

Title: Proposed reforms to third party debt orders Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	IA No: MoJ 076
	Date: 2 February 2012
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

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 in some circumstances debtors. The main weaknesses relate to a lack of accurate and up to date information about debtors and the length of time current processes take to reach fruition. Unless there is prompt and effective enforcement the authority of the courts, the authority of the court order and public confidence in the justice system might all be undermined.

What are the policy objectives and the intended effects?

The policy objectives of the proposed reforms to Third Party Debt Orders (TPDOs) are to implement reforms which will allow quicker and potentially more successful payment of the judgment debt, and which will lead to greater confidence in the civil justice system. The intentions are to streamline and improve the efficiency of processes, and to expand when and how TPDOs can be used (in terms of the accounts they can be applied to and when they can be applied). At the same time, the proposals should retain safeguards from the aggressive pursuit of debts for debtors who are complying with judgment debts.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing.

Option 1: Streamline TPDO process by removing the automatic final hearing stage. Judicial Interim Orders will become Final through the lapse of time unless the judgment debtor raises objections, in which case the matter will be considered at a hearing before a judge. This option requires changes to rules of court.

Option 2: Expansion of accessible bank accounts. Currently TPDOs can only be placed on current accounts solely in the debtor's name. We propose expanding accessible bank accounts to include all accounts (including deposit and joint accounts), except trust funds and those with specific contractual undertakings.

Option 3: Introduction of periodical deduction orders to allow sums to be deducted from debtors' bank accounts at prescribed intervals.

The preferred option is to implement options 1, 2 and 3 in light of the positive consultation responses received strongly in support of the options.

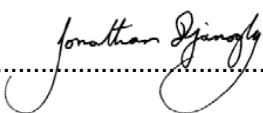
Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Oct 2014

What is the basis for this review? PIR. **If applicable, set sunset clause date:** Oct 2015

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes
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Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:.....  Date: 2 February 2012.....

Summary: Analysis and Evidence

Policy Option 1

Description: Streamline third party debt order processes (streamlining)

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate	NQ		NQ		NQ
<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>No potential costs associated with this option can be monetised due to insufficient data, however, a qualitative assessment of the impact on each group is included below.</p>					
<p>Other key non-monetised costs by 'main affected groups'</p> <p>There are no, or minimal, anticipated IT adjustment costs. Debtors may pay their judgment debt more quickly, and potentially more completely.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate					
<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>It is not possible to monetise the expected benefits of this policy, notably the potential administrative savings to HMCTS, however we outline in the evidence base potential ways in which HMCTS administrative savings may be achieved.</p>					
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Administrative saving in HMCTS identified, primarily relating to not scheduling a hearing unless an objection is raised by the debtor. Creditors may register third party debt orders more quickly in cases where the hearing generates a delay (and the debtor does not raise an objection). Creditors save costs by not attending court unnecessarily (when debtor does not turn up). Possible gains to equity (fairness) if judgment debts are secured more quickly. Possible wider economic benefits if the policy change leads to greater contractual certainty.</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
<p>The volume of cases is assumed to remain the same but possibly might rise. Debtor behaviour is assumed to be the same with the same number of people attending a court hearing. Court fees are assumed to remain the same. Court capacity (including staff and estate) is assumed not to be affected by these proposals. It is not possible to determine exactly how process times may change, however, it is assumed that on average the process may be faster than currently. Distributional implications unclear as we have little information on the characteristics of debtors / creditors. Overall potential impact on legal aid, if any, is assumed not to be significant.</p>					
Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as	
Costs: £0m	Benefits: £0m	Net: £0m	No	NEUTRAL	

Summary: Analysis and Evidence

Policy Option 2

Description: Expansion of accessible bank accounts

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	NQ		NQ	NQ

Description and scale of key monetised costs by 'main affected groups'

It is not possible to include a quantitative assessment of the costs of this option. Consultation responses did not provide financial information to identify the potential cost to banks of administering more TPDOs and this will depend on various implementation methods. HMCTS information does not allow us to assess how the reforms may impact judgment debt repayment. We detail the available evidence in the evidence base, including that used to inform our assessment of the net impact on business.

Other key non-monetised costs by 'main affected groups'

Debtors could repay debt more quickly and / or more completely, and might incur other costs and fees. This repayment would represent a transfer from the debtor to the creditor.
Potential cost to joint account holders where account deemed as 50% belonging to debtor when this is not the case, and it is not defended.
HMCTS and banks could incur costs of administering more third party debt orders, matched by increased fee income.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

It is not possible to include a quantitative assessment of the benefits of this option, in particular the benefit to creditors who may see improved judgment debt repayment. We do not have sufficient information about how creditor behaviour may change as we do not have enough information about debtors' bank accounts, or other factors which may impact upon which enforcement method a creditor would choose.

Other key non-monetised benefits by 'main affected groups'

Creditors may secure full debt repayment more quickly and / or more completely
Potential wider economic benefits from greater contractual certainty and enforceability
HMCTS and banks would secure increased fee income from administering more third party debt orders, mirroring their increased costs

Key assumptions/sensitivities/risks

Discount rate (%)

Court fees and court cost recovery are assumed to remain the same, as is cost recovery to banks, but there is a risk that banks could incur net costs from administering more third party debt orders.
Assume that banks will not occur any additional legal costs through the expansion of accessible accounts
Distributional implications unclear as we have little information on the characteristics of debtors / creditors.
Third party debt orders could displace other enforcement processes in some cases.
Overall potential impact on legal aid, if any, is assumed not to be significant.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	No	NEUTRAL

Summary: Analysis and Evidence

Policy Option 3

Description: Periodical deduction orders

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	NQ	NQ	NQ

Description and scale of key monetised costs by 'main affected groups'

It is not possible to include a quantitative assessment of this option. Consultation responses did not provide financial information to identify the potential cost to banks, and we do not have enough information on debtor and creditor behaviour to assess potential take up of this option and this would also depend on the implementation method. We detail the available evidence in the evidence base below, including the information used to inform our assessment of the net impact on business.

Other key non-monetised costs by 'main affected groups'

Potential one-off HMCTS IT costs associated with providing a new service. These are expected to be minimal based on information from MoJ IT, and the ability to combine the changes with existing IT projects.
Additional familiarisation and awareness transitional costs to both HMCTS and banks.
HMCTS and banks could incur costs of administering periodical deduction orders, matched by increased fee income.
Debtors could repay debt more quickly and more completely and might incur other costs and fees

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

It is not possible to include a quantitative assessment of this option, in particular the benefit to creditors who may see improved judgment debt repayment, as we do not have enough detail about debtors' behaviour to assess the scale of the impact. We refer to evidence from this process in enforcement of child maintenance payments to inform our analysis here.

Other key non-monetised benefits by 'main affected groups'

Creditors may secure full debt repayment more quickly and / or more completely.
Potential wider economic benefits from greater contractual certainty and enforceability.
HMCTS and banks would secure increased fee income, mirroring their increased costs.
Potential improved reputation and confidence in the civil justice system and enforcement of judgment debts.

Key assumptions/sensitivities/risks

Discount rate (%)

Assume that costs to HMCS of administering periodical lump sum deduction orders would be covered by fee income.
Bank fees assumed to cover cost of this process but there is a risk that banks could incur net costs from administering periodic deduction orders.
Distributional implications unclear as we have little information on the characteristics of debtors / creditors.
Periodic deduction orders could displace other enforcement processes in some cases.
Overall potential impact on legal aid, if any, is assumed not to be significant.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	No	NEUTRAL

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			October 2012		
Which organisation(s) will enforce the policy?			HMCTS (Civil Courts)		
What is the annual change in enforcement cost (£m)?			Expect negligible		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: n/a	Benefits: n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes	25
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	25
Small firms Small Firms Impact Test guidance	No	25
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	25
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	26
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	25
Human rights Human Rights Impact Test guidance	No	25
Justice system Justice Impact Test guidance	Yes	25
Rural proofing Rural Proofing Impact Test guidance	No	25
Sustainable development Sustainable Development Impact Test guidance	No	26

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	<u>Tribunals, Courts & Enforcement Act 2007</u>
2	<u>Child Maintenance & Other Payments Act 2008</u>
3	<u>Consultation Paper: Solving disputes in the county courts: creating a simpler, quicker and more proportionate system: A consultation on reforming civil justice in England and Wales</u> <u>justice internet web page at</u> <u>www.justice.gov.uk/consultations/solving-disputes-county-court.htm</u>

Evidence Base (for summary sheets)

1. Introduction

Background

- 1.1 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.
- 1.2 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 might all be undermined.
- 1.3 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 orders, charging orders, third party debt orders (TPDO) or warrants of execution. Some criminal liability orders and other (administrative) orders may also be transferred into the civil courts for enforcement by TPDOs and charging orders.
- 1.4 This Impact Assessment focuses on Third Party Debt Orders only (TPDOs). A TPDO effectively freezes the amount of the judgment sum owing on a debtor's bank account, thereby preventing the defendant from having access to the money in their bank account until the court makes a decision about whether or not the money should be paid out to a creditor. At present, the TPDO is only applicable at the point at which the third party receives the order and only to sums held in a current account.
- 1.5 The reforms apply to all forms of civil debt cases and other money orders transferred into the county courts for enforcement, but not to family cases (Child Maintenance and Enforcement Commission (CMEC) cases have already implemented the extended reforms). The reforms relate to all cases where a TPDO has been, or could be, obtained in order to secure money from the debtor. This might be all forms of civil case where payments are owed, not just cases involving money lending.
- 1.6 In 2010 there were around 4,300 applications for TPDOs in the county court, and 1,500 orders were made². This shows only around one third of the total number of applications lodged for TPDOs led to orders being made. Where orders have failed, it is unclear whether this is because of a lack of available funds in the account applied for, or for other reasons, such as if the judge dismisses the application or the creditor drops the application. The court fee for a TPDO is £100.
- 1.7 TPDOs are the least common enforcement method compared to the other types of judgment debt enforcement mentioned above. They also have a much lower percentage of applications leading to final orders than in charging orders and attachment of earnings orders, possibly because the mechanism is outdated, easily evaded and has not kept pace with modern banking developments.
- 1.8 Our proposed aim is to improve the effectiveness of TPDOs as an enforcement method, whilst still offering protection to debtors who are genuinely unable to pay.

Policy Objectives

- 1.9 Policy objectives are driven by efficiency and equity concerns, as described below.

² Source: Judicial & Court statistics annual. Almost all TPDOs are made in the county court - the Judicial & Court statistics show that only 68 orders were made in the High Court (Queen's Bench Division) in 2010.

Efficiency

1.10 Table 1 below shows the main stages of the TPDO process. The objective is to streamline this process, where possible, without adversely impacting the outcome seen. This would free up staff time for other uses in the County Court.

Table 1: Steps in the third party debt process

Key steps –interim order	Notes	Time taken
Process form and fee		Figures from HMCTS performance system show that an interim order is issued around 1 week after an application is made.
Pass papers to the District Judge for approval of interim order, allocating a hearing date if the application is not refused, and entering all details on the system at the relevant stages.		
Send interim order, application notice and documents filed in support of interim order to parties involved.	Hearing must be at least 21 days after issue of interim order.	
Key steps – final order		
Serve form on third party seven days before service is effected on the judgment debtor, and at least 21 days before the hearing.	This is the point at which the bank account would be frozen (i.e. before the debtor is informed). If funds are not available this is one reason the TPDO could fail.	Figures from HMCTS performance system show that a final order is issued around 9 weeks after an application is made.
Serve on the judgment debtor at least seven days after service on the third party, and at least seven days before the hearing.		
File papers ready for hearing.		
Hearing for final order. Update HMCTS systems to issue the final order.	After the final order is issued the money can be deducted.	

1.11 The process outlined in Table 1 highlights the two stages where judicial input is required – at the interim and final stages. In cases where no objection is made, the two stages may not be necessary, as long as debtors are still informed appropriately of the potential enforcement action against them.

1.12 The policy objective is to remove the duplication created by having an interim and final stage, where appropriate. Having a single stage in cases where no objection is raised, and having the order become final through the lapse of time would lead to a more efficient use of resource without having an adverse impact on outcomes.

Justice

1.13 It is necessary that in cases where debtors are able to repay their judgment debt, the system enables effective repayment to creditors. The original judgment order is assumed to be just, and therefore a system which enables it to be more easily enforced would be a desirable outcome.

1.14 A more efficient enforcement process should assist in achieving this objective. However, other amendments to TPDOs may also improve outcomes from a justice perspective. For example, currently if a debtor has their earnings paid into a joint account, a creditor cannot access these funds, although there is outstanding money owed to the creditor. Similarly, the debtor is able to move their money into a joint or second bank account at short notice to avoid a potential TPDO.

- 1.15 More generally, if the debtor has earnings paid into an account each month, creditors are unable to access the bank account over time, and would need to apply for additional TPDOs to obtain an ongoing stream of debt repayments. It would be more efficient, and potentially more effective if a single order could permit repayments over time as the debtor has additional funds paid into their bank account. This may require compliance on the part of the debtor but would enable creditors to use a longer term approach to debt management in certain situations.
- 1.16 However, any policy change must be balanced against the impact on the debtor side. Therefore, there would be safeguards in place to ensure that certain accounts, such as trust funds, will remain unavailable and that joint account holders remain protected. In the case of joint accounts (excluding cases where both account holders are cited as the judgment debtors), unless evidence can be produced to the court to the contrary, the court will deem only 50% of funds in any joint account as belonging to the debtor. This is the process currently adopted in Scotland and other jurisdictions. Further policy details will be provided at regulations consultation stage.

Summary of policy objectives

- 1.17 If the Government does nothing then the current process for TPDOs would continue to apply without addressing the present identified failings:
- That repayment through TPDOs could continue to be evaded easily, for example through debtors moving money to alternative bank accounts.
 - That the process would not be streamlined, operating less efficiently for users of the service, and confidence in the justice system might not improve.
 - That the process would not reflect modern banking practices, such as having multiple accounts, and so the TPDO process could be used less frequently in the future.

Economic rationale for intervention

- 1.18 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.19 In this case, the intervention would be justified primarily on efficiency grounds.
- 1.20 There would be gains in productive efficiency if fewer judicial system costs and other resources were used to achieve an equivalent outcome in terms of placing a TPDO. In addition, a reduction in the time and resources required to pursue enforcement action may at the margin lead to more cases being fully enforced, or being enforced more quickly, with wider economic benefits for the operation of markets and for contractual certainty.
- 1.21 The proposal to allow TPDOs to be applied to a wider range of bank accounts, and periodical deduction orders, might also generate other benefits if these allowed judgment orders to be settled more effectively in a wide range of circumstances.

Policy Proposals

- 1.22 We propose implementing the following options in relation to TPDOs:
- 1) Streamlining the TPDO process by removing the automatic final hearing stage at which the creditor is currently obliged to attend. Interim Orders will become Final through the lapse of time unless the judgment debtor raises objections, in which case the matter will be considered at a hearing before a judge. This option requires changes to the rules of the court which would be amended by means of regulations and amendments to Civil Procedure Rules.
 - 2) Expand accessible bank accounts to include all accounts (including deposit and joint accounts), except trust funds. An exception may also apply to other specialist accounts if specific legal obligations apply, or if access to certain accounts would create disproportionate

burdens on third parties. Following consultation responses, we will continue to talk to appropriate stakeholders about which accounts will be out of scope.

- 3) Periodical deduction orders to allow prescribed lump sums to be deducted from debtors' bank accounts at prescribed intervals.

Affected key stakeholder groups

1.23 The proposals will affect the civil courts, creditors, debtors, banks, legal professionals and joint account holders.

- **Civil Courts** will be impacted in terms resources required to administer TPDO applications.
- **Creditors** will be impacted in terms of the speed and potentially their ability to place a TPDO and they will also have the option to apply for periodic deductions from bank accounts. In some cases there may be quicker or more complete repayment of the judgment debt.
- **Debtors** will be affected in terms of the speed of the placing of the final TPDO, and potentially whether a TPDO is successfully placed. There could be a periodic deduction order issued against them. In some cases there may be quicker repayment of the judgment debt. Debtors may be liable to bank charges for periodical deduction orders, as in TPDOs.
- **Banks/Third parties** may see changes in costs and fee income, although these will depend on further work on implementation methods. The net financial cost is expected to be neutral.
- **Legal professionals** might be through providing advice relating to periodic lump sum deduction orders.
- **Joint account holders** might be affected if a third party debt order is placed on their joint account to the value of 50% when they actually own more than 50% of the joint account. However, if this risk arises, representations can be made to the court in this respect.
- **Legal Services Commission (LSC)** might be affected if there is a change in demand for legal advice funded by legal aid, which could include advice provided by the not for profit sector. Given that very little legal aid is given for enforcement of judgment debts, it is unclear whether these impacts would arise and if so, how significant they might be. We assume that the overall impact on legal aid, if any, is unlikely to be significant.

2. Costs & Benefits

2. 1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the options considered. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised which might include how the proposals impact differently on particular groups of society or changes in equity and fairness.
2. 2 This Impact Assessment considers the impacts on these groups under the different proposed changes to TPDOs and the process.
2. 3 The costs and benefits identified in this impact assessment are not quantifiable. Where possible, figures are provided for illustrative purposes, however, for some impacts identified only a qualitative assessment can be provided. This stems from a lack detailed financial data in certain areas, or because there is insufficient information to anticipate the extent of potential behavioural responses. This is explained in the analysis below.

Option 0: Base case (do nothing)

2. 4 Under this option, no intervention would be made. Therefore, the TPDO process for HMCTS and restrictions on which bank accounts can be considered would remain the same as currently. In particular, there would be no scope to address joint or second bank accounts, the process would always involve a hearing (even if no objection is raised by the debtor in response to the interim TPDO), and there would be no option for periodic deduction orders. It is possible that applications

from creditors wishing to use TPDOs as an enforcement mechanism would decrease as the system became increasingly out of date and less relevant to modern banking facilities.

2. 5 All options are assessed relative to the base case. As such, the costs and benefits associated with the base case are necessarily zero.

Option 1: Streamline third party debt order processes

Description

2. 6 The proposal under this option is to streamline the TPDO process by removing the automatic final hearing stage.
2. 7 The new process will take place as outlined below:
- File an application notice with the court in a prescribed form containing all the relevant information.
 - The application is referred to a District Judge, and where it is proper to make the order, the judge makes an interim charging order.
 - The third party financial institution is notified within a certain time period (and before the debtor is notified), so that the order can be served and funds frozen (but not deducted) before the debtor is informed. As currently, bank accounts up to the sum of the judgment order would be frozen when the notice of the interim order is sent out to the third party.
 - The interim charging order will become final automatically after a certain number of days (potentially 21 days), unless an objection is raised by the debtor. The interim charging order form will be amended to give notice that the order will become final on the date specified in the order.
 - A hearing date will only be set if the debtor raises an objection following the service of the interim charging order, stating why it should not be final. The final order would be made once the required time for response has elapsed and if no objection is raised. Where an objection is lodged by any interested party, including the debtor, the matter will be considered by a judge at a hearing.
2. 8 The main change from the current process is that in future the judge will make one (interim) order, which will become final once the required time for response has elapsed, provided no objection is raised. This compares to the current process where the judge makes both an interim and a final order. In cases where the debtor objects in future, the hearing process and final stage will take place according to the current process, although it will be the debtor's responsibility to raise the objection with the court (within the required time period).
2. 9 To supplement these changes, notices sent to judgment debtors will be revised to provide enhanced information about the process including a brief explanation of the nature and consequences of a TPDO and indication that the order will be made final upon the expiration of a stipulated period of time unless a hearing is requested.
2. 10 The new streamlined process will require revision to current rules of court subject to approval by the Civil Procedure Rules Committee.
2. 11 The policy would aim to achieve the following:
- Reduced delay in the final TPDO being placed and the judgment debt being transferred to the debtor, in cases where no objection is raised to the interim TPDO.
 - Free up court resources whilst maintaining the same outcome and fairness associated with the TPDO process.

Costs of Option 1

Costs to HM Courts and Tribunals Service (HMCTS)

2. 12 HMCTS IT costs associated with changing the TPDO process are expected to be negligible. The required IT updates are expected to be batched with wider IT updates, generating minimal additional cost.
2. 13 There would be one-off costs associated with revising forms, guidance leaflets, and web-based information, but these are expected to be low. Whether such costs materialise will depend on whether these updates are lumped with other periodic updates, in which case there would be no additional cost. The distribution of such information will not raise additional costs as it is electronic.
2. 14 There are no expected additional ongoing costs as the policy intention is to streamline the TPDO process. In future, a hearing will take place only when a debtor raises an objection and the process for the hearing, and subsequent steps, will take place in the same way as currently. As such, the only potential additional cost may stem from processing the objection from the debtor. This could offset some of the efficiency savings expected from an overall lower volume of hearings.
2. 15 The current volume of debtors attending hearings or raising objections to the TPDO being placed is unclear, and would require individual court surveys. The Judicial and Court Statistics in 2010 showed that around 34% of applications for TPDOs were successful. However, it is unclear whether unsuccessful applications stem from debtors that raise objections, or alternative reasons such as the judge dismissing these at the interim stage, the funds are insufficient in bank accounts, or the creditor drops the application.
2. 16 Court fees and case volumes are assumed to remain the same as currently, hence overall court fee income is also expected to remain the same.

Costs to Debtors

2. 17 Where debtors do not object to the freezing of their bank account, and do not request a hearing, the expiration of time before the order becomes final is expected to be faster than currently. The judgment debt would therefore be paid more quickly, assuming there are sufficient funds in the bank account to pay or part-pay the judgment debt, and subject to a final order being granted by the court. This would represent a cost to debtors, but a benefit to creditors.
2. 18 There may be some additional costs to debtors who choose to object. The final hearing is currently automated and therefore debtors are given the opportunity to object. The proposals will imply that debtors in future will have to draw up a formal objection to courts. However, these costs are expected to be minimal as the objection process should involve a routine piece of court correspondence.
2. 19 In some cases, there may also be an impact on the success of judgment debt repayment. For example, if a debtor has their bank account frozen more quickly, this could result in the judgment debt repayment being more successful if there is less opportunity for debtors to spend this money, or empty it from their bank account.

Costs to Creditors

2. 20 There are no expected additional one-off or ongoing costs to creditors. In cases where debtors object, the creditor will have to attend the hearing, as they do in all cases currently.

Costs to Legal Professionals

2. 21 Legal professionals may incur costs associated with no longer having a final hearing unless the debtor raises an objection to the interim TPDO, which will lead to a reduction in workload. On the other hand, there may be increased demand for legal professionals if there was a change in volume of TPDO applied for as a result of process improvements. The overall position is unclear.

2. 22 Any loss in business to legal professionals will be mirrored by the gain to debtors from no longer paying the related costs (and to creditors in relation to fees which cannot be recovered from the debtor).
2. 23 With any change in the volume of business, it is possible that legal professionals may engage in other activity relating to other types of cases, or may engage in other types of work. Legal professionals may incur one-off costs as a result of adjusting to any changing pattern of demand. Whether legal professionals are worse off as a result of these proposals would depend upon how their work profile changes. Any costs for legal professionals would be deemed a secondary impact.

Costs to Banks

2. 24 No potential costs to banks have been identified. This option will not impact the requirement of banks in the TPDO process.

Distributional costs

2. 25 It is assumed that the process of creditors obtaining their judgment debt through a TPDO will be quicker and potentially more successful than the current process. The overall distributional impact amongst debtors is unknown.
2. 26 At an aggregate level, debtors as a whole are likely to pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse would depend upon the nature of each party. For example in relation to borrowing, the creditors might be financial institutions and the debtors might be less well off individuals. We do not have sufficient information on the characteristics of debtors and creditors to assess these potential distributional impacts.

Equity (fairness) costs

2. 27 The original enforcement hearing will consider whether the contract which has not been honoured was fair. Implementing more efficiently a judgement ruling which itself is considered to be fair should not lead to reduced equity. In addition it would still be possible for the debtor to object to the TPDO and attend court if they have reason to believe enforcement by a TPDO should not be permitted.

Wider social and economic costs

2. 28 The proposals are not expected to generate wider social and economic costs.

Benefits of Option 1

Benefits to HM Courts and Tribunal Service (HMCTS - Civil Courts)

2. 29 Administrative time savings will arise from no longer listing cases which are currently not heard due to the debtor not turning up. As detailed above, it is unclear what volume of debtors currently attend hearings, as there are a number of reasons TPDOs may fail. However, it is reasonable to assume that the number not attending may be in the region of 1,000 to 1,500 per year, as there were 1,500 TPDOs issued in 2010, and a large proportion of these are likely to have been issued without objection.
2. 30 The volumes of TPDOs are much less than volumes of charging orders (around 1,500 TPDOs issued compared to around 93,500 charging orders issued), however the administrative time saving per case may be more significant due to:
- The requirement to schedule hearings urgently (the risk of a debtor moving their funds to another bank is greater than the risk of a debtor selling, or transferring their property), and therefore it may be potentially more difficult to plan and schedule TPDO hearings.
 - The fact that TPDOs are more complex in terms of timings as different parties need to be informed of the final hearing date at different times.

2. 31 To some extent the administrative time saving will depend upon each individual court and the volume of TPDOs they receive. Therefore, it is difficult to quantify what the overall benefit from time savings will be to HMCTS.
2. 32 There may be some benefits to judicial resources through no longer allocating hearings in cases where no objection is raised and the debtor does not attend. However, it is not possible to quantify these, as there is not available information about how judicial time may be allocated to each hearing.
2. 33 Total court costs are not expected to fall, but it is assumed that any reduction in costs per case will allow additional work to be completed in other areas, leading to a reduction in county court processing and associated waiting times. There is no expected impact on overall court cost recovery as fees and case volumes are assumed to remain the same as currently.

Benefits to Debtors

2. 34 There are no anticipated significant one-off or ongoing benefits to debtors. There may be some benefits associated with a simpler TPDO process and new guidance will clarify the process more clearly to court users and set out the consequences of the enforcement.

Benefits to Creditors

2. 35 Creditors will benefit from a more efficient process, allowing them to obtain a final TPDO more quickly in cases where debtors do not object to the interim TPDO. Assuming that there are sufficient funds in the bank account to pay the judgment debt, whether in part or in full, this will result in quicker repayment of the judgment debt.
2. 36 Currently the whole TPDO process takes approximately 10 weeks on average (average figures show one week for the interim order and nine weeks for the final order), however, straightforward cases are likely to be quicker than this, and this average is brought up by those cases that are more complex. Despite this, it is expected that the process could potentially be speeded up by a few days in cases where no objection is raised, as it may not always be possible to schedule a hearing exactly 21 days after the date of the interim order.
2. 37 As mentioned above, there could also be an impact on the success of judgment debt repayment. For example, if a debtor has their bank account frozen more quickly, this could result in the judgment debt repayment being more successful if there is less opportunity for debtors to spend this money, or empty it from their bank account. This will represent a benefit to creditors.
2. 38 In cases where no objection is raised, creditors will see savings as they will no longer be required to attend a hearing at court where the debtor might not turn up. If an objection is raised, the creditor will have to attend court, as currently.

Benefits to Legal Professionals

2. 39 As explained in the costs section it is unclear how the total volume of business might change for legal professionals. Any overall gain in business to legal professionals from this measure will be mirrored by the loss to debtors or creditors from paying the related fees. Any benefits to legal professionals are a secondary impact.

Benefits to banks

2. 40 No potential benefits to banks have been identified. This option will not impact the requirement of banks in the TPDO process.

Distributional benefits

2. 41 It is assumed that the process of creditors obtaining their judgment debt through a TPDO will be quicker and potentially more successful if the proposed changes are made compared to the current process. The overall distributional impact amongst debtors is unknown.
2. 42 At an aggregate level, debtors as a whole are likely to pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are

considered to be positive or adverse will depend upon the nature of each party. For example in relation to unpaid business, the creditor might be a small firm and the debtor might be a wealthy individual. There is no sufficient information on the characteristics of debtors and creditors to assess these potential distributional impacts.

Equity (fairness) benefits

2. 43 The proposals are expected to raise equity and fairness, as the original judgment is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve fairness and confidence in the civil justice system. As mentioned in the costs section, debtors will still have the opportunity to raise an objection and have a hearing.

Wider social and economic benefits

2. 44 At the margin the proposals might possibly generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.
2. 45 The proposals might provide resource efficiency improvements if fewer resources are required to achieve the same outcome or an improved outcome.

Option 1: Summary of key assumptions

2. 46 The following key assumptions apply to Option 1:
- The volume of TPDOs arising from option 1 is assumed to remain the same, although there is a possibility that demand for TPDOs might rise as they might be more attractive to creditors given the process improvements.
 - No change in debtor behaviour is assumed, i.e. the number of debtors who request a hearing in future would be the same as the number of debtors who currently attend court.
 - Court fees are assumed to remain the same. The possible reduction in court costs per case is assumed to lead to a reduction in the case backlog and hence in case waiting times. As a result overall court cost recovery would not be affected.
 - Court capacity (including staff and estate) is assumed not to be affected by these proposals.
 - Case outcomes are assumed to be the same as before in relation to court decisions to applications for TPDOs.
 - The process changes are assumed to lead to quicker judgment debt recovery than currently if no objection to the interim TPDO is raised, and potentially more successful judgment debt recovery for the creditor if a shortened process means debtors are more likely to have the required funds in their bank accounts.
 - We have assumed that the overall impact on legal aid, if any, is unlikely to be significant.

Summary of One In One Out position

2. 47 This option is out of scope of the One In One Out rule as it relates to individual enforcement action.

Summary of overall impact on business

2. 48 The impact on business is assessed as zero net cost Court fees are expected to remain fixed. To the extent that businesses are creditors there could be a benefit from policies which aim to improve overall debt enforcement, although debtors who are businesses may lose out. In such cases, there may be a transfer from one business to another. Where debtors are individuals, businesses may gain overall.

Option 2: Expansion of accessible bank accounts

Description

2. 49 Under the current system, TPDOs cannot be placed on any other account than a single current account. Therefore they cannot apply to joint bank accounts or deposit accounts.
2. 50 This may enable a debtor to avoid recovery of a judgment debt because debtors may be able to transfer their money to other bank accounts where it would be protected from a TPDO. This is becoming increasingly possible because money can be transferred between bank accounts quickly and easily by electronic or telephone systems whereas court orders are sent by post, albeit with several days delay in notifying the debtor of the interim order.
2. 51 Permitting creditors to apply for a TPDO on a wider range of bank accounts may make it easier to enforce the judgment debt in this way, as debtors will have fewer protected accounts. There will be a presumption that 50% of a joint account belongs to the joint owner. While this could have a negative impact on other joint account holders if they own more than the assumed 50% of that joint account, joint owners will be able to make representations to the court to this effect.
2. 52 The proposals will exclude the creditor from having access to any money held in a trust fund. MoJ will also work with appropriate stakeholders to explore any other accounts which may need to be ruled out of scope, for example due to specific contractual undertakings.

Costs of Option 2

Costs to HM Courts and Tribunal Service (HMCTS - Civil Courts)

2. 53 This option may result in an increase in the number of TPDOs applied for and issued as a result of widening the scope of accessible bank accounts. The extent of this potential increase in TPDO applications is explored in more detail in the benefit to creditors section; however, we are unable to assign precise volume figures. At the same time, there might be a marginal reduction in applications for other enforcement methods if creditors believe a TPDO may now be a more successful way of obtaining the judgment debt owed to them.
2. 54 Overall, there may be some increase in HMCTS resource required to meet the increase in workload in relation to TPDOs. However, as HMCTS operate a full cost recovery fees model court fees should cover these costs. This is particularly because the increase in volume will be subject to the new streamlined process outlined in option 1. The net financial impact on HMCTS is therefore expected to be neutral. Similarly, if there are any costs to HMCTS to trace debtors' bank accounts at a particular third party institution, it is assumed that costs will be covered by fee income when the TPDO is placed.
2. 55 Overall, it is assumed that there will be no change in HMCTS capacity, e.g. increased staff or estates, and as such, any increase in court case volumes could have a negative impact on county court processing and waiting times.

Costs to Debtors

2. 56 Debtors are expected to incur a cost through widening the possible bank accounts that TPDOs can be placed on through a potential impact on the speed and / or success of debt enforcement and repayment.
2. 57 Currently, debtors may be able to keep the majority of their savings in a joint or deposit account to avoid a TPDO being used as an enforcement mechanism. If this was no longer possible, it could impact the speed and / or success of judgment debt enforcement for such debtors, through the following mechanisms:
 - Creditors will be able to access bank accounts which are currently protected and therefore inaccessible. The current situation where money in certain accounts cannot be accessed is likely to incentivise debtors to keep funds in such accounts to prevent the possibility of a TPDO. Data from a sample of TPDO cases highlights that often a lack of available funds is

a problem in the TPDO process, and in some cases this is likely to be due to savings being placed elsewhere. Expanding accessible bank accounts may prevent such issues arising.

- The expansion of TPDOs to other accounts may incentivise debtors to repay their judgment debt when they would not have done otherwise. They may wish to avoid the court process of a TPDO if it yields the same outcome, or they may wish to prevent a certain bank account being accessed (although there would be mechanisms in place to prevent the partner's funds being accessed in the case of a joint account).

2. 58 If the expansion of accessible bank accounts leads to more TPDOs being placed there may be a cost to debtors from paying the associated fees. This includes costs incurred by creditors that may subsequently be transferred to the debtor such as court fees. The extent of this cost will depend on the cost of the TPDO compared to the alternative enforcement action that the creditor would have undertaken previously.

Costs to Creditors

2. 59 Creditors could incur cash flow costs from incurring legal costs and court fees which might not be recoverable until the judgment debt is repaid once a successful TPDO has been made. However, ultimately the decision whether and how to enforce a debt is the creditor's.

2. 60 In addition, it is possible that not all of these fees and costs might be recoverable, especially if the process does not result in successful repayment of the judgment debt. If they were not recovered then creditors would incur costs from pursuing their debt.

2. 61 Given that the creditor chooses whether to apply for a TPDO or not, we assume that the benefit to the creditor would outweigh any costs they may incur.

Costs to Banks

2. 62 Banks could incur costs associated with administering an increased volume of freezes on bank accounts, and the subsequent deductions. However, it is assumed that bank costs will be met through their entitlement to deduct administrative costs from the debtor's account, which is currently £55 per transaction.

2. 63 Consultation responses did not provide information as to whether the cost to the bank of processing a TPDO is greater than, or less than £55. In general, concerns raised related to legal costs if certain accounts could be accessed, or the administrative costs for those accounts administered centrally rather than at branch level, rather than concerns about the fee. It is assumed that if the current fee per transaction is insufficient, this would have been raised in consultation responses received from banks in relation to this policy. However, any additional cost would depend upon the detail of implementation methods and the scope of accounts to which this proposal would apply.

2. 64 Further work with the sector will be required to ensure no additional costs are imposed. Appropriate stakeholders will be involved in exploring which accounts need to be ruled out of scope of this policy due to specific contractual undertakings, or if there would be a disproportionate cost of administering the TPDO which could not be covered by the £55 fee.

2. 65 Some information on the potential administrative costs to banks is available from the Child Maintenance & Enforcement Commission (CMEC) Deduction Order Review³. CMEC use TPDOs in relation to non-resident parent cases. Evidence in this review suggests that the average cost per TPDO deduction may be around £83, however, the source of this finding is not available, and so this information may not apply to a general TPDO. The review also finds that banks do not always pass this cost on to customers, suggesting the cost is not always this high, and it is not always necessary to pass on such costs to cover administration of the TPDO.

2. 66 Given the consultation responses and other evidence available, we consider that the net financial position for banks will be neutral, as will the impact on their operating efficiency.

³CMEC Deduction Order Review 2011 - www.childmaintenance.org/en/pdf/research/deduction-order-review.pdf

Costs to Joint Account Holders

- 2. 67 Joint account holders could be directly impacted by the TPDO and therefore be worse off. Previously there would be no risk to any joint account shared with the debtor however in future, the joint account holder will become, to some extent, liable for the judgment debt, assuming that they continue to hold their money in this joint account.
- 2. 68 The order will assume (as in the Scottish and some USA civil enforcement systems) that 50% of any joint account will belong to the debtor. In the event that a joint account holder actually owns more, then they will be able to furnish proof of their payments into the account and make representations to the judge to that effect.
- 2. 69 Consultation responses highlighted that careful consideration will be required in determining what additional types of accounts will be suitable for these purposes, and for the mechanism to enable joint account holders to make representations. MoJ will consider in more detail how representations by joint account holders will work at the implementation stage.

Costs to Legal Professionals

- 2. 70 No costs to legal professionals have been identified – overall there may be a gain in business for legal professionals (outlined in the benefits section). Any impact on legal professionals is a secondary impact.

Distributional costs

- 2. 71 Permitting applications for a TPDO to joint bank accounts may lead to some debtors paying more quickly or more successfully than would previously have been the case. The overall distributional impact among debtors is unknown.
- 2. 72 At an aggregate level, debtors as a whole are likely to pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse would depend upon the nature of each party. For example in relation to borrowing, the creditors might be financial institutions and the debtors might be less well off individuals. There is not sufficient information about the characteristics of debtors and creditors to assess these potential distributional impacts.

Equity (fairness) costs

- 2. 73 It could be considered that there is a cost in terms of reduced equity if a joint account holder could now be liable for their partner's judgment debt, which they did not generate however, as mentioned above any process adopted will ensure that adequate safeguards are in place to protect such third parties.

Wider social and economic costs

- 2. 74 The proposals are not expected to generate wider social and economic costs.

Benefits of Option 2

Benefits to HM Courts and Tribunal Service (HMCTS - Civil Courts)

- 2. 75 As explained in the costs section, HMCTS operate a full cost recovery fees model in which court fees should cover court costs, hence we expect no net impact on the overall HMCTS financial position. HMCTS will secure more fee income from the increase in TPDOs if demand rises, however this is expected to cover the costs of processing the additional orders. Furthermore, there may be a lower demand for applications for other types of debt enforcement, resulting in lower fee income from these areas.

Benefits to Debtors

- 2. 76 No significant one-off or ongoing benefits to debtors have been identified.

Benefits to Creditors

2. 77 The benefits for creditors largely mirror the costs to debtors. As discussed in the costs section, debtors are more likely to repay the judgment debt quicker and / or more completely. This benefit is likely to stem from the direct impact of the creditor being able to apply to a wider range of bank accounts, and also due to the greater incentive for debtors to repay the judgment debt quicker in the knowledge that improved enforcement will create less opportunity for avoiding debt repayment.
2. 78 It is not possible to ascertain how much TPDOs would increase as there is insufficient information relating to why TPDOs currently fail, including because the debtor has funds in an account which cannot be accessed. A sample of TPDO cases from one county court suggests they often fail because the third party informs the court that there are insufficient funds in the account, however, it is unclear whether the debtor has funds elsewhere, or not. Data from the CMEC report showed that in around a third of applications for lump-sum deduction orders (equivalent to a TPDO), the problem was that no appropriate account was traced.
2. 79 It is expected that the expansion of accessible bank accounts is likely to lead to a greater proportion of the existing 4,300 TPDO applications per annum being successful. Furthermore, it is likely to encourage more TPDO applications by creditors who do not currently pursue TPDOs, or pursue their judgment debts through another enforcement method.

Benefits to Banks

2. 80 There are no expected one-off or ongoing benefits to banks. Banks will see an increase in fee income to the same extent of any increase in volumes of TPDOs. However it is assumed that any additional fees will cover any additional administrative costs. The net financial position to banks is considered to be zero net cost based on the nature of comments raised in consultation responses from the sector.

Benefits to Joint Account Holders

2. 81 There are not expected significant one-off or ongoing benefits to joint account holders.

Benefits to Legal Professionals

2. 82 Legal professionals may experience an overall increase in business from the increase in the number of TPDO applications, even once the reduction in business through substitution from other enforcement measures is taken into consideration. This is a secondary impact.

Distributional benefits

2. 83 Permitting applications for a TPDO to joint and deposit bank accounts may lead to some debtors paying more quickly or more successfully than would previously have been the case. The overall distributional impact among debtors is unknown.
2. 84 At an aggregate level, debtors as a whole are likely to pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse will depend upon the nature of each party. For example in relation to unpaid business, the creditor might be a small firm and the debtor might be a wealthy individual. There is not sufficient information about the nature of each party to make an assessment of the distributional benefits.

Equity (fairness) benefits

2. 85 The proposals may improve equity as the original judgment order is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve equity.
2. 86 It is anticipated that overall there will be equity benefits to creditors, and this must not be offset by equity costs to joint account holders. Any process adopted will ensure that adequate safeguards are in place to protect such third parties.

Wider social and economic benefits

2. 87 The proposals might generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.

Option 2: Summary of key assumptions

2. 88 The following key assumptions apply to Option 2:
- Court fees are assumed to remain the same. The potential increase in court activity may potentially impact case processing and waiting times, but overall court cost recovery and operational efficiency would not be affected.
 - Court capacity (including staff and estate) is assumed not to change.
 - Bank costs are assumed to remain at their current levels. Bank costs are assumed to cover their administrative burdens with the net financial implication being neutral.
 - We assume that banks will not be subject to any wider costs, such as legal costs.
 - We have assumed that the overall impact on legal aid, if any, is unlikely to be significant.

Summary of One In One Out position

2. 89 This option is out of scope of the One In One Out rule as it relates to individual enforcement action.

Summary of overall impact on business

2. 90 The impact on business has been assessed as zero net cost, for the following reasons:
- The changes proposed by this policy are to expand the availability of TPDOs, rather than imposing any new regulatory requirements on businesses.
 - The third party who administers the final TPDO is likely to be a bank or business, however a fee is charged to cover administrative cost, which is currently £55 per TPDO. Information from consultation responses and from the CMEC review of deduction orders does not allow us to confirm whether the fee of £55 is equal to the current average cost, however, we assume that if the cost to banks outweighed the potential fee charged, this would have been noted in consultation responses. Furthermore, the detail of any potential additional costs has been outlined as being associated with legal risks and specific administrative costs on certain types of accounts that this measure would apply to. Therefore, whether there would be any additional costs will depend on the detail at implementation stage.
 - We will work with appropriate stakeholders to explore which accounts may need to be ruled out of scope due to any legal risk associated with their contractual obligations, or if costs could be disproportionate.
2. 91 To the extent that businesses are creditors, there could be a benefit from policies which aim to improve overall debt enforcement, although debtors who may also be businesses may lose out. In such cases, there may be a transfer from one business to another. Where debtors are individuals, businesses may gain overall.

Option 3: Periodic deduction orders

Description

2. 92 This option proposes permitting periodic deduction orders from bank accounts, similar to regular deduction orders as operated by the Child Maintenance and Enforcement Commission (CMEC).
2. 93 The intention is that periodic deduction orders will be a process similar to the current attachment of earnings order, but one that could apply to debtors who are self-employed or unemployed as it would relate to their bank account rather than their earnings. These could operate like standing orders or direct debits which are ordered by the court as an agreed means of paying off the judgment debt in instalments.

2. 94 This process will require compliance by the debtor, as unlike in a one-off TPDO, the debtor will have full knowledge of these deductions and so could easily move their funds to another bank account to avoid payment. Although such movements of cash could be traced under the new system, it could potentially frustrate the effectiveness of periodical deductions and the creditor will be able to refer the matter back to court.
2. 95 Evidence from the CMEC shows that since its inception in 2009, regular deduction orders have been an effective and efficient method of maintenance recovery in a number of cases⁴.

Costs of Option 3

Costs to HM Courts and Tribunals Service (HMCTS - Civil courts)

2. 96 It is likely that there will be one-off costs to HMCTS to update IT systems as a new process is being implemented. However initial information from MoJ IT advisers indicates that the new process will require relatively straightforward IT changes, so the update is likely to be able to be combined with other IT projects for minimal cost. There could also be potential costs to update leaflets and information sources.,
2. 97 There will also be staff training requirement given that it will be a new process. The cost of this training has not yet been quantified, and will depend on how the new process operates compared to the existing TPDO process.
2. 98 Any additional ongoing costs to HMCTS for this process will be recovered through court fees, as HMCTS operate a full cost recovery fees model. The fee for creditors to apply for periodic deduction orders is expected to be similar to that of a regular TPDO application (currently £100), based on the similar steps that will be required in the process. It will be set to ensure cost neutrality.
2. 99 It is assumed that there will be no change in HMCTS capacity, e.g. increased staff or estate. Any potential increase in court case volumes could have a negative impact on county processing and waiting times, although this may be offset by some creditors diverting from other enforcement methods to periodic deduction orders. Potential volumes of periodic deduction orders are assessed in the 'benefits to creditors' section below.

Costs to Debtors

2. 100 For those debtors where a periodic deduction order is placed on their bank account, this measure could lead to quicker and potentially more successful judgment debt repayment. Evidence from CMEC highlights that periodic deduction orders are often used for effective debt repayment, and in the majority of cases multiple deductions are made. They also found 10% of orders generated 15 payments or more.
2. 101 If debtors are affected by a periodic lump sum deduction when they would not have been subject to any prior enforcement process, or a different enforcement process, this could also lead to an additional fee for the debtor, which would be added to the judgment debt.
2. 102 If there is an increase in the volume of debt enforcement overall, to the extent that the costs to creditors of pursuing their debt are transferred to debtors, there may be a cost to debtors. For example as well as the court fees the creditor's legal (limited fixed) costs might ultimately be paid by the debtor.

Costs to Creditors

2. 103 If creditors now undertake an enforcement process when they would not have done previously, there may be a cash flow implication if the court fee and potentially legal costs are paid upfront, and not recouped until the judgment debt is repaid. However, as this creditor chooses whether or not to pursue this route, we assume that this cost is offset by the benefit to creditors in terms of the speed and effectiveness of debt enforcement.

⁴ CMEC Deduction Order Review 2011 - www.childmaintenance.org/en/pdf/research/deduction-order-review.pdf

2. 104 Whilst fees and costs initially incurred by creditors may ultimately be paid for by debtors, there may be some costs which are not recoverable in this way. For example if legal costs are not awarded or if the periodic deduction order does not lead to successful recovery of the judgment debt.
2. 105 There may be costs to creditors as a result of debtors not complying. However, as the creditor has a range of potential enforcement methods available, we assume that those creditors who choose periodic deduction orders are less likely to be subject to this issue.

Costs to Banks

2. 106 Banks could incur the costs associated with administering an increased volume of freezes on bank accounts, and the subsequent deductions. However, financial institutions responsible for processing the orders will be able to charge a fee to cover administrative costs.
2. 107 It is proposed that financial institutions will be able to deduct up to £10 for each regular deduction towards any administrative costs, which will be similar in nature to the process currently being adopted by the CMEC under its Regular Deduction Order Regulations⁵. This is expected to cover any additional costs to banks, however MoJ will continue to develop the detail of these proposals with stakeholders including the British Banking Association.
2. 108 Information from the CMEC report shows that the potential cost to banks of administering periodic deduction orders is around £30 per regular deduction, however, the average fee charged is only £6, indicating that either actual administrative costs are lower than those that CMEC report, or banks do not charge the maximum they are able to, Specific cost information was not provided in consultation responses by the banking sector. Further examination and work with banks in this area will be required before setting the maximum fee charged, including obtaining further specific costing information from deposit takers.
2. 109 Whilst consultation responses did not provide any cost information, they highlighted the risk that debtors may stop using a particular account, which could create an indirect cost through the bank losing a customer. In light of further engagement with stakeholders on this policy proposal, it may be that the potential fee needs to be adjusted to reflect this risk. There could also be a loss of fee income if some existing users of TPDOs (where the fee is £55) were to switch to periodic deduction orders (where the proposed fee is £10 per deduction). There is insufficient information about the potential take up of periodic deduction orders, or how many payments will be made on average to assess these impacts.
2. 110 Overall it is expected that fee payments to banks should cover the cost of deductions, leaving the overall position neutral.

Costs to Legal Professionals

2. 111 No costs to legal professionals have been identified – overall there may be a gain in business for legal professionals (outlined in the benefits section). Any impact on legal professionals is a secondary impact.

Distributional costs

2. 112 Permitting applications for periodic deduction orders on bank accounts may lead to some debtors paying more quickly or more successfully than would previously have been the case. The overall distributional impact among debtors is unknown.
2. 113 At an aggregate level, debtors as a whole may pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse would depend upon the nature of each party. For example in relation to borrowing, the creditors might be financial institutions and the debtors might be less well off individuals. There is insufficient information on the characteristics of debtors and creditors to assess these potential distributional impacts.

⁵ The Child Support Collection and Enforcement (Deduction Orders) Amendment Regulations 2009

Equity (fairness) costs

2. 114 The original enforcement hearing would have considered whether the contract which has not been honoured was fair. Implementing more efficiently a judgement ruling which itself is considered to be fair should not lead to reduced equity. In addition it would still be possible for the debtor to attend court to contest the original order or the enforcement order.

Wider social and economic costs

2. 115 The proposals are not expected to generate wider social and economic costs.

Benefits of Option 3

Benefits to HM Courts and Tribunal Service (HMCTS - Civil Courts)

2. 116 HMCTS would secure more fee income from the potential increase in periodic deduction orders. This could be offset by the reduced fee income from a possibly reduced volume of applications for other debt enforcement processes.
2. 117 As explained in the costs section, HMCTS operates a full cost recovery fees model in which court fees should cover court costs, hence we expect no net impact on the overall HMCTS financial position or on court operational efficiency.

Benefits to Debtors

2. 118 No significant one-off or ongoing benefits to debtors have been identified. For some debtors the facility of a court ordered debit system could save time and effort from managing and administering payments themselves which could offset some of the costs associated with fees.

Benefits to Creditors

2. 119 The benefits for creditors largely mirror the costs to debtors. Creditors will benefit from being able to apply for periodic deduction orders on debtor's bank accounts, which could lead to quicker and / or more successful judgment debt repayment.
2. 120 Creditors will have more surety in an agreed and court-ordered system for deducting payments which allows them to adopt a more stable approach to debt recovery in each case.
2. 121 It is not possible to ascertain how many periodic deduction orders are likely to be issued each year as we do not have sufficient information from creditors regarding their potential take-up. This would depend upon a number of factors including how the other reforms proposed in this package are likely to influence creditor behaviour, and whether debtors are suitable for periodic deduction orders.
2. 122 Between August 2009 and July 2010, CMEC made approximately the same number of periodical deduction orders as TPDOs. It is not clear whether the situation will be the same for periodic deduction orders in relation to judgment debts, however, if this was the case we would expect between 750 and 1,500 orders to be made per year (depending on whether this method is used instead of a TPDO or not) and a larger number than this to be applied for.

Benefits to Banks

2. 123 Banks will have an entitlement to administrative costs through fees associated with the volume of judgment debts collected through periodic deduction orders. As discussed in the costs section, it is anticipated that fees should broadly equate to the costs to banks, therefore generating a neutral net financial position.

Benefits to Legal professionals

2. 124 It is possible that legal professionals may experience an overall increase in business from the increase in the number of TPDO applications, even once the reduction in business through substitution from other enforcement measures is taken into consideration.

2. 125 This gain to legal professionals will be mirrored by the loss to debtors or creditors (if they cannot recover these costs from the debtor) from paying the related fees. Any impact on legal professionals is a secondary impact.

Distributional benefits

2. 126 Permitting applications for periodic deduction orders on bank accounts may lead to some debtors repaying their judgment debt more quickly or more successfully than would previously have been the case.
2. 127 At an aggregate level, debtors as a whole may pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse will depend upon the nature of each party. For example in relation to unpaid business, the creditor might be a small firm and the debtor might be a wealthy individual. There is insufficient information about the nature of each party to make an assessment of the distributional benefits.

Equity (fairness) benefits

2. 128 The proposals may raise equity and fairness as the original judgment order is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve equity.

Wider social and economic benefits

2. 129 The proposals might possibly generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.

Option 3: Summary of key risks and assumptions

2. 130 The following key assumptions apply to Option 3:
- The court fee for periodic deduction orders is not yet set, however they are assumed to cover the cost of this process and to be broadly comparable to fees for other debt enforcement processes (around £100).
 - The potential increase in court activity may potentially impact the case backlog and hence case waiting times, but overall court cost recovery and operational efficiency would not be affected.
 - Court capacity (including staff and estate) is assumed not to change.
 - Bank fees are assumed to cover costs associated with implementing periodic lump sum deductions, therefore having a neutral net financial impact.
 - Overall demand for the periodic deduction orders is unknown, as is the impact on other enforcement processes as a result of their introduction.
 - We have assumed that the overall impact on legal aid, if any, is unlikely to be significant.

Summary of One In One Out position

2. 131 This option is out of scope of the One In One Out rule as it relates to individual enforcement action.

Summary of overall impact on business

2. 132 The impact on business has been assessed as neutral, for the following reasons:
- The changes proposed by this policy are to expand the availability of options for placing charges on debtors' bank accounts, rather than imposing any new regulatory requirements on businesses.
 - The third party who administers the final periodical deduction order is likely to be a bank or a business, however, the overall impact is likely to be broadly neutral due to the ability to

charge a fee. This fee should reflect the financial costs and risks involved, including the risk that only one deduction is made, and that the debtor stops using a particular bank account. Looking at data from consultation responses and from CMEC, we are not able to confirm whether the fee of £10 per deduction matches expected average costs. Further analysis should be undertaken at the implementation stage to ascertain what the appropriate fee is likely to be.

2. 133 To the extent that businesses are creditors there could be a benefit from policies which aim to improve overall debt enforcement, although debtors who are businesses may lose out. In such cases there may be a transfer from one business to another. Where debtors are individuals, businesses may gain overall.

3. Enforcement, Sanction and Monitoring

- 3.1 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 judgment creditor should they wish to continue pursuing recovery of a particular judgment debt.

4. Specific Impact Tests

1) Statutory equality duties

- 4.1 An Equalities Impact Assessment signed off by the relevant policy Director has been prepared and is annexed.

2) Economic impacts

i) Competition

- 4.2 No significant competition impacts associated with the proposals have been identified.

ii) Small firms

- 4.3 There is no reason to believe that small firms would be impacted by information orders more significantly than larger firms.
- 4.4 The reforms may affect small firms which are creditors and therefore be of benefit to small firms

Environmental impacts

- 4.5 There are no environmental implications associated with the proposals.

i) Greenhouse gas assessment

- 4.6 There are no greenhouse gas implications associated with the proposals.

ii) Wider environmental issues

- 4.7 There are no wider environmental implications associated with the proposals.

3) Social impacts

i) Health and well-being

- 4.8 There are no health and well-being implications associated with the proposals.

ii) Human rights

- 4.9 There are no human rights impacts associated with the proposals.

iii) Justice system

- 4.10 The justice impacts are outlined in the main body of the Impact Assessment.

iv) Rural proofing

4.11 There are no rural proofing implications associated with the proposals.

4) Sustainable Development

4.12 There are no sustainable development implications associated with the proposals

5) Exemption from Micro Businesses moratorium

4.13 Part 4 enforcement processes are out of scope of the micro business exemption moratorium for the following reasons:

- Specific enforcement action is excluded from the application of the micro-business exemption moratorium.
- Cost impacts are assessed as neutral and these impacts neither fall on small or micro businesses.
- Part 4 enforcement proposals aim to streamline court rules and court procedures which are not in themselves regulation (albeit that they could result in secondary costs to business).

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

These proposals have been subject to consultation and public response for their implementation is positive: 95.5% of respondents stated that TPDOs should be streamlined; 93% stated that TPDOs should be extended to other accounts; and 87% were in favour of introducing periodic deduction orders. Our delivery plan involves developing and implementing Secondary Regulations, amending Civil Procedure Rules, other operational mechanisms, and putting in place post implementation review arrangements.

Review objective:

The post implementation review will analyse the impact in terms of efficiency of the court process, and user feedback in relation to this process, which could ultimately lead to more successful enforcement. It will also look into any negative impact arising in terms of access to justice.

Review approach and rationale:

Subject to any revision at regulations consultation stage, an evaluation will take place 3 years post consultation. We shall evaluate the effectiveness of the review objectives 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 which provides more specific process detail, such as in HMCTS performance management systems. Working Groups will 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.

Baseline:

Option 0 – do nothing

Success criteria:

- Speedier court processing.
- Improvement of customers' perception of services available to ensure effective enforcement.
- Improved debt recovery for creditors with reduced scope for debtors to avoid repayment.

Monitoring information arrangements:

Court user feedback will be monitored through correspondence from the public and Parliamentary Questions. HMCTS Civil and Family Operations also provide Civil Enforcement Policy with feedback from the queries they have received from court staff and users. Judicial statistics also provide indications of court user behaviour.

Reasons for not planning a PIR: