Title: **Proposed reforms to third party debt orders** **Lead department or agency:** Ministry of Justice **Other departments or agencies:**	Impact Assessment (IA) **IA No:** MoJ 076 **Date:** 29 March 2011 **Stage:** Consultation **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Michael Anima-Shaun Tel: 020 3334 3189

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 Third Party Debt Orders (TPDOs) are to streamline and improve the efficiency of the processes, and to make it easier for creditors to enforce their debt through TPDOs. Creditors will be able to apply for TPDOs on a wider range of bank accounts, and courts will be able to trace debtors' accounts when they are moved. This should lead to quicker and potentially more successful payment of the judgment debt, and greater confidence in the civil justice system. The proposals should retain safeguards from the aggressive pursuit of debts for debtors complying with judgment orders.

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

Option 0: Do nothing.

Option 1: Streamline TPDO process. Interim Orders will become Final through the lapse of time unless the judgment debtor raises objections, in which case the matter will be considered at a hearing before a judge. Currently a hearing date is set in all cases. Rules of the court would be amended by means of regulations.

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

Option 3: Periodical lump sum deduction orders to allow prescribed lump sums to be deducted from debtors' bank accounts at prescribed intervals.

Our preferred option is a combination of Options 1, 2 and 3.

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:...... Jonathan Djanogly .... Date: 22.02.2011 ....

Summary: Analysis and Evidence

Policy Option 1

Description: Streamline third party debt order processes

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 one-off HMCS IT costs associated with changing the third party debt order process
Debtors may pay their judgment debt 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'

Possible improved HMCS efficiency leading to reduced case backlog and reduced case waiting times
Creditors may obtain their judgment debt more quickly, and potentially more successfully
Creditors save costs by not attending court unnecessarily (when debtor does not turn up)
Possible gains to equity and fairness
Possible wider economic benefits

Key assumptions/sensitivities/risks **Discount rate (%)**

The volume of cases is assumed to remain the same but possibly might rise
Debtor behaviour is assumed to be the same with the same number of people attending a court hearing
Court fees are assumed to remain the same
Court capacity (including staff and estate) is assumed not to be affected by these proposals
Distributional implications unclear
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

Summary: Analysis and Evidence

Policy Option 2

Description: Expansion of accessible bank accounts

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

Debtors could repay debt more quickly and more completely and might incur other costs and fees.
Potential cost to joint account holders where account deemed as 50% belonging to debtor and this is not the case but not defended.
HMCS and banks could incur costs of administering more third party debt orders, matched by increased fee income.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	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'

Creditors may secure full debt repayment more quickly and / or more completely
Wider economic benefits from greater contractual certainty and enforceability
HMCS and banks would secure increased fee income from administering more charging orders, mirroring their increased costs

Key assumptions/sensitivities/risks **Discount rate (%)**

Court fees and court cost recovery are assumed to remain the same, as are bank fees and bank cost recovery, but there is a risk that HMCS and banks could incur net costs from administering more third party debt orders
Legal professionals assumed to adjust to changing pattern of demand, with increased business
Distributional implications unclear
Overall impact on equity and fairness unclear
Third party debt orders could displace other enforcement processes in some cases
Overall potential impact on legal aid, if any, is assumed not to be significant

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

Summary: Analysis and Evidence

Policy Option 3

Description: Periodical lump sum deduction 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'

Potential one-off HMCS IT costs associated with providing a new service. Additional familiarisation and awareness transitional costs to both HMCS and banks.
HMCS and banks could incur costs of administering periodical lump sum deduction orders, matched by increased fee income.
Debtors could repay debt more quickly and more completely and might incur other costs and fees.

BENEFITS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	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'

Creditors may secure full debt repayment more quickly and / or more completely
Wider economic benefits from greater contractual certainty and enforceability
HMCS and banks would secure increased fee income from administering periodical lump sum deduction orders, mirroring their increased costs

Key assumptions/sensitivities/risks **Discount rate (%)**

Assume that costs to HMCS of administering periodical lump sum deduction orders would be covered by fee income.
Bank fees assumed adjust to cover cost of this process but there is a risk that HMCS and banks could incur net costs from administering periodic lump sum deduction orders.
Legal professionals assumed to adjust to changing pattern of demand
Distributional implications unclear
Periodic lump sum deduction orders could displace other enforcement processes in some cases
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	No	
Small firms Small Firms Impact Test guidance	No	
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	Tribunals, Courts & Enforcement Act 2007
2	Child Maintenance & Other Payments Act 2008
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, charging orders, third party debt orders (TPDO), judgment summonses, or warrants of execution. Some criminal liability orders and other (administrative) orders may also be transferred into the civil courts for enforcement by TPDOs and charging orders.

1.4 This Impact Assessment focuses on third party debt orders only. A third party debt order effectively freezes the amount of the judgment sum owing, thereby preventing the defendant from having access to the money in their bank account until the court makes a decision about whether or not the money should be paid out to a creditor. The reforms apply to all forms of civil debt cases and other money orders transferred into the county courts for enforcement, but not to family cases (Child Maintenance and Enforcement Commission (CMEC) cases have already implemented the extended reforms). The reforms relate to all cases where a third party debt order has been, or could be, obtained in order to secure money from the debtor. This might be all forms of civil case where payments are owed, not just cases involving money lending.

1.5 In 2009 approximately 2,100 third party debt orders were issued in the County Court. This highlights this enforcement method as the least common compared to the other types mentioned above, probably because the mechanism is outdated, easily evaded and has not kept pace with modern banking developments. Our proposed aim is to improve the effectiveness of third party debt orders 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 third party debt orders would continue to apply. However this would not address the present failings - repayment through third party debt orders could continue to be easy to evade, the process would not be more streamlined nor operate more efficiently for users of the service, 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 following in relation to third party debt orders:

1) Streamline TPDO process in order that Interim Orders will become Final through the lapse of time unless the judgment debtor raises objections. In this case the matter will be considered at a hearing before a judge. Currently a hearing date is set in all cases. Rules of the court would be amended by means of regulations.

2) Expand accessible bank accounts to include all accounts (including deposit and joint accounts), except trust funds.

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

1.8 By streamlining the current third party debt order process, widening accessible bank accounts and introducing interim lump-sum deduction orders and tracing orders, the Government believes that it can provide a simpler, consistent and more effective process of enforcement by:

- Reducing delay in the final third part debt order being placed on a debtor's bank account in cases where no objection is raised by the debtor to the interim third party debt order..
- Freeing up court resources whilst maintaining the same outcome associated with the present TPDO process.
- Enabling third party debt orders to be applied to a wider range of bank accounts
- Permitting creditors to take lump-sum deductions over time if there are insufficient funds in a bank account at any one point in time to cover the judgment debt and it is known that periodical payments, such as monthly salaries, are likely to be paid in.
- Preventing debtors from evading the court process by simply moving their accounts.

Economic rationale for intervention

1.9 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 redistributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

1.10 In this case, the intervention would be justified on both efficiency and fairness grounds. There would be gains in productive efficiency if fewer judicial system costs and other resources were used to achieve an equivalent outcome in terms of placing a third party debt order. In addition, a reduction in the time and resources required to pursue enforcement action may at the margin lead to more cases being fully enforced, or being enforced more quickly, with wider economic benefits for the operation of markets and for contractual certainty.

1.11 The proposals to allow third party debt orders to be applied to a wider range of bank accounts, and periodical lump sum deduction orders, might also generate other efficiency gains if these allowed judgment orders to be settled more effectively in a wide range of circumstances, and if the value of doing so outweighs any costs involved,

1.12 From a fairness perspective, improved enforcement of contracts and judgments (which all the proposals address) 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.

Affected key stakeholder groups

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

- Civil Courts – Could be impacted in terms of workload through: i) resources required to administer third party debt orders, ii) the volume of third party debt order applications or iii) applications for periodic lump sum deduction orders. There may be some one-off IT costs associated with the above process changes.

- Creditors – Would be impacted in terms of the speed and potentially their ability to place a third party debt order. They would also have the option to apply for periodic lump sum deductions from bank accounts. In some cases there may be quicker repayment of the judgment debt.
- Debtors – Would be affected in terms of the speed of the placing of the final charging order, and potentially whether a third party debt order is successfully placed. There could also be a periodic lump-sum deduction order issued against them. In some cases there may be quicker repayment of the judgment debt.
- Banks/Third parties – May see volume change in placing third party debt orders or ongoing lump sum deductions, impacting costs and fee income. May face increased burdens from tracing orders and periodic lump sum deduction orders.
- Legal professionals – Might possibly be affected by an increase in volume of third party debt orders, or through providing advice relating to periodic lump sum deduction orders.
- Joint account holders – Might possibly be affected if a third party debt order is placed on their joint account to the value of 50% when they actually own more than 50% of the joint account and are not liable for the judgment debt being claimed (although representations can be made to the court in this respect).
- 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 these groups under the different proposed changes to third party debt orders and the third party debt order process.

Option 0: Base case (do nothing)

2. 3 Under this option, no intervention would be made. Therefore, the third party debt order process for HMCS and restrictions on which bank accounts can be considered would remain the same as currently. In particular, there would be no scope to address joint or second bank accounts, the process would always involve a hearing, even if no objection is raised by the debtor in response to the interim third party debt order, and there would be no option for periodic lump sum deduction orders or tracing orders.

2. 4 All options are assessed relative to the base case. As such, the costs and benefits associated with the base case are necessarily zero.

Option 1: Streamline third party debt order processes

Description

2. 5 We propose streamlining the third party debt order process by removing the automatic final hearing stage and devolving some responsibilities to court clerks. The procedure leading to the grant or refusal of an interim third party debt order will remain as at present, accordingly the need for judicial consideration at this stage is retained. However, the proposed changes would mean a hearing date would only be set if the debtor raises an objection following the service of the interim third party debt order rather than in all cases. As such, it would allow interim orders to become final once the required time for response has elapsed and if no objection is raised from the

defendant, third party or joint account holder. Bank accounts would be frozen when the notice of the interim order is sent out to the third party as currently is the case. However, rather then the judge making the final order, as currently, once the required time for response has elapsed and if no objection is raised, court clerks would issue the final order.

2. 6 To supplement these changes, notices sent to judgment debtors will be revised to provide enhanced information about the process including a brief explanation of the nature and consequences of a third party debt order and indication that the order will be made final upon the expiration of a stipulated period of time unless a hearing is requested.

2. 7 In cases where no hearing is requested, upon the expiry of the relevant period the matter will be placed before an authorised officer of the court who will grant the final order.

2. 8 The new streamlined process will require revision to current rules of court subject to approval by the Civil Procedure Rules Committee.

2. 9 Streamlining the process would also allow some responsibility to be devolved from judges to court clerks, freeing up judicial time which could be used on other cases.

2. 10 As the overall proposed changes would streamline the process, we would also anticipate a time saving per case for court clerks and the judiciary.

2. 11 The policy would aim to achieve the following:

- Reduced delay in the final third party debt order being placed and the judgment debt being transferred to the debtor, in cases where no objection is raised to the interim third party debt order.
- Free up court resources whilst maintaining the same fairness associated with the third party debt order process.

Costs of Option 1

HMCS (Civil Courts)

2. 12 Potential HMCS IT costs associated with changing the third party debt order process. These potential IT costs should be quantified in due course.

2. 13 There may be a transfer of work from judges to court clerks. Given the benefits to HMCS (see below) and the fact that they already process these stages, we consider that court clerks would have sufficient capacity to take on this work without an increase in staff being required (i.e. no one-off costs or ongoing costs from increasing capacity). We also consider that court clerks could take on this work without generating any delays in the time taken to process cases. As such the proposals would not lead to increased HMCS costs.

2. 14 The requirement for debtors to raise an objection and request a hearing might possibly generate additional minor costs associated with this process, which have not yet been specified.

2. 15 Court fees are assumed to remain the same as currently, as are case volumes, although the latter may increase if anything if demand rises following the process improvements.

Debtors

2. 16 Where debtors do not object to the freezing of their bank account, and do not request a hearing, this could result in the judgment debt being paid more quickly than currently, assuming that there are sufficient funds in the bank account to pay or part-pay the judgment debt, subject to a final order being granted by the court.

2. 17 In some cases, there could also be an impact on the success of judgment debt repayment. For example, if a debtor has their bank account frozen more quickly, this could result in the judgment debt repayment being more successful if there is less opportunity for debtors to spend this money, or empty it from their bank account.

Creditors

2. 18 No significant one-off or ongoing costs to creditors have been identified.

Legal professionals

2. 19 By no longer having a hearing unless the debtor raises an objection to the interim third party debt order, this could lead to a reduction in workload for legal professionals who currently attend these hearings. On the other hand, there may be increased demand for legal professionals if there was a change in volume of third party debt orders applied for as a result of process improvements. The overall position is unclear.

2. 20 Any loss in business to legal professionals would be mirrored by the gain to debtors from no longer paying the related costs (and to creditors in relation to fees which cannot be recovered from the debtor).

2. 21 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. 22 It is assumed that the process of creditors obtaining their judgment debt through a third party debt order will be quicker and potentially more successful if the proposed changes are made than the current process. The overall distributional impact amongst debtors is unknown.

2. 23 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. 24 The original enforcement hearing would have considered whether the contract which has not been honoured was fair. Implementing more efficiently a judgement ruling which itself is considered to be fair should not lead to reduced fairness. In addition it would still be possible for the debtor to object to the TPDO and attend court.

Wider social and economic costs

2. 25 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. 26 Potential HMCS judicial savings may arise through devolving the responsibility of checking final applications to court officers in the place of judges. Further savings would arise from no longer listing cases which are not heard due to the debtor not turning up i.e. from no longer automatically listing each TPDO case for hearing.

2. 27 We consider that judicial savings might not lead to monetary savings, but rather than this would allow judges to work on other areas, potentially having a positive impact on the court backlog elsewhere.

2. 28 In relation to court officers or other staff, we assume that there would be savings from no longer listing cases which are not heard due to the debtor not turning up. On the other hand court

officers and other staff would assume new responsibilities which were previously undertaken by judges. Overall we consider that there might be ongoing net savings to staff time.

2. 29 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. 30 Total court costs might not necessarily fall. Instead it has been assumed that any 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. 31 No significant one-off or ongoing benefits to debtors have been identified. However the TPDO process will be simpler and new guidance will clarify the process more clearly to court users and set out the consequences of the enforcement.

Creditors

2. 32 Creditors would benefit from a more efficient process, allowing them to obtain a final third party debt order more quickly in cases where debtors do not object to the interim third party debt order. Assuming that there are sufficient funds in the bank account to pay the judgment debt, whether in part or in full, this would result in quicker repayment of the judgment debt.

2. 33 As mentioned above, there could also be an impact on the success of judgment debt repayment. For example, if a debtor has their bank account frozen more quickly, this could result in the judgment debt repayment being more successful if there is less opportunity for debtors to spend this money, or empty it from their bank account. This would represent a benefit to creditors.

2. 34 In cases where no objection is raised, creditors would also see savings as they would no longer be required to attend a hearing at court where the debtor might not turn up.

Legal professionals

2. 35 As explained in the costs section it is unclear how the total volume of business might change for legal professionals. Any overall gain in business to legal professionals would be mirrored by the loss to debtors or creditors (if they cannot recover these from the debtor) from paying the related fees.

Distributional benefits

2. 36 It is assumed that the process of creditors obtaining their judgment debt through a third party debt order will be quicker and potentially more successful if the proposed changes are made than in the current process. The overall distributional impact amongst debtors is unknown.

2. 37 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. 38 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. 39 At the margin the proposals might possibly generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.

2. 40 The proposals might provide resource efficiency improvements if fewer resources are required to achieve the same outcome or an improved outcome.

Option 1: Summary of key assumptions

2. 41 The following key assumptions apply to Option 1:

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

Option 2: Expansion of accessible bank accounts

Description

2. 42 Under the current system, third party debt orders cannot be placed on any other than a single current account. Therefore they cannot apply to joint bank accounts or deposit accounts.

2. 43 This may enable a debtor to avoid recovery of a judgment debt because debtors may be able to place their money in another bank account where it would be protected from a third party debt order.

2. 44 Permitting creditors to apply for a third party debt order on a wider range of bank accounts may make it easier to enforce the judgment debt in this way, as debtors will have less protected accounts. However, this could have a negative impact any joint account holders if they own more than the assumed 50% of any joint account.

2. 45 The proposals would exclude the creditor from having access to any money held in a trust fund.

Costs of Option 2

HMCS (Civil Courts)

2. 46 We would expect an increase in the number of third party debt orders applied for and issued as a result of widening the scope of accessible bank accounts. At the same time there might be a marginal reduction in applications for other enforcement methods if creditors believe a third party debt order may now be a more successful way of obtaining the judgment debt owed to them.

2. 47 Overall, it is likely that there would be an increase in HMCS costs through an increase in workload in relation to third party debt orders. We assume that current court fees cover these additional court costs, hence the net financial impact on HMCS would be neutral. Similarly, if there are any costs to HMCS to trace debtors' bank accounts, we assume that this would be covered by fee income.

2. 48 We assume that there will be no change in HMCS capacity, e.g. increased staff or estate. As such the increase in court case volumes could have a negative impact on the County Court backlog and on court waiting times.

Debtors

2. 49 We would expect that widening the possible bank accounts that third party debt orders can be placed on would generate costs to debtors through a potential impact on the speed and / or success of debt enforcement and repayment.

2. 50 Currently, the debtor may be able to keep the majority of their savings in a joint or deposit account to avoid a third party debt order being used as an enforcement mechanism. If this option was no longer possible, it could impact the speed and / or success of judgment debt enforcement for these debtors.

2. 51 Similarly, debtors can presently avoid TPDOs simply by moving their money into new accounts. The new tracing order will allow courts to order the third party to disclose the details of the new account to which the debtor's money has been moved, whether internally or to another bank outside the banking group. This may be associated with an increased fee which ultimately falls on the debtor.

2. 52 The impact on the speed or success of judgment debt repayment could stem from the fact that creditors currently are restricted from obtaining certain information about debtors and are required to use other enforcement methods (e.g. orders to obtain information), which take longer, or that the creditor may find it difficult to undertake other enforcement mechanisms e.g. if the debtor is unemployed and does not own their home.

2. 53 There may also be a cost to debtors associated with paying the related court and bank fees if a third party debt order is placed when no enforcement process would be used currently.

2. 54 If there is an increase in the volume of debt enforcement overall, to the extent that the costs to creditors of pursuing their debt are transferred to debtors, there may be a cost to debtors. For example as well as the court fees the creditor's legal costs might ultimately be paid by the debtor.

Creditors

2. 55 Creditors could incur cash flow costs from incurring legal costs and court fees which might not be recoverable until the judgment debt is repaid once a successful third party debt order has been made. However, ultimately the decision whether and how to enforce a debt is the creditor's.

2. 56 In addition, it is possible that not all of these fees and costs might be recoverable, especially if the process does not result in successful repayment of the judgment debt. If they were not then creditors would incur costs from pursuing their debt.

2. 57 Given that the creditor chooses whether to apply for a third party debt order or not, we assume that the benefit to the creditor would outweigh any costs they may incur.

Banks

2. 58 Banks could incur the costs associated with administering an increased volume of freezes on bank accounts, and the subsequent deductions. However, as with HMCS costs we assume that banks' costs would be met by increased fee income, and therefore the net financial position for banks would be neutral, as would the impact on their operating efficiency.

Joint account holders

2. 59 Joint account holders could now be directly impacted by the third party debt order and judgment debt repayment, and could therefore be worse off. Previously there would be no risk to any joint account shared with the debtor, however, if this proposal was implemented the joint account holder could now become to some extent liable for the judgment debt, assuming that they continue to hold their money in this join account. The order would assume that 50% of any joint account would belong to the debtor and would not apply to more than 50% of a joint account. In

the event that a joint account holder actually owns more, then they would be able to furnish proof of their payments into the account and make representations to the judge to that effect.

Legal professionals

2. 60 Legal professionals may be engaged in a greater volume of third party debt order case work as a result of the proposals. However, we assume that for each provider this is unlikely to involve any one-off capacity adjustment costs.

Distributional costs

2. 61 Permitting applications for a third party debt order to joint bank accounts may lead to some debtors paying more quickly or more successfully than would previously have been the case. The overall distributional impact among debtors is unknown.

2. 62 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. 63 It could be considered that there is a cost in terms of reduced fairness if a joint account holder could now be liable for their partner's judgment debt, which they did not generate.

Wider social and economic costs

2. 64 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. 65 HMCS would secure more fee income from the potential increase in third party debt orders. This could be offset by the reduced fee income from a possibly reduced volume of applications for other debt enforcement processes. This increased fee income would ultimately take the form of a cost to debtors.

2. 66 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. 67 No significant one-off or ongoing benefits to debtors have been identified.

Creditors

2. 68 The benefits for creditors largely mirror the costs to debtors.

2. 69 Creditors would benefit from being able to apply for a third party debt order on a wider range of bank accounts, as it could potentially lead to quicker and / or more successful judgment debt repayment and prevent evasion by debtors resulting in failed orders.

Banks

2. 70 Banks would see an increase in fee income associated with any increase in the volume of judgment debts collected through third party debt orders. However, as above, bank fees are assumed to recover their costs hence their net financial position should be neutral.

Joint account holders

2. 71 No significant one-off or ongoing benefits to joint account holders have been identified.

Legal professionals

2. 72 It is possible that legal professionals may experience an overall increase in business from the increase in the number of third party debt order applications, even once the reduction in business through substitution from other enforcement measures is taken into consideration.

2. 73 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. 74 Permitting applications for a third party debt order to joint bank accounts may lead to some debtors paying more quickly or more successfully than would previously have been the case. The overall distributional impact among debtors is unknown.

2. 75 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. 76 The proposals may raise equity and fairness as the original judgment order is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve fairness.

Wider social and economic benefits

2. 77 The proposals might possibly generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.

Option 2: Summary of key assumptions

2. 78 The following key assumptions apply to Option 2:

- Court fees are assumed to remain the same. The potential increase in court activity may potentially impact the case backlog and hence case waiting times, but overall court cost recovery and operational efficiency would not be affected.
- The court fee for tracing orders is not yet set, however they are assumed to cover the cost of this process.
- Court capacity (including staff and estate) is assumed not to change.
- Bank fees are assumed to remain at their current levels. Bank fees are assumed to cover their costs with the net financial implication being neutral.
- We have assumed that the overall impact on legal aid, if any, is unlikely to be significant.

Option 3: Periodic lump-sum deduction orders

Description

2. 79 We propose permitting periodic lump-sum deduction orders from bank accounts, as are currently undertaken in other areas, such as child maintenance.

2. 80 The intention is that permitting periodic lump sum deduction orders would be a process similar to the current attachment of earnings order, but one that could apply to debtors who are self-employed or unemployed as it would relate to their bank account rather than their earnings.

2. 81 This process would potentially require compliance by the debtor, as unlike in a one-off third party debt order, the debtor would have full knowledge of these deductions and so could easily move their funds to another bank account to avoid payment. Although such movements of cash could be traced under the new system, it could potentially frustrate the effectiveness of periodical deductions.

2. 82 These potential issues should be considered in more detail during the consultation process.

Costs of Option 3

HMCS (Civil courts)

2. 83 It is likely that there would be one-off costs to HMCS to update their IT systems, as a new process is being implemented. There could also be potential costs to update leaflets and information sources. These costs should be quantified in due course.

2. 84 In terms of ongoing costs, the reforms could lead to an increased HMCS workload depending on whether additional debt enforcement measures are pursued as a result of this additional enforcement method, or if creditors simply substitute to this process from other methods.

2. 85 We assume that any additional costs to HMCS through a potential increase in workload will be recovered through court fees. Court fees for enforcement processes are assumed not to change as a result of any change in volume, whilst the fee for creditors to apply for periodic lump-sum deduction orders has not yet been set, so could be set to ensure cost neutrality.

2. 86 Whilst this potential increase in court activity is expected to be cost neutral, we assume that there will be no change in HMCS capacity, e.g. increased staff or estate and as such the increase in court case volumes could have a negative impact on the County Court backlog and on court waiting times.

Debtors

2. 87 For those debtors where a periodic lump sum deduction order is placed on their bank account, this could lead to quicker and potentially more successful judgment debt repayment.

2. 88 If debtors are affected by this process when they would not have been subject to any prior enforcement process, this could also lead to an additional fee for the debtor, which would be added to the judgment debt.

2. 89 If there is an increase in the volume of debt enforcement overall, to the extent that the costs to creditors of pursuing their debt are transferred to debtors, there may be a cost to debtors. For example as well as the court fees the creditor’s legal costs might ultimately be paid by the debtor.

Creditors

2. 90 If creditors now undertake an enforcement process when they would not have done previously, there may be a cash flow implication if the court fee and potentially legal costs are paid upfront, and not recouped until the judgment debt is repaid. However, as this creditor chooses whether or not to pursue this route, we assume that this cost is offset by the benefit to creditors in terms of the speed and effectiveness of debt enforcement.

2. 91 Whilst fees and costs initially incurred by creditors may ultimately be paid for by debtors, there may be some costs which are not recoverable in this way. For example if legal costs are not awarded or if the periodic lump sum deduction order does not lead to successful recovery of the judgment debt.

2. 92 With lump-sum deduction orders costs as a result of debtors not complying could also be seen. However, as the creditor has a range of potential enforcement methods available, we assume that those creditors who choose periodic lump-sum deduction orders are less likely to be subject to this issue.

Banks

2. 93 Banks could incur the costs associated with administering an increased volume of freezes on bank accounts, and the subsequent deductions. However, as with HMCS costs we assume that an additional banks costs would be met by increased fee income, and therefore the net financial position for banks would be neutral, as would the impact on banks' operating efficiency.

2. 94 There could also be a loss of fee income if some existing users of third party debt orders were to switch to periodic lump-sum deduction orders. However, as we assume that the fee covers cost, the net financial impact of this would be neutral. In reality there may be a risk that banks may incur costs associated with periodic lump sum deduction orders that they cannot recover.

Legal professionals

2. 95 Legal professionals may be engaged in a greater volume of third party debt order case work as a result of the proposals. However, we assume that for each provider this is unlikely to involve any one-off capacity adjustment costs.

Distributional costs

2. 96 Permitting applications for period lump sum deduction orders on bank accounts may lead to some debtors paying more quickly or more successfully than would previously have been the case. The overall distributional impact among debtors is unknown.

2. 97 At an aggregate level, debtors as a whole may pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse would depend upon the nature of each party. For example in relation to borrowing, the creditors might be financial institutions and the debtors might be less well off individuals.

Equity and fairness costs

2. 98 The original enforcement hearing would have considered whether the contract which has not been honoured was fair. Implementing more efficiently a judgement ruling which itself is considered to be fair should not lead to reduced fairness. In addition it would still be possible for the debtor to attend court.

Wider social and economic costs

2. 99 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 3

HMCS (Civil Courts)

2. 100 HMCS would secure more fee income from the potential increase in periodic lump sum deduction orders. This could be offset by the reduced fee income from a possibly reduced volume of applications for other debt enforcement processes. This increased fee income would ultimately take the form of a cost to debtors (or creditors in the case that they do not successfully recoup their judgment debt).

2. 101 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. 102 No significant one-off or ongoing benefits to debtors have been identified.

Creditors

2. 103 The benefits for creditors largely mirror the costs to debtors.

2. 104 Creditors would benefit from being able to apply for periodic lump sum deduction orders on debtor's bank accounts, which could potentially lead to quicker and / or more successful judgment debt repayment.

Banks

2. 105 Banks would see an increase in fee income associated with the volume of judgment debts collected through periodic lump-sum deduction orders. However, as above, bank fees are assumed to recover their costs hence their net financial position should be neutral.

Legal professionals

2. 106 It is possible that legal professionals may experience an overall increase in business from the increase in the number of third party debt order applications, even once the reduction in business through substitution from other enforcement measures is taken into consideration.

2. 107 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. 108 Permitting applications for periodic lump sum deduction orders on bank accounts may lead to some debtors repaying their judgment debt more quickly or more successfully than would previously have been the case.

2. 109 At an aggregate level, debtors as a whole may pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse would depend upon the nature of each party. For example in relation to unpaid business, the creditor might be a small firm and the debtor might be a wealthy individual.

Equity and fairness benefits

2. 110 The proposals may raise equity and fairness as the original judgment order is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve fairness.

Wider social and economic benefits

2. 111 The proposals might possibly generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.

Option 3: Summary of key assumptions

2. 112 The following key assumptions apply to Option 3:

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

3. Enforcement, Sanction and Monitoring

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

4. Specific Impact Tests

1) Statutory equality duties

4.1 An Equalities Impact Assessment signed off by the relevant policy Director (Nick Goodwin) has been prepared and is annexed.

2) Economic impacts

i) Competition

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

ii) Small firms

4.3 There is no reason to believe that small firms would be impacted by information orders more significantly than larger firms.

4.4 The reforms may affect small firms which are creditors and therefore be of benefit to small firms

Environmental impacts

4.5 There are no environmental implications associated with the proposals.

i) Greenhouse gas assessment

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

ii) Wider environmental issues

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

3) Social impacts

i) Health and well-being

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

ii) Human rights

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

iii) Justice system

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

iv) Rural proofing

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

4) Sustainable Development

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

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.

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 public response. 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.
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 not therefore 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.
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 and Family Operations also provide Civil Enforcement Policy with feedback from the queries they have received from court staff and users. Judicial statistics also provide indications of court user behaviour.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]