

<b>Title: Whether a minimum limit should be imposed on Order for Sale applications in relation to Consumer Credit Act debts only</b>  <b>Lead department or agency: Her Majesty's Court Service</b> Ministry of Justice  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MoJ 075
	<b>Date:</b> 29 March 2011
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Other
	<b>Contact for enquiries:</b> Dr Sue Rayner Jacobs 0203 334 6354

## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> The Ministry of Justice is consulting on whether to implement a minimum limit on applications for Orders for Sale in Consumer Credit Act 1974 (CCA) debts. This follows the publication of the Coalition Agreement Commitment to introduce more protection against aggressive bailiffs and unreasonable charging orders, to ensure that courts have the power to insist that repossession is always a last resort, and to ban orders for sale on unsecured debts of less than £25,000. That commitment arose in part in responses to Citizen's Advice publishing a paper, 'Out of Order' which highlighted concerns about creditors using charging orders to secure CCA debts, sold at higher premiums. Subsequent applications for Orders for Sale could result in debtors losing their homes on what were originally unsecured debts. This could be considered an unfair outcome for debtors.	
<b>What are the policy objectives and the intended effects?</b> The policy objective is to ensure an appropriate level of protection for debtors, while ensuring access to credit remains affordable for individuals and businesses. Therefore, we examine whether there is a case for introducing a threshold on applications for Orders for Sale in relation to Consumer Credit Act 1974 debts, so limiting creditors using this as a method of securing payment of unsecured commercial debt. We will consult upon threshold levels below £25,000, including an option for no threshold (no change).	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b> Option 0: Do Nothing (necessarily the costs and benefits of doing nothing are the same as currently) Option 1: Introduce a threshold on Orders for Sale applications in relation to CCA debts at £1,000. Option 2: Introduce a threshold on Orders for Sale applications in relation to CCA debts at £5,000. Option 3: Introduce a threshold on Orders for Sale applications in relation to CCA debts at £10,000. Option 4: Introduce a threshold on Orders for Sale applications in relation to CCA debts at £25,000.	
<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed May 2014
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off** For consultation 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 Options 1-4

## Description:

Threshold on applications for Order for Sale in relation to Consumer Credit Act debts

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'

Potential administrative costs on the court system, particularly in relation to distinguishing between CCA debts and other debts and therefore training costs for court staff.

Creditors may lose out if they are no longer able to recover their consumer credit act debt below the threshold through an order for sale, or if the costs of alternative enforcement action are higher, and this action is slower and less successful.

Wider economic costs from less contractual certainty and enforceability

Possible wider costs from less credit offered in future, or offered at higher price.

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'

Debtors could benefit from debt repayment occurring less quickly and / or less completely.

Insolvency service could secure increased fee income from administering more bankruptcy claims, mirroring their increased costs.

Potential fairness benefit if debtors paying premiums for unsecured debt are more protected from orders for sale being issued against them for debts below the threshold, than others above the threshold.

#### Key assumptions/sensitivities/risks

Discount rate (%)

Introducing a threshold on orders for sale could lead creditors to substitute to other enforcement processes or bankruptcy in some cases. We do not know the extent of this, nor how behavioural responses could vary with different thresholds.

Court fees and cost recovery assumed to remain the same as currently, as is capacity.

Assume that judicial discretion for those applications above the threshold will remain the same as currently.

Legal professionals assumed to adjust to changing pattern of demand.

Distributional implications unclear.

We do not have complete information as to the level of debt at which most orders for sale are awarded, or how many relate to consumer credit act debt.

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	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?		May 2012			
Which organisation(s) will enforce the policy?		HMCS (County Courts)			
What is the annual change in enforcement cost (£m)?		Not known. Expect negligible.			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: n/a		Non-traded: n/a	
Does the proposal have an impact on competition?		Yes			
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
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes	
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> 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.

No.	Legislation or publication
1	<u><a href="#">Tribunals, Court and Enforcement Act 2007</a></u>
2	MoJ “Consultation on whether a minimum threshold should be imposed on Order for Sale Applications in relation to Consumer Credit Act debts only” (Feb-April 2010)
3	BIS: Call for Evidence on Credit Debt and Personal Insolvency Review (December 2010)
4	

### 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 <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
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

- 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 system might 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, charging orders, third party debt orders or warrants of execution.
- 1.4 Where a creditor has obtained a charging order and feels it appropriate to do so, they may also proceed to make a separate application for an order for sale, to enforce that charging order. A charging order registers a charge on someone's home to repay their judgment debt when they sell their property. An order for sale enforces this charging order by ordering the sale of the property either immediately, or at some point in the future if a suspended order for sale is made. A suspended order for sale is usually conditional upon the debtor's compliance with the judgment order. It may be that the debtor is never required to sell their property.
- 1.5 In considering whether to make an order for sale, the court will balance, against the rights of the creditor to recover the debt, the rights of the debtor and his/her family in respect of the family home under Article 8 of the European Convention on Human Rights (right to respect for private and family life), in all the circumstances of the case. Therefore in all cases judicial discretion will be exercised.
- 1.6 During the period September 2009 - September 2010 (the latest full year of data we have available), approximately 566 orders for sale were granted in the County Court. Of these we do not know how many orders for sale were suspended. All figures collected rely on monthly returns by each individual County Court so there is scope for collection error. However, this figure highlights that orders for sale are rarely pursued, and represent approximately 0.5% of charging orders awarded during the same period. We do not consider any High Court data as applications to the high court would be above all of our thresholds proposed and therefore would not be impacted by the policy proposals.
- 1.7 Whilst orders for sale are uncommon, they are subject to case-by-case judicial discretion and case law. Case law protects the family home and residences where dependents reside. They are more likely therefore to be made against debtors who have all their assets tied up in additional properties, land, unit trusts or shares. As such there are no uniform rules set down in statute which are easily accessible to the consumer. Prior to the recent amendments to the Consumer Credit Act and the guidance issued by OFT<sup>2</sup>, creditors were able to use the threat of an order for sale to push debtors into repaying at increased and sometimes unreasonable rates. The Citizen's Advice ("CAB") 'Out of Order' report<sup>3</sup> (which was published before the OFT guidance) argued that the legal protection for consumers of commercial credit who pay higher premiums for unsecured debt is weak. They say such debtors should be protected from aggressive creditors threatening, or seeking to order sales of their property for what are sometimes disproportionate debts. They acknowledge that whilst the number of orders for sale might be low the threat or

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<sup>2</sup> Debt Collection guidance, published July 2003. A copy of this guidance, and subsequent guidance, published in March 2010, is available at the OFT's website: [www.of.gov.uk](http://www.of.gov.uk)

<sup>3</sup>

Citizens Advice briefing, *Out of order – CAB evidence on the use of charging orders and orders for sale in debt collection*, published on 25 June 2009.

possibility of being subject to an order for sale might be more pervasive. Therefore, our proposed aim is to consult on whether we should increase protection for debtors of unsecured credit in this area.

- 1.8 The Coalition commitment to introduce a threshold in relation to orders for sale applications highlights these concerns, as have other past consultations, such as the CAB paper and the later, more comprehensive Ministry of Justice (MoJ) *Consultation on whether a minimum threshold should be imposed on order for sale applications in relation to Consumer Credit Act debts only*<sup>4</sup>, and the Department for Business Innovation and Skills (BIS) Call for Evidence on *Credit, Debt and Personal Insolvency*.<sup>5</sup>
- 1.9 Charging orders as an enforcement method have also increased significantly in recent years. For example the numbers applied for and awarded in 2009 were more than double the number awarded in 2005. We do not have official data on whether orders for sale have followed this trend, although evidence suggests that the percentage ratio has risen over the past 10 years. However, CAB's fears that the ever-increasing number of applications for charging orders mean there is an increasing risk that the use of orders for sale could also become more common does not seem to be borne out. There is also a question as to whether we are concerned with the absolute number of orders for sale, or whether we are concerned with the number of orders for sale relative to the number of charging orders.
- 1.10 This Impact Assessment focuses on orders for sale, and whether we should implement a minimum threshold in relation to CCA debts. The concerns about aggressive creditors threatening orders for sale for unpaid debts are particularly directed at commercial credit lenders and debt management companies, who charge raised premiums for unsecured credit. Following the previous two consultations we have received many representations from consumers in relation to government and local authority debt recovery and the impact such a threshold would have on bankruptcy and insolvency procedures.
- 1.11 We are therefore advocating that the threshold apply to non-government debt, where in some cases, creditors (such as utility companies) have no other recourse to recover unpaid debts.
- 1.12 We are advocating that the threshold should not apply to:
- Recovery of empty and blighted properties.
  - Community debts or Council Tax.
  - Recovery of legal aid through Crown Courts means testing.
  - Recovery of proceeds of crime.
  - Bankruptcy and insolvency which is generally regarded as a more severe step than debt enforcement, and where it would not make sense to prevent trustees in bankruptcy from recovering assets against a bankrupt's property.
- 1.13 For any amount below a threshold, an order for sale could not be applied for. The reforms apply to all forms of civil case but not to family cases and not to criminal cases. This might be all forms of civil case where payments are owed, not just cases involving money lending.

## Policy Objectives

- 1.14 As mentioned above, recent evidence shows that only a very small proportion of charging orders result in an order for sale (approx 0.5%), of which some are suspended. Following an application, judges exercise their discretion and only grant an order for sale where it is fair and proportionate to do so in accordance with case law. We know from previous consultations that the process of applying for, calculating potential equity in, and administering the sale of a debtor's property is economically risky and many creditors are averse to applying for order for sale. It is, therefore, rare

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<sup>4</sup> [www.justice.gov.uk/consultations/orders-sale.htm](http://www.justice.gov.uk/consultations/orders-sale.htm) published 5 February 2010. A response report to this consultation will be published alongside this consultation.

<sup>5</sup> BIS Call for Evidence on Credit, Debt and Personal insolvency, published December 2010. A response report to this consultation will be published in May 2011.

for a debtor to lose their home as a result of this combination of enforcement mechanisms. However, as mentioned above, it is important that the Government ensures all appropriate safeguards are in place to ensure debtors do not unfairly lose their homes as a result of what might have been originally relatively small, unsecured borrowing.

- 1.15 A creditor has a reasonable right to expect to be able to recover their unpaid debt. Where charging orders and orders for sale are the only means of recovering a debt for a creditor, and that creditor is denied that right whether by the imposition of a threshold or any other regulatory bar, there is the potential risk of judicial review.
- 1.16 When considering options for reform the Government has taken into account responses to the earlier Ministry of Justice consultation<sup>6</sup>, the BIS call for evidence issued as part of its Review of Consumer Credit, Debt & Personal Insolvency<sup>7</sup>, and the views of CAB<sup>8</sup> and other consumer groups. Our aim is to protect the debtor against aggressive creditors, and to protect them from losing their homes for disproportionate debts following judgment on a previously unsecured debt. As mentioned above, we need to balance this against any potential adverse impacts on access to credit if smaller debts cannot be enforced.
- 1.17 The proposal to ban orders for sale on unsecured debts of under a particular threshold is more specific than the previous consultation on whether limits should be imposed. In order to inform the correct level for a threshold which balances the requirements for debtors, creditors and other affected parties, the Government wishes to consult on a range of thresholds to allow stakeholders the opportunity to comment on whether a threshold should be set at £25,000, lower or none at all.
- 1.18 As mentioned in paragraph 1.10 above, we are considering a threshold only in relation to CCA debts as these creditors have already contracted for the debtor to pay raised premiums on the credit at the point of loan and therefore have the insurance to account for non-payment of such debts. Other debts such as utility, government and local authority debts do not have such insurance. It may not be equitable, for instance, for debtors owning expensive, even second or third properties to benefit from the ownership of those properties, shares or unit trusts while they have judgment orders registered against them for unpaid debts for legal aid, utility bills, criminal fines, unrecovered proceeds of crimes or accumulated debts where creditors with cashflow problems are facing bankruptcy, insolvency or winding up of their business.
- 1.19 The proposal for a £25,000 threshold arose out of the CAB report recommendations for a complete ban on any unsecured debts sold at higher premiums being recovered by the order for sale process. It is based on a now obsolete maximum level for unsecured debt. This threshold level has not previously been impact assessed and may result in unfortunate debt management behaviours by aggressive creditors and debt management companies which would not be in the interests of debtors. Such a high level has met with considerable concern by interested parties making representations to the MoJ and HMCS in response to the publication of the coalition commitment proposal. Several creditors have themselves imposed a threshold on their own procedures, and in all cases known about, this has not exceeded £1000. This is consonant with the cost of bankruptcy applications.
- 1.20 At present debtors made bankrupt are more likely than not to lose their assets, including their family home. The natural order of debt management might be to seek to keep bankruptcy and insolvency as the ultimate final resort for those in severe debt. If the threshold for orders for sale were to apply within bankruptcy, a debtor could incur significant unsecured debts up to the proposed limit of £25,000 and then walk away from them even though they may have substantial equity in their property. This is counter to established public policy that those who can afford to pay should pay, and may lead to irresponsible borrowing. As a consequence it is also likely to significantly increase demand for bankruptcy from debtors, as debtors realise that bankruptcy would be a way to write off their debts without losing their home.
- 1.21 Alternatively, if the proposal does not apply within bankruptcy we anticipate that demand for bankruptcy from creditors would increase. Under the current system, creditors have a number of options open to them to recover debts, including a charging order enforced by an order for sale. If

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<sup>6</sup> See footnote 4 above.

<sup>7</sup> See footnote 5 above.

<sup>8</sup> See footnote 3 above.

this option were removed creditors who would otherwise have used an order for sale to recover their debts are likely to resort to petitioning for the debtor's bankruptcy. This would be relatively easy as the creditor must be owed a minimum of only £750 before they can petition for a debtor's bankruptcy. It would therefore make commercial sense to carry out this action, especially if the debtor had built up significant debts of up to £25,000.

## **Policy Proposals**

- 1.22 We propose implementing a threshold on orders for sale if the responses to our consultation highlight that the benefits from this in additional consumer protection would outweigh any costs to the functioning of markets stemming from less contractual certainty and enforceability.
- 1.23 We are consulting on the following thresholds:
- 0) £0 (base case)
  - 1) £1,000
  - 2) £5,000
  - 3) £10,000
  - 4) £25,000

## **Economic rationale for intervention**

- 1.24 The conventional economic approach to government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are perceived 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). In this case, the intervention would be justified primarily on equity grounds.
- 1.25 In this case one of the key rationales for intervention relates to equity and fairness. In particular it may be unfair for debtors to lose their home for the repayment of (originally unsecured) consumer credit debts, which were sold at higher premiums than secured debts.
- 1.26 On the other hand the proposals may diminish the incentive to repay, and may lead to creditors providing less lending in future. The overall compliance cost position is also unclear, as resource savings from not pursuing orders for sale as an enforcement mechanism would be balanced by increased resources from creditors pursuing other, more draconian, actions such as bankruptcy.
- 1.27 The proposals would be justified if the benefits in terms of improved fairness outweighed the costs outlined above, bearing in mind the net change in compliance costs.
- 1.28 In addition, whether a reduction in borrowing is viewed as adverse would depend upon whether the current level of borrowing is optimal. If credit is being provided too easily and if this stems from market failure then a measure which leads to credit being restricted might be beneficial.

## **Affected stakeholder groups**

- 1.29 The proposals would affect the civil courts, CCA creditors, debtors, bankruptcy practitioners and the Insolvency Service.
- Civil Courts – Would be impacted in terms of the number of applications they may process (and award) for Orders for Sale, and potentially charging orders; and the effect this would have on creditor behaviour in relation to other enforcement methods, bankruptcy or insolvency.
  - CCA creditors – Would be affected in terms of the options for debt enforcement they are able to pursue at levels below the threshold, and this may also impact on subsequent lending activity. To ensure that lenders are willing to lend, they have to be confident that they will get their



money back. By restricting orders for sale it effectively reduces the options available to lenders when trying to recoup money owed to them. This may discourage them from lending in the first place and is likely to increase the cost of borrowing.

- Debtors – May now be subject to other debt enforcement measures below the threshold (e.g. insolvency), which may make them worse off, or benefit from no further enforcement, which would make them better off. Debtors might also be less able to borrow funds in future if creditors tighten up lending activity.
- Insolvency Service – May see an increase in activity if debtors are required to resort to bankruptcy in cases where they are no longer able to pursue an order for sale.
- Legal professionals – Might possibly be affected by a reduction in orders for sale, and an increase in work relating to other enforcement mechanisms or insolvency.
- 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 impacts of a threshold for orders for sale in relation to consumer credit act debts 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.

### **Option 0: Base case (do nothing)**

- 2.2 Under this option, no intervention would be made, and debtors would continue to rely on the protection offered by judicial discretion, case law, recent CCA amendments and OFT guidance and monitoring. Creditors would be able to apply for an order for sale in all cases where the debt remains unpaid and where creditors have already obtained a charging order through the court enforcement procedures.
- 2.3 Such applications are usually only made where a debtor's only assets are secured in property, shares or unit trusts, where the property concerned is not the primary residence of the debtor or their dependents, where the creditor is assured of sufficient equity from any sale and where court enforcement mechanisms are inappropriate or have failed. As mentioned above, orders for sale are not common, and may often be suspended rather than for immediate sale, however, data is not collected in relation to how many orders made are suspended. We also do not hold information relating to the number of orders for sale applications in the base case.
- 2.4 All options are assessed relative to the base case. The costs and benefits associated with the base case are necessarily zero.

### **Options 1-4: Threshold on applications for Orders for Sale in CCA debt**

#### **Description**

- 2.5 Here we consider the implications of implementing a threshold on applications for orders for sale in relation to consumer credit act debts.
- 2.6 A threshold would mean that creditors with a charging order registered would be unable to apply for an order for sale unless the judgment debt exceeds this threshold.
- 2.7 With a threshold in place, this would remove any potential applications below the threshold. However, for those applications above the threshold, this would not remove the requirement for judicial discretion as to whether it would be fair to award an order for sale or not given the debtor's circumstances and the judgment debt owed.
- 2.8 Ideally we would consider the precise number of orders for sale that could be affected by the following thresholds: £1,000, £5,000, £10,000 and £25,000. In reality, due to a lack of data around

the values for which orders for sale are awarded, we are only able consider the general impacts if a threshold for orders for sale applications were in place, and how these impacts could vary with thresholds at different levels.

2. 9 Data for the values of charging orders is collected, and this is highlighted in the table below for all charging orders awarded between March & September 2010. Each row sets out the distribution of applications or orders across the different sums of money involved. However, this data does not accurately reflect the distribution of orders for sale as we would not expect as many applications for orders for sale for smaller amounts of judgment debt, and there may also be fewer orders for sale accepted at lower values.

Table 1: Split of applications and orders by amount of money involved

	Null	0	>0 to 1k	>1k to 5k	>5k to 10k	>10k to 25k	Above 25k
Application for charging order	4.8%	0.6%	10.7%	35.8%	22.6%	18.8%	6.7%
Charging order awarded	4.3%	0.6%	9.9%	34.9%	23.9%	19.8%	6.5%

(The null column refers to those cases where no data was recorded, or because the claim was not for a precise amount)

2. 10 The values for which orders for sale are applied for or awarded for different types of debt may also differ. We do not have any evidence relating to whether orders for sale may be for higher or lower amounts in relation to CCA debt compared to other debts.
2. 11 A sample of county court data where detailed case notes were recorded appears to highlight that applications or the award of orders for sale is across a wide range of values (some under £1,000 and others above £25,000) and for a range of reasons. Unfortunately the dataset is very limited meaning any conclusions drawn from it are not robust, and we cannot obtain a representative average value for applications for orders for sale, nor the average value of those orders for sale awarded.
2. 12 Where an order for sale cannot be pursued in future because it falls below the new threshold we assume that the creditor will either do nothing additional, and essentially write off the bad debt, or might seek other enforcement action such as insolvency for the debtor.
2. 13 All impacts identified below would be more significant the higher the threshold is.

#### Costs of options 1-4

##### *HMCS (Civil Courts)*

2. 14 The policy may impose administrative costs on the court system, particularly in relation to distinguishing between CCA debts and other debts when issuing claims in the County Courts. Court clerks are typically not legally trained, and may not easily be able to tell whether a particular debt was regulated by the Consumer Credit Act, and thus covered by the policy. Additional training may be required in order to remedy this.
2. 15 In terms of ongoing costs, the reforms could lead to an increased HMCS workload depending on whether additional bankruptcy or other enforcement measures are pursued if CCA creditors are unable to apply for an order for sale. On the other hand, there could be a reduction in workload and the associated fee income if fewer orders for sale and /or charging orders are applied for.
2. 16 We assume that in this area fee income covers cost per case, and fees are not assumed to change as a result of changes in volume. Therefore, any change in court activity is expected to be cost neutral for HMCS, whether there is an overall increase in court activity (if creditors divert to other enforcement methods or bankruptcy) or a decrease (if creditors do not pursue the judgment debt further). In cases where the creditor is unable to recover the debt by any other means, departmental lawyers advise there is risk of judicial review in accordance with European Convention on Human Rights (ECHR) principles.
2. 17 We also assume that there will be no change in HMCS capacity, e.g. staff or estate, in response to any change in activity and hence no capacity adjustment costs.

2. 18 Given that we consider that court fees would remain the same, that fees cover costs for the different types of court action, and volumes of people switching between different types of court would be low, we assume a threshold would not have an impact on court backlogs and waiting times.

#### *Debtors*

2. 19 Depending on behavioural responses by creditors, it may be that creditors switch to other forms of enforcement, e.g. insolvency. This may result in further costs on debtors through additional court and legal fees, which may be added to the judgment debt. At present debtors are more likely than not to lose their assets, including their family home, when made bankrupt.
2. 20 This additional cost to debtors would depend upon the change in the volume of debt enforcement overall, as well as how legal and court fees in other enforcement methods or bankruptcy compare to those for orders for sale.
2. 21 Debtors might also be subject to reduced lending in future, or to an increased cost of lending as a result of increased amounts of bed debt for creditors.

#### *Creditors*

2. 22 Creditors may lose out if they are no longer able to recover their CCA debt below the threshold through an order for sale, which in some circumstances may have been the most efficient avenue for creditors to take. This could mean that debt enforcement takes longer, or may be less successful in that a lower amount of judgment debt may be recovered.
2. 23 In some cases, creditors may pursue another enforcement route, or pursue bankruptcy. Bankruptcy will reduce a creditor's chances of recovering their unpaid debts. In this situation, there may be cash flow implications for creditors if the court fee and potentially legal costs are paid upfront, and not recouped until the judgment debt is repaid, if repaid at all.
2. 24 In some cases, there may also be some costs which are not recoverable. This may be if legal costs are not awarded, or if route pursued does not lead to successful recovery judgment debt.
2. 25 Ultimately these costs to creditors might be passed to debtors in the form of reduced borrowing for certain types of debtors, higher premiums for unsecured borrowing or reduced availability for unsecured lending. This might also represent a wider cost to society, as detailed below.

#### *Insolvency Service*

2. 1 The insolvency service may incur one-off costs as a result of adjusting to any increase in demand for their services. The extent of a change in demand for their services will depend on behaviour by creditors, and the extent to which increases in the use of bankruptcy is a measure or not.
2. 2 No ongoing net costs to the Insolvency Service have been identified, other than increased demands for service. It is assumed that where the Insolvency Service provides a service, fees are charged which recoup the costs of that service.

#### *Legal professionals*

2. 3 By no longer advising in relation to cases for orders for sale below the threshold, this could lead to a reduction in workload for legal professionals. On the other hand there may be increased demand for legal professionals to the extent that consumer credit act creditors substitute to other enforcement methods or insolvency. The overall position is unclear.
2. 4 Any loss in business 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. 5 With any change in the volume of business, it is possible that legal professionals may engage in other activity relating to other types of case, 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. It has been assumed in this Impact Assessment that legal professionals would pursue other work of an equivalent value and would not experience any ongoing costs.

#### *Distributional costs*

2. 6 At an aggregate level, debtors as a whole are likely to pay creditors less quickly, and may also repay debts less completely, as the policy proposals are taking away an enforcement option for some creditors. In relation to consumer credit act the creditor could be a money lending company whilst the debtor is likely to be an individual, so it may be that there are no distributional costs.

#### *Equity and fairness costs*

2. 7 The original enforcement hearing would have considered whether the contract which has not been honoured was fair. In one respect, implementing a constraint on when a judgment ruling which in itself is considered fair can be enforced could lead to reduced fairness. On the other hand the issue perhaps is whether the enforcement action (i.e. an order for sale) is disproportionate given the nature of the debt, which was unsecured. A creditor who is denied their reasonable expectation to be able to recover an unpaid debt by this method, in cases when it is the only means of recovery, may be able to seek judicial review proceedings to overturn any threshold under ECHR.

#### *Wider social and economic costs*

2. 8 It is possible that businesses may not be willing to offer unsecured loans for sums below the threshold, or may only be willing to do so at higher rates of interest (reflecting the increase in difficulty recovering such debts). This would drive the cost of lending up or restrict access to lending.
2. 9 Whether this is adverse would depend upon whether there is currently an optimal level of lending. If so, and if the market is working efficiently, then a restriction on lending would generate economic costs. This would not be the case of the market was not operating efficiently and was providing credit too easily.

### **Benefits**

#### *HMCS (County Court)*

2. 10 HMCS would secure more fee income from any potential increase in other enforcement methods. However, this would be offset by the reduced fee income from a reduced volume of applications for orders for sale. The overall net position is unclear. Any increased fee income would ultimately take the form of a cost to debtors.
2. 11 As explained in the costs section it has been assumed that court fees cover court costs hence we would expect no net impact on overall court cost recovery, and no impact on court operational efficiency.

#### *Debtors*

2. 12 Introduction of a threshold could remove the threat of eviction for debtors with charging orders in relation to consumer credit act debts below the threshold.
2. 13 On the basis that all other options to pursue judgment debts remain the same as previously, debtors may benefit to the extent that their judgment debts may not be enforced as completely (e.g. if simply a charging order remains) or as quickly (e.g. if another enforcement method or bankruptcy has to be pursued).
2. 14 There may be a fee saving to debtors to the extent that no further enforcement method is pursued after the charging order, or alternatives pursued result in lower court and legal fees.

2. 15 The benefit of judgment debt repayment occurring less quickly or less completely will be greater the greater the threshold. However, it is unclear how any fee benefits would vary according to the threshold.

#### *Creditors*

2. 16 To the extent that creditors no longer apply for an order for sale, they would potentially save on the court and legal fees, or least the associated cash flow costs relating to the fact that these fees are paid upfront, and not recouped until later.
2. 17 However, on the assumption that creditors pursue orders for sale because they are the most efficient way to recoup their judgment debt, overall a threshold can be expected to have a net cost to creditors.

#### *Insolvency Service*

2. 18 The Insolvency Service is likely to experience an increase in business if consumer credit act creditors substitute to bankruptcy. This may be associated with increased fee income from this activity. This gain to the insolvency service would be mirrored by the loss to debtors from paying any additional insolvency fees. Insolvency Service fees are assumed to relate to the costs of their services hence the net financial position for the Insolvency Service should be neutral.

#### *Legal professionals*

2. 19 It is possible that legal professionals may experience an overall increase in business from the increase in other enforcement processes or insolvency, even once the reduction in business associated with orders for sale is taken into consideration.
2. 20 This gain to legal professionals would be mirrored by the loss to debtors or creditors (if they cannot recover these costs from the debtor) from paying the related fees.

#### *Distributional benefits*

2. 21 At an aggregate level, debtors as a whole are likely to pay creditors less quickly, and may also repay debts less completely, as the policy proposals are taking away an enforcement option for some creditors. To the extent that in relation to consumer credit act the creditor is a money lending company whilst the debtor is likely to be an individual, this may represent a distributional benefit.

#### *Equity and fairness benefits*

2. 22 Debtors pay higher premiums for unsecured debts, due to their nature of not being secured against anything. To the extent that implementing a threshold prevents those debtors who have paid a premium for this unsecured debt having an order for sale issued against them, this could represent a fairness benefit.

#### *Wider social and economic benefits*

2. 23 It may be that unsecured consumer credit act lending is currently above the optimum level. If this is the case, it may be that a threshold that would restrict this lending, or increase its cost could represent a benefit.
2. 24 The proposals are not expected to generate wider social and economic benefits. Such wider benefits might in theory arise as a result of debtor-related behavioural responses (e.g. reduced crime) or as a result of reduced enforcement generating savings elsewhere (e.g. reduced state benefits paid to debtors from government bodies).

#### **Options 1-4: Summary of key assumptions**

2. 25 The following key assumptions apply to Options 1-4:

- Introducing a threshold on orders for sale could lead creditors to substitute to other enforcement processes or bankruptcy in some cases. We do not know the extent of this, or how behavioural responses could change with different thresholds.
- Overall court cost recovery and operational efficiency would not be affected.
- Court capacity (including staff and estate) is assumed not to change.
- Assume that judicial discretion for those applications above the thresholds will remain the same as currently.
- Legal professionals assumed to adjust to changing pattern of demand
- We do not have complete information as to the level of debt at which most orders for sale are awarded, or how many relate to consumer credit act debt. However, it is roughly estimated that government debt comprises about 15% of order for sale applications.
- The volume of cases affected by these proposals is not known.
- No assumptions are made about whether current levels of CCA lending are optimal.
- We have assumed that the overall impact on legal aid, if any, is unlikely to be significant.

### **3. Enforcement and implementation**

- 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.
- 3.1 Compliance with a judgment order would continue to be the responsibility of judgment debtors. As long as the judgment debtor meets the conditions of a judgment order or instalment payments agreed and continues to engage with the creditor if difficulties or changes in circumstances occur, the need for the creditor to seek an order for sale is obviated. Should the judgment debtor default, the creditor may apply to the court for an order for sale (but as case law protects family or primary residences this is only likely in cases concerning shares, unit trusts or secondary properties or land where the creditor can be assured of sufficient equity to cover the costs of the sale).

### **4. Specific impact tests**

#### **1) Statutory equality duties**

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

#### **2) Economic impacts**

##### **i) Competition**

- 4.2 It is not anticipated that the proposals would give rise to competition concerns. However, lenders and creditors may rethink their lending policies. They would either move towards lending on a secured basis only; or they might raise interest rates on unsecured lending to make provision for the increased number of 'bad debts' that they would be unable to effectively pursue. Some people would, as a result, find their access to credit restricted and those with access to credit would be paying higher interest to compensate for, and effectively subsidise, defaulters.
- 4.3 To the extent that some firms specialise in small loans (and therefore would be likely to be impacted by a threshold), this could have an impact competition if these firms now have to charge higher premiums than their competitors (with a more diversified lending base) as they could have a larger proportion of their lending that they would be unable to effectively pursue.

##### **ii) Small firms**

- 4.4 It is not anticipated that these proposals would have a disproportionate impact on small businesses. However, to the extent that small firms are lenders, who now have greater difficulty in enforcing their judgment debt, there could be an adverse impact.

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

4.10 Secondly a restriction on a creditor by way of imposed threshold may be in contravention of Article 6 if that creditor, who has a reasonable right to expect to be able to recover their debt, has no other means of recovering that debt. The threshold may therefore be judicially reviewed in such cases.

### **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.

## **4) Sustainable Development**

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

# Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

## 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.

<p><b>Basis of the review:</b> [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];</p> <p>As proposals are still at consultation stage, our delivery plan involves developing and implementing secondary Regulations and operational mechanisms, and at the same time as the operational mechanisms are being developed, putting in any post implementation review arrangements.</p>
<p><b>Review objective:</b> [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?]</p> <p>The post implementation review will analyse the impact in terms of efficiency of process and user feedback. It will also check there is no negative impact on access to justice.</p>
<p><b>Review approach and rationale:</b> [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]</p> <p>These proposals are at consultation stage. It is not confirmed yet whether such reforms will be implemented. Subject to any revision at regulations consultation stage evaluation will take place 3 years post consultation. We shall evaluate the effectiveness of the above intended benefits post implementation by a combination of methods. We shall use Her Majesty’s Court Service’s National Statistical information published in Judicial Statistics, supported by other operational statistical information. Working Groups will also continue to form a key role in monitoring the impact of the new court based enforcement changes. We may also consider questionnaires, if they are appropriate to obtain qualitative or additional quantitative information which assists with the analysis of the impact of our proposals.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>As set out in option 0 – do nothing.</p>
<p><b>Success criteria:</b> [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]</p> <ul style="list-style-type: none"> <li>• Improvement of customers’ perception of services available to ensure effective enforcement.</li> <li>• Improved safeguard for debtors against disproportionate pursuit of amounts owed (the charging order proposals should assist with this element).</li> </ul>
<p><b>Monitoring information arrangements:</b> [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]</p> <p>Court user feedback will be monitored through correspondence from the public and Parliamentary Questions. HMCS 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</p>
<p><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here]</p>