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I. TRIBUNALS: PUBLIC SECTOR IMPACT ASSESSMENT

1. Title of proposal

1.1 The Public Sector Impact Assessment for the tribunals elements of the Tribunals, Courts and Enforcement Bill.

2. Summary

1.2 The Bill will provide a new overarching statutory framework for tribunals. This framework will support the new executive agency, the Tribunals Service, (launched on 3rd April 2006) in delivering improved services to users. It will also clarify the relationship of tribunals to the courts and the wider administrative justice system.

1.3 These reforms have been agreed following Sir Andrew Leggatt's review of the tribunals system in 2001 and the White Paper Transforming Public Services: Complaints, Redress and Tribunals in 2004. The main non-legislative change, the creation of the Tribunals Service, did not require primary legislation and has been effected through machinery of government changes.

1.4 There are now two options for making further improvements to the tribunals system: not legislating and legislating.

a) Not legislating: Although the Tribunals Service will be able to make improvements to the administration of tribunals, the statutes that govern each separate tribunal, and particularly the separate appointments to judicial office, would restrict reforms. The full potential of the reforms would therefore not be realised. The only benefit of this option would be to save the minimal costs associated with the provisions of the Bill.

b) Legislate: Implement the provisions of the Bill. This would lead to a simpler and better structured tribunals system that would be flexible enough to accommodate the needs of different jurisdictions and users.

1.5 The specific changes contained in the Bill are as follows:

- Introduce a new First-tier Tribunal and an Upper Tribunal into which existing jurisdictions can be mapped;
- Establish a new office of Senior President of Tribunals to act as the leader of the judiciary;
- Replace the dozens of existing judicial offices with five new categories of judicial offices;
- Allow a deployment process to be established for Tribunals Judiciary;
- Provide for a Tribunals Procedure Committee to be created;
- Create an Administrative Justice and Tribunals Council with a remit covering the whole administrative justice system.
1.6 The Bill essentially creates the framework for future improvements in service and customer delivery, but is not itself costly. It is estimated that it will cost in the region of £50,000 to set up the new arrangements, and result in additional annual running costs of approximately £160,000 overall. This is minimal against running costs of around £280m per annum for those tribunals that make up the Tribunals Service. It is expected that this simplified structure will give rise to savings that will easily outstrip the costs.

3. Purpose and intended effect of measure

Objective:

1.7 To provide a new overarching statutory framework for tribunals that:

a) compliments the Tribunals Service, helping to remove statutory restrictions which may hinder the delivery of improved services to users;

b) clarifies the relationship of tribunals to the court system and the wider administrative justice landscape; and

c) is consistent with the constitutional reforms as set out in the Concordat agreed in January 2004 between the Lord Chancellor and the Lord Chief Justice of England and Wales, and the Constitutional Reform Act 2005.

Background:

1.8 In May 2000 Sir Andrew Leggatt was appointed to undertake a review of tribunals. His report *Tribunals for Users: One System, One Service* was published in August 2001. He gave a picture of an incoherent and inefficient set of institutions which, despite the efforts of the thousands of people who work in tribunals, provided a service to the public which was well short of what people are entitled to expect and what can be achieved. Sir Andrew set out a convincing case for change and made a number of recommendations on how to improve the service to tribunal users.

1.9 Most of his recommendations were aimed at improving the services that tribunal users receive, such as having access to information about the tribunal process, access to information about their rights, and more generally, by having fair, efficient and speedy procedures. He argued that bringing the largest central government tribunals together in a single service would ensure a more effective and efficient delivery of tribunals justice than the current fragmented system. He stated that it would be better for tribunals to be administered separately from the Department whose policies or decisions they consider. Judiciary and staff should be brought together into this single service which would allow greater flexibility in the way they are deployed for the benefit of users.

1.10 After extensive consultation, in July 2004 the Department for Constitutional Affairs (DCA) published the White Paper: *Transforming Public Services: Complaints, Redress and Tribunals* providing a formal response to Sir Andrew's report and the broad thrust of his recommendations.
1.11 One aspect is the creation of a new agency – the Tribunals Service – to provide an efficient and cost effective administration for tribunals. This agency was formally set up in April 2006 when responsibility for administering the Appeals Service, the Employment Tribunals Service, the Special Educational Needs & Disability Tribunal for England, the Criminal Injuries Compensation Appeals Panel and the Mental Health Review Tribunals for England transferred to the Department for Constitutional Affairs.

1.12 These changes did not require primary legislation and were effected by machinery of government changes. Therefore this assessment does not deal with them in any detail except insofar as they are relevant to the Bill.

1.13 Neither Sir Andrew's report nor the White Paper commented in detail whether there should be any changes to the way these tribunals operated. However, one of the major criticisms in Sir Andrew's report was the vast differences in procedures and processes within tribunals. He recognised the need for simplification and overhaul of tribunal rules and recommended that tribunals' procedural rules should be as consistent as possible, hence the creation of the Tribunal Procedure Committee outlined in the Bill.

1.14 However, the White Paper also set out the need for reform of tribunals in the context of the how the wider administrative justice system functions. It addressed the issue of tribunals, ombudsmen, the courts and complaint handlers learning from each other to offer a tailored package of dispute resolution, focused on the needs of the user.

1.15 These changes will be difficult to deliver without the overarching framework contained in the Bill. This framework will achieve the Government's aim by bringing individual tribunals closer together but allowing specialisation to be retained where it is in the interests of the user. The Bill will allow deployment of panel members across tribunals where members have the necessary skills and expertise. It will permit the use of tribunal staff to supplement the judicial role. It will also bring tribunals into line with the principles set out in the Constitutional Reform Act, providing for appointments to the new tribunals to come within the remit of the Judicial Appointments Commission and for deployment of the judiciary to be the function of a more unified judicial hierarchy under the Senior President.

1.16 There has not been any fundamental change to the tribunals system for almost 50 years and during that time the numbers of tribunals has increased significantly. There are currently over 70 different administrative tribunals in existence, created largely on an ad-hoc basis. There has been no systematic approach to the establishment of these tribunals, contributing towards a fragmented and complex administrative justice landscape. They are rarely thought of as a single entity and have no common standards for performance or accountability against which their delivery of services can be judged or monitored.

Rationale for Government Intervention
1.17 If the Government does not act by implementing the changes in the Bill, it will not be able to provide the full range of improvements to the tribunals system for both the public sector and the users it serves. The changes brought about by the Bill will build on reforms already in progress to ensure that the tribunals system is independent, coherent, professional, cost-effective and user-friendly.

1.18 Without the Bill the Government will not be able to fully address the problems of the system identified by Sir Andrew Leggatt, the findings of which the Government has already accepted. The Government has already demonstrated its commitment to improving the services that tribunals give users.

1.19 Although the creation of the Tribunals Service to deliver services more efficiently and cost effectively can be achieved without legislation, without a Bill neither the substantial changes to the judicial framework nor the flexibility as envisaged in the White Paper can be achieved. The reforms will improve the end-to-end decision making process, increasing flexibility and facilitating long-term improvements. However, just as importantly, failure to make any improvements will cast serious doubt over the Government's commitment to the reform programme.

Devolution

1.20 These provisions cover the UK except where expressly limited in their extent.

4. Consultation

1.21 The tribunal reform provisions have been the subject of extensive consultation both within Government and with wider stakeholders. There have been two formal consultation exercises, with the White Paper Transforming Public Services: Complaints, Redress and Tribunals and the earlier consultation that accompanied publication of Sir Andrew Leggatt’s Review.

5. Options

1.22 The White Paper Transforming Public Services: Complaints, Redress and Tribunals set out the Government’s rationale for accepting Sir Andrew Leggatt’s recommendation to create an executive agency dedicated to administering tribunals. The executive agency is charged with improving service to users, including improving standards of decision-making across Government, and where things do go wrong, promote quicker and more effective dispute resolution. There will be better information about the tribunal process, with better advice and support. The new agency will co-ordinate a national network of hearing centres, providing greater accessibility to users.

1.23 The White Paper also outlined proposals for changes in the way tribunals function in relation to the other parts of the administrative justice system. The proposals build on the new arrangements as provided for under the Concordat (agreed between the Lord Chancellor and the Lord Chief Justice in January 2004) and the Constitutional Reform Act 2005. This put the relationship
between executive, legislature and judiciary on a modern footing, respecting the separation of powers between the three structures. The Lord Chancellor, as a Minister, is no longer a judge and is therefore a member of the executive arm of the constitution. The Lord Chief Justice has assumed the role as head of the judiciary of England and Wales, although the Bill will provide for most of the Lord Chief Justice’s existing powers in relation to tribunals to be transferred to the Senior President. Furthermore, these proposals will encourage greater cross-fertilisation of approaches across the different parts of the administrative justice system.

1.24 The White Paper made a number of recommendations about improving public services and improving access to justice. At the heart of these proposals were plans for a unified service, replacing the existing fragmented arrangements. Bringing the largest central government tribunals together in a single service will ensure a more effective and efficient delivery of tribunals justice. The tribunals judiciary will be brought together in a single framework, thus strengthening the independence of the judiciary and allowing greater flexibility in the way they are deployed.

1.25 The options set out below address the two possible mechanisms for implementing those proposals. They are based on the premise set out in the White Paper that the Government is committed to improving the service offered by tribunals through more joined-up administration and the use of proportionate dispute resolution.

Option 1 – Not legislate
1.26 Without legislation, a number of improvements to the services users receive can still be made. The Tribunals Service can seek to implement improved and more efficient administration. Estates can be shared and common IT systems can be introduced over time, although any alignment of administration may be constrained by processes and procedures set out in primary legislation. Therefore, whilst this option will provide for some improvements, it will be restricted by the statutes that govern the operation of each individual tribunal administered by the new agency. This will inevitably mean that the full potential of any suggested improvements would fail to be recognised, reducing the effectiveness of the new agency in its mission to offer an improved level of service.

Option 2 - Legislate
1.27 Legislation will create a new flexible overarching statutory framework for tribunals, allowing incremental changes over time. This flexible approach will bring together tribunals into the one organisation, but will allow a small number of individual specialist tribunals to retain their own procedures where this is in the interests of users. Changes will be made by introducing:

A First-tier Tribunal and an Upper Tribunal
1.28 The system will be simplified and for most jurisdictions will consist of two tiers, a First-tier Tribunal and an Upper Tribunal. The First-tier Tribunal will hear appeals from the original decision making body, and the Upper Tier will act as an appellate level for decisions of the First-tier Tribunal, appeals being on a point of law only. This simple framework will also allow the introduction of a
coherent system of appeals with appropriate oversight by the courts, ensuring that only those tribunal cases that should go to the courts do go to the courts, and reducing the need for judicial review.

Senior President of Tribunals

1.29 The Senior President of Tribunals will provide the tribunals judiciary with clear leadership and a single voice. He or she will have a role in defining the way the new organisation is established, and will have a statutory responsibility to bring leadership to the service, ensuring the needs of all jurisdictions and judicial members are met. By having a clearly defined set of statutory responsibilities, such as the training, education and welfare of tribunals judiciary, and working with the Judicial Appointments Commission to ensure that tribunal interests and requirements are fully represented in the appointments process, the Senior President will have an important role in shaping the new organisation.

Appointment to an office not a jurisdiction

1.30 The Bill will provide for the creation of five categories of appointment to the new tribunals: Tribunal Judge, Tribunal Member, Deputy Tribunal Appeal Judge, Tribunal Appeal Judge and Tribunal Appeal Member. The creation of these new judicial offices will allow the deployment (assignment) of members across jurisdictions and ensure that the judicial function they carry out is properly reflected in their title. This replaces the current process whereby tribunal office holders are appointed to an individual tribunal (a jurisdiction).

Assignment

1.31 A key feature of the new system will be the ability to deploy members across jurisdictions where they have the necessary knowledge or the ability to acquire it. This proposal recognises that within the tribunal system there already are a substantial number of members who are capable of sitting in more than one jurisdiction. Introducing flexibility will assist the new organisation in delivering a more efficient and effective service to its users. Assignment will be an open, fair and transparent process and will enable suitable judicial office holders to be identified quickly and trained sooner than those entering the system. This will allow the Tribunals Service to have access to judiciary to hear cases at relatively short notice, particularly to meet peaks and troughs in workloads between jurisdictions.

A Tribunal Procedure Committee

1.32 The Concordat agreed between the Lord Chancellor and the Lord Chief Justice set out the respective roles of the judiciary and the executive in making rules for judicial fora. The creation of a Tribunal Procedure Committee will bring rule making for tribunals into line with the principles set out in the Concordat and the Constitutional Reform Act. It will allow tribunals to develop a coherent programme of procedural reform in much the same way as has been achieved for the civil courts in England and Wales.

An Administrative Justice & Tribunals Council

1.33 To compliment all of these proposals the Council on Tribunals will be abolished, and replaced by an Administrative Justice and Tribunals Council, which will subsume the Council’s current functions, but also take on a wider remit, including advising ministers on how to make the administrative justice
system more accessible, fair and efficient, with particular reference to user priorities and concerns.

**Business sectors affected**

1.34 The proposed changes will have no adverse effect on those who use or advise users of the new organisation, and those who work within the organisation. Existing rights to bring appeals or cases will not be affected. The new structures established by the Bill will not immediately bring about any changes in the processes and procedures of individual tribunal jurisdictions. However, they will create an opportunity to bring about changes in the future without further legislation which will simplify access and process. It is envisaged that as each tribunal transfers to DCA they will continue with their own procedures and processes until such time as the Tribunal Procedure Committee aligns procedural rules. Where jurisdiction-specific changes are proposed these are or will be in the future the subject of separate consultations and Regulatory Impact Assessments as appropriate.

**6. Costs and Benefits**

**Benefits**

**Option 1 –Not legislate**

1.35 The only benefits that would accrue from not seeking to legislate would be the savings associated with not establishing the new institutions created by the Bill. These are minor.

1.36 Clearly some of the structures created by the Bill could have an informal existence. However, without a clear statutory basis many of the benefits would be lost. Taking each of the proposals in turn:

- **Senior President** – the creation of a unified judiciary means there should be a single voice to speak for the tribunal judiciary collectively, hence the creation of the post of Senior President. Without this post, there is a danger that proposals for the reform of the administration of tribunals will be developed in isolation, not taking on board the needs of all the disparate jurisdictions in the new organisation. This will hamper the development of an effective partnership between the judiciary and administrators. Without legislation, a senior member of the judiciary can be given an oversight role to help provide the conduit between tribunals and the mainstream courts. However, he would have no statutory powers or duties and no formal authority over tribunals resulting in a figurehead dependent on the consensus of Tribunal Presidents.

- **Deployment/assignment across jurisdictions** – without legislation members can as at present, be appointed to multiple tribunal panels but they have to go through the full appointments process created under the Constitutional Reform Act 2005. This is a time consuming process that would go against Sir Andrew’s recommendation of a flexible system of judicial deployment. There are potential savings to be made. For example, recruitment costs for part-time legal members are in the region of £7,000 - £10,000. If there were 6 assignment competitions conducted in one year, this would be an annual saving of at least £42,000.
• **Tribunal rules** – legislation creates tribunals as separate bodies, with their own appointments, powers, functions and appeal rights. Therefore the jurisdictional boundaries of each tribunal are fixed and cannot be amended without legislation. There is nothing to prevent the Lord Chancellor or another Secretary of State from establishing an advisory committee to assist him with procedural rule changes. However, without legislation it will not be possible to clarify and codify appeal rights.

• Neither will it be possible to alter the remit of the **Council on Tribunals**, which is currently circumscribed by legislation. Without the Bill it would not be possible to give the Council an enhanced remit.

1.37 There would also be disappointment among stakeholders when the full range of possibilities brought about by the Bill could not be delivered within the existing statutory constraints.

**Option 2 - Legislate**

1.38 The key advantage legislation offers is that it allows all of the above to be taken forward in a structured and clear way. This ensures that all users understand the changes whilst at the same time enabling the tribunal system as a whole to respond quicker to changes in user need.

1.39 Therefore, the role of the **Senior President** can be set out including his relationship with individual Presidents. The **Procedure Committee** can be put on a statutory basis with the power to bring about rule changes and the expenses incurred by its members can be remunerated. Legislation allows the creation of a bespoke **deployment** system geared to the needs of tribunals and their users. The system will not require a full appointments process for those tribunal members who have already demonstrated suitability to hold judicial office but instead allows for the testing of knowledge and expertise.

1.40 Furthermore, legislation allows for a more responsive and flexible structure to be created. Through establishing two new tribunals and transferring all existing jurisdictions into one or other of them, the system as a whole will have greater flexibility in absorbing new work or responding to fluctuations. The new structure also allows the introduction of a more coherent appellate system from tribunals and clarification of the relationship of tribunals to the principles set out in the Constitutional Reform Act. It will also create more adaptable boundaries between courts and tribunals by allowing the courts to transfer certain types of case to tribunals and reducing the need for judicial review hearings in the Administrative Court.

1.41 Similarly, legislative change will enable the **Administrative Justice & Tribunals Council** to be more proactive with regard to administrative justice matters. The new body will be responsible for keeping the administrative justice system under review and for considering ways to make the system accessible, fair and efficient. It will be able to advise the Lord Chancellor, Scottish Ministers, the National Assembly for Wales and the Senior President on the development of the Tribunals Service, and be able to refer proposals for changes to them. The Bill will also provide for the Council's reports to be laid
before Parliament, and will give members of the Council the statutory right to attend as observers proceedings of tribunals under the Council's supervision.

1.42 These changes will have a minimal direct impact upon the business sector, but they should over time mean that that sector will be dealing with a more coherent and efficient system of justice and government decision-making machinery.

Costs

1.43 The estimated costs associated with establishing each of the new structures are set out below. These figures are only indicative.

The First-tier Tribunal and an Upper Tribunal

1.44 The movement of tribunal jurisdictions into the new structures will not of itself necessitate any changes and therefore will not mean any additional costs. Where new appeal rights are introduced or appeal rights are moved from the courts there will be some minor associated costs.

1.45 These costs are likely to materialise in the form of increased workload. This can be put down to:

a) A small number of tribunals which have statutory appeal rights from the First-tier Tribunal to the High Court will instead lie to the Upper Tribunal;

b) Judicial Review hearings could be heard in the Upper Tribunal (on licence from the High Court);

c) A new appeal right will be created for those tribunals which previously had no statutory appeal rights - at this stage this only affects the Criminal Injuries Compensation Appeals Panel (CICAP).

1.46 We have tried to predict the caseload for each of these categories, based on very limited information as there are no detailed statistics available from the Administrative Court Office.

a) From January 2004 to April 2005 there were 29 statutory applications for appeals from tribunals within scope of these reforms, all from the Special Educational Needs and Disability Tribunal (although it is not clear how many of these were effective). Allowing for the fact that there may be an increase in volume due to the accessibility of the Upper Tribunal, we estimate there may be around 50 applications during the first year. The change will be advantageous to users, as the cost of an appeal to the High Court is considerably more than an application to the Upper Tribunal would be. However, the cost to the organisation will be minimal.

b) Decisions made by Mental Health Review Tribunals have the most applications for judicial reviews. From September 2003 to September 2005 there were about 80 reported cases, although again, it is not clear how many of these were effective as the Administrative Court Office do not keep these statistics. Assuming that there is an even split of cases between the two years, and allowing for an increase in applications due to improved accessibility, we estimate that about 50 applications will be made within the
first twelve months of the new organisation. The subsequent administrative cost will be minimal.

c) Information obtained from CICAP has indicated that from September 2004 to September 2005 there were 12 applications for Judicial Reviews of CICAP decisions. Bearing in mind that there is currently no appeal right to the High Court, we have taken the view that once a new right has been established, there will be around the same number of appeals, with a similar reduction in the number of Judicial Reviews.

1.47 As the jurisdictions of the current tax tribunals transfer into the new structures we intend to take the opportunity to reform the current arrangements for dealing with tax appeals. Current proposals assume that any reform option will be broadly similar to existing costs.

1.48 Tax appeals from all existing jurisdictions currently have an onward right of appeal to the High Court. Future onward tax appeals will be to the Upper Tribunal and, based upon current onward appeal rates, we estimate that there will be an upper limit of around 150 tax applications to the Upper Tribunal. Overall, allowing for the fact that the Upper Tier will be more accessible than the High Court, in terms of additional work for the Upper Tier, we anticipate the following:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Tribunal applications from Tax Tribunals</td>
<td>150 (estimated administrative and judicial costs approx. £485 per case)</td>
</tr>
<tr>
<td>New appeal rights to the Upper Tribunal</td>
<td>50 (estimated costs as above)</td>
</tr>
<tr>
<td>Applications for Judicial Reviews</td>
<td>50 (estimated costs as above)</td>
</tr>
</tbody>
</table>

1.49 We now need to consider whether additional judiciary will be required to deal with this new workload. The total number of applications made to the Administrative Court in 2004 can be broken down as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeals and applications</td>
<td>2,282 (including 1,816 applications made under s101 of the Nationality, Immigration and Asylum Act 2002)</td>
</tr>
<tr>
<td>Appeals by way of case stated</td>
<td>130</td>
</tr>
<tr>
<td>Judicial Reviews</td>
<td>4,207</td>
</tr>
<tr>
<td>Total</td>
<td>6619</td>
</tr>
</tbody>
</table>

1.50 As can be seen above, the estimated amount of new work for the Upper Tribunal (250), compared to the total amount of work undertaken by the Administrative Court (6619) is very small. Although there are 38 High Court Judges who are nominated to deal with Administrative Court matters, on average about 8 judges a week are allocated to the Administrative Court. Bearing in mind that Jurisdictional Presidents will also able to hear Upper Tribunal cases, we do not think additional judiciary will be required to support
the extra work: on the contrary, we expect there to be savings in the time of Administrative Court judges.

1.51 In order to ascertain the additional cost of new work to the Upper Tribunal, we have worked out the judicial and administrative cost of one simple case within the Commissioners’ Office (previously the Office of Social Security and Child Support Commissioners), which will form the core of the Administrative Appeals Chamber. Of all the jurisdictions, we consider this to be the closest in process to that of the appeals and judicial reviews currently being heard in the Administrative Court.

1.52 Using information available, we have estimated that the administration and judicial costs for a substantive case at the Commissioners’ Office to be around £484. By comparison, we believe the estimated costs for a substantive Judicial Review case to be in the region of £600. Thus, it is evident that there are savings to be made by the change of appeal rights.

Senior President of Tribunals

1.53 Although the legislation will provide for a separate appointment, the current (non-statutory) Senior President is a serving judge and we anticipate that that will continue for the future so there are no extra salary costs. If a separate appointment is made we anticipate an offsetting reduction elsewhere in the need for judges so the change would be cost-neutral. Provision will be made for allowances and expenses to be paid but it is not possible to cost these at this time. Since the acting Senior President’s nomination in September 2004, just over £8,500 has been spent to date on travelling expenses incurred through this role. The Senior President will have a continuing role in improving the organisation which will involve travelling to various venues across England, Wales, Scotland, Northern Ireland and quite possibly abroad. We therefore expect these costs to continue and estimate an annual expenditure of around £4,000.

1.54 In fulfilling his statutory obligations, the Senior President will need administrative support. As this has already been provided for within existing resources it is not included within the costs of these proposals. Any additional resources over and above those already provided will be detailed separately below.

Five categories of tribunal judiciary

1.55 These new Judicial Offices will be created in legislation. Once the terms and conditions of the new offices have been agreed, each judicial office holder will be mapped into one of the new Judicial Offices. There will therefore be no costs for implementing these titles.

Assignment

1.56 Assignment will make the best use of judicial resources already within the system. As a process is still being determined, it is possible that additional administrative support may be required, amounting to less than £100,000 per year. However, savings will be made by making better use of existing judicial resources (including salaried judicial office holders), which will lead to lower recruitment costs.
A Tribunal Procedure Committee

1.57 The Bill states the statutory composition of the Committee, which will be drawn from judicial and non-judicial members. There will be no recruitment costs for judicial members as they will be appointed from existing office-holders. However, in order to comply with guidelines laid down by the Office of the Commissioner for Public Appointments (OCPA) for recruitment to public bodies, there will need to be an open competition for the non-judicial posts which will cost in the region of £50,000. As appointments to Procedure/Rule Committees are usually made for a period of between 2 - 4 years, these costs are likely to arise every couple of years. Any administrative support required for re-appointment of Committee members will be met via the Secretariat.

1.58 By definition, Procedure/Rule Committees are statutory advisory Non-Departmental Public Bodies since they do not pay their chair or members, do not directly employ staff and do not control their own budgets. Although the posts do not attract any sort of remuneration, travelling and subsistence claims may be paid. Costs will arise from travelling (Committee members are entitled to first class travel) as well as taxi costs and any food bought on the day. Members will be geographically spread, and there may also be hotel costs (if a member has a very long travelling journey). The other Procedure/Rule committees within DCA average about £450 per meeting, and we consider travelling and subsistence costs for the Tribunal Procedure Committee members will be the same.

1.59 We estimate that the cost of a Tribunal Procedure Committee meeting will be not more than £1,000. Assuming that the Committee will meet once every two months, we consider travelling and subsistence and catering costs will not exceed an annual total of £6,000.

1.60 Users and practitioners will need to have access to procedural rules made by the Tribunal Procedure Committee. Current Procedure/Rule committees publish their rules either on the website and/or in hard copy. The most important issue to be decided here is one of access i.e. whether all users would have access to the rules if they were only published on the Internet.

1.61 The contract would need to undergo a tendering process but as a rough guide, the Civil Procedure Rule Committee has a contract with The Stationery Office worth £37,000 a year. The Family Procedure Rule Committee have estimated their contract will cost in the region on £39,000. Both contracts involve publishing on the internet, and are also dependent upon a number of hard copies sold i.e. the higher the number of hard copies sold, the lower the contract value. These issues will need to be decided at a later stage, but as a guide, we consider publishing costs to be in the region of £45,000. This is not a new cost; it would mean one single payment for publishing all rules of tribunals within the new organisation, rather than paying separate publishing costs each time a new rule is made.

An Administrative Justice & Tribunals Council.

1.62 The Council on Tribunals will be abolished and replaced by a new body, the Administrative Justice and Tribunals Council. On implementation, the existing membership of the Council on Tribunals will become members of the new body, but as the new Council broadens its horizons, as and when new
vacancies arise, the composition of the Council will change to accommodate its enhanced role. However, the size and general function of the Council will not change sufficiently to generate any extra cost beyond the current running cost of the Council on Tribunals.

1.63 The table below provides estimated costs for establishing and running each of the new structures for the next three years:

<table>
<thead>
<tr>
<th>Structure</th>
<th>Estimate new costs for establishing</th>
<th>Estimated running cost for year one</th>
<th>Estimated running cost for year two</th>
<th>Estimated running cost for year three</th>
</tr>
</thead>
<tbody>
<tr>
<td>First-tier and Upper Tier</td>
<td>Nil</td>
<td>No extra costs</td>
<td>No extra costs</td>
<td>No extra costs</td>
</tr>
<tr>
<td>Senior President of Tribunals</td>
<td>Nil</td>
<td>£4,000</td>
<td>£4,000</td>
<td>£4,000</td>
</tr>
<tr>
<td>New offices of appointment</td>
<td>Nil</td>
<td>No extra costs</td>
<td>No extra costs</td>
<td>No extra costs</td>
</tr>
<tr>
<td>Assignment</td>
<td>Nil</td>
<td>Less than £100,000</td>
<td>Less than £100,000</td>
<td>Less than £100,000</td>
</tr>
<tr>
<td>Tribunal Procedure Committee</td>
<td>£50,000</td>
<td>£51,000</td>
<td>£51,000</td>
<td>£101,000</td>
</tr>
<tr>
<td>Administrative Justice &amp; Tribunals Council</td>
<td>Nil</td>
<td>No extra costs</td>
<td>No extra costs</td>
<td>No extra costs</td>
</tr>
</tbody>
</table>

Social Impacts

1.64 We consider that these policies would not have an adverse impact on different groups of people, including minority groups.

7. Monitoring and evaluation

1.65 The Tribunals Service will remain under constant review with an obligation on the Chief Executive of the Tribunals Service to report annually on the progress of the new agency. The Lord Chancellor and the Senior President will report annually on the working of the two new tribunals and the cases coming before them. Users will also be consulted to see how the service develops. We do not expect the collation of this report to have a major impact on resources since the monitoring of progress will be ongoing and the new IT will facilitate easy access to relevant information and statistics.

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1 Publishing costs will not be incurred until after the first rule has been signed by the Lord Chancellor, the timing of which is dependent on whether a Shadow Committee will be formed.
II. Regulation of Enforcement Services – full Regulatory Impact Assessment

1. Title of the proposal

2.1 Regulation of enforcement services provisions in the Bill, covering: unified enforcement agent law, commercial rent arrears recovery, regulation of enforcement agents and fees.

2. Purpose and intended effect of measure

i) Objectives:

2.2 To reform enforcement services in the following manner:

- Unified enforcement agent law - to simplify and codify a previously complex and disparate area of the law, making it easier for all concerned (creditors, debtors and enforcement agents) to understand and implement, and ensuring that debtors receive fairer treatment from enforcement agents and are not subject to oppressive activities.

- Regulation - to raise standards and improve professionalism, thereby raising public confidence in the industry and those who work within it, ensuring that all those who work within the industry are adequately trained and are subject to appropriate regulatory structures and disciplinary procedures.

- Commercial Rent Arrears Recovery (CRAR) - to ensure that a quick and easy remedy remains for commercial landlords to recover outstanding rent arrears that is effective and proportionate, whilst at the same time being compliant with the European Convention on Human Rights (ECHR).

- Fees reform - by introducing a single simplified fee structure, to end the abuse of fee scales and exploitation of loopholes by unscrupulous enforcement agents that can occur under the existing fee structure - the current major cause of complaints against enforcement agents.

ii) Devolution:

2.3 These proposals apply to England and Wales only.

iii) Background:

Description of the industry

2.4 We estimate that there are currently 5,200 enforcement agents operating within England and Wales. This figure is made up of approximately 600 County Court bailiffs, 1,600 other state employed enforcement agents (such as tax collectors, customs officers etc), 200 local authority employed enforcement agents, 1,600 certificated bailiffs and 1,200 non-certificated private bailiffs. We further estimate that there are approximately 150 firms operating within the industry.
2.5 Many of these currently operate without any formal or statutory regulation. County Court bailiffs and other state employed enforcement agents are crown employees and civil servants, and are therefore subject to exactly the same recruitment and conduct and discipline processes (including those for making complaints about them) as all other civil servants.

2.6 Local authority employed enforcement agents and certificated bailiffs are subject to a certification process through the courts. They need to obtain this certificate before being allowed to enforce for numerous categories of debt, such as rent arrears, council tax arrears, non-domestic rate arrears and parking fines. To obtain their certificate, applicants need to satisfy the judge that they are a fit and proper person to hold a certificate, that they possess sufficient knowledge of the law of distress (the seizure of goods to pay for debts), and they are not engaged in the business of buying or selling debt. They must also lodge a monetary bond with the court by way of security. Complaints as to the fitness of a person to hold such a certificate are to be made to the court that issued said certificate.

2.7 In general terms, there is currently no formal complaints process for private enforcement agents. There are professional associations that exist which individual bailiffs or bailiff firms may belong to, and which have their own internal complaints and disciplinary procedures, but these run totally independently from government control or approval. Enforcement agents are expected to comply with the guidelines laid down in the National Standards for Enforcement Agents, published by the then Lord Chancellor’s Department (LCD) in April 2002, but this is merely a document containing guidance as to good practice that was endorsed by many bodies working within the industry, and has no legal force behind it.

2.8 Our proposals for enhanced and extended certification, however, would give equal access to a complaints mechanism, exercised by a judge at the court that issued the certificate, to anyone who wished to complain about the actions of all private bailiffs. For those who will not be certificated, for example crown employees and police constables, there are existing methods of complaint against these groups that are considered appropriate and suitably robust.

**Identified problems within enforcement services**

- The law in this area is currently complex and confusing. There are numerous different types of enforcement agent attempting to enforce numerous different types of debt under numerous different enabling powers. In many cases these powers are different, enabling different agents to have differing powers, or enabling certain actions to be taken when enforcing one type of debt that could not be taken when enforcing another type of debt. These differing powers can be confusing even for the agents themselves, whilst for debtors and their advisors, it can be an absolute minefield trying to pick a way through the many and various pieces of enforcement agent law that exist currently. It is therefore proposed that a single piece of enforcement agent law be introduced, giving all enforcement agents the same rights and powers, in most instances. This will make it easier for all involved in the process to understand exactly what is going on. It will also give a single set of remedies available for debtors, creditors and enforcement
agents alike, for any illegal or irregular actions they may take during the course of the process of taking control of and selling goods.

- The regulatory structure for enforcement agents in England and Wales is currently very fragmented. Whilst there are some elements within the industry that are quite strictly regulated, there are others that are only subject to informal regulation through trade associations, and others that appear to be subject to no regulation at all. There is clearly a need for a more formalised structure to regulate the industry, which would raise standards of professionalism within the industry, and give the public greater confidence in it.

- It was feared that some aspects of the current civil enforcement regime in England and Wales were not ECHR compliant. This was thought particularly to be the case with the existing system whereby landlords could recover unpaid rents by taking distress action against tenants in residential premises without the need for a court order, an issue which had been brought up as far ago as 1991 in a Law Commission report on the subject.

- The existing fee structures are open to abuse. Similar to the existing laws surrounding distress, each differing power brings with it a differing fee structure. Again, these are complex and can be confusing. This can lead to incorrect fees being charged, either by accident or because unscrupulous enforcement agents exploit the complex nature of the fee structure to charge excessive fees and exploit loopholes, hoping that the debtor will be ignorant of the fee scales and not notice. An excessive fee charge is the biggest cause of complaints against enforcement agents.

Previous attempts to reform the industry

2.9 Civil enforcement as a whole has been subject to at least 4 reviews since the late 1960s. But these have achieved little in the way of reforming enforcement agent law or the regulation of enforcement agents, mainly because this area is just so complicated. Reviews have run out of momentum and nothing tangible has resulted from them. There has also been obstruction to reform from some quarters in the past.

The Green and White Papers and other consultation documents

2.10 The Green Paper *Effective Enforcement* was published in July 2001. This paper outlined options for, and canvassed views upon, a future structure for the regulation of enforcement services, a single piece of enforcement agent law, and a single, simplified fees structure.

2.11 Responses to the Green Paper were published in *Towards Effective Enforcement: Responses to Consultation* in April 2002. Eighty-four responses were received. There was a large consensus among the respondents that enforcement services in England and Wales are in need of regulation. There was also considerable support for a single piece of enforcement agent law, and for a single, simplified fee structure.

2.12 Options for regulation that had been proposed included increased court based regulation, voluntary self-regulation, compulsory self-regulation, or statutory
regulation through a Commission, based upon the model provided by a body such as the Financial Services Authority or the Immigration Services Commission. Most respondents favoured regulation by way of a statutory body such as a Commission. The Department for Constitutional Affairs subsequently identified the Security Industry Authority (SIA) as an existing body whose functions and responsibilities have broad synergies with the stated intentions for the regulation of enforcement activities.

2.13 The SIA was set up under the Private Security Industry Act 2001 by the Home Office in April 2003 as a Non Departmental Public Body (NDPB) to regulate and license security operatives in the private sector, including door supervisors, wheel clampers and private investigators. With some broadening of its scope, the SIA could provide a cost-effective means of regulating the enforcement industry. This would be less expensive than setting up a wholly separate commission dedicated to the enforcement industry.

2.14 Proposals for regulating the enforcement industry through the SIA, including a partial RIA, were therefore included in the White Paper Effective Enforcement Published in March 2003, as were proposals for a single piece of enforcement agent law and a single, simplified fee structure.

2.15 Since publication of the White Paper, however, several policy changes have been made with regard to policy for regulating the civil enforcement industry:

- The Bill will no longer provide for regulation of enforcement agents through the SIA. Following consultation with colleagues at the Home Office, these proposals have been withdrawn, on the understanding that they will be reconsidered at a later date.
- Any future regulatory body would no longer be responsible for administering training and qualifications. It is also no longer intended that a regulatory body would oversee a complaints scheme and establish a Complaints Board. This is due to a legal concern in respect of Article 6 of the ECHR that complaints should not be allowed to bypass the court, even where a right of appeal on the decision to the courts exists. Nor is it intended that a regulatory body will accredit the functions of professional associations.
- Finally, it is no longer policy that such a regulatory body would have the power to make recommendations to the Lord Chancellor on fees. That would remain the role of policy officials within this department.

2.16 Similarly, a consultation paper was issued in May 2001, outlining options for, and canvassing opinions on, the future of the enforcement method presently available for landlords wishing to recover unpaid rents from commercial and residential tenants known as Distress for Rent (DfR). This followed on belatedly from a report issued on the same subject by the Law Commission in 1991, which had called for the complete abolition of distress for rent.

2.17 The responses to this consultation paper were published in April 2002. Of the 157 responses, 79.6% were in favour of keeping a distress for rent type recovery mechanism in place for commercial premises, but 87.5% also agreed that it should be abolished for residential tenancies, agreeing that there was clearly a potential conflict with the ECHR.
2.18 As a result, new proposals for distress for rent were also included in the White Paper *Effective Enforcement*. The centuries old common law right to distress for rent is to be abolished. It is to be replaced by a statute based recovery method, to be known as the Commercial Rent Arrears Recovery system, or CRAR. As the name suggests, this will only be available in commercial tenancies for commercial properties, and it has been drafted in such a way as to ensure that it is ECHR compliant.

iv) **Rationale for Government Intervention:**

*Identified problems within the industry*

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

*The scale of those problems*

2.20 We do not have statistical information on the scale of the problem. Anecdotal evidence is contained in the report *Undue Distress*, published by the National Association of Citizens Advice Bureaux in May 2000. This report also confirmed that 96% of complaints made by the public about the activities of civil enforcement agents are about private bailiffs (i.e. only 4% are about public sector officers, such as county court bailiffs). Whilst the introduction of a single piece of enforcement agent law and a revision of the fee structure will address some of the areas of malpractice, without increased regulation the impact of these changes would be diminished.

*Will these problems worsen without Government intervention?*

2.21 It has been suggested by the advice sector that the full scale of the issues is not apparent, as debtors are not aware of their rights. The voluntary sector is responsible for advising debtors of their rights and is therefore paying the price. Not only is there a fear that without this reform incidences of malpractice and fee scale abuse will increase, but also that ineffective and oppressive enforcement of debts by unscrupulous agents will exacerbate the problems of escalating debts and social exclusion.

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

2.22 In April 2002 the Lord Chancellor’s Department published *National Standards for Enforcement* Agents. This laid down a code of minimum standards of behaviour for enforcement agents, and was endorsed by all the major stakeholders within the industry. It was the first document of its kind. But it was voluntary guidance – nobody was obliged to abide by its contents and it did not replace existing local agreements, codes of practice or legislation.
3. Consultation

Regulation of enforcement services

2.23 Options for regulation were submitted for public consultation in the Green Paper *Towards Effective Enforcement* (July 2001) and the responses were published in the post consultation report (May 2002). The overwhelming majority of respondents favoured the statutory regulation of enforcement services. Subsequent to that consultation exercise, policy officials identified the possibility for regulation through the Security Industry Authority, which could carry out the same functions as a statutory Commission through an existing NDPB. This remains our long-term objective.

2.24 However, as an interim measure towards that eventual long-term aim, this Bill proposed to introduce an enhanced and extended certification process, based upon the court based certification process currently in existence and operated under the Distress for Rent Rules 1988 (SI 1988/2050). This will extend the process currently in place to approve certificated bailiffs who wish to carry out distraint for e.g. rent arrears, council tax, non-domestic rates, parking fines etc to all persons who wish to carry out enforcement work.

2.25 Key stakeholders include the following:

- The High Court Enforcement Officers Association (a professional body regulating the activities of HCEOs).
- The Enforcement Services Association (a trade association representing individual bailiffs).
- The Association of Civil Enforcement Agencies (representing bailiff companies and firms).
- The Local Authority Civil Enforcement Forum (representing local authority enforcement agents).
- The judiciary.
- The advice sector (e.g. Citizens Advice, the Money Advice Association, the Federation of Independent Advice Centres).
- Organisations that represent court users (e.g. the Civil Courts Users Association).
- Other government departments who make use of enforcement agents or have policy responsibility for areas where enforcement agents are used (e.g. HMRC, for enforcement of tax debts etc, ODPM, for enforcement of council tax and non-domestic rates etc).
- The unions that represent court staff, including county court bailiffs.

2.26 The industry has generally been supportive of the proposals. In particular they were supportive of regulation by the SIA rather than an independent commission, mainly due to a desire to see increased professionalism within the industry, but also in the light of the cheaper fees for licences and approvals that would be charged by the SIA rather than by an independent commission.

Unified enforcement agent law
2.27 There have been several reviews of enforcement procedures over recent years that have resulted in minor changes to enforcement law (most recently in 1992 and 1999). The need for wholesale reform of the law was most recently identified by Professor Jack Beatson in his *Independent Review of Bailiff Law* (2000), which was supported by 86% of the respondents to his consultation. Subsequent consultations during the Enforcement Review, across all sectors involved in enforcement, have agreed upon the need for the introduction of a single piece of enforcement agent law. There is overwhelming consensus that simplification and clarification of the law is necessary. It is felt that clarification of enforcement agent law will help to achieve one of the underlying objectives of the Enforcement Review, to make enforcement more straightforward and understandable. Additionally, clarification aims to ensure that debtors receive fairer treatment from enforcement agents and are not subject to oppressive activities by ensuring all parties have greater knowledge of their rights.

*Commercial Rent Arrears Recovery (CRAR)*

2.28 There have been several reviews of Distress for Rent procedures over recent years, calling for reform, if not outright abolition of this procedure. The most notable of these was a Law Commission report entitled *Landlord and Tenant Distress for Rent*, published in February 1991. This department published its own consultation paper into the future of the Distress for Rent procedure in May 2001. The results of this were published in April 2002, and the findings of this report formed the basis of the policy proposals outlined in the White Paper *Effective Enforcement*.

**Fees**

2.29 The Green Paper *Towards Effective Enforcement* consulted on the fee principles to be set out in primary legislation. Full details of the responses to the Green Paper may be found in the Post-Consultation Report (May 2002). Fee principles and the potential components of a fee structure were subject to further consultation, many of the proposals comprising the basis of the new fee structure were included in the Second Report of the Advisory Group on Enforcement Service Delivery, published in August 2002. The Advisory Group report followed extensive consultation and analysis, including an early discussion paper, *Warrant Enforcement: Towards a New Fee Structure*, which was submitted to a range of individuals and organisations active in enforcement services.

2.30 The recommendations from the Advisory Group were included in the White Paper.

4. **Options**

A. **Regulation of enforcement services**

2.31 The Green Paper assessed that in the absence of regulation there were insufficient sanctions to prevent oppressive behaviour by unscrupulous enforcement agents. This RIA will therefore consider three options:
2.32 The aim of regulation is to ensure that taking control of goods (this is not always done pursuant to a writ or warrant e.g. tax debts) is carried out appropriately, effectively and fairly in relation to both debtors and creditors. The broadened remit of the Enforcement Review, announced by the Lord Chancellor on 6 March 2001, envisaged the eventual regulation of all public and private enforcement activities, with a long term aim of raising standards across the profession, and promoting best practice, fostering public confidence and creating a level playing field across the industry.

2.33 In the long term, it is still envisaged that any such regulatory body would regulate public and private enforcement activities by:

- licensing enforcement agents;
- approving enforcement agencies;
- making recommendations to the Lord Chancellor on legislative change; and
- issuing a Code of Practice.

2.34 As a significant step towards that long-term objective, this Department proposes that a new and enhanced certification process, loosely based on the existing certification process for enforcement agents under the Distress for Rent Rules 1988, should be introduced. This will cover all enforcement agents who are not Crown employees or police constables who are engaged in taking control of goods under the new code (the single piece of enforcement agent law), also to be introduced in this Bill.

**Option 1 – To do nothing and leave enforcement services as it is.**

2.35 At present the enforcement profession is fragmented, with some individuals operating outside of any structures and some evidence of threats and intimidation being used against vulnerable people in their own homes. The existing perceived problems would continue unchecked if some form of regulation is not introduced, to the detriment of confidence in the justice system.

**Option 2 - Regulation through a separate Enforcement Services Commission.**

2.36 There was a large consensus among the respondents that enforcement services in England and Wales are in need of regulation. Most favoured regulation by way of a statutory body such as a Commission.

2.37 It was originally proposed in the Green Paper that regulation would be by way of an independent, statutory, self-financing Non-Departmental Public Body. This was tentatively given the title of the Enforcement Services Commission, and would be modelled upon, for example, the Financial Services Authority or the Immigration Services Commission. It would have regulatory functions, designed to ensure that all those licensed to provide enforcement services were fit and competent to do so and were suitably trained and qualified. It
would also approve companies that provided enforcement services, accredit professional associations and training providers, oversee a national data access scheme for enforcement agents, investigate complaints, and carry out research and make recommendations with regard to possible changes in enforcement agent law and fees.

2.38 It was envisaged that initial set up costs would be £1.1m and would have to be initially funded by the Treasury, whilst annual running costs would be £1.7m and would be funded through income from licence fees. Initial set up costs could also be recouped in this manner.

2.39 The Department for Constitutional Affairs subsequently identified the Security Industry Authority (SIA) as an existing body whose functions and responsibilities have broad synergies with the stated intentions for the regulation of enforcement activities.

Option 3 - An enhanced and extended certification process.

2.40 Our proposed interim measure is that all enforcement agents (meaning persons who take control of goods) who are not Crown employees (such Crown employees being, by way of example, county court bailiffs, tax collectors, customs officers and civilian enforcement officers), or police constables (insofar as a warrant of distress may technically still be directed to a constable for enforcement), would need to be certificated under provisions to be included in the Bill. Those contracted to provide services to Crown departments who are not permanent crown employees would require certification.

2.41 Certificates would be granted by a county court, on a similar basis to how they are currently granted under the Distress for Rent Rules 1988. Applicants would need to satisfy the judge that they are a fit and proper person to hold a certificate, that they possess a suitable knowledge of the law regarding the taking into control of and sale of goods, and that they are not involved in the buying and selling of debt. A bond would also have to be lodged. The county court would also have the power to cancel or suspend certificates. The Lord Chancellor would have regulation making powers regarding certification, and it is envisaged that these would be used to ensure that the requirements of the certification process are suitably enhanced to ensure improved standards and increased professionalism.

B. Single piece of enforcement agent law

Option 1 – To do nothing and leave the enforcement agent law as it is.

2.42 Existing enforcement agent law is complex. If no changes are made this lack of clarity would persist, and creditors, debtors or enforcement agents would continue to find the law difficult to understand.

Option 2 - single piece of enforcement agent law
2.43 The Bill proposes a single piece of enforcement agent legislation. It is intended that this would govern the activities and actions of all civil enforcement agents, be they public or private sector, and whether they are enforcing court-based writs and warrants or non court-based liabilities.

2.44 These proposed reforms would clarify existing law, much of which is very old and complex. It would also codify existing law, which is currently found in many disparate places and is based on many different legal sources, in one single legal entity that would be written in plain English, making it much easier for creditors, debtors and enforcement agents alike to understand.

2.45 The single piece of enforcement agent law would include a unified set of legal remedies available for wrongful actions carried out during the course of distraint action. These proposals would achieve the following:

- They would clarify the legal remedies available for wrongful actions.
- They would cover wrongful actions by enforcement agents, debtors and creditors alike, and would cover “irregular” actions (including what is currently known as “excessive” action).
- Redress for illegal actions would be available through the existing laws of tort, whilst redress for irregular actions would be available by bringing an action for a breach of the new code.
- They would ensure that all actions taken by enforcement agents are legal and proportionate.

C. Distress for Rent reforms

Option 1 – To do nothing.

2.46 The existing practice would not be ECHR compliant.

Option 2 - Abolish the practise of distress for rent in both residential and commercial property without creating a replacement.

2.47 Distress for rent is a non-court based remedy, currently available for commercial and residential premises alike, that enables landlords (or certificated bailiffs acting on their behalf) to seize goods belonging to the debtor tenant and sell them to cover unpaid rent arrears. Abolishing distress for rent and not providing an alternative recovery method would force all such cases to be enforced through the courts. This would prove to be slow and costly for landlords, and would place extra burdens upon the courts. It would have a particularly negative effect on short-term lets and difficult to let properties.

Option 3 - Distress for rent retained and modified to improve Human Rights compliance.

2.48 Under proposals in the Bill, distress for rent would be abolished to address ECHR issues. It would be replaced with a new right and a modified regime for recovering rent arrears, to be known as Commercial Rent Arrears Recovery (CRAR). This would be a non-court based remedy, available in relation to non-
residential premises only (unlike the current law on distress for rent which applies to both residential and non-residential premises, with a few exceptions). Under the provisions on CRAR, commercial landlords would be able to recover arrears of rent by engaging certificated enforcement agents, who would follow new procedures for taking control of, and selling, the goods of the tenant.

2.49 The rules on CRAR would closely mirror those of the new unified enforcement agent law in respect of exempt goods provisions, powers of entry, remedies, hours of day when goods can be taken into legal control etc. They would also set out more clearly the actions that landlords and their tenants are legally entitled to take, and contain new safeguards to ensure that CRAR complies with ECHR.

2.50 One of the safeguards is that CRAR would only be available where there is a minimum of one week’s rent in arrears. This is so that CRAR cannot be used to recover disproportionately small levels of debt. A second safeguard is that the landlord would be required to give one week’s written notice of intention to use the remedy. The notice would include information to the tenant on the amount due, any charges that can be made, and how payment can be made to avoid the removal and sale of goods. It would also outline the debtor’s legal rights and avenues of complaint. The notice period is intended to allow the tenant sufficient time to obtain legal advice and exercise his right of access to the courts, and where appropriate and possible to pay the arrears due. A further safeguard is that only certificated bailiffs, acting on the written instruction of the landlord, would be allowed to enter the premises to take legal control of the tenant’s goods up to the value of the arrears and any costs. (Previously, the landlord himself or a certificated bailiff acting on his instruction were permitted to take legal control of goods). This rule would ensure that the person carrying out the procedure has sufficient knowledge of the law and is subject to appropriate controls.

2.51 Residential landlords would still have access to redress through the courts, where, having gained their judgment, the whole raft of court based enforcement methods would be available to them.

D. Fees

Option 1 – No change

2.52 The existing fee regime is complex and difficult for creditors, debtors and enforcement agents to understand. The lack of clarity, may make the system more open to abuse. Unchanged, the problems would continue.

Option 2 – A new uniform fee structure.

2.53 The new unified fees regime for taking control of goods would introduce a more transparent, consistent and proportionate system. The unified regime would minimise fruitless activity by enforcement agents and encourage improved payment by debtors.
2.54 Unification is intended to make enforcement more effective and improve public confidence in the justice system. At the same time, the introduction of the new fee regime should bear down on abuse and exploitation of the vulnerable by enforcement agents.

2.55 The policy should achieve the following:
- A fee regime that brings uniformity, transparency and consistency to the various debt streams, capable of quantifying the amounts that enforcement agents can charge and what debtors can expect to be charged and the cost of defaulting.
- That enforcement agents would be remunerated for the work they do regardless of the eventual success in taking control of goods. The Bill would give the Lord Chancellor powers to create a fee structure that is likely to comprise:
  - an up-front fee that would cover all the initial costs incurred by an enforcement agent;
  - a fixed fee to be charged for discrete actions common to all debt streams; and
  - a variable fee to be charged for example, for things such as storage or removal costs.
- Debtors should benefit from the uniformity and clarity of a single fee structure where it is known at each point in the enforcement process what fees and charges they would incur then and in the future. The fee structure may also allow for payment by instalments.

2.56 We do not have any specific examples of what the fee rates would be. The unified fee rates would be fixed after public consultation.

5. Costs and Benefits

Sectors and groups affected by these proposals:
- Enforcement agents.
- Debtors
- Creditors.
- The advice sector.
- The courts.
- The judiciary.

Social Impacts

2.57 We consider that these policies would not have an adverse impact on different groups of people, including minority groups.

A. Regulation of enforcement services

Option 1 - No change.

2.58 This option was considered in the Green Paper, and respondents were resolutely against it as an outcome.

Costs
2.59 This option would incur no additional costs to debtors or creditors. There would, however, be a continuing cost to voluntary and charitable organisations, as there is widespread concern that the present unregulated system allows the unscrupulous to exploit the vulnerable, as identified by Citizens Advice.

Benefits
2.60 The status quo would remain; therefore there would be no extra cost to business. The enforcement agents are familiar with the current system and have developed working practices to deal with the number of warrants issued. We are unable to ascertain how much debt is covered by these warrants, but as an indication, the level of debt successfully recovered between January 2003 and December 2003 in the county courts was £49.8 million from 355,476 warrants issued worth a total of £186.3 million.

Option 2 - Regulation through a separate Commission.

2.61 This option was considered in the Green Paper and gained support from a range of stakeholders as detailed in the post-consultation Report.

Costs
2.62 Regulation through an Enforcement Services Commission would incur costs through the establishment and running of a new NDPB. The cost figures were outlined in the Green Paper, as such they are likely to be:

- set up costs of £1.1 million;
- staff costs of £1.2 million per annum;
- accommodation costs of £300,000 per annum;
- other recurring costs including ongoing IT, research, support services, travel and subsistence, marketing, publicity and recruitment of an estimated £200,000 per annum.

2.63 Total estimated cost for regulation through an Enforcement Services Commission is therefore estimated at £1,700,000 per annum plus one-off set up costs of £1,100,000. The figures may be reduced on the basis that the Commission is expected to be self-financing but not profit making.

Costs on Business
2.64 Any separate Commission would have to be self-financing. Therefore, the costs would be shared between the approximate 5,200 enforcement agents that would apply for a licence. Based on the costs of similar licences issued by the SIA, the probable licence fee would be £500 each, giving a total annual income from fees of £2.6 million. Enforcement agencies would also be obliged to pay for approvals, which, based on those firms already subject to approved contractor schemes under the SIA, we estimate would need to cost £750 each. Businesses may wish to pay for the licence of employees but they would not be obliged to do so.

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

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

- guidance in a published Code of Practice, and
- transparency through a register that would be available to the public.

2.67 The courts, by imposing appropriate penalties for misbehaviour, would effectively curtail the oppressive activities of unscrupulous enforcement agents. The Commission would ensure that all enforcement agents are licensed and meet the licence criteria. As we are unable to quantify the level of unscrupulous activity we are unable to estimate the reduction on change.

2.68 Those in debt, who are often among the most vulnerable and socially excluded, would have protection and better information about their rights and advice about coping with their responsibilities.

Option 3 – Enhanced and extended certification process.

Benefits

2.69 Regulation through an enhanced and extended certification process would achieve many of the same benefits as Option 2 for the private sector, namely that debtors would benefit from a regulated system to guard against unscrupulous activity, creditors would have access to certificated enforcement agents, and enforcement agents who do not abuse the system would not be undercut by those acting in an unscrupulous manner.

2.70 Under the provisions in the Bill, it would become an offence to take control of goods under the new code without a certificate, (unless exempt). Regulations may provide for judges to cancel or suspend certificates, and to hear complaints against the actions of certificated enforcement agents. In addition, enforcement agents may have to lodge a bond as security to cover the costs of any such complaints.

Costs

2.71 Regulation through the judiciary in this way would involve little if any additional financial burdens by way of start up costs, as the judges, staff, buildings, systems and structures would already be in place. Applicants would pay for any further costs that may arise through the fees payable for certification.

Costs on individual agents

2.72 All enforcement agents (unless they are exempt) would be required to obtain a certificate. The cost of applying for a certificate is currently £150. This is considerably cheaper than the estimated cost of licences issued under a separate Commission, even with the Commission operating on a non-profit basis. The licence fee for enforcement agents would need to be set on the basis of recovering an appropriate share of the courts core costs and the additional costs to the Department for regulating this sector.
2.73 To qualify for certification individual agents would have to undergo training to the required standard, acquire the appropriate qualifications and obtain adequate insurance. We have estimated that the costs of training for enforcement agents are likely to be £110 per head per day. The costs may be less where an acceptable and recognised level of training has already been acquired.

2.74 It is anticipated that enforcement agents who are already certificated would only need one day’s training in the requirements of the new single piece of enforcement agent law. Those that are not currently certificated would not only require that, but an additional day’s training in the requirements of the new certification scheme.

2.75 The enhanced and extended certification process would not apply to Crown employees, and therefore 600 county court bailiffs and 1600 other state employed enforcement agents would be exempt. In addition, the 200 local authority employed and 1,600 (out of a total of 2,800 other persons who carry our enforcement work) certificated bailiffs are already subject to certification. The process would therefore only be new to the 1,200 other enforcement persons who are currently uncertificated. They would need under a day’s training in the requirements of the new process (@£110 per day = £132,000) and pay for their certificates (@£150 = £180,000). Total costs to these people would therefore be £312,000.

2.76 In the longer term, as their current certificates expire, those who are currently approved under the existing system would need to be trained in the requirements of the new system. This would therefore result in long term training costs totalling £22,000 on local authorities and £176,000 on the private sector\(^1\). For those enforcement agents who are brand new to the industry, six-and-a-half days of training would be necessary to attain the required standard to be certificated. It is also anticipated that, once certificated, new enforcement agents would be required to do two days per year continuing professional development to maintain the standards required to keep their certificate when it comes around for renewal.

**Costs on business**

2.77 Where enforcement agents are employees of a business, that business may well finance the certification costs, training costs and bond / insurance costs of its employees.

**Costs on any charities**

2.78 Debt advisors would need to familiarise themselves with the new procedures for a regulated enforcement profession. The specific cost is not known, however volunteers working in the area of debt advice currently receive free training funded by sponsors, who donate funds to the Federation of Independent Advice Centres totalling £1.5 million over two years. The costs would form part of existing ongoing training, it is therefore not a new cost, and the funding is already in place to cover this.

**Costs to the courts**

\(^{1}\) (Costs of the certificates themselves are not included as these people have to have them anyway under the existing system).
2.79 Under the new enhanced and extended certification process, the county courts would continue to administer the certification process. An application for an enforcement agent’s certificate currently costs £150, which is the amount of the court fee charged. Applications are listed before a circuit judge for around 15 minutes, and there is also a certain amount of preparatory clerical work that court staff must carry out. Courts must also take out an advertisement in a local newspaper.

2.80 The Department considers that the fee charged for an application for a certificate must adequately reflect the cost to the courts in terms of judicial time and the clerical support necessary to run the system properly. It is anticipated that as much of the processing work as possible would be done by clerical support staff – after all, judges' core skills lie in adjudication, not in completing administrative tasks. These judicial skills are a scarce resource. However, it is accepted that a certain amount of judicial time would be required, not just for the process of dealing with applications but also in dealing with complaints against certificated enforcement agents. Whilst we envisage that there would be extra pressures on the courts and judicial time, in order to respond to the extra applications for certificates from the currently uncertificated persons who carry out enforcement work, we anticipate the overall cost to the courts would be neutral. Any increased costs incurred due to the extra applications would be offset by increased income from fees.

B. Single Piece of Enforcement Agent Law

Option 1 (No change)

Benefits
2.81 The main benefit of the current system is that the judiciary, barristers, solicitors, voluntary sector and enforcement agents are familiar with the system. There would be no extra costs if the status quo were maintained.

Costs
2.82 There would be a continuing cost to voluntary and charitable organisations as there is widespread concern that the present unregulated system allows the unscrupulous to exploit the vulnerable. At present, enforcement agents have been portrayed in a negative light and have been subject to much negative publicity. This has much to do with the lack of clarity in enforcement law where there is a lack of understanding as to what actions enforcement agents are able to take and the fees they are able to charge. Enforcement agents would continue to be subject to negative publicity and criticism and this could increase if debt levels in England and Wales increase.

Option 2 (Single piece of enforcement agent law)

Benefits
2.83 Currently the law is open to interpretation and largely based on case law. This means that disputes frequently take place and these can be expensive and time-consuming. Having a single piece of enforcement agent law with all legislation relating to enforcement action set out in one place would greatly reduce the number of court cases which query the law on enforcement action,
although there may be an initial increase in complaints under the new complaints system.

2.84 New legislation would also decrease the number of complaints that are made directly to enforcement agencies or their associations. By simplifying and harmonising the legislation, much court time would be saved and the legislation would be significantly simpler to understand for all the parties. There would also be increased clarity for the debtor and enforcement agent in relation to illegal and irregular behaviour. This should result in fewer complaints against enforcement agents and greater public confidence in the system.

Costs

2.85 There would be a continuing cost to voluntary and charitable organisations as there is a widespread concern that the present unregulated system allows the unscrupulous to exploit the vulnerable. At present, enforcement agents have been portrayed in a poor light and subject to negative publicity. This has much to do with lack of clarity in enforcement law, where there is a lack of understanding as to what actions enforcement agents are able to take and the fees that they can charge. A cost of continuing with the present system would be that enforcement agents would continue to be subject to negative publicity and criticism and this could escalate if personal debt levels increase.

2.86 Her Majesty’s Courts Service (HMCS) estimates the cost of re-training staff, including members of the judiciary and approximately 600 enforcement agents (county court bailiffs) in the new law would be £64,000. Retraining of all other enforcement agents, of whom we estimate there to be 4,600, would be required. Training for all of these would take one day and cost £110 per head. The total estimated cost would be £506,000 (£176,000 for crown employed agents, £22,000 for local authority employed agents, and £308,000 for the private sector, of which we estimate £165,000 would fall upon small businesses and £143,000 on the self-employed).

2.87 The Security Industry Training Organisation is developing a national occupational standard and NVQ. We estimate direct costs arising from this at £25,000. The cost of voluntary debt advice sector training is estimated at £1,500,000. This is funded from the Money Advice Trust. It is estimated that the publication costs for new court forms, information leaflets etc. would be £20,000, to be met by HMCS.

C. Distress for Rent

Option 1 (No change)

Benefits

2.88 Distress for rent is a quick, cheap and effective procedure. At present, out of 60,000 procedures carried out, 56,000 are successful in collecting rent arrears. It acts as a deterrent for non-payment of rent. Distress for rent overcomes the disadvantage that commercial landlords face compared to other creditors, in that they are unable to discontinue supply of their services. Distress for rent allows commercial tenancies to rent to marginal business tenants and marginal properties, which reduces risks for owners of letting premises, and they can
therefore offer them on more advantageous terms. Landlords, tenants and enforcement agents are familiar with the present system and so they would not need to learn about any new procedures.

**Costs**

2.89 Concern has been expressed that distress for rent might breach the right to a fair trial, the right to respect for privacy and family life, and the right to quiet enjoyment of possession and could therefore be challenged under the Human Rights Act 1998. Distress is felt to be a disproportionate remedy, especially in lower rent residential premises. Tenants do not always get a fair price for goods that are removed and sold. Enforcement agents who rely on fees for taking legal control of goods have more incentive to abuse the system.

**Option 2 (Abolish distress for rent in without creating a replacement)**

**Benefits**

2.90 If the practice of distress for rent were abolished, the recovery of rent arrears would be placed on the same footing as the recovery of other debts. Business tenants would no longer have enforcement agents take legal control of their goods immediately and without warning and could continue to use or trade them. It is probable the business tenant would receive a better price for his or her goods than the valuation placed on them by the landlord. Business tenants would receive fairer treatment in the case of exploitation by the landlord by having access to established court procedures and they could challenge the actions of harsh landlords. Other creditors would be on a more level playing field with commercial landlords for recovery of debts than under the existing regime.

**Costs**

2.91 The threat of using distress for rent is very effective, although there is no similar indication of the impact of court action. Costs to landlords include a higher proportion of rent arrears and repossession fees and other associated costs. Costs of seeking arrears through the courts would fall to commercial landlords. Additional costs to business tenants would be the cost of court procedures minus the costs they would incur under distress for rent procedures. Costs to enforcement agents include the loss of around £4 million in fees. These may account for between 4% and 20% of an agent's income, depending on their speciality. Cost to courts would mean that the remaining method of recovering debt would be by money judgments and, in certain cases, using the insolvency procedure. It is possible this would lead to 60,000 new claims and nearly 8,000 additional hearings.

**Option 3 (Distress for rent retained and modified)**

**Benefits**

2.92 Compliance costs of a revised procedure are likely to be low. Legislation for a modified remedy would improve access to justice by making procedures clear to both commercial landlords and business tenants. Other benefits would include legal certainty, leading to greater confidence in the justice system; responsible fee charging by enforcement agents; and fewer complaints about enforcement agents’ behaviour.
Costs
2.93 Costs would be minimal. There would be little in the way of extra costs for court hearings for residential rent arrears (as over 90% of distress for rent currently carried out is for commercial rent arrears), and little loss of work for enforcement agents for similar reasons. Costs to enforcement agents would be minimal as they already need to be certificated to carry out distress for rent and that would not change for CRAR. Additional retraining costs would also be minimal, as enforcement agents would need to be retrained in the requirements of the new unified enforcement agent law anyway.

D. Fees

Option 1 (No change)

Benefits
2.94 Creditors who currently have enforcement work undertaken for them free of charge would continue to receive a service at no cost to themselves. Enforcement firms, HMCS and debt advice services would avoid retraining costs.

Costs
2.95 There would be a continuing financial cost to private sector enforcement agents and agencies undertaking work whereby they take control of goods for free or pay to undertake work which proves unsuccessful. Enforcement agents would continue to suffer a public perception that they exploit the existing fee system to ensure profitability.

Option 2 (New fee structure)

Benefits
2.96 The introduction of an up-front fee would ensure enforcement agents receive remuneration for work undertaken, regardless of the eventual success of the enforcement action. Minimising the degree of fruitless enforcement activity, the costs of which are met by agents, agencies and the debtors who do pay. Fixed fees may mean an increase in the income of enforcement agents.

2.97 The new fee structure should introduce a greater degree of certainty and control for enforcement agents, as they would be able to work with set figures and negotiate contracts with a firmer notion of the minimum level of return they can expect. Debtors would be aware of their potential liabilities benefiting from the uniformity and clarity of a single fee structure.

Costs
2.98 The introduction of an up-front fee would ensure that enforcement agents receive remuneration for work undertaken, regardless of their eventual enforcement success. Fixed fees may result in lower charges and costs payable to enforcement agents who have been able to charge a higher or variable rate for what has become a fixed cost activity. Enforcement agents would be responsible for notifying the debtor of the fees they would incur if they fail to pay the amount owing (our estimate is approximately £12 million, though the majority of this figure should be recoverable from the debtor).
6. Simplification and reducing administrative burdens

2.99 The proposals for certification, enforcement agent law and fees unify existing disparate procedures and therefore are key simplifications and reduce burdens on enforcement agents etc. Implementation would impose an initial burden on courts, due to the requirement for certification. Over the longer term, we anticipate that the simplified structure and overall regulation process would lead to fewer complaints for the courts to deal with.

7. Small Firms Impact Test

2.100 There are currently approximately 150 firms that employ certificated enforcement agents in the private sector. Some of these employ a small number of agents. Regulation through a statutory body may incur extra costs for small businesses, if they choose to cover the costs of their employees.

2.101 There are no known figures for landlords undertaking distress themselves. Landlords of business tenancies would in future need to employ an agent to undertake distress for rent (unless they themselves were also a certificated enforcement agent). The payment of an agent’s fees varies greatly as some agents charge landlords, others take all of their payment from the tenant – therefore, this is an unknown quantity. Whilst an amended DfR regime would introduce greater protection of tenants, there is the possibility that the use of DfR on small businesses may still cause a disproportionate loss, possibly resulting in business failure.

2.102 With regard to the new single piece of enforcement agent law, there may be an impact on small enforcement firms. The new legislation would mean that all enforcement agents would be trained to the same standards and would have to be certificated. The Small Business Service commented that, taken as a whole, the new legislation would assist small businesses that are unable to settle their debts, as they would be treated in a more balanced and fair manner. The new legislation would also help small businesses to collect debts that are owed to them, because enforcement methods would be more effective and efficient as a result of these reforms.

8. Competition Assessment

2.103 The establishment of regulatory powers to ensure that enforcement is carried out by licensed enforcement agents, introduced by whatever means, should not have a significant effect on competition within the enforcement industry. The industry currently comprises 5,200 enforcement agents, about 2,200 of whom are crown employees, 200 of whom are local authority employees, and 2,800 of whom are private employees, spread between approximately 150 business entities.

2.104 The enforcement industry consists of a number of different market segments, which consist of High Court and county court writs and warrants, magistrates'
court fines, parking charges, local and national taxes and duties, maintenance and child support. Each debt stream has its own characteristics in terms of the nature of competition, number of firms operating and the nature of competition. In some sectors e.g. enforcement of county court warrants of execution, the work is wholly within the public sector, whilst in others, such as High Court writs, the work is wholly contained within the private sector and is divided between approximately 70 High Court Enforcement Officers. But looking across the industry as a whole, it is estimated that there are generally five firms with larger market shares within each debt stream open to the private sector, holding a combined market share of at least 50%.

2.105 Certification fees would be payable by individual enforcement agents. However, the anticipated level of such fees is sufficiently low that it is considered unlikely to affect significantly either the number of individual enforcement agents, or the number of businesses, operating in the market. The increase in costs would not represent any significant increase in barriers to entry, although it is possible that those firms entering the industry for the first time may find that they face some additional training costs. All their enforcement agent employees would need the training required to meet the necessary standard for certification, whereas for existing firms many of their employees would already be certificated, and only those that are currently not certificated would need this extra training required to reach the necessary standard.

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

2.107 The new fee structure may limit what firms can charge for their services, but this would affect all firms within the industry (and indeed the public sector) in the same way, so no firm or sector would gain a significant advantage over another by this reform. Likewise, the Government does not expect that any of the options on Distress for Rent would have a significant impact on competition.

2.108 Option 1, retaining the use of distress for rent warrants, would maintain the status quo and would not therefore result in any change to existing levels of competition or market structure.

2.109 Option 2 would abolish the use of distress for rent warrants and create additional court costs for commercial landlords in the region of £15 million (the costs involved in bringing 60,000 cases before the courts rather than using an out of court remedy such as distress for rent or an equivalent), as well as resulting in a loss of around £4 million in fees income to enforcement agents. The commercial sector comprises many different segments according to the size and location of the properties. It is unlikely, however, that implementation of this proposal would have any significant effect on competition within any of these markets.
2.110 Option 3, retaining the existing use of distress for rent with some amendments, would result in additional staff training costs for enforcement agents. This should constitute a one-off cost and would be unlikely to have a significant disproportionate impact on smaller firms or on new firms looking to enter the market. It is not anticipated this would have any significant effect on competition.

2.111 The proposals to include in primary legislation the power for the Lord Chancellor to set fees for enforcement agencies in England and Wales could have a significant impact within the enforcement industry. However, it is difficult to assess with any certainty the scale of the impact of the reform prior to the fee levels being set. We anticipate the main affect arising from the new fee regime is that fewer warrants may be issued, due to creditors having to pay an up-front fee. As a consequence, there may be a reduction in the workload of enforcement agents within the industry, leading to a reduction in the numbers of enforcement firms operating, thus further increasing the level of concentration.

2.112 At present, a significant number of warrants are unenforceable, possibly due to incorrect address details but it may also be because enforcers have insufficient incentive in the current charging structure to strive for maximum recovery. Improvements in the charging structure should promote competition on recovery rates, particularly when this is tied to improvements in the availability of information on debtors.

9. Enforcement, sanctions and monitoring

2.113 Under primary legislation, it would be an offence for non-exempt enforcement agents to operate without a certificate. The punishment would be a fine not exceeding level one on the standard scale.

2.114 In addition, there would now be a unified set of remedies available against enforcement agents who take illegal or irregular action:

- If an enforcement agent committed an illegal action, i.e. an action that had no basis or justification in law from the outset, then from the moment he sets foot on the property concerned he would be deemed a trespasser, and the aggrieved party could seek restitution through the courts under the existing laws of tort as they could against any other trespasser.
- If an enforcement agent committed an irregular action i.e. he had the right to be on the premises, but then committed an act that was in breach of the new single piece of enforcement agent law, the debtor could bring proceedings against the enforcement agent through the courts for a breach of the code.
- In addition, a complaint could also continue as at present to be made to the court that issued the enforcement agent’s certificate, regarding that person’s fitness to continue holding a certificate. The court would have the power to cancel or suspend a certificate in these circumstances if the complaint is upheld.

2.115 Disputes regarding fees charged would continue to be matters for professional bodies representing enforcement agents or under regulations, possibly by way of assessment after reference to the courts.
10. Implementation and Delivery Plan

A single piece of Enforcement Agent Law, enforcement agent fees, and CRAR:

2.116 It is anticipated that all elements of what currently might be termed “bailiff law”, including the new single piece of enforcement agent law, the abolition of distress for rent and its replacement with CRAR, the new remedies and the new single, simplified fee structure, would be introduced simultaneously. It makes sense to do it this way – to, say, introduce a new single piece of enforcement agent law without a new fee structure would not be a sensible way to proceed.

2.117 Following Royal Assent, there would then need to be a suitable period of time to draft the underpinning regulations, and, particularly in areas such as fees, a further three-month consultation period. Once passed, it is estimated that there would need to be a minimum run-in period of three months before the regulations came into effect. It is therefore most unlikely that implementation proper would occur until two years after introduction of the Bill, at the earliest.

Regulation of enforcement services

2.118 It would be necessary to give a fair period of time to enable existing enforcement agents to attain the standards required to qualify for a certificate under the new regime. The time taken to draft the regulations and get them approved by Parliament would be similar to above. But it is anticipated that at least a year would be required before all existing enforcement agents were at a level that they could be certificated under the new regime. It is therefore suggested that full implementation would not happen until three years after introduction of the Bill.

2.119 Looking to a more long-term implementation timetable for regulation would also fit better with the current review of NDPBs, announced under the Hampton Review (March 2005), and the SIA’s current regulation programme. The Hampton Review, which has looked at the current number and structure of NDPBs, has given the SIA two years before it will be reviewed again, and its future structure and role will be looked at again then. The SIA will also have finished its current programme for taking on board regulation of all other sectors it is due to regulate, such as event stewards, security consultants, key holders etc. by then.

2.120 This all means that by this time, the long term future of the SIA post-Hampton report will be a lot clearer. It is even possible that this department may already be negotiating full scale regulation of all civil enforcement agents (private and public) by the SIA (or its successor) by that stage. This all being the case, a more long-term approach to implementing regulating of enforcement agents by way of an enhanced and extended certification process seems the most sensible approach.

11. Post Implementation Review
2.121 Our delivery plan must involve securing primary legislation, developing and implementing the secondary and operational mechanisms, and at the same time as the operational mechanisms are being developed, putting in place any post implementation review arrangements.

2.122 With some of these policies, notably CRAR, having come as a result of recommendations from the Law Commission, a structured and successful post implementation review programme becomes even more important.

2.123 This process would be conducted in a similar way to our post implementation reviews of the High Court enforcement reforms contained in the Courts Act 2003. This mainly involved holding a series of meetings with key stakeholders to discuss the impact of the changes and if / why things have / have not improved as a result of these reforms, at a period of 6 months and 1 year after implementation. Further reviews could be held at six monthly intervals thereafter if it were thought to be necessary.

2.124 Contributions to the debate by way of written responses from stakeholders and the general public would also be encouraged.

12. Public Sector Impact Test

2.125 It is not envisaged that the introduction of a single piece of enforcement agent law would result in any significant changes in the number of public sector enforcement agents. There may be an initial increase in overall workload until the changes have bedded in. However, in the longer term, workloads should decrease as a consequence of unification, simplification and clarity in terms of the law of distress.

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<th>Cost</th>
<th>Benefit</th>
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| **Regulation of enforcement services – Option 1**  
Private Sector – None.  
Public Sector – None. | Private Sector – None.  
Public Sector – None. |
| **Regulation of enforcement services – Option 2**  
Private Sector – Not known. The cost of voluntary debt advice sector training is estimated at £1,500,000 – funded from the Money Advice Trust.  
Public Sector – £1.1m implementation costs and £1.7m running costs per annum. | Private Sector – Not quantifiable in financial terms.  
Public Sector - Not quantifiable in financial terms. |
| **Regulation of enforcement services – Option 3**  
Private Sector – £488,000 | Private Sector – Not quantifiable in financial terms. |
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<td><strong>Public Sector</strong> – £202,000 (although we would expect any costs to the courts to be met through the fees charged to applicants)</td>
<td><strong>Public Sector</strong> - Not quantifiable in financial terms.</td>
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<td><strong>Single Piece of Enforcement Agent Law – Option 1</strong></td>
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<tr>
<td><strong>Single Piece of Enforcement Agent Law – Option 2</strong></td>
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<td><strong>Private Sector</strong> – £308,000</td>
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<td><strong>Enforcement Agent Fees – Option 1</strong></td>
<td><strong>Private Sector</strong> – None.</td>
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<td><strong>Private Sector</strong> – None, although inefficiencies would remain.</td>
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### 13. Summary and Recommendation

<table>
<thead>
<tr>
<th>Regulation of enforcement services</th>
<th>Total benefit per annum: Economic, environmental, social and administrative</th>
<th>Total cost per annum: economic, environmental, social and administrative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option 1 – no change</strong></td>
<td>Status quo would remain so no extra cost to business</td>
<td>No additional costs to debtors and creditors but system would remain unregulated and open to abuse</td>
</tr>
<tr>
<td><strong>Option 2 – Commission</strong></td>
<td>Regulatory body would apply uniform standards across the enforcement profession.</td>
<td>Regulation through Enforcement Services Commission would incur the following costs through the establishment and running of a new NDPB: Set up costs of £1.1 million; Staff costs of £1.2 million per annum; Accommodation costs of £300,000 per annum; and IT, support services, T &amp; S, £200,000 per annum.</td>
</tr>
<tr>
<td><strong>Option 3 - Certification</strong></td>
<td>Certification would apply uniform standards across the enforcement profession.</td>
<td>Public sector costs £202,000 Private sector costs £488,000</td>
</tr>
</tbody>
</table>

**THIS IS THE RECOMMENDED OPTION**

### Single Piece of Enforcement Agent Law

<p>| Option 1 – no change | No extra costs to businesses. Enforcement agents and legal/voluntary sector are familiar with the system | Exploitation of the vulnerable by unscrupulous enforcement agents |</p>
<table>
<thead>
<tr>
<th><strong>Option 2 – single piece of enforcement agent law</strong></th>
<th><strong>Total benefit per annum:</strong> Economic, environmental, social and administrative</th>
<th><strong>Total cost per annum:</strong> economic, environmental, social and administrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation would be significantly easier for all parties to understand</td>
<td>Public sector implementation costs consist of: One-off training for Court Service: £64,000; NVQ training costs £25,000 Training costs for enforcement agents: IR, C&amp;E, CEOs £176,000 Leaflets £20,000; Local Authorities: £22,000. Private sector implementation costs consist of: Private sector (employed) £165,000 Private sector (self employed) £143,000</td>
<td><strong>THIS IS THE RECOMMENDED OPTION</strong></td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th><strong>Distress for rent</strong></th>
<th><strong>Option 1 – no change</strong></th>
<th><strong>Option 2 – abolish</strong></th>
<th><strong>Option 3 – retain and modify</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Quick and effective remedy for the collection of arrears - £167m worth of debt (93% of warrants) is successfully collected</strong></td>
<td><strong>Distress for rent is felt to be a disproportionate remedy and it could be challenged under the HRA 1998</strong></td>
<td><strong>Recovery of rent arrears would be placed on the same footing as the recovery of other debts</strong></td>
<td><strong>Improve access to justice by making procedures clear to both commercial landlords and business tenants</strong></td>
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<tr>
<td><strong>£15m in additional court costs to landlords, which may not all be recoverable from debtors.</strong></td>
<td></td>
<td></td>
<td><strong>Many of the suggested amendments are already features that many commercial landlords already undertake.</strong></td>
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<td></td>
<td></td>
<td><strong>£4m loss of income from enforcement agents.</strong></td>
<td><strong>THIS IS THE RECOMMENDED OPTION</strong></td>
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<thead>
<tr>
<th><strong>Fees</strong></th>
<th><strong>Option 1 – No change</strong></th>
<th><strong>Option 2 – Add, No change</strong></th>
<th><strong>Option 3 – Retain and modify</strong></th>
</tr>
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<tr>
<td><strong>Creditors who currently have</strong></td>
<td><strong>Continuing financial cost to creditors who currently have</strong></td>
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<td><strong>Continuing financial cost to creditors who currently have</strong></td>
</tr>
</tbody>
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<th>Total benefit per annum: Economic, environmental, social and administrative</th>
<th>Total cost per annum: economic, environmental, social and administrative</th>
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<tbody>
<tr>
<td>enforcement work undertaken free of charge or who receive a fee would continue to receive this service. No additional training costs incurred</td>
<td>private sector enforcement agents and agencies undertaking enforcement work for free or paying to undertake work which proves unsuccessful</td>
</tr>
</tbody>
</table>

Option 2 – unified fee regime

<table>
<thead>
<tr>
<th>Enforcement agents would receive remuneration for work undertaken, regardless of their eventual enforcement success</th>
<th>Training costs in the new fee structure would be included in training for the new single piece of enforcement agent law.</th>
</tr>
</thead>
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<tr>
<td><strong>THIS IS THE RECOMMENDED OPTION</strong></td>
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</table>
III. REFORM OF COURT-BASED METHODS OF ENFORCEMENT – FULL RIA

1. Title of the proposal:

3.1 Reform of court-based methods of enforcement provisions in the Bill covering: widening the scope of Charging Orders, Attachment of Earnings Order (fixed rates for deductions and finding a debtor’s current employer) and Information Requests and Orders.

2. Purpose and intended effect of measure:

i) Objectives:

3.2 To reform court-based methods of enforcement by ensuring that the rights of creditors to receive payment of judgment debts is met and to balance this against the need to protect debtors from unreasonable action by creditors even where they are complying with the debt judgment.

ii) Devolution:

3.3 These proposals apply to England and Wales.

iii) Background:

3.4 The Government believes that responsible creditors who are owed money and have gained judgment in a court should have the right to enforce that judgment. Equally, debtors should be protected from the oppressive pursuit of their debts.

3.5 Effective enforcement is crucial to both the criminal and civil justice systems. People ordered to pay a court judgment, criminal penalties and compensation awards, or to comply with the terms of a community sentence, have little or no incentive to do so if they know there is no effective means of enforcing it. Unless there is prompt and efficient enforcement, the authority of the courts, the deterrent value of penalties, and public confidence in the justice systems are all undermined.

3.6 Under the existing arrangements, following a judgment after a payment has not been received a creditor may apply to the court to enforce the judgment. The creditor will decide which of the following court based enforcement methods they favour such as: attachment of earnings order (AEO), charging orders, third party debt orders, judgment summonses, or warrants of execution.

3.7 Whilst offering protection to debtors who are genuinely unable to pay, the package of legislative proposals aims to improve the effectiveness of the current court based enforcement methods.

iv) Rationale for Government Intervention:
What are the identified problems?

3.8 The Government is committed to improving access to, and the efficiency of, civil justice. It is crucial that creditors who have established a legitimate claim should be able to pursue it through a straightforward and accessible system and, if necessary, enforce the judgment by the most appropriate means. The present system of court based enforcement has a number of weaknesses which have been identified as failing both creditors and those debtors who genuinely wish to honour their judgement debts. The main weaknesses relate to a lack of accurate and up to date information about debtors.

What is the scale of the problems?

3.9 We do not have specific statistical information on the scale of the problems. Anecdotal evidence is contained in the White Paper *Effective Enforcement*, published in March 2003. Much of the basis for the proposed changes is based on anecdotal evidence provided by stakeholders involved in civil enforcement, such as: creditors, debtors, or people involved in the enforcement process. Information has been obtained from the results of consultation, activities of working groups, and only after extensive liaison and discussion with external stakeholder groups.

Will the problems identified worsen without government intervention? If so, how?

3.10 If the Government does nothing then the court based enforcement methods can still be employed to apply and enforce judgment debts. However this will not address the present failings for both creditor and debtor. Repayment will continue to be sporadic and easy to evade, and confidence in the justice system will not improve. We cannot say whether or not the problem will worsen, since this would require predicting future behavioural changes between disparate groups involved in court processes. We feel safe to assume that the problems will not rectify themselves, since this would have happened over the course of time.

3.11 By making the proposed changes, the Government believes that it can provide a simpler, consistent and more effective process of enforcement by:

- Improving the ability of responsible creditors to recoup monies owed to them;
- Protecting genuine debtors complying with judgment debts from the aggressive pursuit of their debts even when they are paying those debts; and
- Assisting creditors in tracking down defaulting debtors and improving enforcement of court orders and the administration of civil justice.

3.12 By allowing, the creditor to take responsible and appropriate action to gain payment of debts the Government will improve confidence in civil justice. By making changes that mean both the courts and creditors make a distinction between debtors who deliberately default on debt and those who make every effort to pay, the Government can ensure vulnerable groups are given the protection they need whilst meeting debt obligations.
3.13 With regard to charging orders (a means of securing a debt by placing a charge onto a debtor’s property), the main risk associated with the proposals concerns accusations of enabling unsecured loans to effectively become secured by a charging order, potentially leading to the loss of the family home. The Government believes this is unlikely. Members of the debt advice sector suggested the introduction of a lower limit on the size of debt for which a charging order or an order for sale could be sought. There were also calls for debts arising from credit agreements under the Consumer Credit Act 1974 to be exempted from enforcement by way of charging orders and orders for sale. However, our proposals aim to balance the interests of the creditor with those of the debtor and his family. Similarly the judge needs some discretion when considering an application.

3.14 Responsible creditors who are owed money and have gained valid judgments through the county court must retain the right to enforce that judgment by the most appropriate means. After consultation with the British Banking Association and the Finance and Leasing Association, it is clear that the vast majority of financial institutions and their trade organisations are committed to sensible lending and enforcement practises. On the whole, they make use of charging orders as a way of securing their position, but do not resort to the use of orders for sale except in extreme circumstances. Orders for sale are rare, partly as a consequence of existing judicial discretion. Lenders believe that judges make great use of their discretionary powers, and avoid granting orders for sale except in the most extreme circumstances. Many lenders have already adopted a policy of minimum debt levels below which they do not pursue debtors by way of charging order. The cost of a successful charging order and order for sale (in terms of lawyers time etc. rather than the application fees payable) is not justified for such relatively small sums.

3.15 Without increased access to information, debtors who can pay (but refuse) will continue to evade their responsibilities, safe in the knowledge that their details will not be accessible. Additionally, creditors will continue to use the easiest enforcement method available, rather than the most appropriate.

3.16 The impact on individual businesses of the Attachment of Earnings Orders (AEO) fixed deductions scheme will vary depending on payroll systems and prior experience of administering fixed tables. If the present system continues, there is a risk that the use of Attachment of earnings orders as a method of enforcement will be undermined, and less effective enforcement methods may be chosen (for example, warrants of execution).

Have other methods been considered/used? If so, why do they fail to resolve the issues?

3.17 Other changes to court based enforcement methods have already been introduced to the Civil Procedure Rules 1998. In March 2002, new court processes were introduced: Third Party Debt Orders replaced Garnishee orders, Orders to Obtain Information replaced oral examinations, and new procedures governing charging orders and orders for sale were introduced. The March 2002 changes represented the initial outcome of the 1st Phase of the Enforcement Review, and those changes which could be introduced by way of secondary legislation. Primary legislation would be required to ensure
that the full range of court based procedural reforms could be introduced. The Enforcement Review examined the further development of processes which could be achieved via primary legislation after March 2002, culminating in the proposals in the White Paper *Effective Enforcement* in March 2003.

3.18 All of the proposals covered by this regulatory impact assessment have been derived after extensive public consultation, and working groups involving stakeholders both internal to and external to Government.

### 3. Consultation

**List of public consultations:**

- *How can the enforcement of civil court judgments be made more effective* - June 1998 – consultation included consideration of charging orders and attachment of earnings processes;
- *Key principles for a new system of enforcement in civil courts* – May 1999 – consultation included consideration of information gathering in the enforcement process;
- *Attachment of Earnings Orders, Charging Orders and Garnishee Orders* – October 1999 – consultation included further consideration of proposals to reform attachment of earnings orders and charging orders;
- *Warrants and writs, oral examinations, and judgment summons* – January 2000 – consultation included consideration of data disclosure orders;
- *A report of the First Phase of the Enforcement Review* – July 2000 – summarised the findings for attachment of earnings and charging orders;
- *Towards Effective Enforcement* – July 2001 – Green Paper which dealt with information sharing proposals; and
- *Effective Enforcement* – March 2003 – White Paper which stated the Governments chosen options for reform in attachment of earnings, charging orders and to introduce data disclosure orders.

**Key stakeholders involved in court-based process consultation:**

- The Judiciary;
- Enforcement Agents and Agencies;
- The advice sector (e.g. Citizens Advice, the Money Advice Association, the Federation of Independent Advice Centres);
- Organisations that represent court users (e.g. the Civil Court Users Association);
- Other Government departments (e.g. HMRC, DWP, DTI, ODPM, Home Office, Treasury);
- The unions that represent court staff; and
- Employers organisations (e.g. Institute of Professional Payroll Management, Federation of Small Business).

3.19 The internal and external stakeholders have generally been supportive of the proposals. For example: regarding our proposals for attachment of earnings deductions by fixed rates - a separate consultation conducted with employers, through the Chamber of Commerce (on advice from the Federation of Small Businesses) and through payroll organisations, showed that out of 155 responses, 148 were in favour of the proposed change. Further, responses to
the First Phase of the Review identified that confidence in the attachment of earnings process was low and a tracing process to find details of the new employer would be beneficial. Fifty-three of 67 responses were in favour of a tracking procedure.

Where policy has changed as a result of consultations:

3.20 The White Paper Effective Enforcement included proposals for a partial Data Disclosure Order, involving regulated enforcement agents seeking information to assist with enforcement as part of the data sharing gateway with Government departments or other nominated organisations. This element of the overall data disclosure order proposal has been dropped. In light of the decision to not proceed with regulation of enforcement services through the Security Industry Authority, the partial data disclosure order provision has been dropped.

4. Options

3.21 The White Paper Effective Enforcement outlined the options that were derived as a consequence of extensive public consultation. The options represent the sum of all views expressed as to how Government can improve the methods of court enforcement on debt. The regulatory impact assessment, therefore, only considers the options of “no change” or the specific option derived at as a consequence of consultation.

3.22 Much of the court based procedural reform for charging orders has already been introduced to the Civil Procedure Rules 1998. The Civil Procedure Rules Part 73 was introduced in March 2002 and contains procedural changes that could be introduced as secondary legislation.

3.23 Attachment of earnings orders can only be modelled on two distinct systems:

   i) fixed deduction rates – similar to those operating in Council Tax; or
   
   ii) individually calculated rates – currently in operation for civil debts.

A. To widen the Scope of Charging Orders

Option 1 – To do nothing and leave the application of charging orders unchanged.

3.24 A charging order is a means of securing a debt by placing a charge onto the debtor’s property (usually land or securities such as shares). A charging order can be made absolute or subject to conditions. However, once an order is in place a creditor can subsequently apply to court seeking an order for sale of the charged property.

3.25 At present, a county court or the High Court cannot make a charging order when payments due under an instalment order are not in arrears. When making an application for a charging order, the creditor must specify that the
whole or any part of an instalment (or instalments) due remains unpaid. It leaves a major barrier to the recovery of a judgment debt because debtors with large judgment debts, paying off their debt in small instalments which are not reviewed regularly if the debtor's circumstances change, are able to benefit from the sale of a property without paying off the debt. The debtor thereby obtains a capital sum and is under no obligation to make any payments towards the judgment debt.

3.26 If the Government does not amend the scope and application of charging orders, creditors would still be able to apply to the court for them. However, it would not address some of the shortcomings in the present system of charging orders which allow debtors to avoid their commitments to repay debts.

**Option 2 - To widen the Scope of Charging Orders.**

3.27 If a charging order is in place before the debtor defaults, this would provide the creditor with some security that the proceeds of the sale would go towards paying off the judgment debt. Although the debtor, if he became aware of the sale, could apply to the court for a review of the instalment order, the money from the sale could already have been disposed of and an opportunity to settle the debt more quickly would have been lost.

3.28 The policy should achieve the following:

- Widened access to charging orders so that it should be possible for a creditor to obtain a charging order against an asset even where the debtor is subject to an instalment order with which he is complying.
- The extension of access to charging orders will be counter-balanced by the creation of additional safeguards to protect the debtor. The Bill contains provision to set financial thresholds regarding the making of charging orders and orders for sale.
- Creditors would not be able to seek an order for sale to enforce the charging order in circumstances where the debtor had not defaulted on an instalment order.

**B. To introduce Attachment of Earnings Orders deductions at fixed rates:**

**Option 1 – To do nothing and leave the Attachment of Earnings Order process unchanged.**

3.29 An Attachment of Earnings Order (AEO) allows a creditor to secure payment of a debt by ordering the debtor's employer to make regular deductions from a debtor's salary, until the debt is paid in full. The outstanding debt must be over £50 and deductions can be made from earnings, pensions and Statutory Sick Pay but only after tax and National Insurance contributions have been made. Benefits and tax credits are exempt from an AEO. An AEO is not available if the debtor is self-employed.

3.30 Under the current system for judgment debts in the county court, the court relies on the debtor's completion of a means form (N56) to calculate a
Protected Earnings Rate (PER) and a Normal Deduction Rate (NDR). Our consultation identified that this often leads to unnecessary delay; some debtors do not return the means form when asked to do so. If it is not returned after 14 days, a county court bailiff must serve the documents personally on the debtor and this may require several visits to the debtor's address before service can be achieved. There are also questions about the reliability of the information supplied by debtors.

3.31 If the Government does not amend the AEO process, creditors would still suffer undue delay with recovery of judgment debts by AEO. The existing shortcomings in the present system of Attachment of earnings orders would remain.

Option 2 Introduce deductions at fixed rates for Attachment of earnings orders

3.32 Fixed Tables setting out deductions at fixed rates for AEOs made by the county court to secure a judgment debt would remove the need for a means form to be completed; once the court has made an order the employer would be instructed to apply the deduction rate specified in the tables. The debtor would still have 14 days to respond when the order is made, but after that time the deductions would automatically begin. The aim is to make the process more straightforward at the court end. Additionally employers would have a system that provides more certainty and is more consistent with other deduction schemes they operate for Council Tax and unpaid fines.

3.33 Fixed tables would specify, given the debtor’s net pay over a certain pay period, the percentage of their salary that would be deducted each period to pay for the debt. There would be a lower limit (to be determined in secondary legislation) meaning those who earn under a certain amount per pay period would have a 0% rate. This is very similar to how deductions under Council Tax AEOs work.

3.34 There would continue to be provision for any party to request a review of the fixed table deductions, meaning those who genuinely cannot pay would be protected.

3.35 The policy would achieve the following:

- Reduced delay in attachment of earnings cases through use of fixed tables.
- Greater certainty for creditor and debtor
- More detailed and clearer guidance to be issued to supplement the new procedures.

C. To introduce a means of tracing the debtor’s employer in Attachment of Earnings cases.

Option 1 – To do nothing and leave the Attachment of Earnings Order process unchanged.
3.36 Currently, if a debtor changes employment and fails to notify the court of the new employer’s details, the AEO lapses and recovery of the debt ceases.

If the Government does not amend the AEO process, creditors would still suffer undue delay with recovery of judgment debts by AEO. The existing shortcomings in the present system of Attachment of earnings orders would remain.

Option 2 – Attachment of Earnings Orders: finding the debtor’s current employer.

3.37 The opening of an information gateway between the relevant court and Her Majesty’s Revenue and Customs should enable lapsed AEOs to be redirected to the current employer. The policy should ensure fewer AEOs would fail due to the debtor failing in their responsibilities.

3.38 The procedure would only occur if the debtor has failed to provide the court with new employment details when, and if, they change employment whilst an order is in place. Provisions in the Bill would allow us to open the information gateway for all kinds of AEOs covered by the 1971 Attachment of Earnings Act, and AEOs made for fines collection under Schedule 5 to the Courts Act 2003 (made by fines officers). We estimate this would provide the opportunity for approximately 9,050 more lapsed AEOs to be re-directed, thereby supporting the Government’s focus on recovering money from criminal fine defaulters.

3.39 Magistrates’ courts have estimated that up to half of Attachment of Earnings Orders fail because of poor information about employers, i.e. 18,100 (36,150.)2. If the interrogation of HMRC information returns a similar success rate as currently occurs with information exchanges between the magistrates’ courts and DWP (mainly for the purpose of enforcing payment of fines), we could expect that an extra 9,050 (18,075) cases per year would result in a redirected AEO and continued recovery of the fine.

D. Information Requests and Orders

Option 1 – To do nothing.

3.40 A key finding outlined in the White Paper is that enforcement can be made more effective by improving the quality and quantity of information available on which to base informed and responsible decisions about enforcement. More and better information would allow enforcement efforts to be targeted towards the procedure that is most likely to produce results for the creditor and make it possible to identify, at an earlier stage, debtors who do not have the resources with which to pay the debt.

3.41 Under option 1, the current failings of the system would persist.

Option 2 – Introduce Information Requests and Orders

2 A court in Hertfordshire reported that of the 17 AEOs imposed since July 2003 nine were stopped because the offender changed employer and the new employer could not be traced. Another court told us ‘employers are not very forthcoming; when the defendant leaves their employment 9 times out of 10 we have to chase them.’
3.42 The introduction of information requests and orders would be a new proposal for the civil courts. This would be a court-based scheme to seek information on the judgment debtor who has failed to respond to the judgment or comply with court-based methods of enforcement. Information would be sought from relevant third parties in both the public (HMRC and DWP) and private (for example banks and credit reference agencies) sectors, to help the creditor make an informed choice about how to enforce a judgment.

3.43 The policy would achieve the following:

- Widened access to relevant information about the debtor.
- Increased confidence in that information.
- More effective use of information held by different Government Departments.

3.44 Any personal data obtained and used under statutory powers would only be used and stored for the purposes specified in the Bill. Information obtained via an information order or request would be used to enforce civil judgments, which are orders of the court. Clear constraints would be imposed on the use of data.

3.45 The judgment creditor would have to apply for information to be provided via this scheme, and there would be a fee for this service.

Compatibility of the provisions with the European Convention on Human Rights

Attachment of earnings: finding the debtor’s current employer

3.46 The Department considers that the proposal engages Article 8 (respect for the private and family life of individuals, home and correspondence) and is compatible with the Convention. Information provided pursuant to the clause would be in accordance with Article 8(2), as such information disclosure would be in the pursuit of a legitimate aim (to protect the rights and freedoms of the creditor and to ensure that the attachment of earnings order is enforced) and necessary in a democratic society as proportionate to the legitimate aim, as an information request would only be made if the debtor has failed to comply with his obligations in section 15 of the Attachment of Earnings Act 1971.

3.47 We would provide safeguards to protect an individual’s Article 8 rights, and impose a criminal sanction where information obtained pursuant to the proposal, is disclosed for a purpose that is not connected with enforcement of the relevant attachment of earnings order.

Charging orders: payment by instalments: making and enforcing charging orders

3.48 The Department considers that the proposal engages Article 8 (respect for the private and family life of individuals, home and correspondence) and that it is compatible with the Convention. Imposition of a charge pursuant to this clause would be compatible with Article 8(2), as this is in the pursuit of a legitimate aim, (to protect the rights and freedoms of the creditor and to provide security for his judgment debt), and necessary in a democratic society as proportionate to the legitimate aim. It would not be possible for an order for sale to be made where a debtor is not in default under the instalments order, (and therefore, in
the absence of default, the debtor would not lose his home), and the debtor would be able to apply to the court for the charging order to be discharged under section 3(5) of the Charging Orders Act 1979.

Information requests and orders
3.49 The Department considers that the proposal engages Article 8, (respect for the private and family life of individuals, home and correspondence), and that these clauses are compatible with the Convention. Information disclosure pursuant to these clauses is in accordance with Article 8(2), as such information disclosure would be in the pursuit of a legitimate aim, (to protect the rights and freedoms of the creditor, enabling him to seek to enforce his judgment debt). Various safeguards would be imposed to ensure that the information disclosure is necessary in a democratic society and proportionate:

- The court must give notice to the debtor that it intends to make an information request or order. The debtor, as a party to the proceedings, will be entitled to apply to the court for the request or order to be set aside.
- Regulations made by the Lord Chancellor would specify the circumstances in which an application for information can be made.
- Criminal sanctions would be imposed where a person uses or discloses information obtained via an information order and/or request for a purpose that is not connected with taking action in court to recover the debt.

3.50 The Department considers that the proposal engages Article 6, (the right to a fair and public hearing), and considers that the clauses are compliant, as the debtor would be able to object to the information request/order being made or will be able to apply to the court for the information request/order to be set aside.

5. Costs and Benefits

A. Charging Orders:

Option 1 - No change

Costs
3.51 There would be no direct financial cost, though the cost of not putting safeguards in place to support debtors might mean erosion in public confidence in the civil justice system. Creditors may, as a result, choose to make more use of bankruptcy procedures.

Benefit
3.52 Creditors would continue to apply for charging orders as at present.

Option 2 - Introduce proposed change

Costs
3.53 The government does not envisage any new costs would be incurred by creditors since the existing court administered process would continue to be available, with no changes to court fees. The courts would incur negligible costs. Debtors would not incur any new costs.
Benefit
3.54 We would create safeguards for debtors with the Lord Chancellor having the power to set financial limits for charging orders and orders for sale. The financial safeguard would prevent creditors pursuing either a charging order or a subsequent order for sale, unless the financial value of the debt exceeded a set threshold.

B. Attachment of Earnings Orders - deductions at fixed rates:

Option 1 - No change

Costs
3.55 There would be no direct financial cost, or improved recovery of judgment debts.

Benefit
3.56 There would be no implementation costs, as the existing process would continue.

Option 2 - Introduce proposed change

Costs
3.57 The proposal is unlikely to affect charities or voluntary organisations except in cases where they have salaried staff subject to an AEO. An employer would only be required to apply fixed tables if an employee receives an order following implementation. There would be set up costs for those businesses that have staff with an AEO made following the introduction of fixed tables. Quantification of the implementation costs for business is not possible. We estimate the majority of training costs would be under £100 per individual. The courts would require a minor update to IT systems and leaflets. We estimate that the costs would not exceed £250,000.

Benefit
3.58 The proposed change should reduce the time taken from applying for an Attachment of Earnings Order to the making of a full order, as the court would no longer have to wait for the debtor to supply a means form. The need to engage in bailiff activity to serve means forms would be reduced significantly, thereby freeing up bailiff resources for warrant enforcement. Creditors should benefit from more consistent levels of payment.

C. Attachment of Earnings Orders - finding the debtor’s employer:

Option 1 - No change

Costs
3.59 There would be no direct financial costs, though lapsed orders due to changes in employer would continue to lead to cessation of enforcement action, in cases where the debtor did not provide details of the new employer to the court.

Benefit
3.60 Any improvement in recovery of judgment debt would not materialise, as the existing process would continue to rely on the judgment debtor complying with their obligation to keep the court informed of changes in employment. Creditors would not be required to pay an additional fee for the service.

**Option 2 - Introduce proposed change**

**Costs**

3.61 DCA would pay for the implementation costs of the new system. The estimated costs to set up a link between the court system and HMRC would be £500,000. Additional running costs, estimated at £500,000 per annum over three years would be met from fees charged to service users. There would be additional court costs for revisions to leaflets. The IT change would not involve major procurement and could be implemented via a central site to ensure implementation costs are as low as possible. Our estimates suggest that overall costs would be a maximum of £500,000 to implement, with a further £1.5 million additional running costs.

3.62 Creditors would be required to pay a fee to make use of the process.

**Benefit**

3.63 Court users will be provided with, if they choose, a more effective AEO procedure, resulting in higher levels of debt recovery and reducing the amount of unpaid bills.

**D. Information requests and orders:**

**Option 1 - No change**

**Costs**

3.64 Creditors would continue to suffer difficulties recovering judgment debts where enforcement fails through lack of information or wilful non-compliance by the debtor. The credibility of the justice system would continue to be undermined if judgments are seen as unenforceable.

**Benefit**

3.65 Creditors would not be required to pay the new fee for the data disclosure service. No re-training costs would be incurred for the judiciary, enforcement agents and advice sector workers.

**Option 2 - Introduce proposed change**

**Costs**

3.66 DCA would pay for the implementation costs of the new system. Estimated costs to set up a link between the court system and the Department for Work and Pensions (DWP) would be £500,000. Additional running costs are estimated at £500,000 per annum for three years, which would be met from fees charged to service users. It is estimated that costs to extend the process to a Credit Reference Agency or the banking/financial sector would cost a further £500,000. The courts would incur minor costs for new leaflets, which

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3 The estimate is based on an HMRC Business Planning Estimate.
would not exceed £10,000. Total estimate set up costs are £1.5 million, the additional running costs over the initial 3 years after implementation are estimated at between £1.5-2 million.

3.67 The additional running costs would be met from fees charged to service users.

**Benefit**

3.68 Creditors would be better informed about effective means to recover their debt. There would be a net financial benefit for creditors who obtain new information from the use of the new process which leads to successful enforcement.

**Social Impacts**

3.69 We consider that these policies would not have an adverse impact on different groups of people, including minority groups.

**6. Simplification and reducing administrative burdens**

3.70 Proposals for charging orders, Information Requests and Orders, and Attachment of Earnings orders attempt to make enforcement more effective, whilst ensuring debtors are not pursued for unrecoverable debts.

3.71 The AEO fixed deductions scheme should simplify the calculation of how much can be recovered from a debtor based on their earnings. We have considered the potential administrative burden that might be imposed on employers and have consulted with employers groups. Consultation conducted with employers, through the Chamber of Commerce (on advice from the Federation of Small Businesses) and through payroll organisations, showed that out of 155 responses, 148 were in favour of the proposed change. We have acted to reduce the potential burden, by modelling the fixed deductions scheme on the existing Council Tax system. We would also ensure that implementation would coincide with annual provision of software to employers’ payroll teams for other AEO schemes, in order to minimise the impact of the change.

**7. Small Firms Impact Test**

3.72 The introduction of a fixed deductions scheme should not immediately increase the existing likelihood of a small business receiving an AEO. However, if the proposed changes improved the effectiveness of the procedure, the use of AEOs could increase over time, as more court users choose the process over other enforcement methods. The provision relating to AEOs (finding the debtor’s employer) would not directly impact on small business. Small businesses as court users would benefit if they chose to enforce a judgment by way of an AEO.

3.73 Although small business creditors would incur costs in the short term (the application fee estimated at between £100-£200 in each case), they would be able to recover their costs of the enforcement action enabled by the information request or order if successful. The choice to take the risk of not recovering the fee by future enforcement action would remain a decision for each small business creditor as at present.
3.74 No specific comments were received from the Small Business Service on the impact of information orders and request proposals.

8. Competition Assessment

3.75 With regard to AEOs (finding the debtor’s employer and deductions at fixed rates), neither option will have an impact on competition. Tracing via the information gateway established to find the debtor’s employer is not a service that can be provided by the private sector since they do not have access to Her Majesty’s Revenue and Customs information. The attachment of earnings system as a whole is provided directly for the creditor’s benefit and therefore does not cut across any commercial interest in the enforcement sector. Similarly the fixed deductions scheme provisions simply replace an existing way of establishing the deductions to be made under an AEO. This process does not, and never has, involved any commercial interest amongst enforcement service providers.

3.76 The Bill will widen access to charging orders and introduce safeguards to protect debtors. This should not have any significant impact on competition. However, the introduction of financial limits on the making of charging orders or orders for sale may have an impact on some creditors if the limit prevents them from taking enforcement action of this nature. We recognise that the setting of financial limits will require careful consideration and believe it is difficult to accurately assess the impact on creditors and debtors at this stage. Before any limits are set, we would need to consult more widely.

3.77 The information requests and orders proposals may, however, result in a reduction in the workload of enforcement agents. This is because creditors would have improved access to data on debtors, thereby leading to greater use of alternative measures like Third Party Debt Orders, which may then result in fewer warrants of execution being passed onto enforcement agents.

9. Enforcement, sanctions and monitoring

3.78 The responsibility of enforcing a judgment debt remains the judgment creditor’s. Action on failure to comply with a court-based enforcement method by a judgment debtor, is a matter for the creditor should they wish to continue pursuing recovery of a particular judgement debt.

3.79 Compliance with a charging order would continue to be the responsibility of judgment debtors. As long as the judgment debtor meets the instalment payments agreed no penalty should arise. Should a judgment debtor default, the creditor may apply to the court for an order for sale.

3.80 With regard to AEOs, compliance would remain the responsibility of employers bound to make deductions in accordance with the provisions of the section 6 of the Attachment of Earnings Act 1971.

3.81 As to compliance for information requests or orders, where information is requested from government departments service-level standards would be established between Her Majesty’s Court Service and the respective
government departments. Compliance by non-government bodies would be ensured by an order of the court. All organisations that intend to handle the personal data released by the information request or order procedure, would need to be compliant with the regulatory structures.

3.82 DCA will monitor the impact of the court-based enforcement methods once they are implemented.

10. Implementation and Delivery Plan:

3.83 Implementation and delivery will occur in two distinct phases:

   i) obtaining the legislative requirement to implement – both primary and secondary; and
   ii) actual operational delivery.

3.84 Following Royal Assent, work would need to begin on the underpinning regulations and court rule changes that would be needed to actually put some flesh on the bare bones of the powers outlined in the Bill. In some circumstances further consultation would take place before the secondary legislation could be developed and finalised.

3.85 Additionally, some regulations would be placed before Parliament for consideration and approval before they could be implemented.

Charging orders:

3.86 There are two measures set out in the Bill: i) widened access to charging orders, and ii) financial limitations. Neither measure would be implemented until such time as the Department of Trade and Industry (DTI) introduce regulated credit lending provisions (see the Consumer Credit Act 1974). Implementation activity on the widened access provisions should be minor. The financial limitations provision, however, would require public consultation. Any supporting secondary legislation and operational implementation details should take a maximum of 6 months to arrange, once all consultation has concluded.

Attachment of Earnings – deductions at fixed rates:

3.87 Work to overcome any implementation issues has been considered by reference to the DCA Attachment of Earnings Expert Panel, comprising representatives from small business, employers organisations, creditor organisations, money advisors, and the Judiciary. Based on the information considered by that Expert Panel, we consider that a minimum of 18 months would be required from Royal Assent and the skeletal secondary legislation before implementation can occur. All legislative and operational provisions must be finalised nine months prior to the implementation date, to enable software development for employers which would enable the system to be introduced smoothly. We have also agreed that fixed deductions scheme would be introduced from a convenient April date, whenever Council Tax earnings deduction uprating occurs. We envisage developing regulations with further input from the Expert Panel.
Attachment of Earnings – finding the debtor’s employer:
3.88 We intend to work up any secondary legislation, a workable operational model, that capture all types of AEO, agree codes of practice, guidance and training. It is estimated that the earliest the above tasks could be completed is within 2 years of Royal Assent.

Information Requests and Orders:
3.89 Our intention is to introduce information requests and orders, initially, between the courts and the Department for Work and Pensions and Her Majesty’s Revenue and Customs. The work required to make the process operational should take a minimum of 2-3 years from Royal Assent. We would need to work up any secondary legislation, a workable operational model, codes of practice, guidance and training. Our longer term goal, to include credit reference agencies and the financial sector, would take longer to deliver. We are not at present, able to quantify a potential implementation date for sharing information with non-government departments.

11. Post Implementation Review:
3.90 Our delivery plan involves securing primary legislation, developing and implementing the secondary and operational mechanisms, and at the same time as the operational mechanisms are being developed, putting in place any post implementation review arrangements.

3.91 On the AEO fixed deductions scheme, the DCA would conduct monitoring with organisations representing employers and more specifically payroll staff would be asked for feedback. DCA would work with the DTI to monitor the effectiveness of the changes for charging orders. We would review the evidence to decide whether there is a need to bring in financial limits by way of secondary legislation.

3.92 We anticipate four main customer service benefits to be realised by the implementation of the court-based enforcement proposals, which are:

- Improvement of customers’ perception of services available to ensure effective enforcement.
- Speedier court processing, particularly with attachment of earnings orders.
- Improved debt recovery for creditors with reduced scope for debtors to avoid repayment, provided by a combination of the AEO, charging order and information request or order proposals.
- Improved safeguard for debtors against disproportionate pursuit of amounts owed (the charging order proposals should assist with this element).

3.93 We shall evaluate the effectiveness of the above intended benefits post implementation by a combination of methods. We shall use Her Majesty’s Court Service’s National Statistical information published in Judicial Statistics, supported by other operational statistical information. For information requests or orders and the AEO (finding the debtor’s current employer) proposals, we shall consider any information provided by other government departments. Working Groups will also continue to form a key role in monitoring the impact of the new court based enforcement changes. We may also consider questionnaires, if they are appropriate to obtain qualitative or additional
quantitative information which assists with the analysis of the impact of our proposals.

12. **Public Sector Impact Test**

3.94 The impact on the public sector would be experienced mainly by court staff, enforcement agents, the Department for Work and Pensions and Her Majesty’s Revenue and Customs. For example, it is staff at these Departments who would operate the information requests or orders gateway. We anticipate that all of the proposals should be absorbed within existing staffing levels. It is possible that a small number of posts would be created to operate the information requests or orders or AEO finding the debtor’s employer information gateway – though we expect the numbers to be as low as single figures.

<table>
<thead>
<tr>
<th>Cost</th>
<th>Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Charging Orders – Option 1</strong></td>
<td></td>
</tr>
<tr>
<td>Private Sector  – None, though recovery of debt may take longer in some cases or not happen at all.</td>
<td>Private Sector  – None.</td>
</tr>
<tr>
<td></td>
<td>Public Sector  – None.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – None.</td>
<td></td>
</tr>
<tr>
<td><strong>Charging Orders – Option 2</strong></td>
<td></td>
</tr>
<tr>
<td>Private Sector  – None.</td>
<td>Private Sector  – Not quantifiable, though reforms should lead to more reliable payments.</td>
</tr>
<tr>
<td></td>
<td>Public Sector  – None.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – Negligible costs.</td>
<td><strong>THIS IS THE RECOMMENDED OPTION</strong></td>
</tr>
<tr>
<td><strong>Attachment of Earning Orders – Deductions at Fixed rates – Option 1</strong></td>
<td></td>
</tr>
<tr>
<td>Private Sector  – None.</td>
<td>Private Sector  – None.</td>
</tr>
<tr>
<td></td>
<td>Public Sector  – None.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – None.</td>
<td></td>
</tr>
<tr>
<td><strong>Attachment of Earning Orders – Deductions at Fixed rates – Option 2</strong></td>
<td></td>
</tr>
<tr>
<td>Private Sector  – costs reduced by utilising the same commercial software products to implement the new system, when Council Tax is uprated.</td>
<td>Private Sector  – Not quantifiable, but fixed tables would improve effectiveness.</td>
</tr>
<tr>
<td></td>
<td>Public Sector  – None.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – Minor costs for training, new forms and leaflets – estimated at up to £250,000.</td>
<td><strong>THIS IS THE RECOMMENDED OPTION</strong></td>
</tr>
<tr>
<td><strong>Attachment of Earning Orders – Finding the current debtor’s employer – Option 1</strong></td>
<td></td>
</tr>
<tr>
<td>Private Sector  – None, though recovery of debt</td>
<td>Private Sector  – None.</td>
</tr>
<tr>
<td></td>
<td>Public Sector  – None.</td>
</tr>
</tbody>
</table>
13. **Summary and Recommendation:**

<table>
<thead>
<tr>
<th>Cost</th>
<th>Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>may no occur if an order lapses.</td>
<td>Private Sector – improved judgment debt recovery in cases where an AEO can be redirected.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – None.</td>
<td><strong>Public Sector</strong> – None financial – may lead to improved confidence in the justice system.</td>
</tr>
<tr>
<td><strong>Attachment of Earning Orders – Finding the debtor’s current employer – Option 2</strong></td>
<td>THIS IS THE RECOMMENDED OPTION</td>
</tr>
<tr>
<td><strong>Private Sector</strong> – None.</td>
<td><strong>Private Sector</strong> – None financial – may lead to improved confidence in the justice system.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – set up costs of £500,000, additional running costs £1.5m to be absorbed within existing allocations and met by fees charged from service users.</td>
<td><strong>Public Sector</strong> – None financial – may lead to improved confidence in the justice system.</td>
</tr>
<tr>
<td><strong>Information request or orders – Option 1</strong></td>
<td>THIS IS THE RECOMMENDED OPTION</td>
</tr>
<tr>
<td><strong>Private Sector</strong> – None, though the benefits of more effective enforcement would not be gained.</td>
<td><strong>Private Sector</strong> – None.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – None.</td>
<td><strong>Private Sector</strong> – None.</td>
</tr>
<tr>
<td><strong>Information request or orders – introduce - Option 2</strong></td>
<td><strong>Private Sector</strong> – Not possible to quantify the financial benefits for creditors, though the process should lead to more judgment debts recovered.</td>
</tr>
<tr>
<td><strong>Private Sector</strong> – None, implementation costs for any extension to credit reference agencies or financial institutions would be met by DCA and recovered by fees from service users.</td>
<td><strong>Public Sector</strong> – None.</td>
</tr>
<tr>
<td><strong>Public Sector</strong> – estimated set-up costs of £1.5m, with additional running costs which would be absorbed within existing allocations and met by fees charged from service user of £1.5-2m.</td>
<td>THIS IS THE RECOMMENDED OPTION</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total benefit per annum: economic, environmental, social and administrative</th>
<th>Total cost per annum: economic, environmental, social policy and administrative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Charging Orders</strong></td>
<td><strong>Erosion of confidence in the justice system</strong></td>
</tr>
<tr>
<td>Option 1 – To Do Nothing</td>
<td>Creditors would continue to apply for charging orders as at present</td>
</tr>
<tr>
<td><strong>Option 2 – Introduce change</strong></td>
<td>We do not envisage any new costs to be incurred by creditors since the court administered process would still continue to be available, though</td>
</tr>
<tr>
<td>By securing the debt, creditors and debtors negotiate more appropriate instalment payments</td>
<td><strong>Erosion of confidence in the justice system</strong></td>
</tr>
<tr>
<td>Attachment of Earnings Orders – Finding the debtor’s current employer</td>
<td>Option 1 – To Do Nothing</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Option 2 – Introduce change</td>
<td>Private sector – improved judgment debt recovery Public sector – improved confidence in the justice system</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Attachment of Earnings Orders – deductions at fixed rates</th>
<th>Option 1 – To Do Nothing</th>
<th>No additional implementation costs as existing process would continue</th>
<th>Those employers with automated payroll systems would not be required to make changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 2 – Introduce change</td>
<td>Private sector – not quantifiable: should result in improved effectiveness with fixed tables Public sector – none</td>
<td>Public sector costs should be limited to running new software and training – our initial estimate is a maximum of £0.25 million.</td>
<td>THIS IS THE RECOMMENDED OPTION</td>
</tr>
</tbody>
</table>

<p>| Information requests or orders | Option 1 – To | No additional regulatory | Creditors continue to suffer |</p>
<table>
<thead>
<tr>
<th>Total benefit per annum: economic, environmental, social and administrative</th>
<th>Total cost per annum: economic, environmental, social policy and administrative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Do Nothing</strong></td>
<td>burdens or re-training costs</td>
</tr>
<tr>
<td><strong>Option 2 – Introduce change</strong></td>
<td>Net financial benefit to those creditors who obtain new information from the use of the new process which leads to successful enforcement</td>
</tr>
</tbody>
</table>
IV. Administration Orders, Enforcement Restriction Orders and Non-Court Based Debt Management Schemes – full RIA

1. Title of proposal

4.1 Administration Orders, Enforcement Restriction Orders and Non-Court Based Debt Management Schemes.

2. Purpose and intended effect of measure

(i) The objective:

4.2 Proposals in the Bill are intended in part to support the Government’s Action Plan for Tackling Over-indebtedness published in July 2004 and its policies on tackling social exclusion. The measures in the Bill covered by this RIA are intended to provide more and better-targeted options for assisting those with multiple debts and the over-indebted in England and Wales thus promoting social inclusion, while recognising the economic needs of creditors to recover their debts.

(ii) The background

4.3 Meeting credit commitments does not present problems for the vast majority of people but repayments are often a problem for those with a large amount of debt or a number of creditors. Research has shown that this is particularly true for those who are socially excluded and living on a low income. It is people in this group that these measures are intended to assist.

4.4 The Administration Order (AO) scheme, a re-payment plan originally designed to help multiple debtors avoid imprisonment, is the only court-based scheme that assists those that are over-indebted and those in multiple debt. The scheme helps to organise their affairs and repay, at least in part, their creditors without the stress of and additional costs incurred when enforcement action is taken.

4.5 The scheme is currently restricted to those with debts totalling no more than £5,000, one of which must be a judgment debt, but has no statutory provision to consider income or assets. Once an order is made creditors cannot enforce their debt without the court’s permission, providing debtors with respite from the stress of enforcement action whilst paying their debts.

4.6 Other procedures governed by the Insolvency Act 1986 can provide the debtor with relief from enforcement. Bankruptcy proceedings free the debtor from his debts and ensure that such assets as there are (including any surplus income), are shared out fairly amongst the creditors. Individual Voluntary Arrangements provide a way for the debtor to come to a binding agreement with his creditors to pay some or all of his debt, using either income, assets or a combination of both, over a specified time period. The arrangement is supervised by an authorised insolvency practitioner (or in some cases following bankruptcy, by
the official receiver). Unlike the AO scheme, there is no requirement for a judgment debt and no limit on the amount of debt that may be included under either scheme.

4.7 Independent research commissioned by DCA helped identify three types of debtors: (i) ‘could pays’, (ii) ‘can’t pays’, and (iii) ‘won’t pays’. These groups are separated by two underlying aspects (1) those with the ability to pay and (2) those with the commitment to pay. These are discussed below:

- ‘Could pay’ debtors are those with some income who are able to repay their debts over time but may require help to negotiate repayments with their creditors. This group includes those who may, due to a sudden change in circumstances, be unable to meet all of their repayment commitments in the short-term. However, it also includes those with debt problems caused by their own disorganisation or failure to face up to their problems.

- ‘Can’t pays’ are identified as those debtors with every intention of paying their debts but are unable to do so, as they have no or very low disposable income.

- ‘Won’t pays’ are those debtors who have a genuine dispute or who have the means to repay their debts but choose not too.

4.8 The current AO scheme does not differentiate between these groups resulting in the inclusion of a large number of debtors who fall into the “can’t pay” group, for whom repayment schemes are generally recognised to be inappropriate. This makes the scheme largely ineffective in meeting its objectives of providing help to many of those in multiple debt and securing reasonable returns for creditors leading to increased costs of operation of the scheme and creditor dissatisfaction.

(iii) Rationale for government intervention

4.9 The Government’s Tackling Over-Indebtedness Annual Report for 2005 found that a minority of the population is experiencing difficulty due to problem debt. For example, 4% of the population above the age of 18 are in arrears for more than 3 months on either consumer credit or utility bills, and 5% of borrowers consider the repayments to be a “heavy burden”.

4.10 Over recent years debt has changed considerably. Consumer borrowing has drastically increased. For example, 25.7 million credit cards were issued in 1994 rising to 55 million in 2001. In England and Wales 5.1 Million people have debts that require over 40% of their income to service.

4.11 Costs to the credit industry of pursuing and recovering bad debts are high. Bank of England figures suggest that UK resident banks wrote off £1,570 million of credit lending to individuals (in 2003) and the banking and credit card

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4 Can’t Pay or Won’t Pay? A review of creditor and debtor approaches to the non-payment of bills Nicola Dominy and Elaine Kempson - Personal Finance Research Centre February 2002
5 Over-indebtedness in Britain: A report to the Department of Trade and Industry. Personal Finance Research Centre, November 2002 (www.dti.gov.uk/ccp/topics/overindebtedness)
industry is estimated to spend £3.4 billion every year chasing, recovering and writing off debts.

4.12 The lack or ineffectiveness of state sponsored/supported remedies for the minority who are in arrears or finding payment to be “a heavy burden” is a cause for concern. This does not help the problems of social exclusion, promote inclusion or help to reduce the burdens and cost to business of bad debt.

4.13 There are costs to the debtor in relation to both bankruptcy and Individual Voluntary Arrangements (IVAs). In order to obtain a bankruptcy order, the debtor must pay a deposit of £325 and court fees of £150 although in some circumstances the fee can be remitted in part or in full.

4.14 There are also fees to be paid to the supervisor of an individual voluntary arrangement. These vary depending on the size of the debtor’s contribution to the arrangement. These procedures may therefore be inappropiate for those people with relatively low levels of debt who do not have the financial means to access them.

4.15 AOs are not widely used, almost certainly because the total amount of debt that can be included in an order is limited to £5,000. The number of orders granted has slowly decreased over the years from 8,720 in 1998 to 3,894 by 2003. In comparison the latest figures show that bankruptcy orders continue to rise. In 2002 the total number of bankruptcy petitions (debtor and creditor) issued was 22,682, an increase of 7% from 2001.

4.16 We believe that new or revised court-based schemes, not reliant on creditor goodwill, are needed to address the issues faced by people who fall into the “could pay” group and whose total unsecured debts are less than £15,000.

3. Consultation

4.17 The consultation paper ‘A Choice of Paths’ was published on 20 July 2004. It invited comments on options to help deal with over-indebtedness and in particular people with multiple debt. The consultation period closed on 20 October 2004. 91 responses were received. The majority of the responses came from the consumer credit industry and debt advice sectors. Responses were also received from utility companies, local councils, various trade associations, the Association for District Judges and the Law Reform Committee.

4.18 Responses received were broadly supportive of the proposals to reform court-based AO provisions and the introduction of an Enforcement Restriction Order and have been used to further develop the options discussed later in this paper.

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7 Action on Debt – Social Exclusion Unit of the Office of the Deputy Prime Minister – Business and Debt. Taken from Evaluation of Money Advice Debtline pilot (Deloitte and Touche 2003) p 44.
4. Options

4.19 Over the course of this review various options, including the implementation of Section 13 of the Courts and Legal Services Act 1990 as it stood, have been considered to provide assistance to the ‘can’t pay’ and ‘could pay’ groups identified earlier in this paper.

4.20 We believe that the proposals in the Bill would provide the assistance debtors need because they specify the type of debt that can be included. They also include the practical elements of Section 13 and allow assistance to be targeted more specifically to the different groups. The proposals also take account of creditors’ desire to recover their debt. The options for assisting the “can’t and could pay” groups are discussed below.

Option 1 - Do Nothing

4.21 The AO scheme would remain the same and the current conditions of entry would remain. This would continue to fail to differentiate between different types of debtors treating them all the same regardless of whether they can afford to pay their debts. As such, ‘can’t pay’ debtors would continue to be included in the scheme hence detracting from its overall performance and attracting criticism from creditors. Additionally, it is generally agreed that in the current climate the £5,000 debt limit is artificially low and restricts entry to the scheme for a significant number of debtors leaving their only options as IVAs or bankruptcy.

THE ‘CAN’T PAY’ GROUP

Option 2– Court- Based Debt Relief

4.22 The introduction of a court-based debt relief order that would release debtors from their debts (i.e. they would be written off) after 12 months unless a creditor had evidence of non-declared assets. In these circumstances the order would be revoked and creditors would be free to recover their debts in any way that they wished. A total debt limit of £10 - £15,000, more in line with current indebtedness profiles, would be set and debtors would be charged a fee to enter this scheme. Unlike bankruptcy, a deposit would not be needed as there would not be an investigation of their means or conduct and no realisation of assets. The normal rules covering remission of fees would also apply in hardship cases or where the debtor is in receipt of benefits.

Option 3– Debt Relief Order (DRO)

4.23 This option would be operated by the Insolvency Service (INSS) and utilise existing experience in this area. (See the separate RIA below produced by the INSS.) The non-court based debt relief order would be available to individuals who meet certain criteria as regards levels of assets, income and debts. The official receiver would make an order administratively that would provide relief from enforcement of the debts which would then be discharged after one year. The debtor would need to pay an up front fee to cover the costs of administration but it would be significantly less than the deposit required for...
bankruptcy (currently £325). This option would offer support for those ‘can’t pays’ who cannot afford the bankruptcy deposit and who often inappropriately enter the AO scheme despite being unable to maintain regular payments to their creditors.

**THE ‘COULD PAY’ GROUP**

**Option 4– Enforcement Restriction**

4.24 Research has shown the main benefit of the current AO scheme is respite from enforcement. This option would put this benefit on a more formal footing.

4.25 The power to introduce an ERO was included in Section 13 of the Courts and Legal Service Act 1990 but this has never been enacted. In the case of the ERO potential problems included no definition of debts that could be included, no time limits and possibly most damaging, no entry criteria. All of these issues have been addressed in these proposals.

4.26 The revised ERO scheme would target those in the ‘could pay’ group who have a temporary change in their circumstances and may be on the verge of becoming ‘can’t pays’ if orders are enforced. This group would benefit from the same temporary enforcement relief that is available via IVAs, where creditors are willing to enter into them, or time orders but these need to be done on an individual basis. The aim of the ERO is to formalise this process and to make the order all encompassing.

4.27 Under the proposed scheme the court would have to be satisfied that the debtor had experienced a sudden unforeseeable short-term deterioration in his financial circumstances and that there were realistic prospects for improvement within a relatively short period.

4.28 An order could be made for any period up to the maximum (12 months). Where the term of the order is less than the maximum it would be open for the debtor to apply for an extension (up to the maximum). However, there would need to be evidence that the conditions relied on in the original application were continuing.

4.29 An ERO would include all consumer debts (including those debts not yet in the court system). Debtors with debts incurred in the course of a business or with mixed business and consumer debt would not be eligible for the scheme because to date it has been the Government’s policy to treat the issues of consumer and business indebtedness as separate issues. This is due to the availability of other assistance for dealing with business debt and the need to keep the costs business borrowing down.

4.30 Creditors would have the right to object to an order being made if they felt that the reasons put forward by the debtor were unrealistic or that they were being disadvantaged but would be restricted from taking any action to recover their debt once the order was made. They would however, be able to apply for the order to be revoked if:

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8 For more information see paragraph 5.75 The Consumer Credit Market in the 21st Century -White Paper December 2003
• there was non-compliance with the order;
• the debtor gave false information;
• there was no realistic prospect of improvement in the debtor’s circumstances; or
• it would for any other reason not be fair and equitable for the order to remain in force.

4.31 During the life of an order the debtor would have a duty to notify the court of the disposal of assets in excess of a set value. Both the assets and the value would be defined in regulations.

4.32 If an ERO were successful the debtor would be in a position to start repaying their debts in line with their original commitments at its conclusion. However, if their circumstances did not change significantly it would be up to them to consider other ways of paying their debts or seeking other relief whilst creditors would be free to take appropriate enforcement.

Option 5 – Reform the court based administration order scheme

4.33 As discussed earlier in this paper, the AO scheme does not meet the needs of the ‘can’t pay’ group and, because of the current total debt threshold (£5,000), is of little assistance to the majority in the “could pay” group.

4.34 The debt ceiling is unrealistic in the current climate and means that generally these orders cater for those with very little, if any, disposable income who have a number of small value debts. Due to these factors repayment rates set by the court are normally quite low (the current average is around £29 per month). Orders are therefore currently unsuccessful in delivering reasonable repayment rates and attract criticism from creditors.

4.35 We believe that the existing scheme needs to be revised and replaced with a more effective service addressing all the existing problems. We believe that restricting access to ‘could pay’ debtors who have only consumer debts, raising the threshold of debt that could be included in an order, and fixing a maximum term would provide a viable alternative to bankruptcy/IVAs for the long-term assistance of a debtor group who are not currently adequately catered for.

4.36 The proposals for updating information about a debtor’s means would ensure the highest possible returns for creditors whilst ensuring that repayment terms reflected the maximum that a debtor could affordably pay. This would also reduce creditors’ costs in monitoring and enforcing judgments.

4.37 Automatic revocation on non-compliance would make it clear to debtors that they must commit to the scheme and ensure that creditors are not delayed in taking further action when necessary. Making composition available only at the end of an order, subject to compliance, would provide a visible incentive for the debtor to maintain repayments. It would also save the time and cost of arranging review hearings.
Option 6 – Non-court based debt management schemes

4.38 A number of organisations already operate long-term debt management plans. A further option would therefore be to stop court involvement in this area and rely solely on these outside schemes. We believe that because creditor participation is voluntary this approach would not meet the objective of providing assistance for multiple debtors and the over-indebted and would therefore not promote social inclusion.

4.39 The results of consultation showed that the advice sector generally were unhappy with the suggestion that there would be no court involvement while creditors were not prepared to accept any form of compulsion to participate in schemes or to have composition of their debts without the involvement of the court.

Option 7 – Debt management schemes delivered by approved operators

4.40 A further option, in view of the comments received about non-court based schemes, would be for the Lord Chancellor to approve/licence operators of schemes that would then be able to offer compulsion to participate and composition. Schemes currently operating without these conditions would be allowed to continue to do so.

4.41 Under this proposal there would also be the ability for disputes to be resolved by the court, thus alleviating a lot of the concerns expressed by both the advice and business sectors.

5. Costs and Benefits

(i) Sectors and groups affected

4.42 The banking and credit sector, businesses offering credit terms and service providers, including utilities, would be affected since any of these businesses can incur bad debts. However, the proposed improvements to the AO scheme should result in creditors receiving a better return than under the current scheme. Additionally the proposed measures may help to encourage more responsible lending.

4.43 The ERO would help those in temporary difficulties by providing time, free from the stress of enforcement, to recover sufficiently to meet their original commitments. The revised AO scheme would help those seeking to rehabilitate themselves by allowing a higher amount of debt to be included in the order and restricting enforcement whilst payments are being maintained.

4.44 The 2002 survey of AOs and bankruptcy orders undertaken by DCA revealed the following characteristics of those using the current AO scheme and those involved in bankruptcy:
<table>
<thead>
<tr>
<th>CHARACTERISTICS</th>
<th>ADMINISTRATION ORDER</th>
<th>BANKRUPTCY ORDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>35%</td>
<td>68%</td>
</tr>
<tr>
<td>Female</td>
<td>65%</td>
<td>32%</td>
</tr>
<tr>
<td>Employment Status:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployed</td>
<td>71%</td>
<td>38%</td>
</tr>
<tr>
<td>Employed</td>
<td>29%</td>
<td>53%</td>
</tr>
<tr>
<td>Not Known</td>
<td>9%</td>
<td>9%</td>
</tr>
<tr>
<td>Average debt:</td>
<td>£3,000</td>
<td>£37,028 (unsecured)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£14,165 (secured)</td>
</tr>
<tr>
<td>Most common types of debt</td>
<td>1) Bank</td>
<td>1) Bank</td>
</tr>
<tr>
<td></td>
<td>2) Finance company</td>
<td>2) Credit card</td>
</tr>
<tr>
<td></td>
<td>3) Catalogue</td>
<td>3) Finance company</td>
</tr>
<tr>
<td></td>
<td>4) Retail/store card</td>
<td>4) Retail/store card</td>
</tr>
<tr>
<td></td>
<td>5) Utility</td>
<td>5) Utility</td>
</tr>
</tbody>
</table>

Social Impacts

4.45 We currently have no data linking any court-based debt recovery action to specific social groups or information about ethnicity. In the majority of cases debtors do not engage even after court action has been started and simply allow judgment to be obtained by default.

4.46 However, we intend to include questions about ethnicity on a revised AO application form and in the ERO application process to allow this to be monitored in the future. The requirement to provide accurate financial data in a generally accepted format (similar to the Common Financial Statement used by advice agencies and large parts of the credit industry) would assist in providing information about social groups affected.

Other Sectors

4.47 The proposals would also impact on the advice sector. There would be a limited training need to ensure that advisors were aware of the new procedures and had the knowledge to advise on a particular course. Additionally the need for debtors to produce statements of means on an ongoing basis would be likely to result in more people seeking advice. However, the work involved would not differ significantly from that involved currently when advising debtors e.g. about IVAs or negotiating voluntary moratoria. In addition the long-term nature of the proposals could reduce workload in total with reduced need to advise about ongoing problems that have arisen in individual cases.

4.48 There could be minor savings for charities. A survey undertaken by the Insolvency Service indicates that in March 2004, 2.6% of those presenting their own petition for bankruptcy obtained the deposit from a charity. On 2004 figures this equates to about £114,000 (based on the deposit being £250 at the time). The deposit went up to £310 in April 2004 and then to £325 in April
2006. Even assuming that all of those whose total debts were under £15,000 applied for AOs (26%) rather than a bankruptcy order and all received the deposit from a charity this would only produce a saving of £29,640.

4.49 There might also be an impact on the NHS as there are links between the consequences of debt-related stress and illness leading to lost working days and the need for health care provision. Although these proposals are aimed at a small portion of the population who have debt problems, they may go some way to alleviating these problems for some. However, detailed figures are not available.

(ii) Benefits

4.50 There are various social and economic impacts of these proposals. The social impacts are intended to help low-income groups, and the financial rehabilitation of debtors. The impacts to the economy are to address the issue of debt and responsible lending.

4.51 There are no environmental impacts of these proposals. The proposals could be a major boost to utility companies, particularly water companies, as they do not have the option to discontinue domestic supplies. Ofwat data suggests that for the year 2003/04 water companies wrote off £93 million and spent a further £58 million on outstanding revenue collection.

4.52 The proposals would also make it easier for creditors to identify those “playing the system”, the “won’t pays”, and better target their resources to recover these debts.

Option 1 - Do Nothing

4.53 Although it would be a cost neutral option for the State, this option would not deliver any perceivable benefits to either debtors or creditors. Without any changes to the AO scheme the cost of the scheme and the profile of the existing client group are unlikely to change. Low-income debtors would continue to be disproportionately affected as there would be no effective remedy for ‘can’t pay’ debtors and those in multiple debt.

THE ‘CAN’T PAY’ GROUP

Option 2 – Court- Based Debt Relief

4.54 This option would provide debt relief targeted specifically at those debtors who are often the most vulnerable and socially excluded, providing them with the chance for financial rehabilitation. This would be achieved by releasing them from their debts giving them a chance for a “fresh start” albeit with the possibility that they would have difficulty obtaining credit due to their history.

4.55 It would include those debtors who cannot afford to enter bankruptcy of their own choice because of the £325 petition deposit and targets service provision to the ‘can’t pay’ client group, the largest group in the current AO.
4.56 This option may reduce the number of people entering bankruptcy and would potentially be open to abuse as Her Majesty’s Courts Service (HMCS) would not have the necessary expertise to investigate alleged misconduct, so creditors could experience more debts being written off.

4.57 There may be a negative impact on the credit industry initially as more debts would be written off but this should have positive benefits in encouraging more responsible lending in the longer-term.

4.58 A small fee would be payable to cover administration costs. This should be manageable for debtors but the normal rules on fee exemption and remission would apply in any event. There would however be significant costs to the State through the HMCS start up costs for introducing a new scheme as well as associated IT and training costs.

4.59 Of the 75 replies to the consultation, 75% agreed that repayment schemes are not appropriate for the “can’t pay” group and that a form of debt relief was needed. It was also clear however that there was general agreement that the administration of a debt relief scheme was not an appropriate role for the court.

4.60 Due to the costs involved and the fact that the INSS is seeking to use its expertise to introduce a Debt Relief Order scheme (the subject of a separate RIA) this option has been rejected.

**Option 3 – Non-Court Based Debt Relief Order (DRO) Scheme**

4.61 This option has all of the benefits of the court-based scheme but there would be lower start up costs for this option as the INSS would not need extensive staff training as the scheme would draw on existing INSS expertise. The INSS has consulted on this proposal and is seeking to take it forward in the Tribunals, Courts and Enforcement Bill. The details are covered by the separate RIA specific to the proposal.

**THE ‘COULD PAY’ GROUP**

**Option 4 – Enforcement Restriction Order**

4.62 This option could impact particularly on small businesses and individual creditors as it looks to provide time for a debtor’s circumstances to change. However the scheme’s aims are to enable all commitments to be met and safeguards all non-secured creditors from the actions of other, more aggressive creditors which would benefit all.

4.63 It would provide those in the ‘could pay’ group, who encounter short-term difficulties, with formal enforcement relief. It would allow debtors a stay of proceedings and provide an opportunity for them to meet their commitments when their circumstances change, improving creditor recovery rates although over a longer period than creditors may have envisaged.

4.64 If the anticipated change of circumstances does not occur during the life of the order creditors would then be free to enforce their debt using existing
procedures. The effect being that creditors lose time but their chances of recovering their debt increases.

4.65 This option fits in strategically with the primary role of the courts as a dispute resolution forum of last resort and allows ‘could pay’ debtors short-term respite from enforcement, which may otherwise tip them into the ‘can’t pay’ group.

4.66 Creditors’ concerns about disposal of assets would be addressed by making it necessary to include assets in the Statement of Means and by placing a duty on the debtor to notify the court of changes to circumstances or disposal of assets above an amount to be defined in regulations. Where this duty is not complied with the court would have the power to revoke the order and/or fine or imprison the debtor.

Option 5 – Reform the court based administration order scheme

4.67 This option would be beneficial in reducing the cost burden of the current AO scheme on other court users and the taxpayer. It would also provide additional options and support for those with debts in excess of £5,000 and therefore help to alleviate the problems of social exclusion.

4.68 It would refine and improve the current scheme. By increasing the current debt ceiling it would provide assistance to those in the ‘can pay’ group whose debts are over £5,000 and for whom options are currently limited to IVAs or bankruptcy.

4.69 The proposals would benefit debtors by ensuring that the order only exists for a relatively short fixed term and that only those who are seeking to rehabilitate themselves and have the means to do so would be included in the scheme.

4.70 The proposed system would however place a new onus on the debtor to “buy in” to the scheme by ensuring that composition could only occur at the end of the order’s life and upon the debtor’s compliance with its terms throughout. This would be a new incentive. Debtors would also be expected to supply more comprehensive information about their financial position than they do at present and to update this information regularly, probably half-yearly, to ensure that the order remains as appropriate, for both debtors and creditors, as possible throughout its life.

4.71 Debtors would also face the prospect of the order being dismissed if two payments were missed without good reason, or if they fail to comply with certain other aspects of the order. In these circumstances they would be unable to apply for a further order within 12 months leaving creditors free to recover/enforce their debt. This is a further incentive to comply.

4.72 This would also assist in keeping the operating costs of the scheme and creditors’ costs at as low a level as possible. The current need to arrange review hearings, where creditors’ representations are considered, before an order is revoked are both time consuming and costly.

4.73 Creditors would also benefit in that they would be more likely to see a greater return against their debt than they do at present due to ensuring that only the ‘can pay’ group are included and from the incentives for debtor compliance that
are built into the scheme. They would have more comprehensive financial information about the debtor when an application is made, allowing them to consider their position in regard to the order more fully and receive regular updates. They would not need to monitor the orders performance or attend as many hearings as orders would automatically cease in certain circumstances on non-compliance or be varied to take account of changing circumstances.

4.74 This proposal could also lead to a reduction in the number of bankruptcies. Indications are that up to 26% of debtors bankruptcy petitions involve debts totalling less than £15,000.

Option 6 – Non-court based debt management schemes

4.75 Non-court based schemes are currently being operated by both the advice and private sectors but rely on creditor agreement. The costs of the schemes are met by either creditors or debtors depending on the scheme. We accept that there is a place for these “independent” schemes, perhaps to provide assistance for those who cannot enter court-based schemes due to the level of debt being too high or there being insufficient surplus income but still have the desire to repay their debts.

4.76 The lack of support from either the advice or business sectors during consultation has led to the conclusion that court involvement in this area should not be discontinued in favour of simply strengthening non-court based schemes to include compulsion and composition.

Option 7 – Debt management schemes delivered by approved operators

4.77 A further option, in view of the comments received about non-court based schemes, would be the introduction of a procedure where operators of schemes, offering compulsion to participate and composition, would be approved/authorised by the Lord Chancellor.

4.78 Under this proposal there would also be the ability for disputes to be resolved by the court, thus alleviating a lot of the concerns expressed by both the advice and business sectors. We believe that there may be some merit to this approach but would need to consider it in more detail to establish a need and to detail the schemes operation. Consequently, the Bill includes an enabling power to allow the Lord Chancellor to instigate such schemes in the future if they prove both necessary and appropriate. However, a further round of public consultation would be undertaken and a RIA specific to the proposals would be produced before the Lord Chancellor would exercise this power.

(iii) Costs

General

4.79 Overall the costs of the proposals, as opposed to the effect of having debts written off generally or as a result of bankruptcy or under the Debt Relief Order (DRO) scheme, are likely to be small to businesses that undertake thorough credit referencing and encourage early engagement between themselves and debtors.
4.80 Costs would be higher for those businesses that do not routinely engage with debtors or check credit ratings. This would be particularly true of small businesses and individual creditors who are unlikely to have the time, experience or expertise to either engage debtors or undertake credit referencing. Improving access to information held on the Register of Judgments, Orders and Fines to assist in these circumstances is being taken forward by HMCS under a different project.

4.81 However, all businesses are likely to benefit from the introduction of these proposals as they are designed to assist and encourage the “buy in” of those debtors who are seeking to rehabilitate themselves. This would increase returns to creditors, perhaps in the medium to long rather than the short-term, and reduce their costs by ensuring better compliance and therefore less abortive enforcement.

Option 1 - Do Nothing

4.82 This option would not increase costs to any of the sectors involved as it retains the current system.

THE ‘CANT’ PAY’ GROUP

Option 2 – Court-Based Debt Relief

4.83 As mentioned in the benefits section of this assessment, this option has been rejected because of the costs involved to HMCS in training and IT in favour of the INSS proposal to introduce and administer a non-court based DRO scheme (see below).

Option 3 – Non- Court Based Debt Relief Order Scheme

4.84 This option is being taken forward by the INSS and is the subject of a separate RIA.

THE ‘COULD PAY’ GROUP

Option 4 – Enforcement Restriction Order

4.85 We are unable to estimate the numbers that would use this new form of relief and assistance because of the strict entry criteria and there being no upper limit on the level of debt. It is not possible to forecast how many people in debt:

- would experience a major detrimental change to their circumstances in any year;
- would meet the need to be able to show realistic prospects of improvement within a relatively short period; or
- would choose to seek this assistance.

4.86 However, due to the deliberately stringent entry criteria, designed to stop misuse of the scheme, recognising the other options available to those who encounter problems over a longer period and the fact that anyone with a
business debt is to be excluded, we anticipate a very small amount of applications.

4.87 There would be some limited start up costs for HMCS for the introduction of this new form of relief and assistance but these would be met from within existing provision. Applications for EROs would attract a fee set at a level to ensure that ongoing costs of the scheme would be met.

4.88 We estimate the cost of the introduction of the scheme to be similar to the average unit cost of dealing with an application for an AO but we anticipate that hearings would take longer because of the potentially higher sums involved and the short-term nature of orders.

4.89 However, hearings will only be arranged where they are specifically requested by creditors wishing to object to an order after viewing and considering the evidence provided by the debtor, or debtors seeking to vary the terms of an order.

Set up costs

Training

4.90 HMCS would need to meet the costs of developing and delivering training. The costs for developing training, the only new cost, for the ERO and the revised AO scheme, are assessed at £2,250. These would be met from existing provision.

4.91 Staff training would be delivered by expanding current AO training course and would therefore not attract further displacement costs for delegates. Advice workers already routinely negotiate with creditors to seek agreement on voluntary moratoria on enforcement. Therefore, we do not expect that there would be any significant additional training requirements for that sector.

Information technology

4.92 Current IT systems would need to be updated to deal with this new function. From experience of other similar changes to systems we anticipate a cost of around £150,000 which could be met from existing provision.

Publicity/Information

4.93 The scheme would need to be publicised and explanatory leaflets would need to be produced. We anticipate that the costs of printing, translation and distribution of 100,000 leaflets to be in the region of £40,000. Again these costs would be met from existing provision.

Ongoing administration costs

4.94 The processes and procedures for the ERO would be identical to those for the current AO scheme except that there would be no requirement to deal with miscellaneous applications from the debtor or any need to deal with payments/dividends. We have therefore used the AO Process Model to assess staff costs, including overheads at £40.70 per application.
4.95 However, this process differs from that of the AO when considering judicial involvement, in that an application would immediately be referred to a Judge to consider. Although this takes place without the parties present, it is fair to assume that a reasonable amount of time would be required because of the amount of information that needs to be considered.

4.96 As mentioned above, hearings will only be arranged on request but it can be assumed that in view of the potentially higher sums involved and the information available, these are likely to attract more attention from creditors with more either attending or giving their views in writing, leading to longer hearings than those to consider AO applications. The table below considers these factors using a standard cost of £1.94 per minute (inclusive of overheads) for hearings, derived from the AO process model.

<table>
<thead>
<tr>
<th>Cost per Minute</th>
<th>10</th>
<th>30</th>
<th>45</th>
<th>60</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Hearing</td>
<td>1.94</td>
<td>19.40</td>
<td>38.80</td>
<td>58.20</td>
</tr>
</tbody>
</table>

4.97 Using the worst case scenario this shows that the total cost for judicial involvement could be as high as £ 77.60. Adding staff costs of £40.70 indicates that the fee for dealing with these applications needs to be around £ 118.30 but this would be reviewed as a part of the ongoing fee review process and post implementation evaluation exercise.

4.98 As mentioned earlier, it is not possible to predict accurately the numbers who would seek to use this scheme, or the numbers of applications that would result in hearings, but the following table gives an indication of total costs and fee income that would be received using a range of numbers for applications.

<table>
<thead>
<tr>
<th>Application Numbers</th>
<th>500</th>
<th>1,000</th>
<th>1,500</th>
<th>2,000</th>
<th>2,500</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Staff Cost</td>
<td>20,350</td>
<td>40,700</td>
<td>61,500</td>
<td>81,400</td>
<td>101,750</td>
</tr>
<tr>
<td>Judicial Cost</td>
<td>38,800</td>
<td>77,600</td>
<td>116,400</td>
<td>155,200</td>
<td>194,000</td>
</tr>
<tr>
<td>Total</td>
<td>59,150</td>
<td>118,300</td>
<td>177,450</td>
<td>236,600</td>
<td>295,750</td>
</tr>
<tr>
<td>Fee Income</td>
<td>60,000</td>
<td>120,000</td>
<td>180,000</td>
<td>240,000</td>
<td>300,000</td>
</tr>
<tr>
<td>Costs per Case</td>
<td>118.30</td>
<td>118.30</td>
<td>118.30</td>
<td>118.30</td>
<td>118.30</td>
</tr>
</tbody>
</table>

Costs to Creditors
4.99 Again it is only possible to give indicative costs because of uncertainty about the number of applications that would be received, the level and pay rates of staff dealing with them and whether creditors would prefer to give written views or to attend hearings. The fact that not all applications would in effect be “new business” (i.e. some may seek to take this option rather than pursue other forms of relief) further clouds the picture.
4.100 We do not envisage that dealing with these applications would require additional training for staff within the credit industry nor take a great deal of time as they are well versed in scrutinising Statements of Means.

4.101 There could be an increased cost to business for considering proposals and/or attendance at hearings but this might be offset by reductions in the number of general applications to the court, bankruptcies and IVA proposals needing to be considered.

4.102 For these purposes we have assumed a maximum hourly staff cost rate, including overheads, of £50. It is also possible that some organisations would want the views of their legal team in some cases. Assuming this is the case we would anticipate costs of around £100 per hour. There would also be advocates costs for either attending hearings, which we assess to be £250 per hour inclusive of expenses, or in putting their views in writing which we assess to be £100 inclusive of overheads.

4.103 Addressing the “worst case scenario”, we assume an average of one hour per application of staff time plus 30 minutes of legal oversight, a total of £100 based on the figures above. A further £150 would need to be added per case if representation is to be made in writing making a total of £250 per case.

4.104 Where there is attendance at a hearing we believe that an average of 4 hours is warranted to cover travelling and delays, a total of £1,000 giving a total for dealing with a case in this way of £1,100 per case.

4.105 The table below details these assumptions against possible workload based on a range of between 10 and 50 applications per week (nationally) or roughly between 2 and 10 applications per annum per court.

<table>
<thead>
<tr>
<th>Attendance in Writing</th>
<th>500</th>
<th>1,000</th>
<th>1,500</th>
<th>2,000</th>
<th>2,500</th>
</tr>
</thead>
<tbody>
<tr>
<td>25%</td>
<td>£31,250</td>
<td>£62,500</td>
<td>£93,750</td>
<td>£125,000</td>
<td>£156,250</td>
</tr>
<tr>
<td>50%</td>
<td>£62,500</td>
<td>£125,000</td>
<td>£187,500</td>
<td>£250,000</td>
<td>£312,500</td>
</tr>
<tr>
<td>75%</td>
<td>£93,750</td>
<td>£187,500</td>
<td>£281,250</td>
<td>£375,000</td>
<td>£468,750</td>
</tr>
<tr>
<td>100%</td>
<td>£125,000</td>
<td>£250,000</td>
<td>£375,000</td>
<td>£500,000</td>
<td>£625,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Attendance By Advocate</th>
<th>25%</th>
<th>50%</th>
<th>75%</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>25%</td>
<td>£137,500</td>
<td>£275,000</td>
<td>£412,500</td>
<td>£550,000</td>
</tr>
<tr>
<td>50%</td>
<td>£275,000</td>
<td>£550,000</td>
<td>£825,000</td>
<td>£1,100,000</td>
</tr>
<tr>
<td>75%</td>
<td>£412,500</td>
<td>£825,000</td>
<td>£1,237,500</td>
<td>£1,650,000</td>
</tr>
<tr>
<td>100%</td>
<td>£550,000</td>
<td>£1,100,000</td>
<td>£1,650,000</td>
<td>£2,200,000</td>
</tr>
</tbody>
</table>

4.106 These costs can only be indicative and must, however, be balanced against current creditor expenditure in trying to recover debt (£3.4 billion), the amount of debt written off, the potential raised returns and the fact that creditors already incur at least some of these costs in negotiating with debtors and or advisors about proposed voluntary moratoria.
Option 5 – Reform the court based administration order scheme

4.107 Throughout this section the current figure for the number of orders made (3,894) has been rounded up to 4,000 for ease. A sample of 550 AOs in 2001 showed that 71% of debtors were recorded as unemployed and receiving state benefits. Lack of disposable income within the 71% unemployed included in the AO scheme means that the majority probably should not be included in the scheme; they are likely to fall into the “can’t pay” group for whom repayment schemes are inappropriate.

4.108 Even assuming that only 50% of those currently applying for orders would be ineligible because of lack of surplus income would see the current figure reduced to 2,000 orders per year. The latest figures show that 18,000 debtors issued petitions for bankruptcy but, as mentioned earlier, as many as 26% of these petitions may have been for less than £15,000, the current proposed limit for this scheme. Assuming that 25% of these meet the other requirements to enter this scheme, and that these debtors choose to do so, there would be an increase of 4,500 orders.

4.109 Additionally we could expect a rise in the number of orders generally due to the increased limit of debt that can be included. This would rise from £5,000 to £15,000, an increase of 300%. Applying this to the current figures for those eligible to enter the scheme would see the number of orders rise to 6,000. A total of 10,500 when all those who would no longer need to take the bankruptcy option are included. This figure has been used as the baseline for the ranges used within this section.

Set up costs

Training
4.110 There would be no additional training costs for HMCS other than to revise the current training brief. The costs for this (and for producing a brief to cover the ERO) are anticipated to be £2,250 and would be met from existing provision.

4.111 As with EROs, we do not anticipate any significant additional training costs in view of the experience of debt advisors generally in negotiating with creditors and preparing documents for use by the court.

Information technology
4.112 There are no additional IT costs. Current systems would continue to operate without the need for them to be updated.

Publicity/Information
4.113 The scheme would need to be publicised and explanatory leaflets would need to be produced. We anticipate that the costs of printing, translation and distribution of 100,000 leaflets to be in the region of £40,000. Again these costs would be met from existing provision.
Ongoing administration costs  
4.114 HMCS cost of operating the current scheme is £290 per order (unit cost) and should be met from the administration fee, currently 10% (of total debt included in the order) which is collected from payments made by debtors. However, if an order is refused, no payments are made and therefore HMCS costs of dealing with the application and hearing are not recovered.

4.115 Additionally, the poor success rate of the current scheme (19% of orders are fully paid, a further 66% receive some payments and 15% receive no payments at all) means that the scheme costs HMCS around £500,000 per annum to operate.

4.116 Under the revised scheme, we anticipate a rise in the costs of dealing with the application (pre-order costs) due to increased creditor involvement in hearings. The likelihood is that more creditors would want to be heard due to the increased debt ceiling. However, this would be offset by reductions in the following areas:

- the number of dividends declared (under the proposed scheme there would be a maximum of 10 on a 5 year order);
- there would be no ability to apply for a revoked order to be reinstated; and
- the number of applications for debts to be added would be reduced.

4.117 This would mean a reduction in the overall unit cost to £175, allowing HMCS to recover its costs and providing potential to reduce the administration fee from the current level of 10%, perhaps to a sliding scale based on the number of debts to be included in the order. This benefits both debtors and creditors by ensuring that a higher percentage of payments made are used to help clear debts rather than meeting the court costs.

Costs to Creditors  
4.118 There would be little in increased costs to creditors as this option would simply revise a current scheme in which creditors already play a full part. We believe that it is likely that creditors would be eager to have their views heard because of the higher level of debts that would be included in the new scheme. This would give rise to increases in costs but these would be substantially less than those described in the ERO section of this paper.

4.119 Balancing this increase there would be the potential for a substantial rise in creditors’ returns. At present the average repayment rate is around £29 per month and the average amount recovered is in the region of £440. This represents 18.33% based on the average debt included in an order (c. £2,400) and only 8.8% of the maximum (£5,000) that could be included in an order.

4.120 The intention to restrict entry to those who have sufficient disposable income would ensure that far greater returns are achieved. The table below illustrates the amounts that would be recovered from various payment rates assuming a total debt of £15,000 in each case.
<table>
<thead>
<tr>
<th>Rate per Month</th>
<th>£50</th>
<th>£100</th>
<th>£150</th>
<th>£200</th>
<th>£250</th>
<th>£300</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>£1,800 (12%)</td>
<td>£3,600 (24%)</td>
<td>£5,400 (36%)</td>
<td>£7,200 (48%)</td>
<td>£9,000 (60%)</td>
<td>£10,800 (72%)</td>
</tr>
<tr>
<td>4</td>
<td>£2,400 (16%)</td>
<td>£4,800 (32%)</td>
<td>£7,200 (48%)</td>
<td>£9,600 (64%)</td>
<td>£12,000 (80%)</td>
<td>£14,400 (96%)</td>
</tr>
<tr>
<td>5</td>
<td>£3,000 (20%)</td>
<td>£6,000 (40%)</td>
<td>£9,000 (60%)</td>
<td>£12,000 (80%)</td>
<td>£15,000 (100%)</td>
<td>£18,000 (120%)</td>
</tr>
</tbody>
</table>

**Option 6 – Non-court based debt management schemes**

4.121 Non-court based schemes are currently being operated by both the advice and private sectors but it is not possible at this stage to assess what costs would be incurred if these schemes were to take the place of the court based scheme or to say who would meet them. Debtors meet the costs of some current schemes while the creditors meet the costs of others.

**Option 7 – Debt management schemes delivered by approved operators**

4.122 This option would need to be much more defined before any assessment of costs could be made. As mentioned in the benefits section of this paper we believe that there may be some merit to this approach but would need to consider it in more detail to establish a need and to detail the schemes operation.

4.123 This would be achieved by a further round of public consultation and development of a RIA specific to the proposals. This would be produced before the Lord Chancellor would exercise this power.

**6. Compensatory/Simplification Measures**

4.124 The proposals would not increase the regulatory burden on businesses. Although the ERO procedure would revise existing legislation it would also introduce parameters for the scheme to operate in. The limited increased impact on business would be more than balanced by the introduction of the parameters and a reduction in the amount of work currently undertaken in other areas e.g. considering IVA proposals and dealing with applications for suspension of enforcement, variation of orders or in bankruptcy proceedings.

4.125 The greater range of more appropriate and targeted options for debt recovery would also more than compensate business for the need to become familiar with the new procedure.

**7. Small Firms Impact Test**

4.126 The Small Business Service (SBS) indicated that they would be unhappy if commercial debts were to be included in either the ERO or the AO schemes.
The SBS pointed out that to date it has been the Government’s policy to treat the issues of consumer and business indebtedness as separate issues. The Consumer Credit Act 1974 currently provides the self-employed with some protection where the debt is less than £25,000. Their view was that any attempts to introduce consumer protections to business lending could affect the price of that debt and its availability. Businesses need to access appropriate finance that is not made more expensive or difficult to obtain because of inappropriate levels of protection if they were to thrive in a competitive environment. These views were supported by the Finance and Leasing Association and the Association of District Judges.

4.127 As a result of the comments and the potential impact of the original proposals debtors with commercial debts have been specifically excluded from both schemes.

8. Competition assessment

4.128 Completion of the competition assessment does not lead us to conclude that there would be any significant competition issues raised as a result of these proposals. The administration of DRO scheme would be undertaken only by the INSS. The effect of these proposals on the business sector and a competition assessment are set out in a separate Regulatory Impact Assessment. The operation of the ERO is purely court-based. Some firms offer services where they reach agreements with creditors on behalf of clients but none of these can guarantee that enforcement action is not taken.

4.129 The AO scheme is a court-based scheme. Similar schemes are currently operated by the advice and private sectors but these schemes cannot ensure creditor compliance, they cannot make reluctant creditors enter schemes and they cannot offer composition of debts without creditor agreement.

4.130 Debt recovery problems are not limited to any particular section of the market but there may be higher costs for firms who traditionally lend to those with poor credit records. These proposals should encourage more responsible lending.

4.131 The proposals would not lead to higher set-up or ongoing costs for new firms compared to existing firms nor would they restrict the ability of firms to choose the range of the products that they offer.

4.132 The payment system of the proposed re-structured AO scheme could be put out to a private service provider in order to improve the range of options available. However delivery of the service would be put out to tender on a fair basis.

9. Enforcement, sanctions and monitoring

4.133 Court based options would continue to be delivered and enforced by HMCS. Particular emphasis would be placed on monitoring creditors’ behaviour once orders have been made. There is evidence of creditors continuing to illegally contact debtors after AOs have been made to “demand” payment. This should
not be necessary under the new scheme as non-payment is a ground for having an AO (and an ERO where there is a payment provision) revoked.

4.134 Should it become necessary in the future to authorise external providers to run the AO or similar schemes, mechanisms would be developed to ensure that compliance monitoring and enforcement would be undertaken by HMCS or other bodies authorised by the Lord Chancellor. However, these issues would be addressed in a further dedicated RIA if that proves necessary.

10. Implementation and delivery plan

4.135 These proposals do not introduce new schemes. Instead they fine tune existing schemes to make them more accessible for debtors and practical for creditors. As such there is no need for these schemes to be “launched” in the traditional sense.

4.136 We anticipate that it would take about one year for the passage of the Bill and that we would need a further year from Royal Assent to implementation. This period would allow sufficient time for amendments to be made to HMCS IT systems, for forms and information leaflets to be produced and for staff training. It would also provide creditors and the advice sector with sufficient time to make any changes necessary to their systems and deal with training issues.

4.137 Court staff would be trained and available to help with any problems that arise and HMCS HQ staff would be available to discuss policy intentions with any groups that need this level of input.

11. Post-implementation review

4.138 A monitoring exercise would be undertaken within 2 years of implementation. This would be a comprehensive review that would assess the impacts of these proposals. The intention to improve data collection on ethnicity and income would allow an assessment to be made of the effects on various social and ethnic groups.

4.139 The review would also consider whether changes are needed at that stage to the debt ceiling and the minimum surplus income levels. Any shortcomings or unexpected/unwelcome consequences would be addressed and alterations made where necessary.

12. Summary and recommendation

4.140 Based on the findings of the review of AOs, the client group that is not adequately catered for is the ‘can’t pay’ group who cannot afford to petition for bankruptcy. However, it would not be cost effective for HMCS to deliver a scheme to meet their needs, as it can only do so at huge expense.
4.141 The most viable solution for reform to help this group is a non-court based DRO scheme (Option 3) which would offer relief from enforcement for those individuals who are unable to access any of the other debt solutions because they do not have the financial means to do so. This proposal forms part of our recommended options.

4.142 After considering all of the proposals (discussed earlier in his paper) we recommend the following options:

I. Reform of the AO scheme offering assistance to the “could pay” group (Options 5)

II. Introduction of targeted schemes to assist current debtors groups namely;

• the DRO scheme providing assistance to the “can’t pays” (Option 3)
• the ERO providing assistance to “could pay” debtors (Option 4)

III. An enabling power to allow the Lord Chancellor to approve non-court based service providers if it is apparent that there is a need and/or that the service could be provided more cheaply.

4.143 These options would be more beneficial to the client groups than the other proposals mentioned in this paper. The table below highlights the advantages and disadvantages for our recommended options.

<table>
<thead>
<tr>
<th>Option</th>
<th>Total cost per annum</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 5. Reform of the court-based AO scheme</td>
<td></td>
<td>Court based • Would deliver benefits to those in multiple debts • Would provide relief from enforcement for the debtor and repayment to the creditor • Increased access to the scheme • A higher limit of indebtedness would accurately reflect the over-indebted profile • Little if any additional cost to creditors</td>
<td>Court based • There might be a small cost to the state. • If the scheme is not self-financing HMCS could be criticised but the added benefits to debtors of compulsion and composition (not offered by current non-court based schemes) needs to be taken into account.</td>
</tr>
<tr>
<td>Option</td>
<td>Total cost per annum</td>
<td>Advantages</td>
<td>Disadvantages</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>----------------------</td>
<td>--------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Option 3 Debt Relief Order scheme</td>
<td></td>
<td>• Higher returns</td>
<td>• Possible increase in work for court staff</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Debtors would potentially pay less in court fees</td>
<td>• Possibly very small take up because of strict entry controls</td>
</tr>
<tr>
<td>Option 4 Enforcement Restriction Order</td>
<td></td>
<td>• See separate RIA below</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• £200,000 set up costs for HMCS</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Ongoing administration costs covered by fee income</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Depending on the number of applications, the amounts paid to staff and the method of representation at hearings, creditors costs could, in a worst case scenario, be £2.75 million</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Would give debtors ‘breathing space’ to sort out their problems</td>
<td>• Creditors taking aggressive action to enforce their judgment would not disadvantage other creditors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Would not include secured debts</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Would not apply to business debt</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Would apply to all consumer debts</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Would encourage negotiation between debtors and creditors</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Creditors taking aggressive action to enforce their judgment would not disadvantage other creditors</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Improve chances of creditors recovering their debts</td>
<td></td>
</tr>
<tr>
<td>Option 7 Debt management schemes delivered by approved operators</td>
<td></td>
<td>• Could not be established until a RIA specific to the proposal is produced.</td>
<td>• Limited court fees would need to be retained if any court involvement remained.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Operators would need to satisfy approval criteria</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Would deliver the same benefits (as the court-based scheme) in</td>
<td></td>
</tr>
<tr>
<td>Option</td>
<td>Total cost per annum</td>
<td>Advantages</td>
<td>Disadvantages</td>
</tr>
<tr>
<td>--------</td>
<td>----------------------</td>
<td>------------</td>
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</tr>
</tbody>
</table>
|        | helping those in multiple debt.  
• Would provide relief from enforcement for the debtor and repayment to the creditor  
• Would provide potential to widen access to the scheme with a higher limit of indebtedness |           |               |
V. DEBT RELIEF ORDERS: FULL RIA

1. Title of proposal

5.1 Debt Relief Orders

2. Purpose and intended effect of measure

(i) The objective

5.2 The proposal is designed to provide debt relief for the financially excluded who have no income and no assets and are therefore unable to avail themselves of any of the remedies currently available to people with serious debt problems.

(ii) Devolution:

5.3 Any legislation in this area would apply only to England and Wales. Scotland has its own personal insolvency regime, as does Northern Ireland.

(iii) The background

5.4 There is a category of person for whom none of the current remedies for those with serious debt problems apply: this group has insufficient disposable income to make monthly payments, no assets that can be sold to defray even some of the debt and they cannot afford the petition deposit required to go bankrupt. We think there is a need to plug this gap, and provide a form of relief for people who have fallen into debt, who do not owe a great a deal but who have no reasonable prospect of ever being able to pay off even part of the debt. The government is committed to contributing to social justice and working to create the conditions for business success by tackling over-indebtedness and financial exclusion. Part of this commitment includes access to help for those in financial difficulty, and improving the support and processes for those who have fallen into debt.

5.5 It is proposed that debtors who have total liabilities of less than £15,000, surplus income of no more than £50 per month, and no realisable assets over £300, be eligible for the Debt Relief Order scheme. The Order, which would be made administratively by the official receiver, would provide relief from enforcement of the debts, which would then be fully discharged after twelve months.

5.6 At present, if people fall into debt, there are a number of remedies available to them. They can try to formulate a debt management plan, whereby they come to an agreement to pay their creditors a specified amount at regular intervals – usually every month. This requires the person concerned to have an amount of money over and above what he needs to live on to set aside to pay off his debts. Similarly if the debtor applies for an individual voluntary arrangement under the provisions of the Insolvency Act 1986, or a county court administration order, he or she needs to have funds with which to pay monthly instalments, or in the case of an individual voluntary arrangement, assets that can be sold to raise money to repay the debts either in part or in full.

5.7 There is also the option of bankruptcy. However, this is an arguably disproportionate response for someone who has a relatively low level of debt, no assets, no income, and no apparent conduct issues that need to be
investigated by the official receiver. Additionally, the debtor has to find the petition deposit (currently £325) and in many cases court fees too.

5.8 In 2004 a partnership between the voluntary sector, the credit industry, the Government and consumers drew up a strategy for dealing with over-indebtedness and this was published in July 2004.\(^9\) The Action Plan arising out of that strategy included a commitment that, depending on the results of a consultation by the Department for Constitutional Affairs\(^10\), the Insolvency Service would consult on the detail of a proposed non-court based system of providing debt relief for the socially excluded.

5.9 The DCA’s consultation closed on 20th October 2004, and responses to it led us to believe that there should be further consultation on the detail of a proposed debt relief scheme. The Insolvency Service subsequently issued a further consultation in March 2005, entitled “Relief for the Indebted – an alternative to bankruptcy”\(^11\) which set out the detail of how such a scheme might operate. That consultation closed on 30 June 2005, and responses to it indicated that our proposals were generally thought to be appropriate.

5.10 Further detail of how the Debt Relief Order proposals will work can be found on the Insolvency Service website at: http://www.insolvency.gov.uk/.

(iv) Rationale for Government intervention

5.11 As evidenced in the White Paper published in December 2003 “Fair Clear and Competitive; the Consumer Credit Market in the 21st Century”\(^12\), the consequences of over-indebtedness are often worst for people in the lowest income groups. Such people are more likely to have priority debts (rent, utility bills, council tax and mortgage arrears). In serious cases, that can lead to eviction, imprisonment, disconnection or repossession. Being in debt can lead to increased stress and associated medical conditions. There is also a clear link between stress and absenteeism from work. This leads to additional costs on government, businesses and on the economy generally through lower productivity and growth.

5.12 Because of the nature of the problem, it is very difficult to quantify the number of people who are unable to access any of the debt relief solutions currently available. However, many people who get into financial difficulty do try and seek help from a debt advisor, and Citizens Advice is one major organisation that gives such advice.

5.13 During February 2004 the Insolvency Service conducted a survey of people who attended a sample of 63 Citizens Advice Bureaux for help with their debt problems and has used that survey to try and estimate how many people nationally would meet the criteria for entry to the proposed scheme. The survey results and other sources of information\(^13\) have been used to estimate a

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\(^9\) Available at www.dti.gov.uk/ccp/topics1/pdf1/overdebt0704.pdf
\(^10\) “A Choice of Paths – proposals for providing better assistance to the over-indebted and those in multiple debt”,
\(^11\) Available at www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/closedindex.htm
\(^12\) Available at www.dti.gov.uk/ccp/topics1/consumer_finance.htm#review
\(^13\) (i) The Distribution of Unsecured Debt in the United Kingdom; survey evidence, by Merxe Tudela and Garry Young of the Bank of England’s Domestic Finance Division available at: www.bankofengland.co.uk/qb/qb030402.pdf
take-up rate for the scheme. The conclusions take account not only of people who seek advice about their difficulties but also those who have problem debt but do not seek help – for example because they think that nothing can be done - and also people who currently present a bankruptcy petition but would possibly apply for a debt relief order if it was available.

5.14 Although we have made use of a variety of sources of information and looked at published research in trying to establish how many people might want to use the scheme, clearly we can do no more than estimate the number of people who get into financial difficulty but do not seek help, and also those who do seek help but would not wish to apply for a debt relief order.

5.15 We think that if a scheme such as the one we are proposing were put in place, the number of people wishing to obtain a debt relief order would be in the region of 43,000 a year after two years, but would then increase (or decrease) in line with the number of bankruptcies, which is largely driven by economic factors such as outstanding unsecured credit.

5.16 Consultees to the Insolvency Service consultation were asked if they had any further information that would help to estimate the likely numbers of people who might want to use the proposed scheme. Although there were 70 responses to the consultation generally, very few of the respondents had any comment to make on the questions relating to this Regulatory Impact Assessment. We received 16 answers on this question and little further information was provided that would enable us to refine our estimates.

5.17 It seems that Debt Relief Orders would apply to a substantial proportion of those seeking advice for debt related problems who owe less than the proposed liability cap of £15,000 and/or are not homeowners. Approximately 50% of callers to National Debtline have debts under £15,000 and 60% are in some form of accommodation where they are not a homeowner. National Debtline expect to help in the region of 60,000 clients in the next year. Advice UK also made the point that nearly 60% of their clients were not homeowners. However, without further information concerning their incomes and overall asset levels we cannot ascertain how many would meet the criteria for entry to the scheme.

3. Consultation

(i) Within government

5.18 We have consulted with the following government departments and associated bodies:

- Department of Trade and Industry
- Department for Work and Pensions
- Department for Environment, Food and Rural Affairs
- HM Customs and Excise
- Inland Revenue
- Department for Culture, Media and Sport
- Legal Services Commission (Executive Non-Departmental Public Body)
- Financial Services Authority (FSA)
- Home Office
- Scottish Executive
• HM Treasury
• Office of the Deputy Prime Minister
• Office of the First Minister and Deputy First Minister Northern Ireland
• Office of Fair Trading (OFT)
• Department for Education and Skills
• Welsh Assembly Government

(ii) Public consultation

5.19 Prior to issuing a formal consultation paper the Insolvency Service consulted on an informal basis with representatives from the advice sector and business.

5.20 The consultation paper was sent to approximately 350 people consisting of representatives from the debt advice sector, the credit industry, business, insolvency practitioners and the general public. The consultation was open for twelve weeks and 70 responses were received.

4. Options

Option 1: Do nothing.

5.21 This would maintain the status quo but would leave vulnerable people without any protection from their creditors.

Option 2: Remove the requirement for those people without assets or surplus income to pay a deposit when presenting their own petition for bankruptcy.

5.22 Each bankruptcy currently costs in the region of £1,625 to administer, and part of that cost is met from payment of the deposit of £325. If the petition deposit were waived then it would mean that all the costs of case administration in such bankruptcies would have to be met from other sources. It would not be fair on creditors in other cases to require them to further cover those costs by way of cross-subsidy, and neither do we believe that it is appropriate that it should be met out of general taxation.

Option 3: Try to persuade creditors to use a voluntary code of practice whereby in cases where there is clearly no prospect that the debt will be repaid within a reasonable timescale because the debtor is just too poor, the debt is written off.

5.23 We have consulted with the OFT and they are firmly of the view that a code of practice is not a substitute for legislation. It is an entirely voluntary process and even in an ideal situation, not everyone would be signed up to it. It is simply a tool for consumers to identify better traders.

5.24 Even if it were possible to persuade creditors to sign up to a voluntary code on responsible collection practices, the people at whom the debt relief order scheme is aimed are unlikely to make their borrowing decisions based on which entities had signed up to it: many in this group of debtors would be desperate to borrow money from whoever was willing to lend it, with some made even more vulnerable by literacy and numeracy problems.
5.25 Even if an information campaign publicised how to make informed choices on sources of credit, a voluntary code is unlikely to secure an adequate level of help for debtors. It is possible that not enough lenders would sign up to the code, rendering it ineffective, and that there would be insufficient levels of code compliance to make it a worthwhile exercise. Whilst there are many responsible creditors who will write a debt off when it becomes clear that the debtor is unable to pay it, there are some who would not act so responsibly, and who would take steps to enforce their debts even when the legislation does not allow it. Research funded by the Department for Constitutional Affairs and the Insolvency Service 14 found that a third of people who were interviewed reported being contacted by one or more of their creditors after a county court administration order was in force, demanding full or part payment of their arrears. Only half the debtors were able to stop this unwanted (and illegal) action by writing to the creditors, seeking the help of the court or re-contacting the debt advisor who had helped them originally.

5.26 As the objective is to provide debt relief for the socially and financially excluded, we do not think that the use of a code of practice would be a suitable way to proceed.

Option 4: Introduce legislation to enable people who are financially excluded to access a system of debt relief

5.27 We think that if the objective is to provide debt relief, it can be only achieved on an equitable basis if there is legislation in place to determine the manner in which the debt relief is granted and policed.

5. Costs & Benefits

Business sectors affected

5.28 There may be risks associated with implementation of the debt relief order scheme. For example, it is possible that the provision of accessible debt relief might mean that the people at whom the scheme is aimed, or who might qualify for entry to the scheme, would find it more difficult to obtain credit or that the cost of credit might rise.

5.29 We think it unlikely that there will be an adverse effect on the credit and lending sector as a whole. What we are proposing does offer relief from enforcement but it does not alter the fact that the relief would be offered to people who are in debt and who have no reasonable prospect of paying that debt, whether there is a mechanism to provide formal relief from enforcement or not.

The credit and lending sector

5.30 We expect that most people wishing to apply for an order will be “consumer” debtors rather than business failures and that the majority of debt included with a debt relief order will be of the type that is owed to large institutions and lenders.

5.31 We asked consultees if they thought that the existence of the proposed scheme would reduce lenders’ willingness to lend to people who may qualify for entry to the scheme and if so, how might this risk be mitigated. Of those that replied (16 in all) there was a significant variation in views. Many of the advice workers felt that there would be no effect, since, for example, “the existence of other debt remedies e.g. bankruptcy, IVAs [Individual Voluntary Arrangements] or DMPs [Debt Management Plans] does not seem to reduce creditors willingness to lend,” and one or two expressed the hope that it would encourage more responsible lending. One expressed the view that “if a person’s circumstances were such that they would be likely to qualify for a DRO scheme it is probably desirable that they are not provided credit on commercial terms”.

5.32 The Institute of Credit Management felt that the existence of the proposed scheme would reduce lenders’ willingness to lend to people who qualify for entry to the scheme, and that this risk cannot be mitigated. The CBI expressed the view that if the scheme attracted large numbers of applicants causing lenders or creditors to write off unacceptable levels of debt, it could also reduce their willingness to lend to people who may qualify for entry.

5.33 One respondent stated that lenders would not lend where the risks of not recovering are unacceptable, which would occur if the proposed scheme were used inappropriately.

5.34 There are a number of initiatives across government departments to tackle the issues arising out of debt and the causes of it. “Tackling Over-indebtedness: Action Plan 2004” brings together this work and joins together departments in combating over-indebtedness. Government is particularly keen to ensure that the most vulnerable customers have access to affordable forms of credit. The Government is working with the Credit Union movement and others to ensure that the framework in which they operate has the flexibility to allow them to focus on tackling issues of financial exclusion including affordable credit and support for the most vulnerable.

5.35 As mentioned in “Tackling Over-indebtedness: Annual Report 2005”\(^{15}\) - which sets out how Government and partners in the independent regulators, credit industry, voluntary sector and consumer groups are addressing the issue of problem debt - Government is working hard to ensure responsible lending. Responsible lending should mean that a realistic assessment of the consumer’s ability to repay is made, and this should mean that consumers who are lent to responsibly should not find it necessary to apply for a Debt Relief Order. The credit sector has continued to work towards raising standards of responsible lending through self-regulation and collaborative action. For example, Banking Code Guidance was revised in March 2006 to strengthen the way lenders assess a customer’s ability to repay before providing credit.

5.36 At this point, and in the absence of any evidence to the contrary, we think that moves towards more responsible lending and greater access to affordable credit for low income households, coupled with robust entry criteria for our proposed scheme should mean that the existence of the scheme would not, of itself, adversely affect either the credit market or the ability of low income households to obtain credit when it is desirable for them to do so.

\(^{15}\)Available http://www.dti.gov.uk/ccp/topics1/overindebtedness.htm
The banking and credit card sector

5.37 According to figures from the Bank of England, in 2005 UK resident banks wrote off credit card lending to individuals of £2,185 million\(^16\), some of which is owed by people who would potentially use the proposed scheme. The banking and credit card sector is estimated to spend over £3.4 billion every year chasing, recovering and writing off debts\(^17\). There could in fact be savings to the credit industry in terms of decreased recovery costs.

5.38 According to research conducted by Citizens Advice\(^18\) about 70% of the amounts owed by their clients constitute credit card/consumer type debt. If every applicant for a debt relief order owed the full permitted amount of, say, £15,000 and there was an uptake of the scheme of 43,000 cases a year, then this would amount to an annual debt write off of £451.5 million (70% x £15,000 x 43,000).

Utility companies

5.39 A continuing feature of household debt is the amount owed to utilities. This is problematic for water companies especially, as they do not have the option to discontinue domestic supplies to non-payers. Data obtained from Ofwat suggests that in the year 2004/2005, water companies wrote off household revenue of £114 million (although there is no information to indicate the age of the debt written off) and that the water companies spent operating expenditure of £72 million on outstanding revenue collection.

5.40 Generally water companies will only write off outstanding revenue when all attempts to recover the debt have been exhausted, for example where a customer has absconded and agents cannot successfully locate them or where it is uneconomic to pursue the debt\(^19\).

5.41 The survey we conducted with Citizens Advice during February 2004 included questions on amounts owed to utilities. Of the people participating in the survey who were eligible for the scheme, only 2 people (1% of the total) were recorded as owing money in respect of unpaid gas charges, in the total sum of £392, 1 person owed money in respect of unpaid electricity (£296) and that same person together with one other owed monies in respect of water or other utility charges (total £1045). So overall, 4 people who participated in the survey and who would be eligible for our proposed debt relief scheme, owed monies to utilities. This is just over 2% of the total eligible people.

5.42 On a straightforward extrapolation basis, and using £500 as guide for the amounts owed, this would indicate that in the region of £451,500 (.021 x 43,000 x £500) would need to be written off annually in respect of amounts due to utility companies. Set against an annual write-off by water companies of £114 million, we think this is a negligible impact. If 43,000 people obtained an order, and every single person who did so owed £500 in respect of unpaid

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\(^{16}\)http://213.225.136.206/mfsd/iadb/fromshowcolumns.asp?Travel=NlxAZxl1xSCx&ShadowPage=1&SearchText=UK+Resident+Banks+credit+card+lending&SearchExclude=&SearchTextFields=&Thes=&SearchType=&Cats=&ActualResNumPerPage=5&C=4ZM&C=351&ShowData.x=36&ShowData.y=7

\(^{17}\)Action on Debt- Social Exclusion Unit Office of the Deputy Prime Minister – Business and Debt. Taken from Evaluation of Money Advice Debtlime pilot (Deloitte and Touche 2003) p44

\(^{18}\)“In Too Deep” CAB Clients’ Experience of Debt, by Sue Edwards, May 2003

\(^{19}\)Letter to Directors of all water and sewage companies and water only companies – Industry Information on the level of Household Revenue Outstanding. www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/Content/rd1804
water charges, which we do not think is likely, the total write-off would be £21.5 million (43,000 X £500).

Other business impacts

5.43 We asked consultees if they thought there would be impacts on business in addition to those outlined above and if so, what were they and whether it was possible to quantify the impact. No significant additional impacts were identified, although two respondents suggested that small businesses might suffer disproportionately because they could carry losses less well than larger organisations, and one or two respondents commented that it might adversely affect those small tradesmen who are generally paid after they have supplied goods or services.

5.44 We do not have any evidence to substantiate this and we do not think that the scheme will have a noticeable impact on small business. It should be reiterated that the people at whom the scheme is aimed are genuine “Can’t Pays” and as such the facility of offering debt relief should make no overall difference as it is unlikely that they would pay anyway. It is likely that the write-offs arising as a result of a debt relief order relate to debts that would have to be written off irrespective of whether or not there is a formal order.

Advice Sector

5.45 There will be an impact on the advice sector through the need to familiarise staff with the new procedure, and the time taken to deal with clients wanting to apply for the order. However, we feel that this will potentially be offset by the fact that such advisors would not have to spend time entering into protracted correspondence with creditors on behalf of their clients, and also that they will be able to offer a solution that is not currently available.

5.46 Clearly if a debt advisor deals with an individual in good faith who then turns out to have provided false or misleading information, then no liability would attach to the advisor.

5.47 Many of the respondents were strongly of the view that there would be an impact on the advice sector. We are therefore giving careful consideration to how best to ensure that debtor advisors are adequately funded for any work they would need to undertake whilst at the same time protecting their independence and keeping the scheme financially viable.

5.48 No other significant impacts on the advice sector were identified.

Social Impacts – Racial Equality Impact Assessment

5.49 We are uncertain as to whether or not the new procedure will have a different impact on ethnic minorities when compared to the white population.

5.50 Debt Relief Orders are aimed at socially and financially excluded individuals, and, as with bankruptcy, there is no immediately obvious reason to suppose that there would be any differences in their effect on any particular ethnic group. However, data held by the Insolvency Service indicates that ethnic
minority bankrupts are less likely to present their own bankruptcy petition (65% of ethnic minority bankrupts present a debtor’s petitions) when compared to white bankrupts (84% of whom present a debtor’s petition). In addition, following the making of the bankruptcy order in debtors petition cases, people from ethnic minorities are less likely to obtain an early discharge to their bankruptcy.

5.51 Early discharge in the bankruptcy process is granted if before the end of the twelve month period prior to automatic discharge, the official receiver files a notice in court to state that an investigation into the conduct and affairs of the bankrupt is unnecessary or concluded. If there are delays at the start of the proceedings, for example by failing to surrender to the first appointment or provide information requested by the official receiver, the whole process is lengthened and therefore the chance of an early discharge is reduced.

5.52 We have found that following a bankruptcy order, there are differences in behaviour between the ethnic groups, with a significantly higher proportion of bankrupts from ethnic minorities failing to attend their first appointment, and also provide on a timely basis subsequent information about income, and this has led to their being less likely to receive an early discharge.

5.53 We do not know the reasons why people from ethnic minorities are less likely to present their own bankruptcy petition, or why, following the making of the bankruptcy order, they are less likely to co-operate with the proceedings. Therefore we cannot say with any certainty whether those reasons might also impact on the way people from ethnic minorities would access the debt relief order, which requires a positive act to go on seek the advice of an approved intermediary.

5.54 An analysis of the people who were made bankrupt in the period 1 April 2005 to 31 March 2006 and who would have met the financial criteria for a debt relief order had the procedure been available shows a marked difference in the number of creditors’ and debtors’ petitions presented for each ethnic group.

![Graph showing comparison of debtors' and creditors' petitions by ethnic group](image-url)
5.55 We need to build on our current levels of knowledge and try and understand why these differences are occurring. We are therefore commissioning some research which we hope will help to explain why ethnic minorities are less likely to petition for their own bankruptcy (as opposed to being the subject of a creditors petition); and why, once in the bankruptcy process, marked differences exist in the behaviour of white and ethnic minority groups in relation to surrendering to and co-operating within the bankruptcy proceedings.

5.56 We hope that this will give us some insight into why these differences occur and enable us to ensure that if they are likely to impact on the debt relief order process then we can address them prior to implementation.

5.57 The results of the research are expected towards the end of 2006 or early 2007, and we are confident that should the research highlight any areas that may impact on the debt relief order process we will be able to address them before they become operational.

Benefits

Option 1: No change

5.58 There is no discernible benefit for the indebted or for society as a whole in doing nothing, aside from the fact that there would be no additional costs to government in initiating the new scheme.

5.59 There may be a marginal benefit for some creditors who find in a few cases that they are able to recover their debt after some years should the debtor experience a change in circumstances that meant (s)he was able to meet his liabilities.

Option 2: Removal of the need for a petition deposit

5.60 There would be a benefit to the indebted individual in that he would be able to obtain debt relief at no cost to himself, and there would be benefits to debt advisors in that they would not need to familiarise themselves with a new regime. There would also be an indirect benefit to charitable organisations in that they would not have to fund the petition in hardship cases. Any benefit to creditors in not having to familiarise themselves with the new procedures would in our view be more than offset by the resulting increased administration fee, that would be funded by cases with assets, so leading to reduced returns to creditors.

Option 3: Introduce a code of practice

5.61 It is likely that reputable lenders would be prepared to discuss voluntary codes of practice. The advantages of this option would be that it would not require legislative change and would offer a cheaper alternative to regulation, with few direct costs to Government. The courts would be excluded and so this would be cheaper for society. However, since it is unlikely that all lenders would sign
up to it, the relief from enforcement offered would be at best sketchy, and therefore would not achieve the aim of the provision of relief from enforcement action for those who most need it.

5.62 Many debtors would owe amounts in addition to those owed to the credit industry, for example utility bills, council tax and rent as well as to other creditors outside these main categories.

5.63 We do not think a voluntary code of practice is a viable option.

**Option 4: Legislation for a new scheme**

5.64 Clearly not everyone who is over indebted would benefit from a debt relief order, nor would everyone qualify. However, the type of consumer at whom such orders are aimed are amongst the most financially and socially excluded members of society.

5.65 We think that although amounts are difficult to quantify, the benefits of providing debt relief to those people would include the following:

**Benefits to the individual:**

5.66 The Consumer Credit white paper “Fair, Clear and Competitive” sets out very clearly the effects on the individual of too much debt, and we think our proposals would benefit the indebted individual in terms of reduced stress and the effect on health that accompanies it. It would also provide an opportunity for the individual to make a fresh start and learn to manage their finances in more favourable circumstances.

**Benefits to business:**

5.67 There may be a reduction in costs associated with chasing unpaid debt that is never going to be paid. There would be a register of people subject to a debt relief order, so allowing lenders to make an informed choice about whether to grant further credit.

**Benefits to charities and debt advisors:**

5.68 An Insolvency Service survey of people who applied for a bankruptcy order during March 2004 indicated that roughly 2.6% of people who present their own bankruptcy petition obtain the deposit from a charity. A simple extrapolation would indicate that based on the year to April 2004 figures of 17,624 debtors own petitions, charities made grants in the region of £114,556 (.026 X 17,624 X £250)\(^2\) to help people petition to make themselves bankrupt. Although our proposed scheme will need to have an entry fee, it will be far smaller than the £325 deposit that is now required for bankruptcy and we believe that this will lead to savings for charities that would otherwise be asked to fund a bankruptcy petition.

5.69 In addition there would be savings on the time spent with debtors and benefits to the advisor in that they would be able to offer a solution to the debtor not currently available.

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\(^2\) Although the current deposit is £325, in the year to April 2004, it was £250.
5.70 The previously mentioned research into county court administration orders found that some debt advisors who assist people applying for a county court administration order see their ability to help people in this way as positive because it enables them to help more people - once an order has been set up, a case can effectively be closed. In contrast, other multiple debt cases involve negotiations with a number of creditors and can remain open for a year or more.

**Benefits to Government and the taxpayer:**

5.71 We think the scheme should free up court time in those cases where enforcement action is being taken by creditors but where there is no hope of repayment.

5.72 We estimate that 14% of people who currently present their own bankruptcy petition would be eligible for a debt relief order. Assuming everyone who was eligible chose to apply for a debt relief order rather than a bankruptcy order, there would be in the region of 14% fewer debtors’ petitions. This would also free up bankruptcy court time and also time spent by the official receiver on administering the cases once the order has been made. Clearly the official receiver would need to deal with the debt relief order cases instead, but we anticipate that the time spent administering these would be very considerably less.

**Benefits to society:**

5.73 Debt is linked to both poverty and social exclusion, and insurmountable debt can only compound that. Research has previously shown that around 1 in 8 Citizens Advice Bureaux debt clients have started treatment for stress, depression or anxiety since their debt problem started\(^{21}\)

5.74 The consequences of debt related stress and mental health problems and eviction can contribute to crime and re-offending. Debt can also lead to tensions in family relationships, leading to breakdown of the family unit.

5.75 Although our proposed scheme is aimed at a small proportion of the over indebted, we envisage that it should go some way at least to alleviating debt related stress and its associated problems.

5.76 We asked consultees if they thought there would be benefits associated with our proposal in addition to those outlined above and whether or not they would be able to assist us in quantifying the benefits we have identified. One respondent made the point that “larger credit companies may be forced to be more responsible in their lending for their own benefit due to the risk of not recovering the debt” and another suggested it might encourage more responsible borrowing. Aside from this, no additional benefits were identified.

**Costs**

**Option 1: Do nothing**

5.77 There are no new costs associated with doing nothing.

\(^{21}\) Action on Debt – An Introduction p 4, Social Exclusion Unit, Office of the Deputy Prime Minister, Social Exclusion Unit.
Option 2: Abolish the requirement for the poorest debtors to pay a deposit when presenting their own petition for bankruptcy.

5.78 As mentioned earlier, each bankruptcy currently costs in the region of £1,625 to administer, and part of that cost is met from payment of the deposit of £325. If the petition deposit were waived then it would mean that all the costs of case administration in such bankruptcies would have to be met from other sources.

5.79 Our research suggests that after two years, approximately 43,000 people a year would want to seek a debt relief order. The numbers of people who would apply for a debt relief order would, we think, then increase or decrease in line with increases and decreases of the number of people who go bankrupt. If the petition deposit were waived in these cases, and such people were offered the opportunity to present a bankruptcy petition without any cost to themselves then in order to offset part of this cost, the fees charged in cases where there are assets would need to rise substantially.

5.80 The principle of the Insolvency Service’s financial regime is that creditors will pay for the full costs of the official receiver's administration via a single administration fee funded in part from the petition deposit and also a general Secretary of State's administration fee (chargeable only in bankruptcies and compulsory liquidations). This involves some cross-subsidy between case administrations.

5.81 At present, all cases have a deposit, and a proportion of cases have sufficient assets to pay all of or part of the “administration” fee, currently fixed at £1,625. Cases which have assets of over £2,000 are used to pay for those cases that have few or no assets and this is done by charging a “Secretary of State” fee. This fee is currently set at 17% of all chargeable receipts over £2,000 relating to the bankruptcy.

5.82 The additional debt relief order cases would have no assets, no income and no deposit to defray any of the costs. We would therefore need to increase greatly the Secretary of State fee on those cases that did have assets to cross-subsidise the extra “no asset” cases. Under the current fees regime, we estimate that the Secretary of State fee would have to increase to between 35% and 40% of chargeable receipts to pay for these cases if dealt with through the current bankruptcy proceedings with a deposit waiver.

5.83 There is an additional risk that the overall costs of case administration would rise because of the need to add in a further process of means testing. This would identify which debtors ought to pay a deposit and those entitled to an exemption.

Option 3: introduce a code of practice

5.84 The costs associated with introducing a code of practice would include consultation with the various trade bodies, training and advertising. We have not taken steps to quantify these in detail. However, the consultation process for such a code is likely to be lengthy and therefore costly. Since we do not think 100% take-up of the code by lenders is likely, we would therefore not expect to achieve our objective of debt relief for those unable to pay. We do not therefore think the costs of introducing a code of practice can be justified.

Option 4: legislation for a new scheme of debt relief
5.85 There will be costs to set up the scheme initially, but if the debtor pays an upfront fee (substantially less than the current bankruptcy deposit) then we think it will be possible for the ongoing administration costs to be met from the fee and for the scheme to therefore be effectively self-funding.

**Set up costs**

**Information Technology**

5.86 The Insolvency Service has recently developed a system to enable debtors to complete a bankruptcy petition online. We believe that it will be possible to adapt this system to receive debt relief applications from the intermediary.

5.87 Expenses associated with IT and the supply of equipment and services can be apportioned out over the terms of the contract rather than paid at the start.

**Training costs**

5.88 There will need to be a significant amount of training prior to the scheme being operational, particularly in relation to the use of debt advisors.

5.89 The Insolvency Service has experience of the training required for the implementation of new insolvency legislation. It designed and ran extensive training courses when the insolvency provisions of the Enterprise Act 2002 came into force during 2004. On that occasion, we ran 32 courses of 3 days each and each course required eight man days. This meant that in the region of 1,000 people received training, and we think that a comparable number of debt advisors would need to receive training on the legislation and their role as intermediaries.

5.90 There was also the cost and time of designing the course, which took approximately 10 days. This involved a large number of people but we think it should be possible to reduce the number of people involved in the design of the course to two or three.

5.91 It would be possible to use Insolvency Service premises throughout the regions and therefore the major cost would be in terms of staff time.

5.92 If the training was designed and carried out by Insolvency Service staff and Insolvency Service premises were used wherever possible, then based on the time spent for the Enterprise Act training, the overall cost would be in the region of £150,000.

**Publicity/information**

5.93 There would be a need to produce explanatory leaflets and provide information about the scheme.

5.94 If leaflets are produced that are similar to those used for bankruptcy - “A Guide to Bankruptcy”22 - the costs would be as follows:

To produce 100,000 leaflets:

- Printing (£6,000 per 25,000 copies) £24,000
- Plain language translation (Urdu, Chinese £3000 per translation) £6,000

There would be additional costs in terms of time taken to write the leaflet and obtain lawyers’ clearance.

**Ongoing costs of administering the scheme**

We think that the way we have devised the scheme means that if the debtor pays an up front fee to cover the costs of administration, it would be possible for it to be self funding.

We need to be sure that we set the fee at a level sufficient to cover the costs of running the scheme. The grid below sets out a number of possible cost scenarios and the fee that would be needed to cover those costs. It should be possible for us to be able to alter the fee should the level at which it is set initially prove to be too high or too low. We would wish to avoid setting the fee at an unrealistic level only to raise it shortly after commencement.

The staffing model we have used for our assumptions is based on that of The Insolvency Service’s Redundancy Payments Offices, where each office deals with in the region of 30,000 applications a year.

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<td>Fee</td>
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</table>

**6. Compensatory/simplification measures**

Debt Relief Orders are aimed at assisting those in debt who cannot access the currently available remedies and who have no way to pay what they owe. However, they are part of a wider package of proposals aimed at tackling the overall way that debt is dealt with in the court system and which also introduce
new measures to help creditors enforce debts where the debtor is actually able to pay and has chosen not to.

5.100 We believe that the introduction of debt relief orders will lead to a reduction (estimated to be 14%) in overall numbers of people presenting their own bankruptcy petition. This reduction will free up court time.

5.101 Each debtor’s petition bankruptcy case takes the court an average of 68.5 minutes to administer, including time spent on the order itself. In the year April 2005–March 2006, there were 43,404 debtor’s petitions. If 14% of those orders had not been made that would represent an approximate saving in time spent by the court system of 6937 hours. There would also be savings in terms of time spent administering those cases by the official receiver, although clearly some of that would be offset by time spent administering the debt relief orders, and it should also be noted that the remaining cases left with the official receiver would be more time consuming and therefore more expensive to administer.

7. Small Firms' Impact Test

5.102 On the advice of the Small Business Service, we have taken soundings from the federation of small business and small firms, and we do not think that the scheme will have a noticeable impact on small business.

5.103 The majority of debt included with a debt relief order is of the type that is owed to large institutions and lenders, and we expect that most people wishing to apply for an order will be “consumer” debtors rather than business failures.

5.104 We asked consultees if they agreed with this assessment. Overall there was agreement, but one respondent suggested that “small traders who usually operate on a credit basis could suffer heavy losses if a number of customers opted for a debt relief order and they may seek to protect themselves by getting payment up front from high risk customers.” The same respondent also suggested that smaller licensed credit providers could be driven out of business if the scheme had a significant impact on their bad debts.

8. Competition Assessment

5.105 Not all regulations will affect the competitive process, and it is our view that the introduction of this proposal will not have an adverse effect on any particular market.

5.106 There may be some lenders who lend disproportionately to the financially excluded – particularly, for example, in the “home collected” credit market. Since our proposal is aimed at people who are not likely ever to be in a position to pay what they owe, with or without the provision of debt relief, we do not think that introduction of the proposal should have an adverse effect.

5.107 We sought views from consultees on this competition assessment, and in particular on whether they had any information that would help to clarify the
effect of the proposal on lenders (if any) who lend disproportionately to the financially excluded.

5.108 No significant issues were raised, but two respondents suggested that lenders who lend disproportionately to the financially excluded would be more reluctant to give credit.

9. Enforcement, sanctions and monitoring

5.109 These proposals do not impose an obligation on individuals or businesses to take any action. Obtaining a debt relief order is an entirely voluntary process and we do not consider that there is a need to make separate provision for enforcement, sanctions and monitoring.

10. Implementation and delivery plan

5.110 A delivery plan accompanies this Regulatory Impact Assessment and is available at Annex A. Once legislation is in place to enable the Debt Relief Order scheme to exist, substantial further secondary legislation will be required before the scheme can become operational.

11. Post-implementation review

5.111 We propose to keep under review the effectiveness and impact of these proposals and report three years after commencement on whether or not they achieve the objective of assisting the financially excluded to obtain debt relief within a system that provides proper recourse and appropriate sanctions where the debtor’s conduct has been culpable and creditors have suffered as a result.

5.112 We will at the same time monitor the effect of the proposals on the business sector. We will also keep under review the levels at which the entry criteria are set.

5.113 An evaluation and planning paper accompanies this Regulatory Impact Assessment and is attached at Annex B.

12. Summary and recommendation

5.114 A summary of the various options and their advantages and disadvantages is contained in the table below.
<table>
<thead>
<tr>
<th>Option</th>
<th>Monetary Costs</th>
<th>Benefits</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do nothing</td>
<td>• No new costs would be incurred</td>
<td>• There would be no need to legislate.</td>
<td>• There would be no provision of debt relief for those that need it.</td>
</tr>
</tbody>
</table>
| Removal of the need to pay a deposit to petition for bankruptcy in certain “hardship” cases | • Losses to creditors in terms of reduced returns in insolvency cases and increased Secretary of State fee.  
• Costs associated with introduction of means testing | • Provision of debt relief at no cost to the debtor.  
• Aside from the means testing, no need for debt advisors or creditors to familiarise themselves with a new procedure  
• Less legislation required than would be the case if option 4 were introduced  
• Benefits to society from the reduction of stress associated with being in debt  
• Benefits to charities who would not need to make grants for bankruptcy deposits | • There would be a large increase in the number of bankruptcy orders in case where that was not the most appropriate remedy  
• Bankruptcy is disproportionate |
| Introduce a code of practice for creditors       | • Consultation with the various interested parties  
• Training  
• Advertising and information campaign            | • There would be no need to legislate  
• The creditors involved would be voluntary participants | • There would be no statutory protection offered to the debtor  
• The scheme is not compulsory and not everyone will sign up to it |
| Legislation for a new scheme of debt relief       | • Once the scheme is implemented we expect it to be self funding  
• There would be initial costs in terms of training (£150,000) and publicity (in the region of £40,000) | • Statutory provision of debt relief to those that need it  
• Far lower cost than bankruptcy.  
• Register of people who obtain an order will enable creditors to make informed choices | • The debtor will need to pay a fee |
<table>
<thead>
<tr>
<th>Option</th>
<th>Monetary Costs</th>
<th>Benefits</th>
<th>Disadvantages</th>
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<tr>
<td></td>
<td>• Fee to debtor</td>
<td>about lending.</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>• Benefits to society from the reduction of stress associated with being in debt.</td>
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</table>

5.115 We think that in order for the provision of debt relief to be fair and equitable to all parties, it will be necessary to legislate. The options outlined above that would require legislation include waiving the bankruptcy petition deposit requirement in hardship cases, and the proposed new scheme. Waiving the deposit would cost a great deal and would not offer a solution that was proportionate to the problem. We therefore recommend introduction of the new scheme of debt relief.
ANNEX A

DEBT RELIEF ORDERS: DELIVERY PLAN

A.1 We envisage that the passage of the Bill will take in the region of 9 months and, following that, further detailed secondary legislation will be needed before the proposals become operational.

A.2 This delivery plan therefore looks in outline at the steps that will be taken following Royal Assent, but it should be borne in mind that a considerable quantity of preparatory work to be undertaken prior to the passage of the Bill will not form part of the delivery plan.

Success Criteria:

A.3 We consider that our proposals will have been effectively implemented if: it becomes possible for eligible individuals to successfully obtain a debt relief order without difficulty; for creditors to understand the process and how it affects them; and for the system to have sufficient integrity to detect and tackle any misconduct by the debtor concerning his insolvency.

A.4 Measures that will enable us to ascertain whether our objectives have been achieved will include:

- Number of orders made in line with expectations (as set out in the main body of the Regulatory Impact Assessment)

- Number of objections from creditors does not exceed 10% of the number of orders made

- Number of cases where the debtor is found to be guilty of misconduct (including failure to disclose facts concerning the debtor’s eligibility for a debt relief order) does not exceed 1% of orders made

Plan for implementation following Royal Assent. Much of the preliminary work will be undertaken prior to Royal Assent. Further substantial secondary legislation will be necessary before the scheme becomes operational.

No later than 1 month – Finalise discussions with debt advice sector on the role and responsibilities of the intermediaries. Until we have done this we cannot determine what will go in the secondary legislation (the Rules).

After 2 months – Grant provisional recognition to the body/bodies providing accreditation to the intermediaries so that they can begin putting systems in place in time for commencement.

After 10 months – Complete alterations to IT systems using in-house consultants and commence testing. Complete installation and commence testing of Paypoint system for receipt of the fee.

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23 Based on the approximate expectation of numbers of bankruptcies where misconduct might be suspected (7%) and the fact that there are likely to be more complaints than cases of actual misconduct.

24 Based (with an added margin of error) on what we know about people who currently have a bankruptcy order and who are suspected of misconduct and who would meet the profile of someone who could seek a debt relief order.
2 months prior to introduction of secondary legislation commence publicity/awareness campaign.

After 12 months (nearest October or April) introduce secondary legislation. Determine staffing and accommodation requirements by date of introduction of secondary legislation.
ANNEX B

DEBT RELIEF ORDERS: EVALUATION PLANNING PAPER

Purpose of the paper

B.1 To recommend an evaluation plan for Debt Relief Orders (DROs) that encompasses the capture of benchmark information.

Background

B.2 In July 2004, the Government published its Action Plan for tackling over-indebtedness. It was considered that to address over-indebtedness effectively, both prevention and cure needed to be considered. Therefore, in addition to maintaining macro-economic stability, Government and regulators are working in partnership with industry, consumer groups and the voluntary sector to:

- Minimise the number of people who become over-indebted by promoting affordable credit and responsible lending and borrowing, e.g. through better financial education and access to advice on handling money; and
- Improve services for those who have fallen into debt and their creditors. This includes promoting financial rehabilitation for debtors, e.g. through debt relief in appropriate cases; and ensuring that debt problems are resolved fairly, effectively and speedily, e.g. through promoting creditor best practice and access to information, advice and assistance for debtors, and through providing efficient court services and effective enforcement.

B.3 Responses to a consultation paper issued by the Department of Constitutional Affairs entitled ‘A Choice of Paths - Better options to manage over-indebtedness and multiple debt’ indicated that the debt relief regimes available were not appropriate for some debtors. As a result, in March 2005, The Insolvency Service issued a consultation paper entitled “Relief for the indebted –an alternative to bankruptcy”, proposing the introduction of DROs. Overall the responses were in favour of our proposals and it is The Insolvency Service’s intention to take them forward when parliamentary time permits.

B.4 It is proposed that DROs will provide debt relief via a scheme administered by the Insolvency Service to assist ‘can’t pay’ debtors – these debtors are defined as those with no disposable income or assets and little prospect of getting any in the foreseeable future (especially those on long-term low income).

B.5 The Insolvency Service intends to complete the evaluation of the DRO provisions within 3 years of commencement of the provisions, which are due to come into force no sooner than April 2009. The evaluation plan is based on the DRO provisions as currently proposed, but the provisions may be subject to change during the legislative-making process. Therefore, the evaluation plan will be kept under review and amended if necessary.

26 Available at: www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultationpaperwithnewannex1.pdf
Aim and key features of the evaluation

B.6 The principal aim of the proposed evaluation is to provide a comprehensive assessment of whether, to what extent and how the provisions relating to DROs meet the policy objectives. The evaluation will also provide information and data that can be used to inform future policy decisions.

B.7 The evaluation also seeks to capture benchmark information regarding the effect of the existing legislation, i.e. before the implementation of the DRO provisions. We have considered a mixture of internal benchmarking, i.e. looking inside The Service at its own historical performance and process benchmarking, i.e. looking at processes both within and outside The Service. The Insolvency Service will also undertake evaluation of new internal processes introduced as a result of DROs.

Main Evaluation issues

B.8 The main issues to be considered in determining whether, to what extent and how the provisions relating to DROs meet the policy objectives are covered in more detail in the paragraphs below.

B.9 The introduction of the DRO regime is intended to contribute to the Government’s overall objective of improving the services for those who have fallen into debt and their creditors. Flowing from this, the objective of the DRO regime can be described as:

- To provide a statutory form of debt relief for some who are currently unable to access such existing processes, which provides financial rehabilitation for the debtor and protects creditors’ interests.

B.10 The evaluation of the DRO regime will focus on the three key elements of this objective, which are:

- The accessibility of DROs;
- The financial rehabilitation of debtors subject to a DRO; and
- The integrity of the DRO system.

B.11 Currently, the only debt relief system available to debtors who have no assets and no surplus income with which to come to an arrangement to pay their creditors is bankruptcy; such debtors are unable to access debt relief systems that require re-payment of creditors, such as Individual Voluntary Arrangements, Debt Management Plans and Administration Orders. Therefore, the benchmark information will mainly relate to bankruptcy as being, prior to the introduction of the DRO regime, the only option available to such debtors (if they could meet the entry costs of bankruptcy). Further, unless indicated otherwise, the benchmark information will relate to the 3 years prior to the implementation of the DRO provisions.

The accessibility of DROs

B.12 The accessibility of DROs will, in the main, depend on the following factors:
The entry criteria: There are no entry criteria as regards asset and debt levels for a debtor to petition for his/her own bankruptcy; in contrast, a debtor can only apply for a DRO if his/her:
- Gross debts do not exceed £15,000
- Gross assets do not exceed £300
- Surplus monthly income does not exceed £50

Further, whilst there is no limit on how often or when a debtor can apply for bankruptcy, a debtor cannot apply for another DRO within 6 years of a previous order.

The entry costs: As regards bankruptcy, a debtor must pay £325 petition costs and, if they are not in receipt of benefits, £150 court fees. These costs are seen as a barrier to entry. There are some charities that will assist with these bankruptcy costs, but the availability of such charities is not widespread and a recent Insolvency Service survey of debtors who applied for a bankruptcy order during March 2004 indicated that only 2.6% of such debtors obtain the deposit from a charity. As regards DROs, a debtor will only need to pay a nominal fee (yet to be fixed) to cover the administrative costs of the DRO.

The application process: In order to access bankruptcy, a debtor must complete bankruptcy petition forms, which can be completed either electronically (under the on-line petition service administered by The Insolvency Service), or by hand. The debtor then must present the bankruptcy petition to his/her local court that has jurisdiction to deal with insolvency matters. The DRO regime will be administered in a very different way. The Court will not be involved in the making of a DRO. Instead, an approved intermediary (such as one of the not-for-profit debt advice organisations or Citizen’s Advice Bureau) will obtain the relevant information about the debtor’s affairs and then, where appropriate, assist the debtor to make an online application to the official receiver for a DRO. On receipt of the application, the official receiver will check that the debtor meets the criteria for entry to the DRO scheme and if so, make a DRO.

Therefore, in order to evaluate the accessibility of DROs, we need to look at the following:

- Are the DRO provisions being used? Is the level of DROs in line with the anticipated level?
- Have DROs impacted on bankruptcies? It is probable that debtors who meet the DRO entry criteria who currently apply for bankruptcy will apply for a DRO instead. Further, the existence of the DRO regime may cause debtors to apply for debt relief via the DRO system at an earlier stage, i.e. while their debts still meet the DRO entry criteria, than they would have when bankruptcy was the only option.
- Are the DRO entry criteria appropriate? Is the six-year rule regarding applying for another DRO fair?
- Is the DRO regime being exploited by debtors who could make meaningful repayments to creditors? Because of the low entry cost, it is possible that debtors who do not fulfil the entry criteria may try to apply for a DRO. The Official Receiver will have the power to revoke a DRO where it subsequently transpires that the debtor does not meet the DRO entry criteria.
• Are the financial costs involved in applying for a DRO less than bankruptcy?
• Are there sufficient recognised intermediaries available? The accessibility of DROs depends on both the number of intermediaries and their geographical spread. It should also be noted that consideration is being given to intermediaries being contacted by telephone. Therefore, the geographical location of intermediaries may have no impact.
• Do intermediaries have sufficient time to deal with all potential DRO applications? Currently, some debt advisors feel that they will not have sufficient time to deal with the extra work involved in making a DRO application. However, others believe that they may save time as currently, in such cases, the debt advisor may well end up writing to creditors to seek some sort of informal arrangement and hence become embroiled in on-going correspondence.
• Do the recognised intermediaries have sufficient resources? Given the mode of application, the intermediaries need adequate IT equipment and access to both IT equipment and the internet.
• Are debtors and debtor advisers aware of the DRO regime? As not all debt advice organisations will be recognised intermediaries, non-recognised intermediaries will need sufficient knowledge regarding the DRO regime to ensure referrals are made in all appropriate cases.
• Do all debt advisors (regardless of whether they are a recognised intermediary) understand the DRO regime? What is the public awareness of the DRO regime?
• What impact does the absence of the Court in the DRO application process have? As the court is not involved, the cost of applying for a DRO is reduced. However, consultation responses indicated that some felt that the court would add "gravitas" and would impress on the debtor the severity of the situation. This needs to be balanced against the ‘face-to-face’ contact provided by intermediaries that may improve the accessibility of DROs. Further, the timeliness between the application and making of a DRO should be looked at.
• Finally, are debtors satisfied with the accessibility of the DRO regime?

B.14 The suggested evaluation criteria are:

<table>
<thead>
<tr>
<th>Measure</th>
<th>Definition</th>
<th>Benchmark information</th>
<th>Rationale</th>
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<tbody>
<tr>
<td>a) The level of DROs</td>
<td>i) The level of DROs</td>
<td>A forecast of the level of DROs based on:</td>
<td>To assess whether the DRO regime is utilised</td>
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<td></td>
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<td>- The level of debtor petition bankruptcy orders obtained which meet the DRO entry</td>
<td>To assess whether the DRO regime provides debt relief in the appropriate</td>
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<td>criteria and a sampling exercise to ascertain</td>
<td>level of cases</td>
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<td>whether bankrupts would have sought debt relief earlier</td>
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<td>- Regulatory Impact Assessment for DROs</td>
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<tr>
<td>Measure</td>
<td>Definition</td>
<td>Benchmark information</td>
<td>Rationale</td>
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<tr>
<td>b) The impact of DROs on bankruptcies</td>
<td>i) The level of DROs compared to the level of bankruptcies</td>
<td>The level of bankruptcy orders prior to the introduction of the DRO regime</td>
<td>To assess the impact of the DRO regime on bankruptcies</td>
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<td></td>
<td>ii) The debt profile of bankrupts after the introduction of the DRO regime</td>
<td>The debt profile of bankrupts prior to the introduction of the DRO regime</td>
<td></td>
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<tr>
<td>c) The appropriateness of the DRO entry criteria</td>
<td>i) Opinion of recognised intermediaries and debt advisors regarding the appropriateness of the DRO entry criteria (based on questionnaire response)</td>
<td>Not applicable, although views have been obtained as part of the consultation exercise</td>
<td>To assess whether the DRO entry criteria are appropriate based on debtors who cannot access DROs being dealt with by intermediaries</td>
</tr>
<tr>
<td></td>
<td>ii) The level of ‘second-time’ DROs (no information will be available until at least 6 years after the implementation of the DRO regime)</td>
<td>The level of ‘second-time’ bankrupts</td>
<td>To assess whether the ‘second-time’ DRO entry criteria are appropriate</td>
</tr>
<tr>
<td>d) Abuse of the DRO regime</td>
<td>i) The level of DROs which are subsequently revoked</td>
<td>Not applicable</td>
<td>To assess whether debtors are exploiting the DRO regime</td>
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<td>iii) The level of prosecutions and restrictions orders based on providing misleading information in a DRO application</td>
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<td>iii) Case study material from recognised intermediaries regarding cases where a debtor has attempted to meet the DRO entry criteria, but information indicating non-suitability has come to light prior to a DRO application</td>
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<td>e) Costs to the</td>
<td>i) DRO fee payable</td>
<td>Costs involved in</td>
<td>To assess whether</td>
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<tr>
<td>Measure</td>
<td>Definition</td>
<td>Benchmark information</td>
<td>Rationale</td>
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<tr>
<td>debtor to obtain a DRO</td>
<td>applying for a bankruptcy order, to cover the petition deposit (allowing for those paid by charitable institutions) and court costs (allowing for those waived)</td>
<td>a DRO is cheaper to access than bankruptcy</td>
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<tr>
<td>f) Accessibility of recognised intermediaries (subject to change depending on whether intermediaries can be contacted by telephone)</td>
<td>i) Number of recognised intermediaries</td>
<td>Number of courts with insolvency jurisdiction</td>
<td>To assess whether there are sufficient recognised intermediaries</td>
</tr>
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<td></td>
<td>ii) Geographical spread of recognised intermediaries in relation to: - Each other - The population</td>
<td>Geographical spread of courts with insolvency jurisdiction in relation to: - Each other - The population</td>
<td></td>
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<td></td>
<td>iii) Opinion of recognised intermediaries regarding whether they have sufficient time to deal with all DRO applications (based on questionnaire response)</td>
<td>Not applicable, although views have been obtained through the DRO development process</td>
<td>To assess whether recognised intermediaries have sufficient time to deal with all DRO applications</td>
</tr>
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<td></td>
<td>iv) Publicity of where recognised intermediaries can be located</td>
<td>Publicity of where courts with insolvency jurisdiction can be located</td>
<td>To assess whether the recognised intermediaries can be easily identified</td>
</tr>
<tr>
<td>g) Accessibility of DRO on-line application process</td>
<td>i) Level of computers with internet access held by the recognised intermediaries</td>
<td>The accessibility of bankruptcy forms</td>
<td>To assess whether the recognised intermediaries have sufficient IT equipment and access</td>
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<td>ii) Opinion of recognised intermediaries regarding the availability of on-line access in their office (based on questionnaire response)</td>
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<tr>
<td>Measure</td>
<td>Definition</td>
<td>Benchmark information</td>
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<tr>
<td>h) Awareness and understanding of the DRO regime</td>
<td>i) Awareness and understanding amongst debt advisors (based on questionnaire response)</td>
<td>Awareness and understanding of bankruptcy amongst debt advisors</td>
<td>To assess the awareness and understanding of the new DRO regime within the debt advice sector</td>
</tr>
<tr>
<td></td>
<td>ii) Level of referrals from debt advisors to recognised intermediaries (depending on the level of accreditation)</td>
<td>Not applicable</td>
<td></td>
</tr>
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<td></td>
<td>iii) Level of DRO applications in correctly made, and reasons why</td>
<td>Not applicable</td>
<td>To assess the understanding of the new DRO regime by recognised intermediaries</td>
</tr>
<tr>
<td></td>
<td>iv) The level of debtor petition bankruptcies meeting the DRO entry criteria post-DRO implementation</td>
<td>The level of debtor petition bankruptcies meeting the DRO entry criteria pre-DRO implementation</td>
<td>To assess debtor awareness of the DRO scheme</td>
</tr>
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<td></td>
<td>v) Public awareness of the DRO regime (based on survey response)</td>
<td>Public awareness of the bankruptcy regime (based on survey response)</td>
<td>To assess the public awareness of the new DRO regime</td>
</tr>
<tr>
<td>i) Effect of a non-court based DRO application process</td>
<td>i) DRO fee payable</td>
<td>As estimate of the fees (including court fees) that would have been payable if the DRO application process was court-based</td>
<td>To assess the financial impact of not involving the court in the DRO application process</td>
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<td></td>
<td>ii) Opinion of DRO debtors as regards the potential effect of court involvement in the DRO process (to include potential increase in DRO fee) (based on questionnaire response)</td>
<td>Opinion of debtor petition bankrupts as regards the effect of the court being involved in bankruptcy process (based on questionnaire response)</td>
<td>To assess the impact on DRO accessibility of making application via recognised intermediaries rather than the court</td>
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<td>iii) Opinion of DRO debtors as the effect of the recognised intermediaries in the DRO process (based on questionnaire response)</td>
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<td>Measure</td>
<td>Definition</td>
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<tr>
<td>iv) Timeliness between DRO applications and making of the DRO</td>
<td>Timeliness between a debtor being ready to present a bankruptcy petition and making of an order</td>
<td>To assess the timeliness of dealing with DRO applications</td>
<td></td>
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<tr>
<td>j) Customer satisfaction with accessibility of DROs</td>
<td>i) Satisfaction of DRO debtors with process of obtaining a DRO (based on a questionnaire response)</td>
<td>Satisfaction of debtor petition bankrupts with the process of entering into bankruptcy (based on a questionnaire response)</td>
<td>To assess customer satisfaction with accessibility of DROs</td>
</tr>
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<td></td>
<td>ii) Complaints received by The Insolvency Service regarding the accessibility of DROs as recorded in the complaints register</td>
<td>Complaints received by The Insolvency Service regarding the accessibility of obtaining a bankruptcy order based on a debtor's petition as recorded in the complaints register</td>
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<td></td>
<td>ii) Complaints received by recognised intermediaries regarding the accessibility of DROs</td>
<td>Complaints received by the Court Service regarding the accessibility of obtaining a bankruptcy order based on a debtor's petition</td>
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</table>

The financial rehabilitation of debtors subject to a DRO

B.15 This objective relates to the impact of a DRO on a debtor, and the key issue is whether a debtor can successfully re-access the financial market.

B.16 Following the making of a DRO, all debtors will be subject to bankruptcy restrictions for a minimum of twelve months. However, the re-entry of a DRO debtor into the financial market will also depend on what impact the DRO regime has had on financial stakeholder perceptions and processes, and whether the debtor has ‘learnt’ from DRO experience.

B.17 As detailed above, the only debt relief system currently available to debtors who have no assets and no surplus income with which to come to an arrangement to pay their creditors is bankruptcy. However, such debtors may well not been able to meet the entry costs of bankruptcy (as detailed at paragraph 13), and therefore, such debtors are effectively unable to access debt relief. Therefore, it is appropriate to use both bankruptcy and ‘do nothing’ options as benchmark information.

27 While the order is in force the debtor will be subject to the same restrictions as if he were bankrupt. For example, he will not be able to obtain credit above a prescribed amount without disclosing his status or engage in business under a name other that was disclosed in the application for the debt relief order.
B.18 Therefore, in order to evaluate the financial rehabilitation offered under the DRO regime, we need to look at the following:

- What effect does the discharge period in DROs have compared if the debtor had done nothing, or entered into bankruptcy? We need to look at both the type of restrictions imposed and the time for which they are imposed.
- What restrictions are imposed on DRO debtors under non-insolvency legislation? In particular, which impact will this have on DRO debtors in PAYE employment?
- How will credit reference agencies and lenders treat DRO debtors? However, it should be noted that it is anticipated that many of the debtors who will apply for DROs will be ‘financially excluded’, i.e. they cannot access banking or mainstream credit facilities, regardless of their credit history, due to their lack of income\(^{28}\).
- Will self-employed DRO debtors be able to recommence trading?
- Do the DRO debtors feel that the DRO regime offers financial rehabilitation? What obstacles have they met?
- Do creditors understand the DRO process and how it affects them? Part of the rehabilitation process is that debtors subject to DROs are given a ‘breathing space’ from creditor actions.
- Further, the existence of the DRO regime may cause debtors to apply for debt relief via the DRO system at an earlier stage, i.e. while their debts still meet the DRO entry criteria, than they would have when bankruptcy was the only option. This may contribute to the rehabilitation of debtors.

B.19 The suggested evaluation criteria are:

<table>
<thead>
<tr>
<th>Measure</th>
<th>Definition</th>
<th>Benchmark information</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) The affect of the DRO discharge period</td>
<td>i) A breakdown of the length of the DRO discharge period (fixed at 12 months unless windfall provisions apply)</td>
<td>A breakdown of bankruptcy discharge periods, and none (if the debtor had not sought any debt relief)</td>
<td>To assess the impact of insolvency legislation on DRO debtors</td>
</tr>
<tr>
<td></td>
<td>ii) The restrictions imposed under the DRO</td>
<td>The restrictions imposed under bankruptcy, and none (if the debtor had not sought any debt relief)</td>
<td></td>
</tr>
</tbody>
</table>

\(^{28}\) Financial exclusion can be described as ‘the inability of individuals, households or groups to access necessary financial services in an appropriate form. Exclusion can come about as a result of problems with access, prices, marketing, financial literacy or self-exclusion in response to negative experiences or perceptions (Centre for Research into Socially Inclusive Services, 2003).
<table>
<thead>
<tr>
<th>Measure</th>
<th>Definition</th>
<th>Benchmark information</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) The affect of DROs on public and lender policies</td>
<td>i) Details of the non-insolvency legislation imposing restrictions on DRO debtors</td>
<td>Details of the non-insolvency legislation imposing restrictions on bankrupts, and none (if the debtor had not sought any debt relief)</td>
<td>To assess the impact of non-insolvency legislation on DRO debtors</td>
</tr>
<tr>
<td></td>
<td>ii) Details of credit agencies' policies regarding the recording of DROs</td>
<td>Details of credit agencies' policies regarding the recording of bankruptcy orders and defaulting debtors</td>
<td>To assess the impact of the DRO regime on a debtor's ability to obtain credit</td>
</tr>
<tr>
<td></td>
<td>iii) Details of lenders' policies in dealing with DRO debtors</td>
<td>Details of lenders’ policies in dealing with bankrupts and defaulting debtors</td>
<td>To assess the impact of the DRO regime on a debtor’s ability to obtain financial products</td>
</tr>
<tr>
<td>c) The affect of DROs on the self-employed</td>
<td>i) The percentage of trader DRO debtors who re-commence trading</td>
<td>i) The percentage of trader bankrupts who re-commence trading</td>
<td>To assess the impact of the DRO regime on entrepreneurial activity</td>
</tr>
<tr>
<td>d) Customer satisfaction with the DRO regime</td>
<td>i) DRO debtor satisfaction with the financial rehabilitation offered under the DRO regime (based on a questionnaire response)</td>
<td>Bankrupts' satisfaction with the financial rehabilitation offered under bankruptcy (based on a questionnaire response)</td>
<td>To assess the debtor views regarding the financial rehabilitation offered under the DRO regime</td>
</tr>
<tr>
<td>e) Creditor awareness and understanding of the DRO regime</td>
<td>i) Creditor awareness and understanding of the DRO regime (based on a questionnaire response)</td>
<td>Creditor awareness and understanding of the bankruptcy regime (based on a questionnaire response from specific frequent DRO creditors)</td>
<td>To assess whether creditors understand the DRO regime and how it affects them</td>
</tr>
<tr>
<td></td>
<td>ii) Case study material where creditors have taken inappropriate action against a debtor subject to a DRO</td>
<td>Case study material where creditors have taken inappropriate action against a bankrupt</td>
<td></td>
</tr>
<tr>
<td>f) Timeliness of seeking debt relief</td>
<td>i) Opinion of DRO debtors as regards whether DRO regime has encouraged debtors to seek debt relief at an earlier stage</td>
<td>Opinion of bankrupts as regards whether DRO regime would have encouraged them to seek debt relief at an earlier stage</td>
<td>To assess whether DRO regime has encouraged debtors to seek debt relief at an earlier stage</td>
</tr>
</tbody>
</table>
The integrity of the DRO system

B.20 This objective relates to the protection of creditors’ rights. There are various provisions proposed which aim to ensure the integrity of the system as follows:

Enforcement action

- When making a DRO application, the debtor will be informed that the statement is subject to the provisions of section 5 of the Perjury Act 1911. These forms will also clearly state the effect of the order and the consequences of failure to disclose full facts or give false information.
- If a debtor obtains a debt relief order and is found to have made misleading statements about eligibility, e.g. failure to disclose assets or liabilities, then that would, if deliberate, constitute a criminal offence. Further, unlike bankruptcy, if the debtor has made a misleading statement about his assets, liabilities or income to obtain an order, it will also be possible to revoke the order, thus leaving the debtor once again without protection from enforcement and at risk of action by his creditors. This would also apply after the order if the debtor comes into property during the period of the order, which he fails to disclose.
- The official receiver would be able to investigate suspicion of misconduct in exactly the same way as if the debtor had been adjudged bankrupt, and debtors whose conduct is found to be culpable and to have contributed to the insolvency would be subject to a regime of restrictions orders of between 2 and 15 years in the same way as in bankruptcy.
- There will be a range of offences aimed at tackling misconduct by the debtor, similar to those in bankruptcy such as failure to disclose information about his affairs, transfer of property out of the reach of creditors and destruction of books and papers.
- The proposed enforcement remedies are not mutually exclusive and in some cases, misconduct by the debtor may lead his being subject to a combination of (or indeed all of) the available enforcement actions.

Creditors’ rights

- Only scheduled creditors are bound by the DRO and prohibited from taking any enforcement action. Any creditor not scheduled would not be bound and will be able to pursue enforcement action if appropriate. However, if it transpires that creditors who ought to have been scheduled have not been, the official receiver will be able to revoke the order (as above).
- Creditors will be able to object to the making of the order on a variety of specified grounds (for example that the debtor had failed to disclose assets, liabilities or income) and if the objection proves to be well founded following the official receiver’s investigation, the order can be revoked and the debtor would then be open to enforcement action by his or her creditors.
• There will be a facility for creditors who are dissatisfied with the actions of the official receiver to apply to the court for the matter to be reviewed, and for the court to give directions or make such order as it thinks fit.

Action following a change in the debtor’s financial situation

• It proposed that a debtor who experiences a windfall or an increase in income, irrespective of the sums involved, should disclose it to the official receiver. In cases where it appears that the debtor would be able to come to a sensible arrangement with his creditors, e.g. a county court administration order or an individual voluntary arrangement, then s/he should be given a period of time in which to make appropriate arrangements after which the order would be revoked.

• Further, it is proposed that in cases where the debtor experiences a windfall or increase in income close to his discharge date, s/he should be permitted three months in which to make arrangements with his creditors, and that in some cases this will entail extension of the order until expiry of the three month period.

B.21 Therefore, in order to evaluate the integrity of the DRO regime, we need to look at the following:

• What arrangements does the Official Receiver have in place to ensure that misconduct will be identified?
• What level of enforcement action is taken in DRO cases? And what type of enforcement action is taken?
• Are creditors satisfied with the Official Receiver’s actions? How often do they object and what is the result? How often do they seek judicial review?
• How often are windfalls identified, and what action is taken?

B.22 The suggested evaluation criteria are:

<table>
<thead>
<tr>
<th>Measure</th>
<th>Definition</th>
<th>Benchmark information</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Working practices of an Official Receiver as regards DRO investigations</td>
<td>i) Processes laid out for DRO investigation in any Casework Process Quality Standard, investigation process and management notices (as appropriate)</td>
<td>Processes laid out for bankruptcy investigation in any Casework Process Quality Standard, investigation process and management notices (as appropriate)</td>
<td>To assess the Official Receiver’s approach to DRO investigations</td>
</tr>
</tbody>
</table>

29 The DCA proposals for the reform of County Court Administration Orders include raising the maximum permitted level of liabilities to £15,000, the debtor having a surplus income of greater than £50 per month
| b) The level of enforcement action | i) The level of prosecution action as regards DROs, to include: - reports submitted - action taken following submission of report | The level of bankruptcy prosecution action, to include: - reports submitted - action taken following submission of report | To assess the level of criminal activity and the protection offered to creditors as a result |
| ii) The level of Restrictions Orders action as regards DROs, to include: - reports submitted - action taken following submission of report | The level of bankruptcy restrictions orders, to include: - reports submitted - action taken following submission of report | To assess the level of civil misconduct and the protection offered to creditors as a result |
| iii) The level of DROs that are subsequently revoked | Not applicable | To assess the level of revocations and the protection offered to creditors as a result |
| c) Creditor satisfaction with the integrity of the DRO regime | i) Level of objections to DROs and action taken | Estimate as set out in the Regulatory Impact Assessment (to not exceed 10% of the orders made) | To assess whether creditors feel sufficiently protected by the DRO regime |
| ii) Level of creditor applications for judicial review and reasons why | Level of creditor applications for judicial review in bankruptcy cases and reasons why | |
| iii) Level of complaints recorded in The Insolvency Service’s Complaints Register relating to DROs | Level of complaints recorded in The Insolvency Service’s Complaints Register relating to bankruptcy | |
| iv) Creditor satisfaction with the DRO enforcement regime (based on questionnaire response) | Creditor satisfaction with the bankruptcy enforcement regime (based on questionnaire response) | |
| d) The level of windfalls | i) The level of windfalls identified in DRO cases and action taken as a result | The level of windfalls identified in bankruptcy cases and action taken as a result | To assess whether all windfalls are being identified |

Methodology and Sources of Information
B.23 The following paragraphs set out the general approach to the evaluation and the proposed sources of information to be used.

a) The Insolvency Service’s internal IT system

B.24 An internal IT system will be developed to support the DRO processes. The Service will ensure that sufficient information is recorded to extract the evaluation information required where possible. Benchmarking information relating to bankruptcies will be extracted from The Service’s existing IT system. Information regarding enforcement action will be taken from databases held by the Authorisations Team.

b) Communication (including meetings) with Insolvency Service personnel

B.25 Communication with appropriate staff will enable the approach of the evaluation to be explained and any necessary information or documentation to be obtained. Such communication will be important in ensuring that the evaluators fully understand the issues within the area under evaluation. Staff who assist the evaluators will be kept informed of the progress of the evaluation.

c) Review of files.

B.26 File research will be used to supplement information from other sources.

d) Contact with professionals within the insolvency sector

B.27 The evaluators will seek the views of professionals within the insolvency sector to obtain information regarding the impact of the DRO provisions.

e) Structured questionnaires

B.28 Surveys of debt advisors (including recognised intermediaries), DRO debtors and creditors will be carried out.

Timing

B.29 The estimated timetable for completion of the evaluation is as follows:

<table>
<thead>
<tr>
<th>Present – March 2009</th>
<th>Obtain benchmark information</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2009 – April 2012</td>
<td>Obtain post-implementation information</td>
</tr>
<tr>
<td>July 2010</td>
<td>1st interim report</td>
</tr>
<tr>
<td>July 2011</td>
<td>2nd interim evaluation report</td>
</tr>
<tr>
<td>October 2012</td>
<td>Final evaluation report</td>
</tr>
</tbody>
</table>
VI. IMMUNITY FROM SEIZURE: PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

6.1 Immunity from seizure for works of art on loan from other countries to the UK.

2. Summary

6.2 The provisions in the Bill will provide immunity from seizure for objects which have been lent to this country from overseas and which are to be included in a temporary exhibition at a museum or gallery.

3. Purpose and intended effect of measure

Objective

6.3 Providing immunity from seizure will reassure international institutions that it continues to be safe to lend to the UK and will help preserve the UK’s status as a major world exhibition centre for art.

Background

6.4 This issue first arose in November 2005 when works of art from the Pushkin Museum in Moscow were seized at the Swiss border at the request of the trading company Noga on the grounds of a claimed Russian government debt. The items were later released, following the intervention of the Swiss national Government but the Russians have become increasingly nervous about lending to the UK and other countries without protection from seizure legislation. Other countries are also insisting on such safeguards.

6.5 In the absence of legislation guaranteeing immunity from seizure we are unable to satisfy such requests. The State Immunity Act 1978 (the Act) provides some protection for works of art lent to exhibitions in this country where such works are state owned. However this protection does not apply to property which is in use, or intended for use, for commercial purposes. The application of the Act to works of art which are lent to this country for exhibitions is not entirely clear. In addition, the protection given by the Act does not extend to works borrowed from private collections.

4. Consultation

6.6 DCMS issued a public consultation paper on these proposals in March 2006. Responses were received from 24 organisations and individuals from within the museums sector and elsewhere. The majority of responses were fully supportive of introducing legislation in this area.

5. Options
6.7 We therefore need a lasting solution to satisfy Russia and an increasing number of other countries which are demanding immunity. Primary legislation is the only way to enable the United Kingdom to provide the necessary guarantees.

6.8 The purpose of the legislation is to provide immunity from seizure to objects which have been lent to this country from overseas to be included in a temporary exhibition at a museum or gallery. Immunity will be given from any form of seizure ordered in civil or criminal proceedings, and from any seizure by law enforcement authorities. It will apply to objects of any description which are lent for temporary exhibitions to the public at any museum or gallery within the United Kingdom.

6.9 The effect of providing immunity from seizure in civil proceedings will be to remove one potential remedy from claimants, but not to remove the basis for any cause of action in relation to a particular work of art. It will remain possible for a claimant to bring proceedings for damages against the museum (or anyone else who may be liable to such a claim).

6.10 The clauses will have the result that it will not be possible for claimants in civil proceedings to apply for an order for the detention, custody, preservation or restitution of an object which is covered by the immunity we propose. Equally, it will not be possible for creditors to enforce a judgment debt against the owner by seeking the seizure of such an object so that it may be sold. It will also not be possible for a work of art to be seized during the course of a criminal investigation.

6.11 There will be one exception to the proposed immunity. The clauses provide that the immunity will not apply where a court is required to make an order for seizure or forfeiture as a result of the United Kingdom’s obligations under international treaties or European Union law.

6. Risks

<table>
<thead>
<tr>
<th>Risk</th>
<th>Consequence</th>
<th>Avoid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do nothing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Important works of art or other cultural objects no longer lent to the UK.</td>
<td>UK’s status as a leading cultural venue under threat. Major exhibitions will not come to the UK or quality diluted. Knock on effect for tourism and ultimately the Olympic culture offer.</td>
<td>No ultimate solution without new legislation.</td>
</tr>
<tr>
<td>Works of art in the UK on loan from abroad may be seized.</td>
<td>Some works of art may be protected under the State Immunity Act, but this does not cover any works of art borrowed from private collections</td>
<td>No ultimate solution without new legislation.</td>
</tr>
<tr>
<td>Risk</td>
<td>Consequence</td>
<td>Avoid</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Do something</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concern that introducing immunity from seizure will protect spoliated items from being returned to their rightful owners.</td>
<td>Potential restitution claimants may protest.</td>
<td>Explain that legislation will only cover works from abroad and on temporary loan.</td>
</tr>
<tr>
<td>Concern that once immunity from seizure applies, museums may be less thorough in undertaking provenance research.</td>
<td>Possibility increases that objects of dubious provenance may appear in exhibitions.</td>
<td>Museums are governed by Codes of Practice on this and will be aware that the legislation will not protect them from claims for damages.</td>
</tr>
</tbody>
</table>
7. Costs and benefits

6.12 If, as we propose, protection is given automatically (rather than on application by the relevant institution) the costs for the government should be minimal.

<table>
<thead>
<tr>
<th>Sector affected</th>
<th>Costs</th>
<th>Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government</td>
<td>None once legislation was introduced. Intention is to have automatic immunity for works of art, rather than a system of application which would involve significant administrative costs.</td>
<td>Ability to offer security to international lenders. Protect the UK's reputation as a leading world exhibition centre and will be beneficial to tourism and research.</td>
</tr>
<tr>
<td>National UK museums and galleries</td>
<td>None.</td>
<td>Reduced legal and administration fees. Guarantees the future of important exhibitions and removes the need for lengthy discussions/negotiations with lenders on the threat of seizure.</td>
</tr>
<tr>
<td>Private sector - shippers</td>
<td>None</td>
<td>Reduced legal and administrative costs. Legislation should limit potential seizures from taking place, limiting costs to shippers as well as to lenders</td>
</tr>
<tr>
<td>International lenders</td>
<td>Should not result in any new costs for lenders. The need to take legal advice and consider risk should reduce.</td>
<td>Will want to lend to the UK and will be confident to do so.</td>
</tr>
</tbody>
</table>
8. Equity and Fairness

6.13 The benefits of immunity from seizure will be enjoyed by all international lenders. From an equity perspective, the legislation will not affect particular groups in society in different ways or give advantage to a particular group.

9. Small Firms Impact Test

6.14 Very difficult to assess. Shippers are the only small businesses which may be involved. Legislation may not stop occasional potential attempts at seizure, though international creditors should be less inclined to try. However, the risk of seizures should be significantly reduced. The legislation will not have an adverse impact on small firms.

10. Competition Assessment

6.15 The legislation is likely to assist all museums and galleries which put on international exhibitions in the United Kingdom. It will not affect competition in the museums sector. We have not addressed the 'competition filter test' as it refers to firms and we are not dealing with these.

11. Enforcement, Sanctions and Monitoring

6.16 Unlikely to be an issue with regards to immunity from seizure. The recommended course will avoid the museums sector and lenders from being involved in any additional procedures.

12. Implementation and Delivery Plan

6.17 Once these proposals become law, objects afforded protection under the clauses will be immune from seizure. There is no other implementation or putting the proposals into place as such, as may be the case with other proposals subject to an RIA.

13. Post implementation review

6.18 This will be considered once the method of implementation has been finalised.

14. Summary and recommendation

6.19 The objective of the proposal is to provide immunity from seizure for international works of art and other cultural objects on loan to the UK. This will ensure that the UK continues to be acknowledged world-wide as a leading centre for international exhibitions. We consulted widely on our proposals before drafting the clauses in the Bill and are confident that they represent the best means of achieving our objective, which is widely supported by the museums sector.