.

## **Part 1 Tribunals and Inquiries**

5. The policy intention underlying Part 1 of the Bill is to create a new, simplified statutory framework for tribunals, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions and new appeal rights.
6. The Bill seeks to provide a new unified structure by creating two new tribunals, the First-tier Tribunal and the Upper Tribunal. It gives the Lord Chancellor power to transfer the jurisdiction of existing tribunals to the two new tribunals. Further, the Lord Chancellor will have the power to transfer to himself certain statutory powers and duties in relation to the administration of tribunals. The Bill places the Lord Chancellor under a general duty to provide administrative support to the new tribunals, and also to the employment tribunals, Employment Appeal Tribunal and Asylum and Immigration Tribunal (AIT).
7. The Bill also creates a new judicial office, the Senior President of Tribunals, to oversee tribunal judiciary. The Senior President will be the judicial leader of the tribunals system. The Senior President of Tribunals holds a distinct statutory office and in carrying out the functions of that office is not subject to the direction of any other judicial office holder. The Bill provides for the membership of the tribunals, rights of appeal from the tribunals, and the making of new Tribunal Procedure Rules. It gives the Upper Tribunal the power to exercise a judicial review jurisdiction in certain circumstances. The Bill also replaces the Council on Tribunals with the Administrative Justice and Tribunals Council, which will have a broader remit over the whole of the administrative justice system.

### **Introduction**

8. The order-making powers will be used to provide the detail for principles set out in the Bill and this statement concentrates on those areas. However, the detail is inevitably limited as the structures created by the Bill are designed to be flexible. It is also envisaged that the specific proposals and the detail will be underpinned by extensive consultation with tribunal office holders as well as users of the Tribunals Service. Until that consultation (scheduled for Autumn 2007) is completed and considered it is not possible to give firm and detailed undertakings in relation to the final form of policies.
9. Many of the order making powers in this Part of the Bill are to give effect to the transfer of a body or functions. They are expressed as delegated powers to provide for the future growth of the First-tier and Upper Tribunals, or the transfer of administration or powers to make rules to the Lord Chancellor or the Tribunal Procedure Committee. Again, those powers are not explained further in the text below as there is as yet no detailed policy to be expressed in delegated legislation. They are there to provide for future contingencies.

### **Clause 4 – Judges and other members of the First-tier Tribunal**

10. Schedule 2 paragraph 2(2) provides a power for the Lord Chancellor to specify the qualifications non-legal members of the First-tier Tribunal must have to be considered eligible. In the light of the ongoing review of the role of non-legal members it is not yet possible to describe those qualifications.

## **Clause 5 – Judges and other members of the Upper Tribunal**

11. Schedule 3 paragraph 2(2) provides a power for the Lord Chancellor to specify the qualifications non-legal members of the Upper Tribunal must have to be considered eligible. In the light of the review of the role of non-legal members it is not yet possible to describe those qualifications.

## **Clause 7 - Chambers: Jurisdiction and Presidents**

### **Clause 7(1)**

12. Clause 7(1) empowers The Lord Chancellor, with the concurrence of the Senior President of Tribunals, to make provision for the organisation of the First-tier and the Upper Tribunal into a number of Chambers. Jurisdictions within the First-tier and Upper Tribunals will be organised into chambers so that jurisdictions which are similar in nature are grouped together. The chamber structure will also facilitate judicial deployment (as judiciary skilled across the expertise of the chamber can be deployed on more than one type of case). The chamber structure will also facilitate judicial development and the preservation of expertise where appropriate. In turn that will allow the development of a more efficient and effective service for users.
13. The establishment of the chambers structure is a joint piece of work between the Lord Chancellor and the Senior President. What follows therefore represents only the government's provisional views, which we would wish to see subjected to consultation. They do not represent an agreement with the Senior President-designate and so do not bind him in any way.
14. Jurisdictions could be grouped together in a number of ways. At present we intend that the criteria would be based on subject matter, rather than geography. We will need to look at similarity of law, common skills needed, the extent to which judges and members already sit across jurisdictions and size and distribution of workload. We do not favour small chambers, which would replicate one of the weaknesses of the present tribunal system. Our provisional views at the moment are that the First-tier Tribunal might consist of a minimum of the following chambers:
  - Social security
  - Tax and regulation
  - Mental Health and other welfare appeals.
15. We have not yet reached a view on whether the Upper Tribunal needs to be divided into chambers. If it were it would probably follow the pattern for the First-tier Tribunal but with an additional chamber for land and property, reflecting the role of the Lands Tribunal.
16. A final decision on the initial shape of the chambers will be taken only after a full and wide consultation, provisionally planned for Autumn 2007. This will allow those who will use the chambers structure – as tribunal office holders; those in judicial leadership posts; tribunal users and their representatives to have maximum involvement in their development.

## **Clause 7(9)**

17. Clause 7(9) empowers the Lord Chancellor and Senior President of Tribunals, each with the concurrence of the other, to be able to vary the distribution of functions between Chambers in either the First-tier or Upper tribunals.

18. Chambers will evolve over time, in response to:

- the transfer of functions of other tribunals to First-tier or Upper tribunals;
- to changes in original decisions (for example as the social security benefit system evolves);
- to the creation of new areas of appeal (for example as has recently occurred in connection with the regulation of licensed gambling);

or in relation to the prevalence of a particular jurisdiction at a point in time, and other business and user needs. This may involve any or all of the following:

- Establishment of new chambers;
- Addition of jurisdictions to existing chambers;
- Transfer of functions and/or jurisdictions between chambers.

19. It is not possible at this stage to say how or whether this power will be used.

## **Schedule 4 - Chambers and Chamber Presidents: Further Provision**

### **Paragraph 15**

20. This empowers the Lord Chancellor, in relation to every matter that may fall to be determined by the First-tier and Upper tribunals, to determine the number and required qualifications of members of the tribunal who are to decide the matter.

21. At present tribunals sit, according to their enabling legislation, with a wide range of panel formats and numbers of members. In November 2005, Baroness Ashton set in motion a review of the role of non-legal members of tribunals with a view to collecting information about the special contribution that these members make to their existing jurisdictions and examining whether those skills were transferable across jurisdictions. Findings from this initial information gathering stage will be incorporated into a wide-ranging publication consulting on the future of the tribunal system which is planned for Autumn 2007. That process will allow Ministers to make decisions about the role of non-legal members and in turn that will inform orders that the Lord Chancellor may make about panel constitution.

22. The work so far suggests that non-legal members are not used to best effect by the present system. Non-legal members mainly sit as part of a panel with legal members, and their presence or absence is rigidly determined. For instance, simple cases have the same composition as complex cases. Some tribunals cases which are solely about legal issues have to include medical members on the panel. In others, panels have to be chaired by legal members even though the issues may be entirely suitable for non-legal members to decide or take the lead on. The present system severely limits

sitting in a variety of jurisdictions even where the relevant expertise is the same.

23. The aim of the policy will be to ensure that panels offer appropriate levels of experience and expertise; facilitate a cost-effective and efficient use of the judiciary; and fully meet the needs of tribunal users. It will also allow the flexibility to cater for the particular needs of individual jurisdictions and of particular kinds of case. We therefore envisage that rules that are laid down in the Order will be subject to an overriding discretion for the Senior President or his delegate to decide that the panel in a particular case is to be composed in a different way, but in accordance with paragraph 15 of Schedule 4.
24. Subject to the desirability of creating a more flexible system our starting point is likely to be the present pattern of panel composition. There will be consultation before the Order is laid.

### **Clause 11 - Right to appeal to the Upper Tribunal**

#### **Clause 11(5)(f)**

25. Clause 11(5)(f) provides that the Lord Chancellor may specify a description of a decision to be excluded from the right of appeal from the First-tier Tribunal to the Upper Tribunal. The basic pattern of appeal rights will for the most part remain as they are now when jurisdictions transfer to the new tribunal. Where there is currently a right of appeal, it will also exist after transfer. Conversely, where decisions currently carry no appeal rights onward appeal can be excluded on the transfer of the tribunal to the First-tier Tribunal.
26. In some jurisdictions it is not possible to appeal from the decision of a tribunal, even on a point of law. Equally, in some jurisdictions, tribunals hear appeals wider than on a point of law. Where there are currently no appeal rights in transferring jurisdictions we will review the desirability of continuing that exclusion. At present our provisional view is that appeal rights to the Upper Tribunal should be created in tax matters and in appeals from what are now the jurisdictions of the Mental Health Review Tribunal. We have not yet formed a view on other jurisdictions.

#### **Clause 11(8)**

27. Clause 11(8) empowers the Lord Chancellor to specify who may or may not be treated as being a party to a case for the purposes of making an appeal from the First-tier Tribunal to the Upper Tribunal. The general policy intention is to not change the basic pattern of appeal rights when jurisdictions transfer to the new tribunal. At present, for instance, some rights of appeal under social security legislation to the Social Security and Child Support Commissioners are not limited to the claimant and the Secretary of State, but may include trades unions and claimants' spouses.
28. Existing provisions in respect of who may be a party to a case for the purposes of making an appeal from the First-tier to the Upper Tribunal, will be preserved at the point of transfer. This power may also be used in the future as new appeal rights are introduced.

## **Clause 13 - Right to appeal to the Court of Appeal etc.**

### **Clause 13(6)**

29. Clause 13(6) empowers the Lord Chancellor to provide for permission (or leave) to appeal from the Upper Tribunal to the Court of Appeal not to be granted on the application unless the Upper Tribunal or (as the case may be) the relevant appellate court considers that the proposed appeal would raise some important point of principle or practice, or that there is some other compelling reason for the relevant appellate court to hear the appeal.
30. We consider that in principle "second appeals" should be subject to the restriction set out in this clause. In general the First-tier Tribunal should resolve factual issues and the Upper Tribunal should resolve legal issues specific to a case. However it would not be right to apply the restriction to the Upper Tribunal as a whole. Its jurisdiction will not be established until an order is made under clause 30. The Upper Tribunal will hear some appeals at first instance. There is a need to distinguish, for the purposes of onward appeal to the Court of Appeal, between these appeals and those coming to the Upper Tribunal on appeal from the First-tier Tribunal.

### **Clause 13(8)(f)**

31. See explanation above in relation to Clause 11(5)(f).

### **Clause 13(14)**

32. See explanation for Clause 11(8)

### **Clause 13(15)**

33. Clause 13(15) empowers the rules of court to make provisions as to the time within which an application for permission (or leave) may be given by the Upper Tribunal or relevant appeal court for a proposed appeal from the Upper Tribunal to the Court of Appeal. The rules will be made by the Civil Procedure Committee and brought into force at the point of the first transfer of functions to the Upper Tribunal. This power and the policy intention mirror those in operation for the courts.

## **Clause 18 - Right to appeal to the Court of Appeal etc.**

### **Clause 18(10)**

34. Rules of Court may be made to treat applications, permission or leave as if they had been made by the High Court. The rules will be made by the Civil Procedure Committee and brought into force at the point of the first transfer of functions to the Upper Tribunal. This power and the policy intention mirror those already in operation for the courts.

## **Clause 22 – Tribunal Procedure Rules**

### **Schedule 5, Part 1, paragraphs 2 to 19 - Tribunal Procedure Rules**

35. Schedule 5 supplements clause 22 by making provision for the content of Tribunal Rules. Schedule 5 provides that the Tribunal Procedure Committee will be able to make tribunal procedure rules which include provisions in respect of:

- Deciding concurrent functions exercisable by both the Upper and First-tier tribunals
  - Delegation to staff
  - Time limits
  - Repeat applications
  - The tribunal acting of its own initiative
  - Extent to which matters may be decided without a hearing and hearing may be public or private
  - Proceedings without prior notice
  - Representation
  - Evidence and witnesses (including provisions relating to the payment of expenses for those attending hearings)
  - Use of information
  - Set-off and interest
  - Arbitration
  - Correction and setting aside of decisions on procedural grounds
36. There are various other provisions in the Bill providing for the use of Tribunal Rules such as:
- clause 9(3): review powers of the First Tier Tribunal
  - clause 10(3): review powers of the Upper Tribunal
  - clause 16(9): time limits for applications for judicial review
  - clause 18(11): amendment to applications for judicial review
  - clause 19(5): transfer of judicial review cases from the High Court
  - clause 21(6): transfer of judicial review cases from the Court of Session
  - clause 27(6): provision about the enforcement of awards
  - clause 29(3): provision about costs and expenses
  - clause 29(4): provision about wasted costs
37. Sets of rules governing procedure in the First-tier and Upper Tribunals should be capable of evolution over time to take into account the changing needs of tribunal users as well as developments in legal and administrative practice and procedure. The intention is for the Tribunal Procedure Committee to develop sets of rules which are harmonised where possible but also to cater for the needs of individual jurisdictions. Harmonised rules will aim to:
- Provide simplified appeal routes, and a common terminology for processes
  - Provide a common pathway through processes where feasible
  - Facilitate proportional dispute resolution
38. The Tribunal Procedure Committee will have responsibility for the making of tribunal procedure rules. We expect that they will develop a wide-ranging programme of work.
39. Initial planning suggests that the Tribunal Procedure Committee will be established in Autumn 2008. No programme of work has yet been set for the Committee. However, the following areas are likely to be amongst the first that the Committee will turn its attention to:
- Costs – there is a variety of costs regimes in operation across tribunals at present. Some tribunals have no power to award costs;

others have the power to award them under very limited circumstances; others again have the power to award costs only in cases of vexatious and unreasonable behaviour.

- Delegation to staff – it is intended that staff will undertake a wide range of functions in the new tribunals, although these will vary between jurisdictions. These may include responsibility for formal procedural steps (eg giving directions, summoning witnesses and extension of time limits) but also responsibility for conciliation, mediation and early neutral evaluation.

#### **Schedule 5, Part 2, paragraph 25(1) - Tribunal Procedure Committee**

40. This empowers the Lord Chancellor to amend rules regarding composition and appointment to Tribunal Procedure Committee. The composition of the Tribunal Procedure Committee may need to vary depending on the jurisdiction for which it is making rules and as jurisdictions transfer in. This power exists for future contingencies only.

#### **Schedule 5, Part 4, paragraph 30(1) - Power to amend legislation in connection with Tribunal Procedure Rules**

41. This empowers the Lord Chancellor to amend, repeal or revoke enactments necessary or desirable to facilitate the making of Tribunal Procedure Rules; or in consequence of making practice directions, the process of making rules; or in consequence of making Tribunal Procedure Rules. It is to ensure that tribunals operate smoothly and without conflicting legislation on the statute book.
42. It is not possible to determine whether and how this power might be used until Tribunal Procedure rules have been proposed.

#### **Clause 27 - Enforcement**

##### **Clause 27(5)**

43. Clause 27(5) empowers the Lord Chancellor to make provision that a sum of a description specified in the order, payable in pursuance of a decision of the First-tier or Upper Tribunal, may be recoverable as if it were payable either under an order of a county court, or under an order of the High Court, but not both (in relation to decisions in England and Wales or to Northern Ireland only).
44. The clause will make it simpler for monetary awards to successful appellants to be enforced without the need for further litigation. At present, awards of over £5,000 are usually enforced in the High Court. An order will be used to alter the limit for tribunal awards should changes to this threshold be made by amendments to the High Court and County Court Jurisdiction Order 1991.

#### **Clause 30 - Transfer of functions of certain tribunals**

##### **Clause 30(1)**

45. Clause 30(1) empowers the Lord Chancellor to provide for the functions of a tribunal to be transferred to the First-tier Tribunal, Upper Tribunal or the First-

tier and Upper Tribunals, with the question as to which of them is to exercise the function in a particular case being determined by a person under provisions of the order or by Tribunal Rules. Clause 30 also provides for the transfer of a function to the First-tier Tribunal to the extent specified in the order, and to the Upper Tribunal to the extent so specified. It makes similar provision for transfers to an employment tribunal, or the Employment Appeal Tribunal.

46. The policy intention is that the functions of the following tribunals, where the Lord Chancellor already has responsibility for administrative functions, will transfer to the new tribunals as soon as practicable. Which tier of the system they will be assigned to will be subject to consultation but provisional views, where these have been formed, are indicated below.

**First-tier tribunal**

- Pensions Appeal Tribunals for England & Wales
- Special Educational Needs and Disability Tribunal for England
- Appeals Service (the Social Security and Child Support Tribunals)
- Criminal Injuries Compensation Appeal Panel
- Mental Health Review Tribunal for England

**Upper Tribunal**

- Social Security and Child Support Commissioners
- Lands Tribunal for England and Wales

**Undecided or functions may be divided**

- Financial Services and Markets Tribunal
- Adjudicator to HM Land Registry
- Gambling Appeals Tribunal
- Information tribunal
- Charities Tribunal
- Consumer Credit Appeals
- Transport Tribunal
- Pension Regulator Tribunal

47. Early planning suggests that the transfer of these functions could be made in Autumn 2008. However, further planning will be undertaken before a final date is set. Planning will cover the question of whether transfer of functions can be achieved at one time, or whether transfer should be achieved in stages
48. It will be necessary to undertake reform of the General Commissioners of Income Tax (GCIT) before the functions of that tribunal can be transferred. The GCITs are linked to the Special Commissioners by statute. For this reason, it is unlikely that the functions of the Special Commissioners or the VAT and Duties Tribunal will transfer before those of the GCITs. Early planning suggests that transfer of functions of the two tax tribunals could be achieved in Spring 2009.
49. Orders for the transfer of the functions of other tribunals listed in Schedule 6 will be brought into force as operational considerations allow. It is intended that a final decision on how functions are to be allocated across chambers will follow a wide consultation, provisionally planned for 2007.

**Clause 30(3)**

50. The Lord Chancellor may further transfer functions in accordance with the provisions of clause 30(1). As chambers will evolve over time it may be necessary to further transfer functions between tribunals: to allow new jurisdictions to be added; to facilitate cost-effective and efficient use of resources; to improve services to tribunal users and to take account of changes to initial appeal rights.

**Clause 31 - Transfers under section 30; supplementary powers****Clause 31(1)**

51. Clause 31(1) empowers the Lord Chancellor to abolish a tribunal whose functions have been transferred under clause 30.
52. Orders abolishing tribunals will be brought into force at the point of transfer of their functions (or should the functions of a tribunal be transferred in stages, at the point of transfer of the last of their functions), thereby removing redundant organisations from statute.

**Clause 31(2)**

53. Clause 31(2) empowers the Lord Chancellor to be able, in transferring functions of tribunals listed in Schedule 6 to appoint judicial office holders to the First-tier and Upper Tribunals created by the Bill.
54. In general terms, all currently serving tribunal judiciary will be appointed to one of the new offices created by the Bill at the point that the functions of their tribunals are transferred to the First-tier or Upper tribunals (or, should transfer of the functions of a tribunal be achieved in stages, at the point of transfer of the first of their functions). Where functions are divided between tiers a decision will have to be taken as to where the members are allocated. A distinction may be drawn between salaried and fee-paid members, or there may be a competition for places on the Upper Tribunal. Orders effecting appointment will be brought into force at the point of transfer of functions.
55. The offices of General Commissioner of Income Tax and of Clerk to the General Commissioners will be abolished at the point that the functions of the tribunal are transferred. At this point, the serving General Commissioners and Clerks will be stood down although they will be encouraged to apply for positions in the new structure.
56. An exercise to map serving tribunals judiciary into the appropriate office is provisionally planned for Autumn 2007, although final decisions cannot be made until the orders are approved by Parliament.

**Clause 31(7)**

57. The Lord Chancellor may provide, where functions of a tribunal have been transferred under section 26, for the continuation of procedural rules (with or without modification) following a transfer of functions.
58. It is anticipated that the Tribunal Procedure Committee will be established in Autumn 2008. A programme of work has not yet been established for the Committee. However, it is likely that comprehensive change to procedural rules will only be achieved over a long timescale.

59. Early planning suggests that the tribunals whose functions will transfer to the First-tier and Upper tribunals first are those already under the administration of the Lord Chancellor. Initial plans also suggest that the start of the transfer may begin in Autumn 2008. At the point of transfer of these tribunals, orders will be brought into force transferring the existing sets of rules that govern procedure for these tribunals. Minor modifications may be made to the sets of rules where functions are to be transferred to the First-tier so that they align with the provisions of the Bill. The same provisions will apply to the Upper Tribunal.
60. As the work of the Tribunal Procedure Committee progresses it is likely that the rules relating to individual jurisdictions will in part be replaced with generic rules although existing rules that specifically cater for the individual needs of jurisdictions will be retained.

#### **Clause 31(9)**

61. Clause 31(9) empowers the Lord Chancellor to make incidental, supplemental, transitional or consequential provision, or provision for savings relating to the transfer (or further transfers) of functions of tribunals; the appointment of tribunal judiciary to offices created by the Bill; and the transfer of procedural rules.
62. To facilitate the smooth continuation of tribunal business at and beyond the point of transfer, orders will ensure that all work underway in the tribunals at the point of transfer of their functions can be completed by the new tribunals. The orders will also ensure that references to tribunals that have been abolished under clause 31(1) are removed from statute.

#### **Clause 32 – Power to provide for appeal to Upper Tribunal from tribunals in Wales**

##### **Clause 32(2)**

63. Clause 32(2) empowers the Lord Chancellor to provide for the route of appeal from a tribunal in Wales to align with that in England, so that in both countries the appeals will lie to the Upper Tribunal.
64. Some tribunals (e.g. the Mental Health Review Tribunal) operate under the same legislation in England and Wales but are administered separately. This provision permits onward appeal routes to be aligned to the Upper Tribunal from Wales as in England (i.e. to prevent there being no onward right of appeal or for that to be via the courts) whether or not the tribunal in Wales is administered through the Tribunals Service.

##### **Clause 32(3)**

65. Clause 32(3) enables the Lord Chancellor to provide for an appeal against a decision of a scheduled tribunal to be made to the Upper Tribunal, instead of to the court to which an appeal would otherwise fall to be made, where the decision is made by the tribunal in exercising a function in relation to Wales
66. Some tribunals, in relation to devolved matters such as health and education, have a separate existence in Wales. Where this is the case, the intention is that onward appeals should be heard by the Upper Tribunal, rather than

either there being no onward appeal or an appeal to the court. This will ensure equal access to justice in England and Wales.

67. The intention in relation to appeals from Wales is that appellants will have access to hearings in Wales and in Welsh.

### **Clause 33 – Power to provide for appeal to Upper Tribunal from tribunals in Scotland**

#### **Clause 33(2)**

68. Clause 33(2) empowers the Lord Chancellor to provide for appeals from tribunals in Scotland to the Upper Tribunal, where such functions are transferred in relation to England.
69. This order makes provision for the situation where the functions of a tribunal are to be transferred in respect of England, or England and Wales, but not in respect of Scotland; and where there is a misalignment of appeal routes to the Upper Tribunal. At present the only tribunals which might be affected by this are the Pensions Appeal Tribunals for Scotland.
70. This would have the effect of aligning appeal routes across Great Britain for tribunals dealing with non-devolved matters.

### **Clause 34 – Power to provide for appeal to Upper Tribunal from tribunals in Northern Ireland**

#### **Clause 34(2)**

71. Clause 34(2) empowers the Lord Chancellor may provide for appeals from tribunals in Northern Ireland to the Upper Tribunal, where such functions are transferred in relation to England.
72. This order makes provision for the situation where the functions of a tribunal are to be transferred in respect of England, or England and Wales, but not in respect of Northern Ireland; and where there is a misalignment of appeal routes to the Upper Tribunal.
73. This would have the effect of aligning appeal routes across the United Kingdom for tribunals dealing with non-devolved matters.

### **Clause 35 – Transfer of Ministerial responsibilities for certain tribunals**

#### **Clause 35(1)**

74. The Lord Chancellor may provide for the transfer to himself (or to two or more Ministers of the Crown of whom one is himself, or to the other Minister of the Crown concurrently with himself) the administrative functions of tribunals (listed in Schedule 6) which are currently exercised by other ministers (including Her Majesty's Revenue and Customs). The power is similar to the power under Section 1 of the Ministers of the Crown Act 1975 which enables transfers of functions between Ministers.
75. The current policy intention is that these administrative functions are transferred to the Lord Chancellor. Once the powers are transferred, it will not

be possible to transfer them back to another Minister of the Crown. Thus, any judiciary-related functions that are transferred will be entrenched in the Lord Chancellor, so recognising the independence of Tribunals.

### **Clause 36 – Transfer of powers to make procedural rules for certain tribunals**

#### **Clause 36(1)**

76. The Lord Chancellor may transfer any power to make procedural rules for a scheduled tribunal to (a) himself, or (b) the Tribunal Procedure Committee.
77. The general policy intention is that the jurisdictions of the scheduled tribunals will transfer to the new tribunals and their Rules will be made by the Tribunal Procedure Committee. This provision is to cater for the situation (which may not happen) that a tribunal is transferred to the Lord Chancellor's responsibilities but is not transferred to the new tribunals, or that tribunal rules need to be made before the Committee is operational.
78. The power to make procedural rules for the employment tribunals will remain with the Secretary of State for Trade and Industry.

### **Clause 37 – Power to amend lists of tribunals in Schedule 6**

#### **Clause 37(1)**

79. The Lord Chancellor may amend lists of tribunals in Schedule 6 by addition to a list; removal from a list; removing a list of tribunals from the Schedule; and adding a list of tribunals to the Schedule.
80. Orders will be brought into force amending the lists in Schedule 6, or adding a list of tribunals, to manage the transfers of tribunals' functions flexibly and to respond to future growth in the Tribunals Service. This power might be used to transfer in local government tribunals, which are currently out with the scope of the Tribunals Service pending a review.

### **Clause 38 – Orders under clauses 30 to 36: supplementary**

81. Orders under clauses 30 to 36 may amend, repeal or revoke enactments in connection with orders relating to transfer of functions of tribunals; abolition of tribunals; mapping of tribunal judicial office holders to the offices established by the Bill; continuation of tribunal procedural rules after transfer of functions; incidental, supplemental, transitional and consequential provisions; appeal routes for tribunals in Wales; appeal routes for tribunals in Scotland; appeal routes to tribunals in Northern Ireland; ministerial responsibilities for tribunals; and transfer of powers to make tribunal procedural rules.
82. It is not possible to determine whether and how this power is used until orders under clauses 30 to 36 are drafted.

## **Clause 40: tribunal staff and services**

### **Clause 40(4)**

83. The Lord Chancellor may make an order providing for certain staff functions to be contracted out, subject to prior consultation with Senior President of Tribunals.
84. At present, a small number of tribunals listed in Schedule 6 have contracted out some staff functions. Examples include the Lands Tribunal, where some staff functions relating to the maintenance of the Tribunal's library are contracted out; and the AIT, where typing services are contracted out.
85. In Spring 2006 the Tribunals Service began a review of how administrative functions would be delivered to support the First-tier and Upper tribunals. The review, which is due to report in 2007, will inform subsequent decisions about how best administrative functions are undertaken, including decisions on whether some functions are best delivered by contracting out, and whether to renew existing contracts.
86. Where it is decided that administrative functions are best delivered by contracting out, an order will be made enabling such contracts to be entered into. Orders will be made only after consultation with the Senior President. The exercise of judicial powers and discretion however cannot be contracted out.

## **Clause 42: Fees**

### **Clause 42(1)**

87. The Lord Chancellor may prescribe fees for anything done by the First-tier Tribunal, the Upper Tribunal, the Asylum and Immigration Tribunal and an added tribunal (see below), or for mediation conducted by tribunal staff. Before making such an order the Lord Chancellor must consult the Senior President of tribunals and the Administrative Justice and Tribunals Council.
88. A small number of tribunals currently charge fees to appellants. In the future it may be appropriate to charge fees in other or new jurisdictions.
89. The intention is that fees will continue to be charged where they are charged at present and to leave open the possibility that fees could be charged in other circumstances in the future. No decision has been taken as to where fees might be charged in the future, but two possibilities that have been considered are fees to regulated business and against refusal of visas. Fees will not be charged where to do so would cause financial hardship or where issues of personal liberty or asylum are concerned.
90. During 2007 we are planning to consult on a wide range of issues related to the Bill, including fees. We are in any case committed to consulting prior to the introduction of new fees.

### **Clause 42(3)**

91. The Lord Chancellor may specify a tribunal as an 'added tribunal' for the purposes of prescribing fees.

92. An order specifying a tribunal as an ‘added tribunal’ for the purposes of prescribing fees will be brought into force to preserve fees where they are charged at present, or prescribe fees for the first time, in relation to tribunals which come under the administration of the Lord Chancellor but whose functions will not transfer to First-tier or Upper Tribunals. There is no intention at present to use this power.

#### **Clause 45 – Abolition of the Council on Tribunals**

##### **Clause 45(3)**

93. The Lord Chancellor may provide for the transfer to the Administrative Justice and Tribunals Council any property, rights and liabilities of the Council on Tribunals and the Scottish Committee of the Council on Tribunals.
94. This power enables the transition of the Council on Tribunals into the Administrative Justice and Tribunals Council. So far no such property etc has been identified.

#### **Schedule 7 – Administrative Justice and Tribunals Council**

##### **Paragraph 2 5(2)**

95. Lord Chancellor, Scottish Ministers or Welsh Ministers may provide for an addition to the list of tribunals under the responsibility of the AJTC.
96. The purpose of this Rule is to allow the oversight responsibilities of the AJTC to cover tribunals inside and outside the new tribunal system. At present the intention is to mirror the existing range of tribunals subject to supervision by the Council on Tribunals, currently set out in Schedule 1 of the Tribunals and Inquiries Act 1992.

#### **Clause 137 – Recovery of sums payable under compromises involving Acas**

##### **Clause 137(5)**

97. Clause 137(15) empowers the rules of court to make provisions as to the time within which a compromise sum is not recoverable.
98. The rules will be made by the Civil Procedure Committee and brought into force at the point of the first transfer of functions to the Upper Tribunal. This power and the policy intention mirror those in operation for the courts.

##### **Clause 137(10)**

99. Rules of court may make provision as to time limits within which an application to a county court (or, in Scotland, a sheriff) for a declaration that a compromise sum is not recoverable is to be made; and when an application (whether made to a county court, the sheriff or an employment tribunal) for a declaration that a sum is not recoverable is pending.
100. Rules of court will be made which will set time limits for applications for declarations that sums are not recoverable under general law of contract and when such an application is pending. Rules of court will be made after consultation.

**Clause 138 (2)**

101. This amends section 27 of the Registered Design Act 1949. New section 27A(6) provides for rules of court to be made in relation to proceeding on appeal in a patents county court. The rules will be made by the Civil Procedure Committee

**Schedule 9 – Tribunals; transitional provision**

**Schedule 9, paragraph 2(1) – Membership of the Tribunal Procedure Committee**

102. The Lord Chancellor may provide for a member of a listed tribunal to be treated as his appointee to the Tribunal Procedure Committee
103. Early planning suggests that the Tribunal Procedure Committee will be established at the point of the first transfers of the functions of the tribunals listed in Schedule 6. However, in order to ensure that the Committee can begin work as soon as feasible the provisions in the Bill have been drafted to allow the transfer of the Committee before the transfers of the listed tribunals commence. These provisions will allow the formation of a Committee from the tribunals in Schedule 6 in anticipation of their transfer and before they can be formally part of the Tribunal Procedure Committee so that preparatory work can be undertaken.
104. No decision has yet been taken on the question of whether members of tribunals whose functions are due to transfer to the First-tier and Upper tribunals, but have not yet transferred, will sit on the Tribunal Procedure Committee. However, if it is decided that members of such tribunals will sit on the Committee, an order providing for them to do so will be brought into force, at the time that the decision is taken.

**Schedule 9, paragraph 12(2) - Judges and other members of First-Tier and Upper tribunals: pension where office acquired under clause 28(2)**

105. The Lord Chancellor may make regulations prescribing the circumstances, time and manner in which an opt-in election under paragraph 11(3) of that Schedule may be made. Paragraph 11(3) allows a person to elect to have the provisions of Part 1 of the Judicial Pensions and Retirement Act 1993 apply to them.
106. It is envisaged that regulations will be made which, subject to further consideration, would reflect the existing Judicial Pensions (Miscellaneous) Regulations 1995 as amended. Regulations will be brought into force at the point that tribunal judiciary are appointed to one of the five generic offices created by the Bill. This provision will operate in relation to individual office holders and their pension entitlement.

**Schedule 9, paragraph 12(6)**

107. The Lord Chancellor may make regulations to prescribe the effective date to be applied when an election to opt-in is made to transfer service from a non judicial pension scheme into the judicial pension scheme under the 1993 Act.
108. Subject to further consideration, it is envisaged that regulations would reflect the existing Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995. These provide for the determination of a 'service credit' on

transfer to the Judicial Pensions and Retirement Act 1993 scheme. This is based on the principle of 'actuarial equivalence'. On this basis total service for the purpose of benefits under the 1993 Act scheme would be the aggregate of the service credit period and the period of actual service under the scheme Up to a maximum of 20 years.

109. Schedule 9, paragraph 18(3) amends the 1993 Act and the new section 12(A)(3) and permits regulations to be made for calculating the amount or value of rights transferred from other public service pension schemes as well as how those rights are to be put into effect.

## **Part 2      Judicial Appointments**

110. Part 2 of the Bill amends the minimum eligibility requirements for judicial appointments in England and Wales (and for some posts where the office-holders may sit in Scotland and Northern Ireland) with the aim of increasing the diversity of the judiciary. The existing eligibility requirements for judicial office are replaced with the requirement that a person must satisfy the “judicial-appointment eligibility condition”. The clauses mean that rather than eligibility for office being based on possession of rights of audience for a specified period, a person who wishes to apply for an office under any of the provisions amended by Schedule 10 of the Bill will have to show that he has possessed a relevant legal qualification for the requisite period and that while holding that qualification he has been gaining legal experience. In respect of many of the offices, the number of years for which a person must have held his qualification before he becomes eligible for judicial office is also reduced.
111. Part 2 also enables the Lord Chancellor, following consultation with the Lord Chief Justice and the JAC, to extend by order the list of relevant qualifications for the purpose of the judicial-appointment eligibility condition. This will enable those with relevant qualifications and legal experience to apply for certain offices, which will also be specified in the order.
112. One statutory instrument (SI) is proposed under the order making power in clause 51(1). This will extend eligibility for judicial appointment to some judicial offices (to be set out in the order) to members of the Institute of Legal Executives, Institute of Trade Mark Attorneys and Chartered Institute of Patent Agents. In accordance with clause 51(3) this SI will also, for the purposes of judicial eligibility, set out the point from which the qualification period commences.

### **Clause 51 - “Relevant qualification” in section 50: further provision**

113. Clause 51(1) is a power conferred on the Lord Chancellor, to introduce a statutory instrument by affirmative resolution.
114. The Bill widens the pool of authorised bodies whose members would become eligible for judicial appointment. Although it is not currently envisaged that groups other than legal executives, patents agents and trade mark attorneys will become eligible for judicial office, there is a possibility that other groups might be thought suitable in the future. This order-making power provides the flexibility to widen the range of “relevant qualifications”, and therefore to widen the pool from which judicial appointments may be made. It is appropriate to provide flexibility in a developing profession, in order to cover groups who may demonstrate in the future the appropriate skills for judicial office.
115. Authorised bodies are presently the Law Society, the Bar Council, the Institute of Legal Executives and those bodies that have been designated by Order in Council for the purposes of section 27 & 28 of the Courts and Legal Services Act 1990. At present there are only six such bodies that are able to authorise rights of audience, namely; the Bar Council, Law Society, Institute of Legal Executives, Chartered Institute of Patent Agents, Institute of Trade Mark Attorneys and the Association of Law Costs Draughtsman. The Association of Law Costs Draftsmen (ALCD) became an authorised body by

statutory instrument on 1<sup>st</sup> January 2007. . Additionally there are two more bodies that have more limited authority to grant rights to carry out certain legal activities and administration of oaths. These are the Council for Licensed Conveyancers and the Master of the Faculties..

116. It is possible to imagine circumstances giving rise to greater demand for the skills, both within the legal profession and in some judicial functions related to the work of the Council for Licensed Conveyancers, the Master of the Faculties and the Association of Costs Draughtsman. If it became desirable to open up some, probably specialist, judicial appointments to them, the power would enable that to be done without enacting further primary legislation.
117. Clause 51 and the order making power will ensure that eligibility criteria remain up to date and reflect any appropriate changes across the legal profession. This will allow the Lord Chancellor to extend/amend by Order the list of organisations whose qualified members are deemed eligible for those judicial offices that are specified in the Order. The Lord Chancellor would also have powers to amend the list of judicial offices. So, for example, if Fellows of the Institute of Legal Executives (ILEX) were only initially to be eligible for the District Bench, the Lord Chancellor would have the power to specify by Order that their eligibility is to be extended to other offices, such as appropriate tribunals.
118. This power is limited in that it will enable the Lord Chancellor only to amend what constitutes a “relevant qualification”. It is not intended to give the Lord Chancellor power to amend by order the number of years’ Post Qualification Legal Experience (PQLE), which is required for a particular office, or the meaning of “legal experience”.
119. The Lord Chancellor would have to consult the Lord Chief Justice and the Judicial Appointments Commission before making an Order, or amending an Order (e.g. to extend the list of judicial offices).
120. Although there is currently an exact correlation between those bodies which are authorised and those to which we seek to extend eligibility for office, we do not wish to make it an automatic result of the authorisation of a body that the members of that body will then become eligible for office;
  - questions of eligibility may be separate from those relating to rights of audience and the right to conduct litigation.
  - the offices for which members of a body might become eligible are likely to be limited and we consider that there needs to be a separate Order to deal with eligibility and its extent. An Order would also address the issue of the length of time between authorisation and members becoming eligible.
  - DCA is proposing to create a new regulatory body, the Legal Services Board (LSB), to which all bodies will have to apply for approval. It may be that additional bodies will be approved by the LSB in the future to regulate legal services. We would not wish automatically to extend eligibility to all such bodies who may gain LSB approval.

## **Clause 51(8)**

121. Is a power conferred on the Lord Chancellor, to introduce a statutory instrument by affirmative resolution to allow the Lord Chancellor to amend or supplement clauses 51(5)-(7) and which is separate from the order making power in clause 51(1). There is no intention at present to exercise this power.
122. This power allows the Lord Chancellor to change the point at which a person is deemed to become a barrister or solicitor (for the purposes of determining their eligibility for judicial appointment), so providing the flexibility to respond to future changes in the professional regulatory rules so as to ensure they do not impact adversely on the judicial appointments arrangements. When ILEX individuals are deemed eligible under 51(1) then the Lord Chancellor may wish to supplement (5)-(7) with a provision indicating the point at which a person is deemed to become a legal executive for the purposes of the Act.
123. Currently solicitors start counting time only once they have completed their training contract and are admitted to the Roll, whereas barristers start counting time from the date they are called to the Bar but before they have finished their pupillage. Clause 51 will create a level playing field across the profession in respect of the starting point for eligibility by providing that both solicitors and barristers must have completed training or pupillage before they can start counting time towards eligibility. The Order making power will provide the necessary flexibility to adapt to any future changes in the Profession, without the need for further primary legislation.
124. It is the intention that the Lord Chancellor, should, following consultation with the Lord Chief Justice and the Judicial Appointments Commission be able by Order to vary the point at which a barrister or solicitor is deemed first to hold a qualification for the purposes of eligibility for judicial office.
125. Annex A lists the judicial appointments that will be extended to ILEX, ITMA and CIPA and set out in the statutory instrument.

## **Schedule 10**

123. Paragraph 2 of Schedule 10 inserts a new order making power in to the London Buildings Acts (Amendment) Act 1939. Similarly paragraph 29 of Schedule 10 inserts a new order making power in to the Social Security Act 1998. The powers are similar to that found in clause 51(1). They allow the Lord Chancellor to specify a qualification for eligibility for appointment to the tribunals set up under each of the aforementioned Acts. The intention is for these powers to be exercised in the manner described above for Clause 51(1).

## **Part 3 Enforcement by Taking Control of Goods**

126. Part 3 of the Bill unifies the law governing the activities of enforcement agents when taking control of and selling goods, and requires such agents (with certain exceptions) to hold a valid certificate issued by a county court. It also modernises and unifies most of the terminology used in various pieces of legislation where the new unified procedure will apply.
127. Part 3 also abolishes the common law right to distrain for rent arrears and replaces it with a new, more limited right and a modified 'out of court' regime for recovering rent arrears due under a lease of commercial premises.

### **Enforcement Agent Law**

#### **Background**

128. At present, the law relating to enforcement by the seizure and sale of goods is complex, unclear and confusing. It is contained in numerous statutes, secondary legislation and common law and its language is old fashioned. There are various terms that describe this enforcement process (for example execution, distress and levy); and various different procedures depending on the type of debt which is being recovered.
129. Schedule 12 to the Bill sets out a comprehensive code governing how enforcement by the seizure and sale of goods operates. It prescribes a new procedure to be followed by enforcement agents when seizing and selling goods pursuant to powers under High Court writs, county court warrants, certain magistrates' court warrants and various other enactments containing a power to seize and sell goods. The Schedule prescribes the whole process from the serving of a notice to seizing goods to powers of entry, goods which may be seized, storage and sale of goods seized and the distribution of the sale proceeds.
130. The Bill replaces terms such as "distress", "distrain" and other similar terms with the phrase "taking control of goods". The Bill also renames certain warrants and writs that give the power to seize and sell a debtor's goods as "writs of control" and "warrants of control". These powers are in future to be exercised by "enforcement agents". Enforcement agents are persons who are acting in the exercise of an enforcement power.
131. Clause 85 of the Bill defines "prescribed" as prescribed by regulations and "regulations" to mean regulations made by the Lord Chancellor. Such definitions apply to Part 3 of the Bill, which includes Schedule 12.

### **Schedule 12 – Taking Control of Goods**

#### **Paragraph 3 – General interpretation**

132. An enforcement agent will only be able to take control of goods that are not exempt from seizure. The list of exempt goods will be included in the regulations. Paragraph 3(1) defines "exempt goods" as goods that regulations exempt by description or circumstances or both".
133. Exempt goods will include tools, books, vehicles and other items of equipment as are necessary to the debtor for use personally by him in his

employment, business or vocation; and such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying his basic domestic needs and those of his family. The definition will also include domestic pets, and sufficient cash to support basic domestic needs.

134. The items that will be considered as necessary for satisfying basic domestic needs will include:

- a cooker,
- a fridge,
- a washing machine,
- a dining table and sufficient chairs to seat each member of the household,
- bed and bedding for each member of the household,
- a telephone (this could be a land line phone or a mobile phone),
- any medical equipment.

135. A computer may be considered a necessary tool for the debtor's employment, business or vocation.

136. Fixtures and fittings attached to external power and water supplies to provide lighting, washing and heating facilities (e.g. a bath, a gas fire, electric light sockets etc.) will also be exempt from seizure.

**Paragraph 7 – Notice of enforcement.**

137. Under paragraph 7(1), the debtor will be entitled to a notice detailing the procedural and financial consequences to the debtor of failure to pay the debt, namely enforcement action. Details as to the period of notice, format, contents and delivery of the notice will be laid out in regulations made under paragraph 7(2).

138. It is intended that the regulations will state that in all cases a letter of notice will be served not less than seven calendar days (fourteen calendar days in the case of Commercial Rent Arrears Recovery) before any enforcement action is taken. Notice will be in writing, and contain specified information. This will include the amount outstanding, the enforcement power that will be exercised to enforce the debt, and where and by when payment should be made if such action is to be avoided. Ordinarily, service by first class post will be deemed sufficient by the enforcement agent, the creditor or the court.

139. Paragraph 7(4) contains further regulation making powers, enabling a reduction in the minimum notice period. The creditor or enforcement agent will have the right to apply to the court to dispense with the seven days period of notice (fourteen days in the case of CRAR) if there are reasonable grounds to believe that the debtor may relocate or dispose of the goods to avoid enforcement action. It will be for the creditor or enforcement agent to show objective evidence of this, and not merely a subjective fear of this taking place. An example would be evidence that the debtor had previously evaded enforcement action by removing goods.

**Paragraph 8 – Time limit for taking control.**

140. This paragraph contains two regulation-making powers. Paragraph 8(2) prescribes the time limit for taking control of goods and the date from which this period will start. It is intended that the regulations will state that taking

control of goods should take place within 3 months of the date the writ or warrant or notice was issued.

141. Under paragraph 8(3) application may be made to the court for an extension of this period. It is intended that the court should be able to grant an extension of 3 months including further extensions in increments of 3 months, up to a maximum of 12 months. The applicant would need to persuade the court, however, that there has been good reason for not taking control of goods within the initial 3 month period and equally that there is good reason for the notice to be extended.

**Paragraph 11 – Goods which may be taken.**

142. An enforcement agent may only take control of goods that are not exempt from seizure. The list of exempt goods will be included in regulations, made under powers contained in paragraph 3(1).
143. In certain circumstances, however, for example where there are no other suitable goods on the debtor's premises, the enforcement agent may be permitted to take control of exempt goods provided he provides the debtor with replacement goods. These circumstances are provided for in paragraph 11(2), and are probably best illustrated by way of an example.
144. A debtor may have no goods on the premises suitable for being taken into control for a relatively small debt. But the debtor may own an antique dining table and chairs. In usual circumstances, such items may be exempt. However, in the absence of any other goods suitable for taking into control, the enforcement agent may in these circumstances take the table and chairs, providing that a suitable replacement is provided for the debtor's use. Replacements are to be provided in accordance with regulations, and we would envisage those regulations stating that the replacements should be adequate to meet the needs of the debtor in the same way that those items taken would have done (i.e. if a dining table and 4 chairs were taken, then a dining table and 4 chairs should be provided).

**Paragraph 12 – Value of goods taken.**

145. An enforcement agent may not take control of goods whose value is wholly disproportionate to the value of the amount outstanding and any future costs that have been incurred unless there are insufficient goods of a lower value. The future costs must be calculated in line with regulations. This is to ensure that the amount calculated by way of future costs are legal and are not excessive or artificially inflated.

**Paragraph 13 – Ways of taking control.**

146. Under this paragraph, there are three ways of taking control of goods:
- by a controlled goods agreement (formerly a walking possession agreement);
  - by securing goods on the premises or the public highway (this includes locking them in a room located in the premises and wheel clamping of vehicles on the public highway; and
  - by removal from the premises.
147. Regulations under paragraph 13(3)(a) may determine the time at which it is deemed that goods have been taken into control. It is intended that this may

be from the point that the controlled goods agreement has been signed, or when the goods are secured.

148. Most importantly, regulations made under paragraph 13(3)(b) may prohibit any of the above ways of taking control of goods for certain goods.

**Paragraph 14 – Entry without warrant.**

149. Ordinarily, under paragraph 14 the enforcement agent will be allowed repeated entry to the same premises to inspect the goods or to remove them for storage and sale. However, regulations made under paragraph 14(3) will allow restrictions to be placed on powers of repeated entry. This will include the methods used to enter premises. It is intended that entry will be restricted to what we may consider “normal” methods of entry into premises – that is to say by way of a door or French windows.

**Paragraph 15 – Entry under warrant.**

150. Ordinarily, under paragraph 15 the enforcement agent will be allowed repeated entry under a warrant to the same premises to inspect the goods or to remove them for storage and sale. However, regulations made under paragraph 15(3) will allow restrictions to be placed on powers of repeated entry. This will include the methods used to enter premises. It is intended that entry will be restricted to what we may consider “normal” methods of entry into premises – that is to say by way of a door or French windows.

**Paragraph 22 – Application for power to use reasonable force.**

151. Enforcement agents will be permitted to force entry into debtors premises when enforcing a debt, to enable them to search for and seize goods, which can then be taken into control and if necessary removed and sold at auction to pay the debt – but only with prior judicial authority.
152. Judicial authority may be granted under paragraph 20 or 21 provided prescribed conditions are met. It is intended that the court’s power should only be used as a last resort and each individual case will be judged upon its merits. The conditions for granting forced entry will be contained in regulations that will be made under paragraph 22(1). It is our intention that these conditions will include:
- that other methods of enforcement have failed;
  - the property is inhabited by the debtor;
  - normal entry attempts have been unsuccessful;
  - there is reason to believe there are suitable goods on the premises to satisfy the debt (and evidence to support that belief);
  - the enforcement agent has considered the likely means required to gain entry; and,
  - the enforcement agent will leave the property in a secure state.
153. The judge must also take other factors into account when making his decision, including:
- the size of the debt;
  - the type of debt; and
  - any other information about the debtor’s personal circumstances.

At Committee Stage in the House of Commons, Vera Baird MP gave an assurance that the power to apply to use reasonable force to enter domestic premises will not be brought into effect until the enforcement industry is regulated by the Security Industry Authority (Official Report, 20 March 2007, column 126).

**Paragraphs 24, 25 and 28 – Other provisions about powers of entry.**

154. It is intended that regulations will cover other restrictions on the powers of entry. This will include provisions regarding the use of force (see above), the power to enter and remain on premises, the information the enforcement agent must provide the debtor with having entered the premises, and the circumstances in which such information need not be provided on re-entry to the premises.
155. Paragraph 24(2) contains a regulation-making power that could permit enforcement agents to use force against persons in prescribed circumstances. The Government has made it clear that there will a full public consultation before this power, and a similar power in paragraph 31(5) (in relation to goods on a highway) are exercised. If after that consultation it is considered that no new powers to use force against the person are necessary, then regulations will not be made under paragraphs 24(2) or 31(5).
156. These regulation-making powers will also be subject to the affirmative resolution process thereby allowing Parliament a further and clear opportunity to be satisfied about the need for and scope of the powers of force against the person.
157. It is intended that the regulations would state that the power to use force against persons could only be used in a restraining capacity to enable the enforcement agent to carry out his lawful duties without threat of physical interference or harm. These regulations would make it clear that it would only be the fully qualified and trained enforcement agent, and not any one else whom he takes on to the premises to assist him in the process of taking control of goods, who would be permitted to use force against persons. The powers would not include physical body searches, or physically forcing the debtor to do anything against his will, for example, escorting him to other premises where he may be holding goods. Nor would the powers allow the forcible removal of items from the debtor's person such as clothing or jewellery or removing the debtor from the premises.
158. Furthermore, these powers would not replace existing laws on self-defence, which can only be used where the enforcement agent is being attacked or is about to be attacked.
159. Under paragraph 25, enforcement agents may enter and remain on premises only within prescribed times of day. For those premises that are wholly residential and are not used for the conduct of a profession, trade or business, we intend the regulations will state that enforcement agents will be permitted to enter premises between the hours of 06:00 and 21:00. For those premises that are not wholly residential and are used for the conduct of a profession, trade or business, enforcement agents will be permitted to enter premises between the hours of 06:00 and 21:00 and at any other hours the premises are open for the conduct of the business. Once the enforcement agent has entered the premises and has begun the process of taking control

of goods he will be permitted to complete the process even if this results in him remaining on the premises outside these times.

160. We intend that the regulations will also state that enforcement agents will be permitted to enter premises on any day of the year. However, there will be guidance relating to various religious and cultural festivals and enforcement agents will have carefully to consider religious and cultural sensitivities and the appropriateness of entering premises on any religious or cultural festival of the year.
161. Under paragraph 25(2), regulations may give the court the power to allow entry at other times. We intend the regulations will state that the court will be able to exercise such power on application by the creditor or enforcement officer and each case will be decided on its merits.
162. After entering the premises, the enforcement agent must provide the debtor with a notice. The form of the notice and what information it must give will be contained within regulations made under paragraph 28(2), and will cover:
- the statutory liability or judgment which has given rise to the debt;
  - the legislative provision authorising the action;
  - the amount for which the warrant was issued;
  - the charges (which have been and can be made) in relation to it;
  - how payment can be made;
  - that the goods will be sold if the debt and costs are not paid; and
  - any rights of appeal or avenues of complaint the debtor may have (in outline).

It is intended that the notice must be given in writing.

163. We intend that under regulations made at paragraph 28(3), this information need not be given again when the agent is re-entering premises.

#### **Paragraph 31, 32 and 33 – Goods on a highway.**

164. The court may authorise an enforcement agent to use, if necessary, reasonable force to take control of goods on a highway provided prescribed conditions are met under paragraph 31(2). The power to use force is subject to any restrictions imposed by regulations made under paragraph 31(4), including to what extent the power may be used against persons pursuant to regulations under paragraph 31(5) (see section above on paragraph 24(2)).
165. An enforcement agent may not exercise any power under Schedule 12 on a highway except within prescribed times of day. It is intended that regulations made under paragraph 32(1) will state that enforcement agents will be permitted to take control of goods on a public highway between the hours of 06.00 and 21.00, unless permission to use a power at any other time is granted by the court under regulations made under paragraph 32(2).
166. Notice will need to be provided to the debtor when taking control of goods on the highway. The form of the notice and what information it must give is to be set out in regulations under paragraph 33(2). This notice will be similar to that issued to debtors under paragraph 28(1) for goods taken into control on premises, and will contain similar information.

**Paragraph 34 – Inventory.**

167. Having taken control of goods, the enforcement agent must provide the debtor with an inventory of all those goods taken into control. The form of the inventory, and what it should contain, will be laid out in regulations under paragraph 34(4) it is anticipated that the regulations will contain a draft example of an inventory. It is intended that the inventory will contain exact details of all the goods that have been taken into control e.g. if a car is taken into control, rather than just saying make and colour of car, it should confirm the registration and chassis numbers. Where cash has been taken into control, the inventory will be a receipt which will state the exact amount of cash that has been taken into control.

**Paragraph 35 – Care of goods removed**

168. Enforcement agents will be under a duty of care for any items they remove – and regulations under this paragraph will specify the applicable requirements. It is intended that the regulations will state that the goods must be stored in appropriate safe and secure premises which are free from cold and damp, that would enable the goods to be returned to the debtor in a similar condition to when they were taken into control if the debtor paid the debt owed.

**Paragraph 36 – Valuation.**

169. Before the end of the minimum period, the enforcement agent must make or obtain a valuation of the controlled goods in accordance with regulations under this paragraph. The minimum period is also to be specified in regulations under paragraphs 39 or 48 of the Schedule. The regulations will state that the valuation must be obtained from a fully qualified independent valuer, the valuation must be in writing and that a copy of the valuation must be given to the debtor and any co-owner.

**Paragraphs 39 to 43 – Sale (including place of sale)**

170. The conduct of the sale of goods taken into control will be governed by regulations. These will include the period of time that is to elapse between seizure and sale; the notice that must be given to the debtor; how the sale is to be conducted, and where and how the sale is to be advertised.

171. It is most important that should seized goods need to be sold, the debtor is given clear advice as to when and where this will happen. This will give the debtor one final chance to raise the funds to clear his debts before the goods actually reach the point of sale at auction. It is also only fair to the debtor that the sale is organised, advertised and conducted in such a way as to try to ensure the best possible price for the goods, should the sale go ahead.

172. We intend that regulations made under paragraph 39(2) will state that no goods should be sold until the expiration of a period of at least 7 calendar days following the day on which the enforcement agent has taken control of the goods.

173. We further intend that regulations made under paragraph 40(2) will state details of the information the enforcement agent must give to the debtor and any co-owner regarding the sale of goods taken into control. It is anticipated that the minimum period of notice of sale will be 3 days; that notice is to be given in writing; that in addition to the date, time and location of the sale the notice must contain details as to what payments need to be made and where to prevent the sale going ahead; and that first class post will suffice as method of service.

174. Regulations under paragraph 40(3) will stipulate any restriction on the enforcement agent replacing a notice with a new notice. These restrictions will include the requirement that a new notice must be dated and issued in writing if the date, time or location of the sale have been rearranged. Also, if the previous notice could not be issued to the debtor because he has changed address, a fresh notice must be issued in writing to the debtor's new address. Any new notice which is issued will be dated and will have a statement on it explaining that it replaces a previous notice.
175. Regulations under paragraph 41(3) may stipulate the sorts of sale that may be provided for. We intend that this will allow for a sale by, for example, private contract or sealed bids to be made, if the court is convinced that this will raise more money than sale by public auction is likely to raise. For sale other than by public auction (e.g. private contract or sealed bids) the enforcement agent must apply to the court to be able to carry out the sale in this manner. However, if an enforcement power has become exercisable by another creditor against the debtor or a co-owner, the court is not allowed to consider such an application until notice of the application is given to the other creditor in accordance with regulations under paragraph 41(5). It is intended that the regulations will state that the notice must be in writing and should be delivered by hand or first class post at least 3 days prior to the application being heard.
176. We intend that regulations made under paragraph 42(a) will further state that the sale (normally by public auction unless the court orders otherwise) must be advertised at least 3 days before it is held. It is intended that sale by public auction will include sale in an auction room, sale by electronic methods such as "ebay" and sale by advertisement.
177. We intend that the sale will be conducted in accordance with regulations made under paragraph 42(b). These will state that an auctioneer must carry out the sale.
178. Finally, we intend that regulations made under paragraph 43 will also make provision about the place of sale including the circumstances when the sale may take place on the premises where the goods were found and when the occupier's consent is not required in this regard.
179. Regulations under paragraph 43(1) will state that in most circumstances the sale of controlled goods will take place in an auction house and regulations under paragraph 43(2) will state the circumstances when the sale may take place on the premises where the goods were found. This will include for example, where the goods to be sold are large and heavy items on business premises which will be too bulky and costly to remove. It is intended that the enforcement agent will have to apply to the court for permission to be able to carry out the sale on the premises where the goods were found. Regulations under paragraph 43(3) will state the circumstances when the sale may be held on the premises where the goods were found even without the occupier's consent. For example, the court will have the power to authorise the sale on premises without consent of the occupier if the enforcement agent can prove that the costs to remove the goods for sale elsewhere would be disproportionate to the amount of debt that is owed.

**Paragraphs 48 and 49 – Holding and Disposal of Securities.**

180. Separate regulations will be required regarding the holding and disposal of securities, to be made under paragraph 48(1), due to the unique nature of the item taken into control i.e. securities. These may be held until they have matured, when they will be of considerably more value.
181. It is anticipated that the information given to the debtor and any co-owner in regulations under paragraph 49(3) and the restrictions under paragraph 49(4) will be similar to that given to debtors and co-owners prior to the sale of other goods in paragraphs 39 to 42.

**Paragraph 50 – Application of proceeds.**

182. The regulations made under this paragraph will state what should happen in circumstances where the amount of money raised by the sale of controlled goods does not cover the value of the unpaid debt and all associated costs.
183. We intend that regulations made at paragraph 50(4) will state that money obtained from the sale of controlled goods will be applied in the following ways:
- payment of the share due to any co-owner (if jointly owned goods have been taken into control and sold);
  - followed by payment of the enforcement agent fees and charges;
  - followed by payment to the creditor of the debt owed.
184. We intend that regulations made under powers granted at paragraph 50(7) will further state that any disputes regarding the application of proceeds from the sale of controlled goods will be dealt with by the court.

**Paragraph 53 – Abandonment of goods other than securities.**

185. As a general rule, goods will be considered as abandoned if the correct notice of sale is not given within the required period or if they remain unsold. However, paragraph 53(3) allows for regulations to specify other circumstances in which controlled goods will be considered as abandoned. We will consult on what those circumstances should be.
186. It is intended that secondary legislation under paragraph 54(2) will cover what should happen with any goods left unclaimed after a prescribed period. The prescribed period is likely to be 28 days. In addition, it is intended that regulations will state that it would be for the court to decide what should happen to goods left unsold and unclaimed by the debtor. However, the options that the court may wish to consider are:
- the goods should be kept in storage for a period of time (to be determined by the court) in case the debtor changes his/her mind and decides that they want the goods to be returned. If during this period of time the debtor informs the court that he/she wants the goods to be returned then the goods should be made available for collection.
  - if, after this period of time, the debtor still does not want the goods, then -

- a) the judge can order the goods to be given to charitable organisations such as Oxfam, British Heart Foundation, Cancer Research, etc.; or
- b) the judge can order for the goods to be destroyed.

187. These are some of the options that the judge may wish to consider when deciding what should happen to unsold goods which remain unclaimed by the debtor. However he may wish to consider other options as it will fundamentally be for the judge to decide.

**Paragraph 56 – Abandonment of securities.**

188. Separate regulations will be made relating to the abandonment of securities. It is intended that similar regulations as for abandonment of goods other than securities will be introduced.

**Paragraph 62 – Costs.**

189. Paragraph 62 provides for the recovery of any costs associated with the process of seizure and sale of goods. The details as to what costs may be recovered, how they are to be recovered, and how disputes as to the validity and accuracy of costs charged are to be resolved, will all be contained in regulations.

190. Further consultation and research will be needed to determine the exact costs and fees that enforcement agents will be allowed to charge, and how disputes as to the validity and accuracy of these costs and fees will be resolved. We will consult with the enforcement industry, the advice sector, court user groups and the judiciary to ensure a balanced and fair fee structure, which adequately rewards enforcement agents for work done, without unduly oppressing genuinely vulnerable debtors.

**Clause 59 – Certificates to act as an enforcement agent**

191. Regulations must be made under clause 59(2), setting out the basis of the new enhanced and extended certification process. Regulations made under this clause will effectively replace those that currently govern the existing certification process for bailiffs, which are made under section 7 of the Law of Distress Amendment Act 1888, and are contained in the Distress for Rent Rules 1988 and the Distress for Rent (Amendment) Rules 1999.

192. The new regulations will apply to all enforcement agents who are not Crown employees or constables, and as outlined in clause 59(3) may cover the following:

- The fees that may be charged to applicants for a certificate.

A non-returnable fee will be charged on all applications for certification made by prospective enforcement agents. This fee must be paid when the application is lodged without exception. It is envisaged that the fee will be similar to that currently charged under the existing certification process, which is £150.

- The conditions that applicants must meet before being granted a certificate.

These will include the following:

- i. educational qualifications.
- ii. the level of approved training that has to be undertaken, including training in such areas as diversity awareness, dealing with potential conflict situations, and identifying vulnerable and potentially vulnerable client groups.
- iii. compulsory criminal records checks.
- iv. references that should accompany the application.
- v. the requirement to not be an undischarged bankrupt.
- vi. the requirement of not being involved in certain trades, such as the buying and selling of debt.

- Any security that must be lodged for a certificate to be granted.

A security bond of £10,000 will need to be lodged, this will be used as security against any awards of compensation etc a judge may make as the result of a successful complaint against a certificated enforcement agent.

- Any conditions or limiting of purpose that may be placed upon the granting of the certificate.  
The Lord Chancellor may decide to make the granting of a certificate limited to specific purposes as he sees fit.
- How complaints about certificate holders are to be dealt with.

A debtor, creditor or third party may make complaints against a certificated enforcement agent. The complaint will be lodged at the court that issued the enforcement agent concerned with his certificate, on a specified form, and will be dealt with at that court. No fee shall be payable for lodging a complaint. The judge will consider the complaint, and, if he believes the complaint has merit and there is a case to answer, a date and time will be arranged for the complaint to be investigated. The complainant, the agent and any witnesses will be invited to give evidence. If the complaint is upheld, a variety of sanctions will be available to the judge, including compensation, and the suspension or cancellation of the agent's certificate. The system will be more widely advertised than the current complaints system.

- How certificates may be suspended or cancelled.

Certificates may be suspended or cancelled by order of the judge either during the course of the investigation of any complaint, or as a result of any complaint.

- How and where information about applicants and certificate holders is to be held and made available.

Information will be held by each court regarding each enforcement agent their certificate, and centrally by HMCS regarding all certificated enforcement agents. This information is to be made available on written request.

## **Clause 72 – The rent recoverable**

193. Under the new Commercial Rent Arrears Recovery system, recovery will not be permitted unless the amount outstanding exceeds a set minimum amount. In normal circumstances, this minimum amount will exclude interest or VAT.
194. Regulations made under clause 72(4) of the Bill will enable the minimum amount to be set by way of regulations, as well as setting out the method for calculating the amount. Further regulation-making powers at clause 72(6) will lay out the exceptional circumstances when the recoverable amount may include interest and VAT.
195. At present, we have not finalised at what level this minimum amount should be set, how it should be calculated, or what the exceptional circumstances for including interest and VAT in the recoverable amount will be. We will carry out research to judge where best to set this limit and how it should be calculated. Once initially set ongoing evaluation and research would need to continue to enable periodic update of this limit. The exceptional circumstances will similarly be kept under review.
196. Initial indications, however, are that we would be mindful of using the following levels as the baseline for consultation. The amount of rent that should be outstanding for CRAR to take place will be:
- if the rent is more than £200 per week – one weeks rent.
  - if the rent is between £200 per week and £50 per week - £200.
  - if the rent is less than £50 per week – four weeks rent.
197. However, we are mindful of the fact that setting this minimum level too low may well have ECHR implications – particularly in areas of the country where business rents are relatively high, and even small and hard to let business premises may still be rented out for sums in excess of £200 per week. We will of course bear such considerations in mind when setting this minimum threshold.

## **Clause 73 – Intervention of the Court**

198. Under the new CRAR system, the court (either High Court or county court, as rules of court may provide) may, on the application of the debtor, intervene in the action, and set aside the notice or order no further action to be taken on the notice pending further enquiries. The ability for the courts to intervene in such a manner is crucial for ECHR compliance in an out of court recovery method such as CRAR. It provides an added level of protection for debtors from unduly overzealous pursuit for relatively small sums. The grounds on which the court may intervene in this fashion will be set out in regulations made by the Lord Chancellor under powers contained in clause 73(2).
199. At present we have yet to finalise what those grounds may be. We will consult interested parties on this issue. After consultation with the judiciary in particular, it may well be decided to leave this decision as to whether the court should intervene largely to judicial discretion.

## **Clause 76– Right to rent from the sub-tenant**

200. One of the notable features of the Commercial Rent Arrears Recovery system is that the landlord may recover monies owed to him by the immediate tenant from the sub-tenant. In effect, rather than paying rent to the tenant, the sub-tenant will pay rents directly to the landlord to pay off the tenant's arrears.
201. For this to happen, the landlord would need to give notice to both the tenant and the sub-tenant that he intends to collect rent arrears owed to him by the tenant in this way. The format of the notice that must be given to both the tenant and the sub-tenant by the landlord to enable this to take place will be set out in regulations made under clause 76(6). The period of time between the notice being issued and the notice taking effect will be specified in regulations made under clause 76(5)
202. Regulations will set out the form that the notice must take, the information that it must contain, how the notice must be served, and what must be done to withdraw the notice.
203. It is anticipated that the notice will have to be in writing; will have to contain details of the amount owed by the tenant to the landlord, and what sum the sub-tenant(s) will be expected to pay direct to the landlord; that it must be served by the landlord on all parties; and that the notice will be withdrawn by way of further written notification by the landlord to all parties that the notice has been withdrawn. We anticipate a 14 day period for the notice to take effect.

## **Part 4 Enforcement of Judgements and Orders**

### **Introduction**

204. Part 4 of the Bill makes a number of changes to existing court-based methods of enforcing debts in the civil courts. Part 4 also contains new provisions, including powers to obtain information about debtors.

### **Background**

205. Responsible creditors who are owed money and have gained judgment in court should have the right to enforce that judgment. Equally, debtors should be protected from the oppressive pursuit of their debts. Part 4 of the Bill makes a number of changes to existing court-based methods of enforcing debts in the civil courts.

206. Part 4 also enables the High Court and county courts to request information about a debtor from among others the Department for Work and Pensions (DWP) and Commissioners for Her Majesty's Revenue and Customs (HMRC) in order to assist in the enforcement of a judgment debt.

### **Clause 86 - Attachment of earnings orders: deductions at fixed rates**

207. This clause introduces a new scheme of fixed deductions to be made under attachment of earnings orders ("AEOs") made by a county court to secure payment of a judgment debt, and introduces Schedule 15, which makes amendments to the Attachment of Earnings Act 1971 ("the AEA 1971") for this purpose.

### **Schedule 15 Attachment of earnings orders: deductions at fixed rates**

208. Paragraph 3 inserts a new section 6A into the AEA 1971, and subsection (2) provides a power for the Lord Chancellor to make a fixed deductions scheme in regulations.
209. It is intended that such regulations will set out the scheme of deductions in tabular format, in a similar way as is presently used for deductions from earnings for the collection of council tax. It is envisaged that fixed deduction rates will be reviewed and revised from time to time.
210. The exact levels of the tables will be set after careful consultation with stakeholders from the court user and advice sectors, and the judiciary.
211. Fixed tables are already used for council tax and magistrates' courts fines in England and Wales. The current table for council tax AEOs looks like this:

| Monthly Net Pay    | Council Tax Table                                    |
|--------------------|--|
| Not Exceeding £220 | 0%   |
| £220 to £400       | 3%   |
| £400 to £540       | 5%   |
| £540 to £660       | 7%   |
| £660 to £1040      | 12%  |
| £1040 to £1480     | 17%  |
| Exceeding £1480    | 17% for first £1480, 50% in respect of the remainder |

212. Council tax deduction rates lead to quite high repayments for many debtors. The main reasons for council tax tables being set at a higher rate, are:
- council tax has traditionally had a high priority in terms of collection because it is a tax; and
  - council tax debt arrears are based on debts accrued in one tax year and therefore repayment has to be made over a short period, 12-18 months, to ensure arrears for the following year are not built up.
213. We may therefore look at setting the county court fixed tables at a lower level than the council tax tables because although the judgment debt is important, the additional justifications above do not apply. However the exact levels will only be set after careful consultation with key stakeholders.
214. These tables prevent a deduction being made if the monthly net pay is £220 and below a month. We will have a similar 0% band but the figure may be different and will take account of economic circumstances at the time (for example, inflation). By preventing deductions below the 0% threshold, the court will be safeguarding the income of those on low salaries.
215. Paragraph 5 inserts a new section 9A into the AEA 1971, making provision for the suspension of AEOs made under the fixed deductions scheme. Subsection (5) enables rules of court to specify the circumstances in which a court can make or revoke a suspension order of its own motion. This is in line with section 9(3) of the AEA 1971 (power of the court to vary or discharge an AEO of its own motion).
216. Paragraph 7 inserts a new Schedule 3A into the AEA 1971. Paragraph 6(4) of Schedule 3A provides an order making power for the Lord Chancellor to specify a “changeover date” (when all existing AEOs made by a county court to secure a judgment debt that are subject to the scheme of deductions specified in Part 1 of Schedule 3 to the AEA 1971, will become subject to the scheme of deductions set out in fixed tables). We will have to monitor implementation of the fixed deduction scheme very carefully in order to judge when the changeover date will be, and the Lord Chancellor will take a decision based on the circumstances at the time. We are therefore unable to say exactly when that will be.

## **Clause 87 - Attachment of earnings orders: finding the debtor's current employer**

217. This clause inserts sections 15A to 15D into the AEA 1971 to enable Her Majesty's Revenue and Customs (HMRC) information to be provided to the courts for the purpose of re-directing a lapsed AEO. Clause 84 inserts sections 15A-15C into the AEA 1971, to enable information to be provided to the courts for the purpose of re-directing a lapsed AEO, to a debtor's current employer, by establishing an information gateway between the High Court, magistrates' courts, county courts and HMRC. Section 15B creates an offence where a person further discloses information provided by HMRC under section 15A(5) other than for a specified permitted purpose. Section 15B(8) provides a regulation making power for the Lord Chancellor to exercise, with the consent of the Commissioners for HMRC, to restrict or prohibit access to, or the supply of, information supplied by HMRC via the information gateway.
218. It is intended that such regulations should specifically restrict rights of access of creditors and the public to information that has been supplied via the information gateway. Particularly, it is envisaged that such regulations should restrict the effect of Part 5 rule 4 of the Civil Procedure Rule, (which enables parties to proceedings and other persons to obtain copies of orders made in public, such as AEOs). Such a power should be a regulation rather than a rule making power to give HMRC greater control over the content of the restrictions. We intend that regulations restricting access to information will be subject to affirmative resolution parliamentary procedure.
219. Information obtained from HMRC might be passed between courts for enforcement purposes. HMRC will have control over the information flow as the Bill provides in section 15B(3) that any further disclosure by the court must be with the general or specific consent of the Commissioners. Information will also be further disclosed to the debtor and the employer, (both of whom clearly will already be aware that the debtor is employed and who he is employed by). Information obtained from HMRC will not be further disclosed to the creditor or members of the public. There is a criminal sanction on the face of the Bill for persons who use and disclose information obtained from HMRC for a purpose that is not connected with an attachment of earnings order.

## **Clause 89 – Charging Orders: power to set financial thresholds**

220. This clause inserts in the Charging Orders Act 1979 a new section 3A. This section will include two new regulation-making powers for the Lord Chancellor. At subsection (1), he will be able to make regulations imposing minimum financial thresholds below which a judgment creditor would not be able to apply for a charging order. At subsection (2), he will be able to make regulations imposing minimum financial thresholds below which a judgment creditor would not be able to apply for an order for sale. These powers are being introduced to provide further protection for genuinely vulnerable debtors from unduly vigorous pursuit by overzealous creditors.
221. At present, we have not finalised at what level these thresholds should be set. We will carry out research to judge where best to set these levels, and once

initially set, ongoing evaluation and research would need to continue to enable period updates of these thresholds.

### **Clause 90 - Application For Information About Action To Recover Judgment Debt**

222. Clause 90(2) specifies that an application for information about action to recover a judgment debt must comply with any provision made in regulations. We propose that such regulations should specify the circumstances in which a person may make such an application. The following list is indicative of the circumstances under which an application could be made but it should not be taken as definitive. It seeks to capture situations where the debtor is non-compliant or falls out of contact with the court through the failure of an enforcement mechanism.

- Following a forthwith default judgment: the information request/order may be applied for simultaneously with the application for the forthwith default judgment. The information request may then be granted immediately following the issue of the default judgment (a default judgment is given where the debtor has failed to attend the hearing).
- Following a default judgment: the information request/order may be applied for at any point after the issue of the default judgment;
- Following wilful non-compliance with the Order to Obtain Information from the Judgment Debtor: if the debtor has not responded to this Order the creditor may apply for an information request/order as an alternative to initiating the committal process; if the debtor is wilfully non-compliant at the hearing, the creditor may request or the Judge may order an information request/order;
- Following default on an Instalment Order: after the first instance of default notice must be given to the debtor that further non-compliance may result in an application for an information request/order; if, thereafter, the next instalment is defaulted on, provided the creditor supplies evidence, by a statement of truth, that the debtor is two instalments in arrears and due notice has been given, it may be applied for;
- Following an unsuccessful Third Party Debt Order (TPDO): if an application for a TPDO fails, the creditor may apply for an information order, using as evidence the original judgment and notice of the failure of the TPDO;
- Following an unsuccessful Attachment of Earnings Order (AEO): if an application for an AEO fails, the creditor may apply for an information request/order using as evidence the original judgment and notice of the failure of the AEO;
- By application on notice to a District Judge: creditors who have an enforceable judgment, such as a High Court writ/ or a Tribunal award, which may be enforced through the County Court.

### **Clause 91 - Action by the court**

223. This clause specifies that a relevant court must not make an information request to the HMRC Commissioners unless regulations made under clause 94(4) and (7) (see below) are in force. This is to ensure that the scheme cannot proceed until regulations have been made which have the

Commissioners' agreement. This is established practice when working in partnership with HMRC in this way.

### **Clause 92 - Departmental information requests**

224. This clause specifies information that may be requested by the relevant court from a government department (in practice DWP and HMRC at least at first). The core information we will be seeking is on the face of the Bill. Further feasibility studies need to be undertaken to establish what information should be obtained from other departments for the purposes of assisting a creditor to decide what information it would be appropriate to take in court to recover his debt, therefore we are unable to specify it here.
225. Subsections (3)(e), (4)(d) and (5) enable a request to be made for prescribed information. It may be the case that whilst currently, certain information (for example, a debtor's national insurance number) can be most easily obtained from DWP, such information might, in the future, be more easily obtained from HMRC. Therefore, to cover this eventuality and in the interests of flexibility we consider that the Lord Chancellor should have regulation making powers to prescribe additional categories of information that can be requested from DWP and/or HMRC.
226. Subsection (3) enables an information request to be made to another government department (other than HMRC and DWP) to request prescribed information in relation to a debtor provided that the relevant Secretary of State has been designated for the purposes of the Act. Such designation will be by regulation under Clause 92(6). Again, this power exists for the sake of flexibility. We anticipate that the Secretary of State for Work and Pensions will be designated for these purposes for reasons stated above.

### **Clause 93 - Information orders**

227. Subsection (1) enables the High Court and county courts to make information orders requiring prescribed third parties to provide prescribed information about the debtor. Subsection (3) allows the Lord Chancellor to specify what organisations and what information will be prescribed. It is envisaged that credit reference agencies and banks will be prescribed for these purposes but further feasibility studies will need to be undertaken before a definitive view can be given. Subsections (3) to (5) make further provision about the content of such regulations.
228. We expect the prescribed information to be of the pattern established in clause 93, except that specific information could be requested from specific institutions. For example, the point of asking a bank for information is to find out whether the debtor has a bank account with them, in order to make a Third Party Debt.
229. These regulations can apply to specific individuals or to individuals or organisations of a particular description. This will enable the subsequent law to be appropriately framed. It will mean, for example, that banks, in general, could be ordered to provide bank account information instead of regulations having to name every bank trading in the UK.

230. Subsection (5) prevents the court using the information order scheme to obtain information from a debtor themselves or from a government department. The first exception exists because this scheme is not designed to change the Order to Obtain Information which is an extant procedure in the county courts; the second because such powers will exist as information requests.

#### **Clause 96 - Using the information about the debtor**

231. Subsection (6) specifies that information obtained via an information order or request must not be further used or disclosed unless regulations have been made about such use and disclosure and the use or disclosure complies with such regulations.
232. We intend that such regulations will be used to put in place administrative controls over the use of information. The information can be obtained from HMRC, DWP and other specified third-parties and can be used in the following ways:
- to enable the court to make a further information request or order, (e.g. if it is necessary to pass information about the debtor onto a third party such as another government department or a bank or credit reference agency to enable that third party to identify the debtor and provide the court with further information, by way of example, about his financial status).
  - to enable the court to inform the creditor what type of action he could take in court to recover his judgment debt. It is not proposed that information released by HMRC and DWP would be given directly to the creditor, and, by way of example, the creditor would simply be informed that an attachment of earnings order could be obtained against the debtor (without informing him of the details of the debtor's employer). If the creditor were to decide to pursue such enforcement action the court would transpose the necessary information onto the relevant forms for processing so that the creditor would not directly receive the information.
  - Information must not be used or disclosed unless it complies with the regulations, which should specify that such information obtained from HMRC or DWP should not be available to the public or the creditor, (effectively reversing the effect of Part 5.4 of the Civil Procedure Rules , which enables people to obtain copies of court orders). HMRC in particular will have control over the information flow as it is proposed that the Bill should specify that any further disclosure by the requesting court must be with the general or specific consent of the Commissioners.
  - The Bill will create a criminal sanction (see below) for persons who use or disclose information for a purpose that is not connected with informing a creditor about what kind of action it would be appropriate to take before a court to recover a judgment debt. This would cover court staff and third parties such as government departments or banks who would be in either direct or indirect receipt of information.

#### **Clause 97 - Offence of unauthorised use or disclosure**

233. This clause establishes a criminal offence for circumstances where a person discloses or uses information in an unauthorised manner. Subsection (4)

specifies that use or disclosure is authorised where it is in accordance with a court order, proceeding or enactment, and is in accordance with regulations. Subsection (7) specifies that use or disclosure is authorised where it is in accordance with rules of court under subsection (7).

234. Subsection (7) gives the Lord Chancellor power to make regulations establishing rules of court which govern access to or supply of information disclosed. (See clause 96 above)

### **Clause 98 - Regulations**

235. This clause covers the regulation-making powers under any of clauses 90 - 97 relating to information requests and orders. It compels the Lord Chancellor to seek the agreement of the Commissioners for Her Majesty's Revenue and Customs (HMRC) when making regulations that impact on HMRC. This is established practice when working in partnership with HMRC in this way. The powers are necessary because the information-sharing provisions are likely to evolve over time.

## **Part 5 Debt Management and Relief**

236. Part 5 of the Bill makes changes to two statutory debt-management schemes, Administration Orders (Chapter 1) and Enforcement Restriction Orders (Chapter 2).
237. Part 5, Chapter 3, also amends the Insolvency Act 1986 to allow for the introduction of a new form of personal insolvency procedure that entails the making, administratively by the official receiver, of a debt relief order (DRO) on the application of an individual debtor who meets specified criteria as regards his assets, income and liabilities.
238. Chapter 4 of Part 5 of the Bill empowers the Lord Chancellor (or his delegate) to approve Debt Management Schemes (“DMSs”) operated by any body of persons. Approved schemes will be able to arrange Debt Repayment Plans (“DRPs”) for individual debtors. Subject to prescribed restrictions, schemes will in effect be able to compel creditor participation (if the majority are in favour of a plan being arranged) and plans will be able to compose (i.e. reduce or partially write off) debts. These schemes could be operated by a variety of service providers. Existing providers of debt management advice and assistance do not have the power of compulsion and composition. In future, they will be able to choose whether to offer an ‘approved scheme’ as part of their service.
239. It is intended that DRPs will sit alongside and complement statutory schemes, such as Administration Orders (“AOs”), DROs, bankruptcy and Individual Voluntary Arrangements (“IVAs”). The intention is to provide a range of options giving more choice and flexibility to assist the rehabilitation of over-indebted people. The most appropriate scheme to use will depend on the particular circumstances.

### **Administration Orders**

#### **Clause 101: Administration Orders**

240. Clause 101 of the Bill replaces Part 6 of the County Courts Act 1984 (CCA 1984).
241. New section 112AI enables the Lord Chancellor to make regulations for the whole of new Part 6 of the CCA 1984. However any changes would be subject to consultation with stakeholders and the judiciary.
242. Unlike the existing legislation, debts incurred in the course of a business and specified other debts (e.g. debts secured against an asset) will no longer be able to be included in an AO. Section 112B(2) provides a new restriction in that an order may be made in respect of “qualifying debts” only. Section 112AB defines qualifying debts by making it clear that all debts are qualifying debts except for any debt secured against an asset or any debt specified in regulations.
243. The power for the Lord Chancellor to make regulations is needed to allow him to define clearly debts that cannot be included in an AO after taking account of varying circumstances and the needs of both debtors and creditors.

244. Preliminary consultation has taken place with the key stakeholder group on which debts should not be considered to be qualifying debts. Early views are that this power should be used to specify those debts that are already considered as non-provable debts in bankruptcy, e.g. fines, student loans and maintenance orders in family proceedings or made under the Child Support Act 1991. This ensures that the reformed AO interacts, as far as possible, with existing provisions.
245. This section will also be used to specify any other debts that stakeholders agree should not be considered to be qualifying debts. There is currently no consensus amongst stakeholders that other debts should be specifically excluded. However, it is considered that this flexibility is necessary in any event in order to ensure that the scheme is able to accommodate any future changes to the Insolvency regime.
246. It is intended that the definitions adopted will be common to this and the ERO scheme and, as far as possible, with the proposed Debt Relief Order (DRO), being brought forward by the Insolvency Service. These will, in turn be aligned, as far as possible, with the current Individual Voluntary Arrangements and bankruptcy schemes. This alignment will enable debtors, whose circumstances change, to move between the schemes as easily as possible.

#### **Total Debt & Surplus Income**

247. The current legislation (the CCA 1984) does not have the flexibility to allow the upper limit of debts to be altered (other than by primary legislation) in response to changes in social and economic conditions. Section 13 of the Courts and Legal Services Act 1990 (CLSA 1990) introduced a number of changes, including the total removal of the debt limit but this section has never been implemented due to the lack of parameters and definitions. This has resulted in the debt ceiling (£5,000), considered unrealistic in today's environment, remaining unchanged for 21 years. Consultation has shown a consensus that a limit is needed and that this needs to have sufficient flexibility to allow changes to be made to reflect current conditions.
248. To achieve these aims and to prevent abuse by debtors, section 112B(6) provides that an AO may only be made if the debtor's total qualifying debts do not exceed the prescribed maximum and section 112AA provides the Lord Chancellor with a power to set this maximum limit.
249. Currently the only viable option for those with debts in excess of £5,000, and who have little income and assets, is bankruptcy. The power to set a higher limit is needed to take account of current indebtedness profiles and to offer an alternative.
250. Subject to stakeholder agreement, we intend that the limit should be set at £15,000 in the first instance, allowing debts to be repaid in full during the maximum term of an order (5 years) from an instalment of £250 per month.
251. The limit will be regularly reviewed to ensure its appropriateness. Our key stakeholder group has suggested this should be at 3 yearly intervals but we intend to consult more widely on this issue.
252. A further key feature of the revised scheme is the introduction of a requirement that debtors must be able to maintain a reasonable repayment

rate throughout the term of the order (up to 5 years). Section 112B(7) provides that a debtor must have surplus income above a specified minimum level before they will be able to enter the scheme. Section 112AA empowers the Lord Chancellor to set the minimum surplus income level. Section 112AE allows the Lord Chancellor to make regulations to define surplus income, the period over which a debtor's surplus income is to be calculated and to allow assets to be considered when calculating surplus income.

253. However, parameters such as these may need to be changed occasionally, based on operational experience, for the scheme to be successful. In common with other legislation where limits/parameters of this kind are set, delegated legislation is considered necessary to allow the Lord Chancellor to react quickly when and where necessary.
254. Our intention is to use a derivative of the Common Financial Statement (CFS), which is widely accepted by the advice sector and the credit industry to calculate a debtor's needs. The figures used in the CFS take account of personal circumstances (e.g. the number of children) in arriving at a figure for justifiable expenditure/living expenses. While we intend to consult further on the detail of the reformed AO scheme, our intention is that we will align the surplus income requirement for the AO with that of the DRO (set out in Chapter 3 of this Part of the Bill) at around £50 per month.
255. The amount of justifiable expenditure will be deducted from average earnings to produce a surplus income figure. HMCS intends to consult with stakeholders on the period over which average income should be calculated.

### **Repayment Requirement**

256. The AO scheme is effectively a long-term debt repayment plan. However, the current scheme has no requirement for debtors to be able to make and/or maintain payments. This has led to very low repayment orders being made and lengthy periods being needed for orders to reach conclusion. This, together with the constant round of revocations/reinstatement of orders that currently exists has led to creditor dissatisfaction, while the lack of an "endpoint" does not encourage debtor compliance or assist their rehabilitation. Evidence gathered in 2002 from a sample of 500 AOs showed that the average repayment rate set was around £29 per month and that it took over 15 years for full repayment. However, only 15% of these orders were paid in full, the majority (66%) received partial payments while no payments were made in 19% of cases. The average life of an order where either no or partial payment was made was 2 years.
257. The effect of this is that the scheme simply provides temporary protection from enforcement as opposed to debt repayment with little likelihood that the debtor will be in a better financial position than when they entered. This benefits neither creditors nor debtors and there is therefore a clear need to ensure that this scheme is only available to those who can make and maintain reasonable repayments to their creditors. Where this is not the case other options (e.g. EROs, DROs, bankruptcy and IVAs) are available.
258. Section 112E specifies that debtors must make repayments during the currency of an order. Sub-section (8) specifies that the court must determine the amount of instalments in accordance with regulations made by the Lord Chancellor and sub-section (9) defines payment regulations as regulations

which make provision for instalments to be determined by reference to the debtor's surplus income.

259. Creditors are generally not interested in receiving small sums by way of instalments over a long period because of the costs of processing. The advice sector is also keen to see an end to orders for very small repayments spread over many years. Both believe that in circumstances where a debtor cannot repay by reasonable instalments the debt should be cleared.
260. Regulations made under this section could specify that:
- there must be a minimum instalment (perhaps £50);
  - all surplus income would be taken as the instalment;
  - a fixed percentage of the surplus income should form the instalment;
  - or
  - a sliding percentage of surplus income based on the amount of the total debts should be used for the instalment.
261. The key stakeholder group has been consulted on these issues and we intend to include these issues in the public consultation.

#### **The Effects of Bringing Legal Proceedings**

262. Section 112F(2) restricts creditors with qualifying debts from presenting a bankruptcy petition without permission from the court, once an order has been made. Additionally section 112G(2) restricts creditors from pursuing any other remedy to recover the debt while the AO is in force, again without the permission of the court or unless regulations provide otherwise. Section 112G(3) provides the Lord Chancellor with the power to make regulations exempting specific classes of debt from the restriction imposed by section 112G(2).
263. This section may be used, after consultation with stakeholders, to specify any debts that it is felt should be exempt from this restriction. It is thought that this may include debts resulting from ongoing commitments (e.g. rent, utility payments), where the creditors are unable to avoid the debt being incurred. If excluded from the restriction creditors would be able to act to try to recover these specified debts promptly and provide an important safeguard from potential abuse of the new AO system.

#### **Provision of Information**

264. A key feature of this revised scheme is that debtors will be required to keep the court informed of their circumstances. Under the current scheme debtors are only required to give information about their means and expenditure when making the initial application.
265. Section 112M(2) sets out that, at prescribed times, the debtor must provide to the court details of his earnings, income, assets and outgoings. Section 112M(3) requires the information to be provided in respect of the debtor's current financial position and as he expects matters to be at such times in the future as may be prescribed. By virtue of section 112M(7), the Lord Chancellor will have power to prescribe such matters in regulations.
266. The original policy intention had been to require this information to be updated at 6 monthly intervals as this would assist in meeting the

requirement, imposed by section 112M(3) to assess changes that might occur between updates.

267. HMCS intends to consult on this in the public consultation but the key stakeholder group suggests that annual updates would be acceptable.
268. In another change to the current scheme, debtors will generally be prevented from disposing of assets while an AO is in force without first informing the court. To avoid overly burdening the courts, sub-section 112(M)(5) allows the Lord Chancellor to define assets that are exempt from this requirement.
269. Exempt goods, as defined for the purposes of Schedule 12, will also be exempt for these purposes as will any goods that are protected by other enactments. Regulations under sub-section 112M(5)(c) allow the Lord Chancellor to prescribe other goods that will be exempt.
270. During consultation, stakeholders will be asked to consider further items that should be considered to be exempt (e.g. household appliances) regardless of their value and a minimum value threshold (probably £300 - £500 to align with the DRO) below which the court does not need to be informed.
271. Information provided under these provisions would be readily accessible to both creditors and the court so that any change of circumstances, “windfalls” and/or proceeds from the disposal of assets can be considered promptly ensuring that an order remains appropriate throughout.
272. The intention is that a similar approach will be taken with the revised ERO scheme in order to align them with the current Individual Voluntary Arrangements and bankruptcy schemes allowing debtors to move easily between each of the schemes if this proves to be necessary in individual circumstances.

### **Calculating the debtors qualifying debts**

273. To ensure that the reformed scheme meets its objectives, the court will take into account all the debtor’s existing qualifying debts, including interest accruing between the application and the order being made, for the purposes of meeting the prescribed maximum, regardless of whether or not a debt is due at the time of the calculation. This enables the court to consider the impact of interest and deferred debts that will become due during the lifetime of the order, avoiding the need to revoke an order where such a debt will cause the total debt to exceed the prescribed maximum once it becomes due.
274. Section 112AD(3) and 112AD(4) allow the Lord Chancellor to make provision about how the total amount of the debtor’s qualifying debts are to be calculated to ensure that a standard approach is taken to such calculations.

### **Enforcement Restriction Orders**

#### **Clause 102: Enforcement Restriction Orders**

275. Clause 102 inserts a new Part 6A in the CCA 1984. New section 117X enables the Lord Chancellor to make regulations for the whole of new Part 6A of the CCA 1984. Any changes would be subject to consultation with stakeholders and the judiciary.

### **Power to Make an Order**

276. Section 117B(2) introduces the concept of qualifying debts, defined in section 117U(1)(a) as all debts that are not secured against an asset or that are not specified in regulations under section 117U(1)(b).
277. In common with the AO scheme (described above) and to ensure consistency, regulations under this section will be used to specify those debts that are considered non-provable debts in bankruptcy, e.g. fines, student loans and maintenance orders in family proceedings or made under the Child Support Act 1991. Additionally this section will be used to specify any other debts that stakeholders agree should be exempt .
278. There is currently no consensus amongst stakeholders that other debts should be specifically excluded. However, it is considered that this flexibility is necessary, in any event, in order to ensure that the scheme is able to accommodate any future changes to the Insolvency regime.
279. It is intended that the revised ERO and AO schemes, along with the proposed Debt Relief Order (DRO), being brought forward by the Insolvency Service, will be aligned, as far as possible, with the current Individual Voluntary Agreements and bankruptcy schemes. This will enable debtors, whose circumstances change, to move easily between the schemes.

### **Effect of the Order**

280. Once an order is made section 117C restricts creditors with qualifying debts from presenting a bankruptcy petition without the permission of the court. Section 117D(2) restricts creditors from pursuing any other remedy to recover the debt while an ERO is in force without the permission of the court. Section 117D(3) provides the Lord Chancellor with the power to specify debts that are exempted from the restrictions imposed under section 117D(2).
281. This section may be used, after consultation with stakeholders, to specify any debts that it is felt should be exempt from this restriction. As with the AO scheme, it is thought that this may include debts resulting from ongoing commitments (e.g. rent, utility payments) where the creditors are unable to avoid the debt being incurred.

### **Repayment Requirement**

282. Section 117F permits the court to impose a repayment requirement on the debtor, where appropriate and where the debtor has surplus income. Sub-sections 117F(7) and 117F(8) allow the Lord Chancellor to make regulations to set the criteria for calculating the debtor's surplus income available and to take account of assets when making this calculation. This will be common with the method used for the AO scheme (described above).
283. When considering this, the Lord Chancellor will also take account of earnings, benefit changes, indebtedness profiles, and general economic conditions. Other publications such as the Family Expenditure Survey, published by the Office of National Statistics, will assist in these considerations.

### **Provision of Information**

284. A key feature of this revised scheme is that the debtor will be required to keep the court informed of his circumstances. Section 117J(2) sets out that, at the prescribed time, the debtor must provide to the court details of his earnings, income, assets and outgoings. Section 117J(3) requires the information to be

provided in respect of the debtor's current financial position and as he expects matters to be at such times in the future as may be prescribed. By virtue of section 117J(7), the Lord Chancellor will have power to prescribe such matters, in regulations. In this instance, this may not be common with the AO scheme due to the likely differences in the length of the orders, but HMCS intends to consult on this issue.

285. Debtors will generally be prevented from disposing of assets while an ERO is in force without first informing the court, to ensure that the order is not used to provide respite while assets are disposed of. In order to avoid overly burdening the courts, sub-section 117J(5) allows the Lord Chancellor to define assets that are exempt from this requirement.
286. Exempt goods, as defined for the purposes of Schedule 12, will also be exempt for these purposes as will any goods that are protected by other enactments. Regulations under sub-section 117J(5)(c) allow the Lord Chancellor to prescribe other goods that will be exempt.
287. During consultation, stakeholders will be asked to consider further items that should be considered to be exempt (e.g. household appliances) regardless of their value and a minimum value threshold (probably £300 - £500 to align with the DRO) below which the court does not need to be informed.
288. Information provided would be readily accessible to both creditors and the court so that any "windfalls" and/or proceeds from the disposal of assets can be considered promptly ensuring that an order remains appropriate throughout.
289. It is intended that a similar approach will be taken with the revised AO scheme and the proposed DRO (being brought forward separately in this Bill), to align them with the current Individual Voluntary Agreements and bankruptcy schemes. This will allow debtors, experiencing changing circumstances, to move easily between each of the schemes if necessary.

### **Clause 103: Debt Relief Orders**

290. As the provisions relating to debt relief orders are being inserted into the Insolvency Act 1986 (c.45) ("the 1986 Act"), much of the secondary legislation relating to these provisions will be made using powers already contained in the Insolvency Act 1986.
291. Section 412 of the 1986 Act provides for rules to be made by the Lord Chancellor, with the concurrence of the Secretary of State, and where relevant, the Lord Chief Justice, in relation to individual insolvency procedures. These rules are made under the negative resolution procedure but there is also a requirement under section 413 of the 1986 Act to consult the Insolvency Rules Committee, which is an advisory committee to the Lord Chancellor. The current Rules are the Insolvency Rules 1986, S.I. 1986/1925 and references within the Bill, and in this statement, to "rules" and "prescribed" are to be interpreted accordingly. Provisions on existing personal insolvency procedures are to be found at Part 5 (individual voluntary arrangements) and Part 6 (bankruptcy). Much of the detail concerning the administration of bankruptcy cases is contained in part 6 of the Rules and therefore there is already a precedent within the Insolvency Act 1986 for

detailed provisions relating to the administration of cases to be contained in the Rules.

292. Sections 415 and 415A of the 1986 Act make provision for fees orders to be made.
293. Section 418 of the 1986 Act makes provision for monetary limits to be set in a statutory instrument in respect of specified provisions of the 1986 Act.
294. Schedule 17 contains the text of new Part 7A to be inserted into the Insolvency Act 1986.

#### **Section 251A(4): Debt Relief Orders**

295. Only individuals who are unable to pay their debts may apply for a debt relief order. In general terms, this section makes for provision for that and specifies the type of debt – known as a qualifying debt- that will be covered by the order. It also explains the meaning of “qualifying debt”, which cannot be an “excluded debt”.
296. Paragraph 4 goes on to say that an excluded debt means” a debt of any description prescribed for the purposes of the subsection”. Excluded debts will be prescribed in rules. The list of excluded debts will mirror those which are not provable debts in bankruptcy. The current provision in the Insolvency Rules 1986 is Rule 12.3. Excluded debts for DROs will include:
  - Any fine imposed for an offence
  - Certain obligations arising under an order made in family proceedings
  - Obligations arising under a maintenance assessment under the Child Support Act 1991
  - Obligations arising under a confiscation order under s1 Drug Trafficking Offences Act 1986
  - Obligation arising from a liability under a Student loan
297. Such debts are excluded as a matter of public policy. It would not be right that, for example, an individual could evade payment of a fine by seeking the protection of insolvency proceedings. Student loans became non provable debts in bankruptcy as a result of the Higher Education Act 2004 and are excluded to protect public funds, because of the unique, non-commercial nature of these loans and their terms of repayment.
298. The matter has been left to rules so as to enable the list to be amended or updated if necessary without recourse to primary legislation. Since the determination of any new debt as a non-provable debt will be subject to separate parliamentary scrutiny, it is considered that negative resolution procedure provides an appropriate level of parliamentary scrutiny.

#### **Section 251B(2)(c) and (3): Making of application**

299. Section 251B provides for the way in which the debtor must apply to the official receiver for an order. The section sets out some of the detail about the individual’s affairs that must be included in an application for a DRO, and

also makes provision for the individual insolvency rules made under section 412 to prescribe the form and manner in which the application should be made and further information that must be supplied in support of the application.

300. The form of application and the manner in which it is to be made are procedural matters and have been left to rules to enable revisions to be made to the form of application as and when necessary. This aligns the new procedure with the current position in bankruptcy, where rules specify the details to be contained in the bankruptcy petition.
301. Aside from the matters set out in the body of section 251B, details to be supplied in support of the application will include
  - information about the debtor's income and its source,
  - his assets (if any),
  - details of any assets transferred or sold within the previous 2 years
  - previous insolvency history
  - together with information to enable a proper identification of the debtor to be made –his age, national insurance number and address for example.

#### **Section 251B(4)(b) Making of application – the fee**

302. An application is not regarded as having been made until any fee required in connection with the application by an order under s415 has been paid.
303. Section 415 of the Insolvency Act 1986 provides for the payment of such fees under parts 7A (reference to 7A to be inserted in current statutory provisions as a consequential amendment) to 11 of the Act in respect of the performance by the official receiver of his functions as the Lord Chancellor with the sanction of the Treasury may direct. The order setting out the relevant fees will be amended to make provision for a fee to be paid in connection with the application for a DRO.
304. Any fee set under this provision will be sufficient to recover the official receiver's costs of administering the case and no more. At present it is expected that the fee will be less than £100.

#### **Section 251C(7): Duty of official receiver to consider and determine application – manner of giving reasons for refusal**

305. Once an application has been made the official receiver must decide whether to make, refuse or stay the application pending further enquiries.
306. The section sets out, amongst other things, the circumstances in which the official receiver must refuse the application. If the official receiver refuses the application he must give reasons in the prescribed manner to the debtor.
307. The form in which notice of refusal must be given to the debtor is a procedural matter and it is felt that the negative resolution procedure is an adequate safeguard for what is effectively making a description of a required notice. It is intended that the reasons given by the official receiver should be required to be in writing, but it may also be given electronically (by email).

### **Section 251D(4)(b) and (5)(b): Presumptions applicable to the determination of an application**

308. In order to ensure a uniformity of approach to the order making process the official receiver will be required to apply certain presumptions when determining an application for a DRO. This section sets out those presumptions. Presumptions relating to the debtor's domicile and previous insolvency history are made based on information supplied in the application and prescribed verification checks.
309. Such checks will involve cross checking details supplied in the application or in support of it with information held elsewhere –for example with the individual insolvency register made under Rule 6A.1 of the Insolvency Rules 1986 to search for previous insolvency proceedings to which the debtor has been subject. Since the nature of the checks to be undertaken may be subject to amendment from time to time, it is thought to be appropriate to prescribe such checks as need to be made in subordinate legislation. The details of the checks to be made will be contained in the Insolvency Rules, a body of rules that as a whole are subject to negative resolution.

### **Section 251E(2), (4)(b), (5): Making of debt relief orders**

310. This section makes provision for the form of the DRO, including some of the matters that must be included in the order, which must be in the prescribed form.
311. The contents of a bankruptcy order are also prescribed by rules. The matter has been left to subordinate legislation because, as with bankruptcy, it is felt that the negative resolution procedure is an adequate safeguard for what is effectively making a description of a required notice.
312. In addition to including a list of the qualifying debts and details of the creditors to whom the debts were owed (required by section 251E(3)) it is intended that the order will identify the debtor and state the date on which the order was made
313. The section also makes provision for the steps that the official receiver must take once the order has been made, including providing a copy of the order to the debtor, and allows for rules to prescribe other steps he must take in particular with regard to notifying creditors and informing them of the grounds on which they may object under 251K. These are procedural matters and it is felt that that the negative resolution procedure is an adequate safeguard.
314. It is intended that the notification to creditors will be in writing and will include details that will identify the debtor and his creditors together with the amounts owing to them. The notification will also contain details of how to contact the official receiver and the procedure for making an objection.

### **Section 251J(6): Providing assistance to the official receiver etc**

315. This section sets out the requirements imposed on the debtor with regard to assisting the official receiver in carrying out his functions. It requires the debtor to provide the official receiver with information about his affairs and

attend on the official receiver. The requirement extends so far as the official receiver may reasonably require in order to carry out his functions in relation to the application or the debt relief order made as a result of it. The debtor is also under a duty to notify the official receiver if he becomes aware of any errors or omissions in his application, or changes in his circumstances, assets or income. Subsection (6) provides that the notification must “give the prescribed particulars (if any) of the matter being notified”. Such prescribed particulars as there are will be in rules.

316. The particulars may vary depending on the nature of the information that the debtor is required to provide to the official receiver and will be matters of detail over and above the fact that the debtor’s circumstances have changed. As such it is felt more appropriate to locate them in subordinate legislation. Examples of the types of particulars that will be required are in cases where the debtor has an increase in income, details of the amount of the increase, the date of the increase and the reason for it. Where the debtor acquires property he will be required to state the date it was acquired, the reasons for the acquisition, the nature of the property and its value.

### **Section 251K (2) and (8): Objections and Investigations**

317. Creditors are permitted to object to the making of the order on specified grounds and this clause makes provision for that. In particular, the section makes provision for any person specified in the order as a creditor to object to the making of the order or his inclusion in the order or to details of the debt specified. It also gives details of how the objection must be made and requires the official receiver to consider the objection. It allows the official receiver to carry out an investigation if it seems appropriate and gives a power to the official receiver to require any person to give him information and assistance.
318. Subsection (2) requires objections must be made within the prescribed time period, on prescribed grounds in the prescribed manner and supported by any information and documents as may be prescribed. The prescribed time period is intended to be 28 days from the date the creditor was notified of the order. The creditor will be required to make his objection in writing and may be required to provide information in support of the objection – for example if the creditor believes the debtor has an income he has failed to disclose, the creditor will need to provide some details to enable the official receiver to judge how to take the matter forward.
319. Given that debt relief orders arise as a result of the debtor’s inability to pay his creditors, there is wide scope for general complaints about the fact of the order itself, rather than that there has been any unfairness or irregularity. There are, however, a number of circumstances where an objection may warrant further enquiry and since these may be detailed and varied, it is felt to be necessary to identify in rules rather than in the body of the primary legislation what might constitute a complaint that would warrant this. Such instances would include
- that the debtor had failed to disclose an asset,
  - had understated his income,
  - failed to disclose all his creditors or
  - had understated his liabilities.

320. The section also states (subsection (8)) that subject to anything prescribed in the rules as to the procedure to be followed in carrying out an investigation under this section, an investigation may be carried out by the official receiver in such manner as he thinks fit. It is intended that any rules relating to the conduct of an investigation by the official receiver will relate to the procedures he must follow when carrying out that activity.

#### **Section 251L(10) Power of official receiver to revoke or amend a Debt Relief Order**

321. This section sets out the circumstances in which the official receiver may revoke the order and gives him a power to amend the order during the moratorium period to correct errors and omissions. Revocation may take place when information provided by the debtor to the official receiver turns out to be incomplete or misleading, or where the debtor fails to comply with his duties to provide information or attend on the official receiver. The order may also be revoked if the official receiver ought not have made the order because he ought not have been satisfied the criteria were met and also if the debtor's income and property levels change (for example following a windfall) after the order has been made and the debtor would no longer meet the criteria for obtaining an order.
322. Rules may make further provision as to the procedure to be followed by the official receiver when exercising his powers under this section, for example in terms of notification of the revocation to the debtor and creditors, which will be in writing. It is considered that matters relating to the procedure to be followed are more appropriately placed in rules rather than in primary legislation.

#### **Section 251M(4): Powers of court in relation to debt relief orders**

323. This section enables persons who are dissatisfied with the actions of the official receiver to apply to the court and for the court to give directions or make any order it thinks fit. It also enables the official receiver to make an application for directions or an order in relation to any matter arising in connection with the DRO or an application for a DRO.
324. An application to the court may, subject to anything contained in the rules, be made at any time.
325. Detailed procedural rules relating to the form and manner of application to court will be made using this power. They will be modelled as far as possible on similar application procedures already in the Insolvency Rules.

#### **Section 251S(4): Obtaining credit or engaging in business Power conferred on: Secretary of state**

326. This section makes it an offence, if the debtor obtains credit (either alone or jointly with another person) to the extent of a prescribed amount, or trades in a name other than that which the DRO was made, without disclosing his status. His status is that there is a moratorium in force in relation to a DRO or that there is a debt relief restrictions order in force. The clause also includes an explanation of the expression "obtaining credit".
327. The Insolvency Proceedings (Monetary Limits) Order 1986 (S.I. 1986/1996) makes provision for various monetary limits specified in the Insolvency Act

1986, and it is intended that that instrument will be amended to insert a reference to the relevant amount for the purposes of this section. As with bankruptcy, the “prescribed” amount will be included in this order as this provision will be included in the list of specified sections to be covered by the power in section 418. The prescribed amount in relation to bankruptcy is currently £500 and it is envisaged that the same amount will apply in relation to debt relief orders.

### **Section 251U(5) and (6): Approved intermediaries**

328. In order to obtain a debt relief order, the debtor must make his application to the official receiver through an approved intermediary. This section defines an approved intermediary and makes provision for rules to specify the types of activities that should be undertaken by an intermediary. This is in secondary legislation to reflect the fact that the activities relate to procedural and descriptive matters that may be subject to amendment or addition as the nature of the intermediaries work evolves over time, and allows a quick response should the need for change arise.
329. Activities to be undertaken by the intermediary will include identifying with the debtor details of all his creditors and the amounts owing to them and ascertaining with the debtor the level of his surplus income and the realisable value of his assets. They will also include assisting the debtor to complete his application and facilitating transmission of the application to the official receiver.

### **Section 251U(4): Approved intermediaries**

330. The Secretary of State may by regulations make provision as to (a) the procedure for designating persons to be competent authorities, (b) the types of persons who may not be authorised to act as approved intermediaries, (c) the procedure for dealing with applications to competent authorities for authorisation and (d) the withdrawal of designation to act as a competent authority.
331. At present it is intended that intermediaries be drawn from the free to debtor face to face advice sector, but that over time (providing the service is free to the debtor) they may be drawn from a wider pool. Given that the system may evolve and that the matters covered by these regulations require detailed provisions it is felt that Regulations provide the most appropriate mechanism for legislating in this area.
332. It is envisaged that approval of competent authorities will be granted on an “organisational “ basis to appropriate advice agencies who meet criteria as regards training and competence of their staff and that the agency will then make its own arrangements for approving individual staff to carry out the work as approved intermediaries.

### **Schedule 18: Schedule 4ZA to the Insolvency Act 1986**

333. Schedule 17 contains the text of new Schedule 4ZA to be inserted into the Insolvency Act 1986. Schedule 4ZA sets out the conditions for making a debt relief order.

### **Paragraph 6: Limit on debtor's overall indebtedness**

334. The total amount of the debtor's debts on the determination date (other than unliquidated debts and excluded debts) must not exceed the prescribed amount. The Insolvency Proceedings (Monetary Limits) Order 1986 (S.I. 1986/1996) that makes provision for monetary limits as specified in the Insolvency Act 1986 and this limit will be included in the order.
335. The limit will be kept under review and amended if appropriate –for example increased to take account of increases in average indebtedness. To enable a quick response should the need arise, it is not considered to be appropriate to include the limit on indebtedness in primary legislation.
336. The limit on indebtedness has been the subject of public consultation and initially the amount will be set at £15,000.

### **Paragraph 7 (1) Limit on debtor's surplus monthly income**

337. The total amount of the debtor's monthly surplus income on the determination date must not exceed the prescribed amount. This limit will be also be included in the Insolvency Proceedings (Monetary Limits) Order 1986. The limit will be kept under review and amended if appropriate –for example increased to take account of increases in the cost of living. To enable a quick response it is not considered to be appropriate to include the limit in primary legislation.
338. The limit on monthly surplus income has been the subject of public consultation and initially the amount will be set at £50.

### **Paragraph 7 (3) Limit on debtor's surplus monthly income**

339. Rules may make provision as to how the debtor's monthly surplus income is to be calculated and provide descriptions of income that is to be excluded for the purposes of this paragraph.
340. The manner in which surplus income is to be determined has been the subject of public consultation and it is expected that it will be calculated by use of a form substantially similar to the "common financial statement" which is widely used in the advice sector as a mechanism for examining a debtor's income and outgoings and presenting that information to creditors. The calculation will also take into account the work undertaken by the official receiver when he is calculating whether or not a bankrupt can afford to make payments out of income to his creditors.
341. Since it is desirable that the procedure is, as far as possible, aligned with the procedures used by debt advisors when advising their clients, it is thought more appropriate to keep the nature of the method of calculation in rules, so as to enable them to be amended if necessary as the advice sector or the official receiver change their practices.
342. Income that will be excluded for the purposes of the calculation will include benefit payments that cannot currently be claimed by a trustee in bankruptcy,

### **Paragraph 8(1) limit on value of debtor's property**

343. The total amount of the debtor's property on the determination date must not exceed the prescribed amount. This limit will also be included in the Insolvency Proceedings (Monetary Limits) Order 1986. The limit will be kept under review and amended if appropriate. To enable a quick response it is not considered to be appropriate to include the limit in primary legislation.
344. The limit on the value of the debtor's property has been the subject of public consultation and initially the amount will be set at £300.

#### **Paragraph 8(2) –limit on value of debtor's property**

345. Rules may make provision as to how the value of a person's property is to be determined and make provision for particular descriptions of property to be excluded for the purposes of the paragraph. To ensure a consistency of approach, here is a need to provide guidance to the intermediaries on the most appropriate way to value the debtor's property. but it is felt that primary legislation is not the most appropriate mechanism to do this.
346. Property which currently does not form part of a bankruptcy estate –for example such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his family and tools, books vehicles and items of equipment necessary to the debtor for use personally by him in his employment business or vocation will be excluded from the calculation.
347. Assets which are included in the overall property limit will be valued at their net realisable value, not what the debtor paid for them.

#### **Debt Management Schemes**

348. Chapter 4 of Part 5 of the Bill sets out provisions relating to the debt management schemes. Clause 125 empowers the Lord Chancellor to make regulations relating to this chapter.

#### **Clause 106 - Approval by Supervising Authority**

349. Clause 106(2) empowers the Lord Chancellor to make provision in regulations about conditions that must be met, and considerations that must or must not be taken into account in deciding whether to grant approval. Clause 106(3) specifies that regulations may make provision about any matter listed in Schedule 21.
350. Regulations may therefore include conditions and/or considerations about the scheme operator, including constitution, governance, size and financial standing together with the terms and operation of the proposed Debt Management Scheme (DMS). These may include its:
- scope in terms of the type of debtor that the scheme will be open to (for example, if operated by a council or trade union, people living in specified area or member of that union) and the types of debt that could be included (although the subject of consultation these are unlikely to be different from the AO scheme);

- procedures and decision-making criteria (in particular, how the amount of repayments under a Debt Repayment Plan (DRP) (i.e. a plan specific to an individual) should be calculated).
351. Regulations may also provide for the type of organisation that is permitted to operate such a scheme. For example, they could be used to provide that only charitable or, otherwise, non-profit making organisations are permitted to operate such schemes.
352. The intention is to prescribe minimum requirements applicable to all operators and schemes while preserving the maximum flexibility for scheme operators to determine their own detailed rules and procedures.

### **Clause 107 - Applications for approval**

353. Clause 107(1) provides a procedure to be specified in regulations for making an application for approval of a debt management scheme. Clause 107(2) specifies that regulations may require an application to be in a particular form, may require information to be supplied in support of an application which could for example, include plans for advertising the scheme to ensure that this is proportionate, and/or may require a fee to be paid.

### **Clause 108 - Terms of approval**

354. Clause 108(2) provides that the approval of a DMS is subject to any terms specified in regulations. Clause 108(3) specifies that such terms may deal with the start, expiry and/or termination of the approval. Regulations might specify, for instance, that an approval is to last for a specified period and that the approval might be terminated in certain circumstances (e.g. in the event of the operator failing to maintain adequate insurance or complaints procedures).
355. Clause 108(4) specifies that terms may impose requirements on the scheme operator including, for example, requirements to publish the scheme and to provide statistical or financial information about its operation.
356. Clause 108(5) provides that requirements might relate to any matter listed in Schedule 21. This would include requirements relating to the possibility of changes affecting the operator of the scheme or the transfer of the operation to another body (for example, a requirement that changes or transfers must be approved by the supervising authority).
357. Clause 108(6) specifies that regulations may make provision about the terms that must or must not be included in the approval. This again enables minimum requirements applicable to all schemes to be prescribed.

### **Restrictions**

358. Clauses 110 to 113 impose requirements on certain creditors during the currency of a DRP or during a period of protection (period of protection is defined at clause 128). These clauses are based on similar provisions for AOs and EROs (see Chapters 1 and 2 of Part 5 of the Bill respectively). These clauses also permit the Lord Chancellor to use his regulation making powers to disapply the restrictions in certain cases.

### **Clause 110 - Presentation of a bankruptcy petition**

359. Clause 110(2) specifies that the Lord Chancellor may make regulations to disapply the restriction on issuing a bankruptcy petition against the debtor during the currency of a DRP. As with the other provisions within DMS, it is intended to consult fully on this requirement. However, the regulations might, for instance, exempt creditors with debts arising after a DRP came in to force if stakeholders consider that there should not be a mechanism for adding debts.

### **Clause 111 - Remedies other than bankruptcy**

360. Clause 111(2) provides that regulations may disapply the restrictions on pursuing means, other than bankruptcy, to recover qualifying debts during the period of protection. The regulations might, for instance, exempt creditors with debts arising after a DRP came in to force if stakeholders consider that there should not be a mechanism for adding debts. Alternatively, if debts are allowed to be added to an existing DRP, the regulations might exempt debts to involuntary creditors or creditors who can show that they advanced credit to assist the debtor with urgent needs such as the replacement of necessary household appliances (e.g. cooker, washing machine, refrigerator).

### **Clause 112 - Charging of interest etc.**

361. Clause 112(2) provides that qualifying creditors' right to charge interest, fees or other charges during a period of protection is removed unless the court gives permission or regulations disapply the restriction.
362. The intention is to provide protection for debtors by allowing time for rehabilitation without mounting interest. .
363. Creditors will be entitled to charge interest up to the date of the debtor requesting a plan be arranged and will have the opportunity to give their views on why a plan would be inappropriate or why their debt should not be included in a plan, e.g. the debtor is seeking to use the plan to avoid interest payments, the debtor has realisable assets.
364. A term of approval of schemes could be that there is to be a maximum period of time between the request for a plan and a decision on whether a plan should be arranged being made. Regulations could therefore be used to remove the restriction imposed on their rights to add interest or other charges, for example, in the period between the debtor applying for a plan to be arranged (when the protection begins) and the plan coming into operation, if the debtor is responsible for an unjustifiable delay.

### **Clause 113 - Stopping supplies of gas or electricity**

365. Clause 113(2) provides that qualifying creditors' right to stop supplies during a period of protection is removed unless the court gives permission or regulations under Clause 113(6) disapply the restriction. A term of approval of schemes could be that, in order to prevent debtors abusing the protection offered by a scheme, there is to be a maximum period of time between the

request for a plan and a decision on whether a plan should be arranged being made. Regulations could therefore be used to remove the restriction imposed on their rights to stop supplies for example, in the period between the debtor applying for a plan to be arranged (when the protection begins) and the plan coming into operation, if, for example, the debtor is responsible for an unjustifiable delay.

366. This ensures that supply is not stopped in respect of debts included in the scheme, except in certain limited circumstances.

### **Clause 115 - Registration of plans**

367. Clause 115(1) provides that regulations make provision about the registration of DRPs, either requested or arranged, under an approved DMS in the Register of Judgments, Fines and Orders and clause 115(3) specifies that such regulations may amend section 98 of the Courts Act 2003 for this purpose.

368. The purpose of registering plans is to ensure that creditors are aware that such arrangements are in place when considering whether to advance further credit or services. Stakeholders will be asked to consider whether plans should be registered as soon as the request is made and the period of protection begins, or when the plan comes into operation.

### **Clause 120 - Procedure for termination**

369. Clause 120(1) provides for regulations to specify a procedure for terminating the approval of a DMS. Clause 120(2) provides that regulations may specify a procedure that requires notice of and/or the reasons for an intended termination to be given, conditions to be met before termination takes effect and which may prevent the termination from taking effect unless a specific period has elapsed.

370. It is envisaged that either the supervising authority or the scheme operator should be able to terminate an approval. Where a scheme operator wants to end the operation of a scheme and terminate an approval, regulations might provide that the operator must give the supervising authority a period of notice, and must comply with certain requirements for the termination to take effect (e.g. transferring existing plans to an alternate operator or the supervising authority) to ensure the protection of the public.

371. Regulations might specify a different procedure for termination on breach of the terms of an approval.

### **Clause 122 - Alternatives to termination**

372. Clause 122(1) specifies that regulations may make provision for alternatives to termination of an approval. Clause 122(3) specifies that regulations may allow the supervising authority to transfer the operation of the scheme to itself or another body. Again this is to protect the public.

### **Clause 123 - Effects of end of approval**

- 373. Clause 123(1) specifies that regulations may make provision about the effects if the approval of a DMS ends and clause 123(2) specifies that regulations might make provision about the treatment of DRPs arranged before the scheme ended. Clause 123(3) provides that regulations can include provision to treat a plan as though an approval had not ended or as though the plan had been made under a different approved scheme.
- 374. Clause 123(4) specifies that regulations may make provision about cases where the scheme operator is in breach of an obligation at the time the scheme comes to an end and clause 123(5) specifies that this may include provision to ensure that the operator is not released from the relevant obligations by virtue of the termination.
- 375. Termination of approval should not release scheme operators from obligations under the scheme and regulations should specify that certain obligations (such as making outstanding payments to creditors) might be ongoing despite the termination.

### **Clause 125 Regulations**

- 376. Clause 125(8) specifies that regulations may amend the appeal provisions relating to debt repayment plans arranged under an approved scheme contained in clauses 117 and 118.
- 377. The final detail of DMS framework will be subject to further extensive consultation with stakeholders in order to identify both the need for any further provision and the specific form that it should take. It is envisaged that this power will be used to allow the government to provide any further appeal rights for which a need is identified as the detail of the framework is developed and matures over time.

## **Part 6: Protection of Cultural Objects on Loan**

378. Part 6 of the Tribunals, Courts and Enforcement Bill provides immunity against seizure to objects lent to this country from overseas for public display in a temporary exhibition at an approved museum or gallery. The immunity from seizure will apply whether seizure is ordered by the courts in relation to civil proceedings, or by any law enforcement authorities seeking evidence in an investigation, or to confiscate the proceeds of crime. Under the previous law, immunity has only been given to objects which qualify for protection under the State Immunity Act 1978. The absence of a more general immunity for works of art lent to this country to be included in temporary exhibitions has made museums and private owners increasingly reluctant to lend to such exhibitions without a guarantee that their work will be returned. Part 6 of the Bill seeks to ensure that this guarantee may be given.
379. Clause 129(2)(e) specifies that one of the conditions which must be satisfied for the immunity to apply is compliance by the museum or gallery with regulations made by the Secretary of State about the publication of specified information about the object. The regulations will specify what information must be published about each object being borrowed from overseas, when the information should be published, and the manner in which it should be published. The detailed contents of the regulations will be subject to consultation with museums and galleries and interest groups. However, it is currently envisaged that the regulations will require museums and galleries to publish at least sufficient information to enable each object which is being borrowed to be identified, and that this information should be published two months before the opening of the exhibition.
380. Clause 129(9) gives the Secretary of State an additional power to make regulations to require museums and galleries to provide persons with specified information about an object in specified circumstances. It is envisaged that this power may be used to require museums to provide information additional to that which has been published about a particular object on request.

### **List of judicial appointments that will be extended to ILEX, ITMA and CIPA**

The list below sets out many of the judicial appointments that will be extended to ILEX, ITMA and CIPA and which will be set out more fully in the statutory instrument.

The statutory instrument will also set out the point at which members of the 3 organisations become eligible for the purposes of eligibility for judicial appointment. For ILEX this would be when they become fellows of the Institute.

For ITMA and CIPA this would be when they achieve corporate Membership of the Institute.

### **Institute of Trade Mark Attorneys & Chartered Institute of Patent Agents**

- Specialist Patents County Courts (Circuit Judge / Recorder with limited jurisdiction)
- Specialist Branch of the High Court (Chancery Division) (Puisne Judge of the High Court with limited jurisdiction),
- Chairman or Deputy Chairman of Copyright Tribunal
- Persons appointed to decide appeals from registrar (Trade Marks Act, 1994)

### **Institute of Legal Executives**

- Deputy District Judge
- District Judge
- Deputy District Judge (Magistrates' Court)
- District Judge (Magistrates' Court)
  
- Member of Pensions Appeal Tribunal
- Member of Panel for London Buildings Act Appeal Tribunal
- Chairman of Agricultural Lands Tribunal
- President or Member of Lands Tribunal
- Arbitration Committee Members (Scotland only) (NHS (Amndt) Act 1949)
- Chairman of Levy Appeal Tribunal
- Member of Gambling Appeals Tribunal
- Commons Commissioners (Commons Registration Act, 1965)
- Chairman of a tribunal (Misuse of Drugs Act), 1971)
- President of Tribunal established by the Secretary of State (Industry Act 1975)
- Deputy President and Member of the Family Health Services Appeal Authority
- Chairman of the Transport Tribunal
- Member of Insolvency Practitioners Tribunal Panel
- Person appointed to receive representations, Animals (Scientific Procedures) Act 1986 - Chairman or Deputy Chairman of Copyright Tribunal
- Chairmen of the Consumer Credit Appeals Tribunal
- Chairman of Conveyancing Appeal Tribunals
- Parking Adjudicator
- Adjudicator under Friendly Societies Act 1992

- Member of panel of chairman of VAT & Duties Tribunals
- Persons appointed to hear and determine appeals under Trade Marks Act,1994
- Chairman of Police Appeals Tribunal
- Chairman of a tribunal (School Inspections Act, 1996)
- President or Member of Chairman's Panel (Special Educational Needs & Disability Tribunal)
- Member of Panel of Chairman for England and Wales, NI and Scotland (Deregulation (Model Appeal Provisions) Order, 1996)
- Legal Members of Panel (Social Security & Child Support (Decisions and Appeals) Regulations 1999)
- Chairman or Deputy Chairman of Information Tribunal
- Member of National Crime Intelligence Service Appeals Tribunal
- Legal Members of Panel (Consumer Credit Licensing (Appeals) Regulations 1998)(to be abolished by Consumer Credit Bill)
- Panel Member, Child Support Commissioners (Procedure) Regulations 1999
- President or Member of the Chairmen's Panel (Protection of Children Act 1999)
- Member of the Immigration Services Tribunal
- Member of Panel of Chairmen of the Financial Services and Markets Tribunal
- Senior Tribunal Chairman and Member of the Panel of Tribunal Chairman (Health Service Medicines (Price Control Appeals) Regulations, 2000)
- Member of Panel (ET Chairmen) (Employment Tribunals (Constitution & Rules of Procedure) Regulations 2004)
- Road User Charging Adjudicator
- Legally Qualified Panel Member (Housing Benefit & Council Tax Benefit (Decisions & Appeals) Regulations, 2001)
- Member of Panel of Chairmen of the Competition Appeal Tribunal
- Legal Member of Gender Recognition Panels
- Chairman of the Ministry of Defence Police Appeals Tribunal
- Legal Member of the Asylum and Immigration Tribunal
- Chairman of the Pensions Regulator Tribunal