

Title: Proposed reforms to attachment of earnings orders Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	IA No: MoJ 074
	Date: 29 March 2011
	Stage: Consultation
	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 main policy objectives of the proposed reforms to attachment of earnings orders (AEOs) are to reduce the extent of court involvement and streamline and improve the efficiency of the processes. This should lead to quicker payment of the judgement debt enforced by an attachment of earnings order, and greater confidence in the civil justice system. 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) 0: Do nothing Option 1: Introduce fixed tables for the calculation for earnings deductions, in place of current case by case calculations. This reform was legislated for in Section 91 of the Tribunals, Courts & Enforcement Act, 2007 (TCE Act '07). The proposal is to bring this legislation into effect. Option 2: Introduce the ability for courts, where an AEO has failed (where the debtor has changed employment but has failed to notify the court), to request HM Revenue & Customs (HMRC) to provide the name and address of the debtor's current employer for the purposes of re-directing the AEO. This reform was legislated for in Section 92 of the TCE Act '07 and the proposal is to bring this legislation into effect. Our preferred option is a combination of Options 1 and 2.	
When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed May 2014
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

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: 22.02.2011

Summary: Analysis and Evidence

Policy Option 1

Description: Fixed tables in calculating Earnings Deductions for attachment of earnings orders

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

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

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

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

One off IT costs to HMCS and potentially to employers to install fixed table software
 Additional familiarisation and awareness transitional costs to both HMCS and employers
 Costs to debtors from paying more quickly and more completely

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

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

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

Improved HMCS efficiency leading to reduced case backlog and reduced case waiting times
 Some creditors receive payment more quickly and potentially more completely
 Wider economic benefits from greater contractual certainty and enforceability
 Gains to equity and fairness
 Allows employers to use uniform system for deductions for criminal fines, civil debts and Council Tax. Costs reduced by utilising the same commercial software products to implement the new system

Key assumptions/sensitivities/risks

Discount rate (%)

Court fees and employer fees assumed to stay the same
 Ongoing cost implications unclear for employers
 Distributional implications unclear
 Bailiffs and legal professionals assumed to adjust to changing pattern of business demand
 Volume of cases assumed to stay the same
 Overall potential impact on legal aid, if any, is assumed not to be significant

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope Yes/No
New AB: n/a	AB savings: n/a	Net: n/a	Policy cost savings: n/a		

Summary: Analysis and Evidence

Policy Option 2

Description: Finding the debtor's current employer

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

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

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

One off IT costs to HMRC of approximately £500,000 in set up costs.
 Ongoing annual running costs of around £50,000 per annum. Ultimately recovery of these ongoing costs would be achieved through fee income.
 The cost of setting up this link with HMRC also applies to information requests and orders, another policy we are consulting on. Therefore, the non-recoverable IT cost and any ongoing costs should not be double counted if both proposals are to be implemented.

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

One off IT costs to Ministry of Justice to change procedures
 Reduced court fee income from reduced orders to obtain information court caseload. However, we assume that this is matched by reduced costs, leaving the overall financial position neutral.
 Costs to debtors from paying more quickly and potentially more completely

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

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

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

Increased fee income from finding the debtor's current employer, set equal to the cost of this process, leaving the overall financial position neutral. .
 Some creditors receive payment more quickly and potentially more completely
 Some debtors gain from ultimately paying lower court fees
 Wider economic benefits from greater contractual certainty and enforceability from improved debt recovery
 Gains to equity and fairness

Key assumptions/sensitivities/risks

Discount rate (%)

Distributional implications unclear
 Legal professionals assumed to adjust to changing pattern of business demand
 Court fees assumed to stay the same for attachment of earnings orders
 HMRC costs to provide information lower than HMCS costs they displace
 HMRC process quicker than HMCS process displaced
 Existing extent of non-compliance with Attachment of Earnings Orders remains the same
 Initial volume of Attachment of Earnings Orders cases remains the same.
 Uncertainty around the IT cost to set up the linkage with HMRC
 Overall potential impact on legal aid, if any, is assumed not to be significant

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope
New AB: n/a	AB savings: n/a	Net: n/a	Policy cost savings: n/a		Yes/No

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?			01/05/2012		
Which organisation(s) will enforce the policy?			HMCS (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	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	
Small firms Small Firms Impact Test guidance	Yes	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

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>Tribunal, Courts and Enforcement Act 2007</u>
2	Effective Enforcement white paper (LCD) 2003
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

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 order (AEO), charging orders, third party debt orders, judgment summonses, or warrants of execution.
- 1.4 This impact assessment focuses on attachment of earnings orders only. The reforms apply to all forms of civil case but not to family or criminal cases. They relate to all civil cases where an attachment of earnings order has been 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.
- 1.5 In 2009 there were approximately 61,000 attachment of earnings orders issued in the County Court. Our proposed changes (already legislated for in the TCE Act '07) aim to improve the effectiveness of these as an enforcement method, whilst still offering protection to debtors who are genuinely unable to pay.

Policy Objectives

- 1.6 Efficiency and fairness concerns are driving our proposed reforms. If the Government does nothing then the current process for attachment of earnings would continue to apply. However this would not address the present failings - repayment through attachment of earnings would continue to be potentially sporadic and easy to evade, and confidence in the justice system might not improve. We cannot say whether or not the problem would worsen, since this would require predicting future behavioural changes between the disparate groups involved in court processes. We have assumed, however, that the problems are unlikely to rectify themselves, since this would probably already have happened over the course of time.

Policy Proposals

- 1.7 We propose implementing the Part 4 of the TCE Act '07 in relation to attachment of earnings.
- 1.8 This would include:
 - 1) Introducing fixed tables for the calculation for earnings deductions, in place of current case by case calculations.
 - 2) Introducing the ability for courts, where an AEO has failed (where the debtor has changed employment but has failed to notify the court), to request HM Revenue & Customs (HMRC) to provide the name and address of the debtor's current employer for the purposes of re-directing the AEO
- 1.9 By implementing these policies, already legislated for in the TCE Act '07, 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 more quickly.
- Assisting creditors in tracking down debtor's employment if they change employers.
- Providing increased certainty and consistency in the implementation of enforcement orders.
- Protecting debtors who are unable to repay debt at the fixed rates set.

Economic rationale for intervention

- 1.10 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).
- 1.11 In this case, the intervention would be justified on both efficiency and fairness grounds. From an efficiency perspective, fewer resources might be required to calculate deductions and to obtain information about the debtor's new employer. In relation to the latter, a significant reduction in the time and resources required to pursue enforcement action may at the margin lead to more cases being fully enforced, with wider economic benefits for the operation of markets and for contractual certainty.
- 1.12 Improved enforcement of contracts and of judgments should lead to an improvement of fairness, especially as the initial judgment order hearing would have considered if the contract itself was fair and should be enforced, and would have applied a reasonable repayment profile given the debtor's financial position.
- 1.13 Greater consistency in the calculation of deductions might also be fairer, assuming that the deductions tables still provide sufficient flexibility. Rates in tables may be varied over time simply by adjusting the software. The tables also carry a protected minimal percentage under which deductions will not be made.

Affected key stakeholder groups

- 1.14 The proposals will affect the civil courts, creditors, debtors, and third parties - employers, HMRC and bailiff services.
- Civil Courts – Will be impacted in terms of workload in obtaining information about debtors and in calculating deductions. Costs will arise in relation to linkages with third parties (HMRC).
 - Creditors – Will be impacted in terms of the speed and potential likelihood of debt repayment.
 - Debtors – Will be affected in terms of the speed of debt repayment, potential engagement with the courts, and the likelihood of debt repayment.
 - Employers – May see an additional burden through the requirement to install (and operate) fixed tables software. As many employers may already own this software for other deductions (e.g. criminal fines and Council Tax) some may see a reduced burden in not having to run two completely different systems as they do now.
 - HMRC – Will be required to coordinate with HM Courts Service (HMCS) in terms of requests for information about debtors' employers.
 - Court Bailiffs – May see a reduced workload if they no longer need to undertake service of Attachment of Earnings related court process documents on debtors.
 - Legal professionals – Might possibly be affected by the possible improved efficiency and effectiveness of enforcement orders and their implementation.
 - Legal Services Commission (LSC) – The LSC administers legal aid and might possibly 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. It is unclear whether these impacts would arise and

if so, how significant they might be. Given this we have assumed 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 the above groups under the different options for enforcing aspects of the TCE Act '07 in relation to attachment of earnings orders.

Option 0: Base case (do nothing)

2. 3 Under this option, no intervention would be made. Therefore, methods to obtain information about debtors and the calculation for earnings deductions would be undertaken in the same way as now, relying on court staff to individually calculate each AEO order depending on the information provided by the debtor. In particular, information about a debtor's employer when an AEO fails (as the debtor has changed employer) can only be obtained through requesting this from the debtor (and not from HMRC). This may involve repeated involvement of the court and the use of bailiffs, resulting in unnecessary delay and which remains subject to the debtor's engagement. The base case would also allow current arrangements to continue whereby employers are obliged to use two different procedures for deducting from earnings.
2. 4 All options are assessed relative to the base case. As such, the costs or benefits associated with the base case are necessarily zero.

Option 1: Introduce fixed tables calculations for earnings deductions in attachment of earnings orders (TCE Act '07 – Section 91)

Description

2. 5 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). 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 documents can be served. There can also be issues surrounding the reliability of the information supplied by debtors.
2. 6 Introducing 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 as a percentage of the total applicable earnings in the tables. The debtor would still have 14 days to respond once the order has been made, but after that time the deductions would begin automatically. The aim is to make the process more straightforward at the court end, and therefore to speed up the process.
2. 7 With fixed deductions tables employers would also have a system that provides more certainty and is more consistent with other the deduction schemes they operate in relation to Council Tax and unpaid fines.
2. 8 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 that those who earn below a certain

amount per pay period would be subject to a 0% rate. This is very similar to how deductions under Council Tax AEOs work.

2. 9 We would look at setting the County Court fixed tables at a lower level than the Council Tax tables because although the judgment debt is important;
 - a. Council Tax has traditionally had a higher priority in terms of collection because it is a tax; and
 - b. Council Tax debt arrears are based on debts accrued in one tax year and therefore repayment has to be made over a short period, 12-18 months, to ensure arrears for the following year are not built up.
2. 10 The exact levels will only be set after careful consideration with key stakeholders.
2. 11 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 continue to be protected.

Costs of Option 1

HMCS (Civil Courts)

2. 12 Potential one-off costs to HMCS to update IT systems and leaflets. These costs should be quantified in due course.
2. 13 It is possible that the reforms may lead to a reduced HMCS workload. Whilst case volumes are assumed to remain the same there should be less HMCS work involved in each case. If this enabled HMCS court capacity to be reduced then there might be associated one-off capacity adjustment costs, e.g. from terminating contracts. It has been assumed that these reforms by themselves are unlikely to result in any court capacity adjustment, and hence that court capacity adjustment costs would not be incurred.
2. 14 Where the debtor requests that the application of the fixed tables is reviewed it has been assumed that the costs to HMCS of administering such cases should be the same as the costs of administering them under existing processes. Hence additional costs should not arise from the review provision.
2. 15 Court fees are assumed not to change as a result of these proposals, nor are court case volumes. HMCS should not, therefore, experience a reduction in total fee income.

Debtors

2. 16 A more efficient process for calculating salary deductions should allow HMCS to action the attachment of earnings order more rapidly. This should lead to debtors beginning to repay their judgment debt more quickly and, in some cases, to debts being repaid more completely. Overall there may be an increase in the total amount paid by debtors to creditors. Payments may also be made more quickly as a result of HMCS cost savings translating into a reduction in the case backlog and in case waiting times.

Creditors

2. 17 No significant one-off or ongoing costs to creditors have been identified.

Employers

2. 18 The reforms would shift the onus of calculating earnings deductions from HMCS to employers. There may be one-off costs to businesses if they do not currently have fixed table software installed, and if they are required to obtain this software in order to complete the attachment of earnings order. There may also be associated staff training costs. Whether additional one-off costs are likely to arise would depend on whether firms already hold the necessary software for Council Tax or other purposes. It is possible that many firms may already have this software given that it is widely used for other purposes.

2. 19 There would also be ongoing costs from applying the software. It is unclear whether these ongoing costs would be greater than the costs to employers of operating the current system. This might be possible in some cases. It has been assumed that employers would not be able to charge for any increased costs which they might incur, i.e. that the fixed charge currently levied by employers per transaction would remain the same.

Bailiffs

2. 20 Bailiffs are likely to experience a reduction in business from the enforcement of AEOs. (This loss to bailiffs would be mirrored by the gain to debtors from no longer paying the related bailiff fees).
2. 21 It is possible that bailiffs may engage in other enforcement activity relating to other types of case, or may engage in other lines of work. Bailiffs may incur one-off costs as a result of adjusting to any changing pattern of demand. Whether bailiffs are worse off as a result of these proposals would depend upon how their work profile changes. It has been assumed in this Impact Assessment that bailiffs will pursue other work of an equivalent value and would not experience any increased ongoing costs.

Legal professionals

2. 22 The position for legal professions is similar to that for bailiffs. It is possible that legal professionals may experience a reduction in business from the enforcement of AEOs as a result of more effective and streamlined processes. This may be associated with reduced fee income from AEO enforcement activity.
2. 23 This loss to legal professionals would be mirrored by the gain to debtors from no longer paying the related fees (and to creditors in relation to fees which cannot be recovered from the debtor).
2. 24 As with bailiffs it is possible that legal professionals may engage in other activity relating to other types of case, or may engage in other lines 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. It has been assumed in this Impact Assessment that legal professionals will pursue other work of an equivalent value and would not experience any ongoing costs.

Distributional costs

2. 25 The application of fixed tables in place of case by case calculations may lead to some debtors paying more quickly than would previously have been the case, and to others paying more slowly. 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.

Equity and fairness costs

2. 27 The proposals are not expected to reduce equity or fairness, especially as it will be possible to request a review of the fixed table calculations. Cases which are subject to such reviews are assumed to be subject to the same degree of fairness as current cases.
2. 28 The original enforcement hearing would have considered whether the contract which has not been honoured was fair. Implementing more effectively a judgement ruling which itself is considered to be fair should not lead to reduced fairness.

Wider social and economic costs

2. 29 The proposals are not expected to generate wider social and economic costs. Such wider costs might in theory arise as a result of debtor-related behavioural responses (e.g. increased crime) or as a result of improved enforcement generating costs elsewhere (e.g. increased state benefits paid to debtors from government bodies).

Benefits of Option 1

HMCS (Civil Courts)

- 2. 30 Ongoing savings to staff time through avoiding the requirement to process a means form from debtors, which is administered by the court. HMCS staff would also no longer need to calculate protected earnings rates or deductions, and this is likely to represent a more significant time saving.
- 2. 31 As explained in the costs section it has been assumed that these reforms alone are unlikely to enable court capacity to be reduced and hence to generate any related savings e.g. from having fewer staff or buildings. Instead there may be a reduction in ongoing variable court costs per case.
- 2. 32 Total court costs might not necessarily fall. Instead it has been assumed that the reduction in per case costs would lead to a reduction in the County Court backlog and in associated waiting times. As such there may be no impact on overall court cost recovery.

Debtors

- 2. 33 For debtors, there may be a time saving through no longer having to engage with the court through completing a N56 statement of means form.
- 2. 34 Debtors would also benefit from the reduced involvement of bailiffs, whose fees ultimately are paid by debtors. The same applies in relation to any reduced legal professional fees which might be incurred by debtors.

Creditors

- 2. 35 Creditors would benefit as the process for commencing an attachment of earnings order would take place more quickly. This would ultimately result in the judgment debt being repaid more quickly. In addition there may be an increase in the number of complete repayments, i.e. in the total volume of repayments, depending on how monthly deductions would compare to their current levels.
- 2. 36 Creditors may also gain if their (unrecoverable) legal professional fees are lower under the new arrangements. Although their legal fees should ultimately be passed on to the debtor, not all of their fees might be recoverable in this way.

Employers

- 2. 37 It is unclear whether the ongoing costs of operating the new system are lower than that of the current system. This may be the case for some employers who already operate fixed table systems for other types of debt repayment. It has been assumed that the fixed charge currently levied by employers per transaction would remain the same.

Bailiffs

- 2. 38 No benefits are anticipated for bailiffs.

Legal professionals

- 2. 39 No benefits are anticipated for legal professionals.

Distributional benefits

- 2. 40 The application of fixed tables in place of case by case calculations may lead to some debtors paying more quickly than would previously have been the case, and to others paying more slowly. The overall distributional impact amongst debtors is unknown.
- 2. 41 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 unpaid business, the creditor might be a small firm and the debtor might be a wealthy individual.

Equity and fairness benefits

2. 42 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.

Wider social and economic benefits

2. 43 The proposals may generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.

Option 1: Summary of key assumptions

2. 44 The following key assumptions apply to Option 1:
- The volume of cases is assumed to remain the same. Given the benefits to creditors, however, it is possible that case volumes might rise.
 - Court fees are assumed to remain the same. The 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.
 - Employer fees are assumed to remain the same per transaction.
 - Bailiffs and legal professions are assumed to incur one-off adjustment costs from their changing pattern of demand but are assumed to incur no change in ongoing costs or income once they have adjusted to undertaking less AEO business and more other business.
 - Where a debtor requests a review of the fixed table deductions these cases are assumed to exhibit the same characteristics as cases under existing arrangements. In effect the volume of cases subject to the new arrangements reduces by the volume of cases subject to a review.
 - We have assumed that the overall impact on legal aid, if any, is unlikely to be significant

Option 2: To introduce a means of finding the debtor's employer in attachment of earnings cases (TCE Act '07 – Section 92)

Description

2. 45 Under the current system, employment details can only be obtained from the debtor. There are no powers to obtain this information from other parties who may hold it.
2. 46 If a debtor changes employment and fails to notify the court of the new employer's details the AEO fails, and recovery of the debt ceases. The creditor is therefore required provide the court with information of the debtor's new employer if the AEO is to continue. It may be that a new order to obtain information is required to do this. If the Government does not amend the AEO process, creditors would continue to suffer undue delay with recovery of judgment debts by AEO.
2. 47 The opening of an information gateway between the relevant court and HMRC should enable failed AEOs to be redirected to the current employer. The policy should ensure fewer AEOs would fail due to the debtor failing in their responsibilities.
2. 48 HMRC would only be approached 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 TCE Act 2007 allow information gateways to be opened for all types of AEOs covered by

the 1971 Attachment of Earnings Act, and for AEOs made in relation to fine collection under Schedule 5 to the Courts Act 2003. We do not know how many AEOs fail per year.

2. 49 These provisions would relate to civil and family matters only, not to criminal cases.
2. 50 The policy would aim to achieve the following:
 - Reduce the delay in implementing attachment of earnings cases when a debtor has changed employer.
 - Increase the difficulty for the debtor to avoid or delay debt repayment.
 - Prevent the need for creditors to apply to the court more than once in relation to securing and implementing an attachment of earnings order.

Costs of Option 2

HMCS (Civil Courts)

2. 51 There would be a one-off cost of setting up an IT linkage with HMRC, estimated at approximately £500,000. 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. There may also be potential HMCS IT adjustment costs, to adjust their systems for this new process, as well as small one-off costs associated with providing information about this new means to find a debtor's employer.
2. 52 There would be ongoing costs of operating this linkage with HMRC, to cover their additional administrative costs. These ongoing costs are estimated at around £50,000 per annum. However, as assume the costs of operating this linkage would be covered through additional fees charged for this service, hence ongoing net costs to HMCS should be zero.
2. 53 There could be an ongoing loss of court fee income as debtors may not go back to the court to secure an order to obtain information about the debtor's new employer. As in the case of fixed tables, this loss of court fee income would mirror a reduction in HMCS costs, so net costs to HMCS should be zero. Therefore, overall the proposals are considered to have no overall impact on HMCS cost recovery.
2. 54 As for Option 1, it has been assumed that the reforms would not lead to any HMCS capacity adjustment in relation to staff and estate and hence there would not be any one-off capacity adjustment costs e.g. from terminating contracts.
2. 55 There may be a potential increase in workload for defending court clerks against the offence of wrongful disclosure of information obtained from HMRC. Good regulations and guidance will assist here, mitigating this potential impact.

Debtors

2. 56 If debtors change employers, it will now be more difficult for them to evade the process, or stall the process. Therefore, for those debtors who change employers currently and do not report this, there would be a loss associated with the AEO being transferred to their new employer. In effect, assuming some non-compliance with requirements to inform the court of a change of employer, payments from debtors would be made more quickly and the total volume of payments might rise.
2. 57 The reforms are also assumed to lead to the current caseload backlog being reduced and to case waiting times falling. This would also lead to debtors repaying more quickly.
2. 58 The fee for finding a debtor's employer is assumed to fall ultimately on the debtor. However, this new fee relating to obtaining information from HMRC would be in place of the court fees which the debtor would ultimately have to pay currently as a result of the creditor returning to court and securing an order to obtain information. We expect these new costs to debtors would be less than the existing fee to secure another AEO.

Creditors

2. 59 No significant one-off or ongoing additional costs to creditors have been identified. The new fee for obtaining information from HMRC would replace the costs to creditors of returning to court for obtain an order to information. We would expect these costs would ultimately be borne by the debtor.

HMRC

2. 60 As the cost to HMRC would be charged to HMCS, no additional net financial costs to HMRC have been identified.

Legal professionals

2. 61 It is possible that legal professionals may experience a reduction in business from the enforcement of AEOs as a result of more effective and streamlined processes. In particular in relation to non-compliance the relevant information may now be obtained from HMRC rather than additional court activity being required. This may be associated with reduced fee income.
2. 62 This loss to legal professionals would be mirrored by the gain to debtors from no longer paying the related fees (and to creditors in relation to fees which cannot be recovered from the debtor).
2. 63 It is possible that legal professionals may engage in other activity relating to other types of case, or may engage in other lines 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. It has been assumed in this Impact Assessment that legal professionals will pursue other work of an equivalent value and would not experience any ongoing costs.

Distributional costs

2. 64 It is assumed that the process of obtaining information from HMRC is quicker than the process of securing a new AEO from HMCS, and also that the cost of the new process is lower. As a result 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.

Equity and fairness costs

2. 65 The original enforcement hearing would have considered whether the contract which has not been honoured was fair. Implementing more effectively a judgement ruling which itself is considered to be fair should not lead to reduced fairness.

Wider social and economic costs

2. 66 The proposals are not expected to generate wider social and economic costs. Such wider costs might in theory arise as a result of debtor-related behavioural responses (e.g. increased crime) or as a result of improved enforcement generating costs elsewhere (e.g. increased state benefits paid to debtors from government bodies).

Benefits of Option 2

HMCS (Civil Courts)

2. 67 Potential savings to court staff time may arise through avoiding the requirement for a new order to obtain information process to commence if a debtor changes employer.
2. 68 These applications for orders to obtain information may be replaced by applications for information about a debtor's current employer, however, we assume that this process is quicker and less costly than the current order to obtain information process. Any fee income from this new process is assumed to cover cost, meaning the HMCS financial position would remain neutral.

2. 69 As explained in the costs section it has been assumed that these reforms alone are unlikely to enable court capacity to be reduced and hence to generate any related savings e.g. from having fewer staff or buildings. Instead there may be a reduction in total ongoing variable court costs. It has been assumed that court fees would remain the same and that overall cost recovery would remain broadly comparable as a result of spare resource generated by this reform being used to tackle the caseload backlog and hence reduce case waiting times.

Debtors

2. 70 Debtors should benefit as a result of the reduced cost of securing information via HMRC compared to another order to obtain information being obtained from the court. Ultimately the related fees and other legal costs are met by debtors.

Creditors

2. 71 Creditors would benefit as the process for commencing an attachment of earnings order would take place more quickly as case waiting times are reduced. Creditors would also benefit from judgment debt being repaid more quickly. In addition there may be an increase in the number of complete repayments, i.e. in the total volume of repayments.
2. 72 Creditors may also gain if their (unrecoverable) legal professional fees are lower under the new arrangements. Although their legal fees should ultimately be passed on to the debtor, not all of their fees might be recoverable in this way.
2. 73 Creditors may gain in cashflow terms if the upfront fee for securing information from HMRC is lower than the fee for securing an order to obtain information. These costs are ultimately borne by the debtor but are initially met by the creditor until they are repaid.

HMRC

2. 74 No benefit to HMRC has been identified.

Legal professionals

2. 75 No benefits are anticipated for legal professionals.

Distributional benefits

2. 76 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 unpaid business, the creditor might be a small firm and the debtor might be a wealthy individual.

Equity and fairness benefits

2. 77 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.

Wider social and economic benefits

2. 78 The proposals may generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.
2. 79 The proposals would provide resource efficiency improvements as fewer resources would be required to achieve the same outcome or an improved outcome.

Option 2: Summary of key assumptions

2. 80 The following key assumptions apply to Option 2:

- The volume of orders to obtain information is assumed to fall as orders to obtain information would not be needed when an AEO fails if the information could be obtained by HMRC instead. However this reduction in workload might not be as large if the baseline volume of initial AEOs was higher. Indeed given the benefits to creditors, it is possible that initial case volumes might rise.
- Court fees are assumed to remain the same. The reduction in court case volumes is assumed not to have a significant material impact on overall court cost recovery.
- Court capacity (including staff and estate) is assumed not to be affected by these proposals.
- The existing extent of non-compliance with AEOs is assumed to remain the same.
- Obtaining information from HMRC is assumed to be less costly and quicker than securing an order to obtain information from HMCS. We assume that ongoing costs of operating this linkage will be secured by fee income.
- Legal professions are assumed to incur one-off adjustment costs from their changing pattern of demand but are assumed to incur no change in ongoing costs or income once they have adjusted to undertaking less AEO related business and more other business.
- We have assumed that the overall impact on legal aid, if any, is unlikely to be significant

3. Enforcement, Sanction and Monitoring

- 3.1 The responsibility of enforcing a judgment debt remains the judgment creditors. 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. 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. As to compliance for finding the debtor's employer, where information is requested from HMRC service-level standards would be established between Her Majesty's Court Service and HMRC. MoJ will monitor the impact of the court-based enforcement methods once they are implemented. There is a criminal sanction under these provisions for persons who use and disclose information obtained from HMRC for a purpose that is not connected with an attachment of earnings order.

4. Specific Impact Tests

1) Statutory equality duties

- 4.1 An Equalities Impact Assessment signed off by the Director (Nick Goodwin) is annexed.

2) Economic impacts

i) Competition

- 4.2 The proposals may have an impact on competition to the extent that some employers may already possess the IT systems required and others might not. The latter might be subject to a competitive disadvantage as a result of the proposals.

ii) Small firms

- 4.3 The proposals may be relatively more burdensome on small employers, especially those who do not already possess the new IT systems required. It may be that smaller firms are less likely to possess this IT.
- 4.4 AEOs are likely to affect small firms which are creditors as they are not applicable to firms which are debtors. As such the reforms may be of benefit to small firms.

3) 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.

4) 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 The Ministry of Justice considers that the provision 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.

4.10 The provision provides safeguards to protect an individual's Article 8 rights, and impose a criminal sanction where information obtained pursuant to the powers contained in the provision, is disclosed for a purpose that is not connected with enforcement of the relevant attachment of earnings order.

iii) Justice system

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

iv) Rural proofing

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

5) Sustainable Development

4.13 There are no sustainable development implications associated with the proposals.

Annexes

Annex 1 sets out the Post Implementation Review Plan as detailed below.

Annex 2 includes the Equalities Impact Assessment

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

These proposals are subject to consultation and their implementation will depend on the results of the public response. Our delivery plan developing consulting on and implementing the secondary legislation and operational mechanisms, and at the same time as the operational mechanisms are being developed, putting in place any post implementation review arrangements.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The post implementation review will analyse the impact in terms of efficiency of process and user feedback. It will also check there was no negative impact on access to justice.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

These proposals are at consultation stage. It is therefore not confirmed yet whether such reforms will be implemented. Subject to any revision at regulations consultation stage, evaluation will take place 3 year post consultation. We shall evaluate the effectiveness of the above intended benefits post implementation by a combination of methods. We shall use HMCS National Statistical information published in Judicial Statistics, supported by other operational statistical information. Working groups will also continue to form a key role in monitoring the impact of the new court based enforcement changes. We may consider questionnaires, if they are appropriate to obtain qualitative or additional quantitative information which assists with the analysis of the impact of these proposals.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

Option 0 – do nothing.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

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

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

Court user feedback will be monitored through correspondence from the public and Parliamentary Questions. HMCS Civil & 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: [If there is no plan to do a PIR please provide reasons here]