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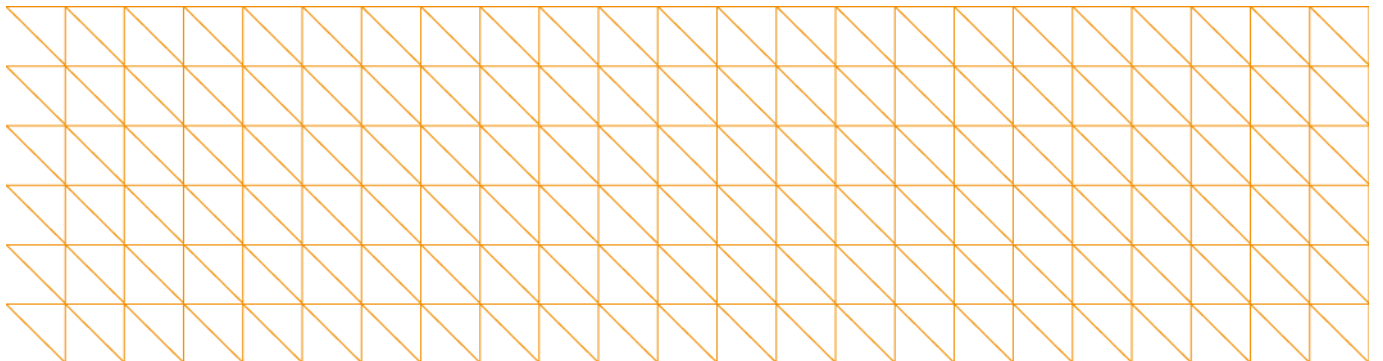
Transforming bailiff action

How we will provide more protection
against aggressive bailiffs and
encourage more flexibility in
bailiff collections

The Government Response

Response to Consultation CP(R)12/2013

This response is published on 25 January 2013





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How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections

The Government Response

Response to consultation carried out by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

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Ministerial Foreword



Bailiffs are necessary for both the economy and the justice system. They carry out a difficult role in often challenging circumstances, and the majority operate in a responsible and proportionate manner. However, a significant few use intimidating behaviour, treat debtors unfairly and cause unnecessary distress, destroying the reputation of the majority. The Government is committed to strengthening protections against these

rogue bailiffs and the unsound, unsafe or unfair methods that they use, while at the same time making sure that debts can still be collected fairly. The reforms set out in this report are the next stage in delivering this commitment.

Our measures clarify the law, introduce a transparent fee structure and regulate the industry. Debtors and creditors will be easily able to understand their rights and can rest safe in the knowledge that there is no scope for unlawful force against the person. Standards of behaviour will be guaranteed by a mandatory training regime and appropriate standards for entering the profession. The public will get better information and guidance to make sure they know where to go for help when something goes wrong, as well as what their rights are.

All of this will rest on effective, targeted regulation providing accessible avenues of recourse where things go wrong.

Taken as a package, our proposals simplify and clarify the enforcement process, improving the accountability of enforcement agents and addressing unnecessary or inappropriate enforcement activity.

Consultation responses showed that this is an area in need of exactly the kind of changes we are making to better balance the needs of creditors with protection against rogue bailiffs, maintaining the value of enforcement whilst rebuilding public trust in it. As such, businesses, individuals and bailiffs will benefit from our changes, which we will move to implement swiftly.

We want to thank all those who took part in the consultation exercise and are grateful to the stakeholders who continue to support and assist with the implementation of these changes.

A handwritten signature in black ink, appearing to read 'Helen Grant'.

Helen Grant

Parliamentary Under-Secretary of State for Justice

Introduction and contact details

This document is the post-consultation report for the consultation paper, 'Transforming bailiff action'.

It covers:

- the background to the consultation;
- a summary of the responses to the consultation;
- a detailed response to the specific questions raised in the consultation; and
- the next steps following this report.

Further copies of this report and the consultation paper can be obtained by contacting **Judith Evers** at the address below:

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This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from EnforcementReform.TCE@justice.gsi.gov.uk 020 3334 3182.

Background

The consultation paper 'Transforming bailiff action' was published on 17 February 2012. It invited comments on the Government's proposals for transforming bailiff action and providing more protection against aggressive bailiffs.

The proposals set out to provide:

- more protection against aggressive bailiffs whilst retaining an effective regime;
- a fair, transparent and sustainable costs regime that provides adequate remuneration; and
- a proportionate regulatory regime that is targeted where action is needed.

The consultation period closed on 14 May 2012 and this report summarises the responses, including how the consultation process influenced the final policy. It also identifies areas that require further development of the proposals consulted upon.

The Impact Assessment published alongside this consultation has been updated to take account of evidence gained during and following the consultation period.

A Welsh language response report will be available at <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action>

A summary of consultation respondents is at Annex A.

Further stakeholder engagement was undertaken during the consultation period. A list of the meetings is at Annex B.

Summary of responses

1. A total of 254 responses to the consultation paper were received. 19 respondents did not answer any of the specific questions and only provided general comments. We are grateful to all those who took the time to respond.
2. Set out below is a list of categories of those who responded.

Category	No. of responses
Advice sector	30
Private creditor (<i>businesses, private landlords, property companies, legal services with clients who are creditors in the private sector</i>)	20
Public creditor (<i>local authorities, government agencies, courts service</i>)	96
Debtor (<i>individuals or companies who have identified themselves as having experiences of being debtors</i>)	6
Enforcement sector (<i>enforcement companies, individual enforcement agents, suppliers to enforcement sector</i>)	45
Judiciary	6
Members of Parliament	1
Members of the Public (<i>individuals who have not indicated whether they are either creditors or debtors</i>)	31
Ombudsman organisations (<i>ombudsmen services</i>)	4
Representative Bodies (<i>trade unions, lobby groups, professional associations for creditors, debtors, the enforcement sector and the public sector</i>)	15

3. The responses were analysed for possible alternatives to the suggested proposals, evidence of impact of the proposals, and levels of support to the general principles.

Summary of recommendations

4. This report considers the proposals set out in the “Transforming bailiff action” consultation paper. It sets out 19 recommendations made following the examination of the responses to that paper as well as stakeholder engagement throughout the consultation process. A number of the key recommendations are summarised below.
5. As proposed in the consultation, the Government believes that protection against aggressive action by enforcement agents can be provided by addressing:
 - the misrepresentation of an enforcement agent’s legal authority;
 - the charging of excessive fees;
 - threatening behaviour by enforcement agents.
6. Following the consultation, the Government believes that these issues can be addressed by implementing Part 3 of the Tribunals, Courts and Enforcement Act 2007 (the “TCE Act”) (recommendation 1).
7. As set out in the consultation paper, it is also the Government’s intention to address the inadequacies of this part of the TCE Act and we will seek to make the necessary amendments as soon as parliamentary time allows (recommendations 2 and 3).
8. Following consultation, we will also make the following minor changes to the draft “Taking Control of Goods Regulations” which formed part of the consultation:
 - change the term of minimum notice for all debt streams to seven days, including Commercial Rent Arrears Recovery (recommendation 6) and;
 - allow for sale on premises for all business debts (recommendation 11).
9. The Government remains committed to introducing a clear and transparent fee structure that provides adequate remuneration. The Government will to that end:
 - introduce core activities, groupings and amounts as set out in the consultation paper, with the provision of a remission stage if necessary (recommendation 13);
 - set the threshold for percentage fees in non-High Court debt at £1,500 (recommendation 14);

- in the case of multiple warrants which are enforced at the same time, ensure that separate compliance fees are charged but only one enforcement fee (recommendation 15); and
 - introduce two separate charging structures for – High Court and non-High Court debt (recommendation 16).
10. The consultation paper set out the aim to ensure effective protection for the vulnerable whilst minimising excessive regulation on business. To strike this balance, the Government will:
- Implement section 64 of the TCE Act and produce regulations about the regulation of enforcement agents (recommendation 18); and
 - set a competence criterion for entry in to the enforcement profession and introduce a mandatory training regime (recommendation 19).

Next steps

11. The Government is committed to working to tackle aggressive and unnecessary bailiff activity without compromising proportionate and effective enforcement. The consultation and publication of this report is part of a coordinated programme of work across Government which has so far included the publication of updated National Standards for Enforcement Agents; updated guidance available to the public on UK.gov; and possible planned publication of guidance on how Councils should work with vulnerable people in arrears.
12. Effective enforcement action is necessary to provide confidence to the civil justice system as a whole. The Government is clear that it is still necessary for enforcement action to be available by enforcement agent seizing and selling goods to pay the debt. Debtors can avoid this action and where possible should take the necessary steps to do so. It is accepted, however, that when this enforcement action is taken debtors should be treated fairly and proportionately.
13. The Government have given a commitment to provide more protection against aggressive bailiffs. The coalition agreement included a provision to provide more protection against aggressive bailiffs. In the recent Mid-Term Review, the Government reaffirmed the commitment to strengthening protection from rogue bailiffs while at the same time making sure debts can still be collected fairly.

What are we going to do next

14. We will seek parliamentary time to address the inadequacies of Part 3 of the TCE Act.
15. We will produce a final set of regulations to enable us to implement the provisions in Part 3 of the TCE Act including regulations that set out the fee structure and the enhanced certification procedure as well as develop supporting rules of court. The intention is to have a full set of regulations prepared by Summer 2013.
16. To finalise the regulations we will need to set up a working group that includes representatives from all stakeholder groups to consider the outstanding issues and inform the post implementation review.

Costs of Enforcement Related Services

17. We will need to produce regulations setting out the new fee structure.

Regulatory Regime

18. We will produce regulations to enable us to implement section 64 of Part 3 of the TCE Act. We will work with stakeholders from the enforcement and advice sectors in developing the content of the regulations and will also work with HM Courts & Tribunals Service and the judiciary on the court procedure.

Competence Requirements

19. We will continue to work with stakeholders from the enforcement and advice sectors as well as current training providers as we develop the content of the competences. We will build on existing training already under development to reduce any unnecessary additional burdens on existing business. The intention would be to have the training competences fully developed by Summer 2013.

Remedies and Complaints handling

20. We will set up a working group with representatives from all our stakeholders and a representative from the Local Government Ombudsman office to develop a clear route for complaints in order for people to secure appropriate redress.

Ensuring all parties are aware of all their rights and responsibilities

21. We will continue to work with stakeholders on the content of the notices and warnings and also consider what other leaflets or guidance should be developed to assist all the parties.
22. Further work needs to be undertaken to ensure that debts are only passed to enforcement agents when it is deemed necessary creditors. It is not the decision of the enforcement agent which debts are referred to them for action – that is a matter for the creditor.
23. We will continue our work with the Working Group we have set up to consider the National Standards and the Government website to ensure that it covers sufficiently the Equality Act 2010 including observing cultural sensitivities and religious holidays and festivals.
24. The creditor and the enforcement agent have a duty of care to the vulnerable. We will continue to work with stakeholders, including the advice sector, local authorities and the Department for Communities and Local Government to develop a better approach as to how vulnerable situations would be identified.

Policy argument and recommendations

25. Our aim is to respect the rights of both creditors and the debtors. Unless there is prompt and effective enforcement the authority of the courts and public confidence in the justice system are undermined. Creditors are entitled to collect what they are owed whilst debtors should be protected from oppressive pursuit of their debt.
26. At present the law and costs structures relating to enforcement by the seizure and sale of goods are complex, unclear and confusing. This can result in enforcement agents misrepresenting their legal authority to the detriment of debtors. The current costs structures lack clarity, are difficult to interpret in some instances and do not provide adequate remuneration for all aspects of enforcement work. These factors combine to make the current charging process prone to abuse.
27. There have long been calls to clarify the law, to introduce a transparent fee structure and to regulate the industry.
28. The consultation proposed that any regime for enforcement agents should seek to:
 - Clarify and simplify the law to address misrepresentation of powers by enforcement agents;
 - Unify the law to address the current complex range of primary and secondary legislations and common law, which may cause confusion;
 - Balance the sometimes competing rights and responsibilities of creditors and debtors;
 - Establish the use of less invasive ways to take control of goods; and
 - Verify the rights and responsibilities of debtors, creditors and enforcement agents when debts have to be enforced.
29. The current regulatory structure for enforcement agents in England and Wales is very fragmented. This report sets out proposals to address this, including to raise the standards of professionalism of the individuals in the enforcement industry and to set competence requirements for entry in to the profession.
30. The proposal is to implement Part 3 of (which includes Schedules 12 and 13) the Tribunals, Courts and Enforcement Act 2007 (TCE Act), including subordinate legislation under those provisions, in the form of the Taking Control of Goods Regulations, to:
 - Clarify and unify the law;
 - Introduce a new fee structure; and

- Introduce a new and extended certification process.
31. These three provisions are inextricably linked and it is not practicable to implement them separately. These elements are proposed as a package of reforms.
32. This report explores the seven key themes (detailed below) on which views were sought in the consultation:
- i. Non-regulatory options
 - ii. Use of force
 - iii. Treatment of vulnerable persons
 - iv. Enforcement action
 - v. Enforcement fees
 - vi. Regulatory regime
 - vii. Remedies and complaints handling.
33. A breakdown and analysis of the responses to each consultation question can be found at the back of this report.
34. The consultation paper considered the detailed policy on the law and fees in this area and as expected there were diverse views on the degree and nature of the reforms.
35. There was general agreement from all categories of respondents that there was a need for reform due to the current complexity of the law relating to enforcement. There was also overall support for:
- Ensuring that the power to use force against a person can never be exercised by enforcement agents;
 - Strict definition of the modes of entry and re-entry;
 - A clear fee structure including a fees remission policy;
 - Introduction of competence criteria and mandatory training for individual enforcement agents.

Non-regulatory options

36. The majority of respondents agreed that there were no case for reducing regulation of the enforcement industry. The advice sector, however, are still seeking full independent regulation of the industry which is explored later in this report. The majority of respondents agreed that further Government intervention was necessary as the National Standards were only a voluntary code. (Question 2)

“National Standards for Enforcement Agents (NSEA) is a voluntary code with no compliance monitoring or effective sanctions if bailiffs act in breach of the standards.NSEA should be regarded as a useful supplement to legislation, but certainly not a substitute to an effective statutory regime.” Advice sector

“The existing law is complex and diverse, with differing legislation and fees for different debt types. A more transparent and easy to understand structure is required to improve the efficiency of enforcement and the perception held by the general public.” Enforcement sector

“We feel the new regulations are required to simplify the process for debtors and increase protection within the bailiff industry.” Public creditor

37. We will therefore proceed with making changes to the existing law and fees as set out later in this report.

Recommendation 1

To implement the provisions in the Tribunals, Courts and Enforcement Act 2007 to simplify and clarify the law and fees.

Information about enforcement agents

38. It is clear from the responses that there is a need to provide clear information about enforcement agents. This should include guidance which provides more detail than the legislation and information on the possible consequences following a visit by an enforcement agent.
39. The National Standards for Enforcement Agents are intended for use by all enforcement agents, public and private, the enforcement agencies that employ them and the major creditors who use their services. In order to improve the public’s perception of the profession, enforcement agents and those who employ them, or use their services, must maintain high standards of business ethics and practice.
40. The National Standards are national guidance and do not replace local agreements, existing agency codes of practice or legislation; rather they set out what the Ministry of Justice and those in the industry regard as

minimum standards and, as such, contribute to the work on transforming bailiff action. They are not legally binding, but are a helpful tool for the industry and for creditors which, it is hoped, will be used to inform their contractual arrangements.

41. The Government published amended National Standards in January 2012 as a first step to transforming bailiff action. These were published partly to remind creditors and enforcement agents of their responsibilities.
42. Alongside the revised National Standards the information available on GOV.UK (which has replaced Directgov and Business Link as the official website to find government services and information) was also updated providing guidance on enforcement agents for debtors and creditors. This guidance also provides information on where people can go for help if they feel they have been a victim of unacceptable behaviours by enforcement agents.
43. The consultation paper sought views on the information currently available on GOV.UK and the National Standards for Enforcement Agents. Specifically, it asked whether together with the existing law this was sufficient to address the problems with enforcement agents or whether there was a need for further government intervention, as we proposed in the consultation paper. (Questions 1 and 3)
44. The majority of respondents agreed with the current contents of the National Standards. However, many commented that there is a gap in the information they contain and suggested information they consider should be included.
45. The majority of respondents have commented that there are gaps in the range of information available on the Government website about bailiffs. As with the National Standards the advice sector suggested further information that might be included and, so as to not disadvantage the most vulnerable and the digitally excluded, have suggested information should be available in print as well as electronically.
46. We have set up a working group with representatives from the enforcement sector, creditor organisations and the advice sector to ensure that both the National Standards and the Government website are amended to include necessary and useful information. The National Standards and the website will be kept under constant review to ensure they contain the most up to date information.

Force

47. As currently worded the TCE Act provides enforcement agents with the power to use force against a person, removes **existing** powers to use of reasonable force on entry or re-entry to a property without prior specific judicial authority and creates an overly restrictive definition of abandonment. Without resolving these inadequacies, we would be

introducing the opportunity for commercial debtors to avoid enforcement action, undermining the effectiveness of the system, and may discourage bailiffs from negotiating agreements with any debtor leading to the possibility of increased aggressive behaviour.

48. The consultation paper explored these inadequacies and asked respondents to consider how these provisions could be improved.
49. The majority of respondents agreed that force against a person should never be used by enforcement agents. Some respondents felt that the use of reasonable force should be allowed when it was necessary for self defence, however, existing legislation regarding self defence should be sufficient in these cases. (Question 4)

"We cannot envisage anytime when the use of force against a person would be justified. The existing laws regarding self-defence are more than adequate." Enforcement sector

"We agree that it is never ever permissible to use force against a person. The only exception would be in self-defence against a violent debtor as a bailiff was withdrawing from the scene." Advice sector

Recommendation 2

We will seek parliamentary time to make the necessary amendments to the Tribunals, Courts and Enforcement Act 2007: to prevent the use of force against a person.

50. Effective enforcement is needed for the payment of debts and fines. Introducing an additional court process whereby an enforcement agent would have to seek the court's authority to use force to ensure that a "won't pay" debtor will not be able to avoid or evade enforcement would introduce unnecessary delay, additional cost and risk undermining the effectiveness of the system.
51. The consultation paper therefore sought views on possible amendments to the TCE Act. The purpose of the amendments was to reflect and clarify the current position. They set out clearly in what circumstances general powers to use reasonable force are available as well as specifying clear restrictions. The proposals included were:
 - providing a general power for an enforcement agent executing a High Court or county court debt to use reasonable force, if necessary, on entry to any business premises; and
(Question 7)
 - providing a general power for an enforcement agent to use reasonable force, if necessary, on re-entry where goods have been

taken control of via a controlled goods agreement and the debtor has failed to comply with the repayment terms set.

(Question 10)

52. There was a mixed reaction to these proposals with some suggesting that this was an increase in powers for the enforcement agent. The Government is clear that this is not an increase in power but rather a necessary step to ensure that the current situation, whereby the use of reasonable force for High Court Enforcement Officers and county court bailiffs to enter business premises and any bailiff who has obtained a walking possession, is maintained.
53. Some respondents argued that the general power to use reasonable force, if necessary, on entry to any business premises should be available to all debt types and not restricted. This would be an increase in existing powers of entry and the Government has made it clear that it is not the intention to increase any powers of entry at this time.
54. A new 'gateway' has been created to prevent the creation of needless powers and reduce unnecessary intrusion into people's homes. Government departments and agencies are obliged to fully consider the necessity, proportionality and safeguards attached to any powers. The powers under the TCE Act and the proposed amendments have been through the gateway and approved.

Recommendation 3

We will seek parliamentary time to amend the Tribunals, Court and Enforcement Act 2007 to provide an enforcement agent with the power to:

- use reasonable force, if necessary, to enter any business premises when executing a High Court or county court debt; and
- use reasonable force, if necessary, to re-enter any premises where:
 - the enforcement agent has taken control of the goods by entering into a controlled goods agreement;
 - the debtor has failed to comply with any provision of the controlled goods agreement relating to the payment by the debtor of the debt;
 - the debtor has been given notice of the intention of the enforcement agent to enter the premises to inspect the goods or to remove them for storage or sale.

55. The consultation paper also sought views, on the prescribed conditions the court should consider when granting an enforcement agent with the authority to use reasonable force, if necessary, should a general power not be appropriate. (Questions 5,6, 8 and 9)

56. There was a mixed response across the sectors to the potential prescribed conditions. The responses set out concerns that this might allow debtors to evade enforcement.
57. Enforcement agents collecting HM Revenue and Customs debts will be able to apply to the court for judicial authority to use reasonable force, if necessary, as is the current position. Having considered the responses the Government deems the proposed prescribed conditions appropriate.

Vulnerability

58. The Government is clear that there should be safeguards to protect the most vulnerable in society from aggressive enforcement. The consultation sought views on whether there was a need to define vulnerability in the regulations and sought views on a workable definition. (Question 28)
59. While most respondents were not in favour of defining vulnerability in the regulations, views within each response category were mixed. Some considered that there was a need to clearly define vulnerability whereas others suggested that being overly prescriptive could reduce protection for the vulnerable, resulting in a tick box exercise rather than making an informed assessment in every case. Most agreed that defining vulnerability was difficult.

“Vulnerability is a phrase that is difficult to define and a list like the National Standards could be too blunt an instrument. By listing specific groups that should be considered vulnerable there is a risk that groups not included would not be considered or that this would give local authorities limited scope to use bailiffs for recovery action where it may be legitimate. Decisions should be made on a case by case basis, although highlighting possible vulnerable groups is useful guidance on this issue.” Ombudsman

“Vulnerability should not be defined in regulations. Vulnerability is best determined on a case by case basis by qualified enforcement agents, in consultation with local authorities if necessary.” Public creditor

“We agree that no definition can or should be static as circumstances change; whilst certain characteristics and circumstances may be likely risk factors or proxies for vulnerability, debtors may also be vulnerable for reasons which are not associated with any of these circumstances, and such circumstances do not necessarily lead to vulnerability.”
Advice sector

“The critical factor in identifying someone who is vulnerable is their capacity to engage with the agent and ability to understand why the agent is in attendance. Categorising those who are vulnerable as is often the requirement does not reflect individual differences and can exclude those who may not initially appear as vulnerable but may now be vulnerable.” Enforcement sector

60. It is clear that there are situations, especially in times of particular hardship, when individuals are unable to face their debt problems. This is particularly true with the most vulnerable in society. The Government expects that when an enforcement agent is faced with this sort of situation they would immediately cease further enforcement action to allow the individual to seek the necessary support to remedy the situation.
61. The creditor and the enforcement agent have a duty of care to the vulnerable. We will continue to work with stakeholders, including the advice sector, local authorities and the Department for Communities and Local Government on a possible approach as to how vulnerable situations would be identified.
62. The Department for Communities and Local Government are in the process of considering what guidance they can issue to local authorities to help them provide better support to vulnerable people in council tax arrears. They will work with local authorities and the advice sector on this.
63. We will also develop the content of the training competence which will include, as part of the customer care aspect, identifying actions to take in situations where vulnerable people are involved and the fee remission policy and guidance.

Recommendation 4

The regulations will not include a definition of vulnerability.

Enforcement Action

64. The consultation paper sought views on the detail of the proposed regulations that would underpin the Taking Control of Goods procedure set out in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007. The regulations set out the process for taking control of goods and includes:
- When and how an enforcement agent may enter a property
 - What goods an enforcement agent may seize and sell
 - How, when and where an enforcement agent may seize and sell goods
 - What information the enforcement agent will be required to provide to the debtor and when.
65. There was general agreement to the proposals in principle in order to provide clarity of process and procedure, and bring greater protection to all people in debt (including the most vulnerable) against bad practice. A simple, transparent and uniform set of rules that apply to all forms of

bailiff enforcement is needed. There were, however, mixed responses to some of the detail.

66. Legitimate creditors have the right to enforce their unpaid debts. Equally, debtors should be protected from the oppressive pursuits of their debts. The proposals seek to achieve the right balance between these rights and freedoms.

Time Limit

67. The consultation paper set out the proposals for a 12 month time limit for taking control of goods commencing with the date of the notice of enforcement. It also made clear that to allow for flexibility in the setting of the payment arrangement, if the debtor is able to make a repayment arrangement without the need to take control of goods, the 12 months will commence on the date of any breach of the repayment plan. (Question 11)
68. The majority of respondents agreed with the 12 month time limit, although some advice sector representatives were concerned that debtors would be pressurised into making repayment regimes that required the debt and costs to be paid in 12 months rather than making affordable payments.
69. The matter of repayment plans is not solely the responsibility of the enforcement agent. The creditor also has some responsibility and is entitled to inform the enforcement agent of the acceptable level of repayment plans.

Recommendation 5

The time limit for taking control of goods will be 12 months which may be extended for a further 12 months on application to the court.

Administration/compliance stage

70. The consultation paper set out proposals requiring the enforcement agent to notify the debtor of the decision for enforcement action to be taken and allow the debtor time to pay the debt before the enforcement agent arrives at the premises. (Question 12)
71. The consultation paper set out proposals for the minimum period of notice as 7 days except for Commercial Rent Arrears Recovery which proposed 14 days. The advice sector welcomed the introduction of an administration/compliance stage. Private creditors were concerned that providing notice could result in the opportunity for the debtor evading enforcement. There was a mixed response to the proposed time periods. Some thought the period was too long, others thought it was too short and several respondents mentioned that there should only be one time period for all debt streams. It is our intention therefore to set the

minimum period as 7 days for all debt streams. This is a minimum period and does not negate any extended time periods creditors and enforcement agents may negotiate. The regulations also give the court the power to reduce the period where the enforcement agent or the creditor considers the debtor will avoid enforcement if given too much notice.

Recommendation 6

The term of minimum notice for all debt streams (including Commercial Rent Arrears Recovery) will be 7 days.

Enforcement Stage

Entry to property

72. The consultation proposed that an enforcement agent will only be able to enter or re-enter a property by any door or any usual means by which entry is gained to the property. (Question 13)
73. The majority of respondents agreed with this proposal.

Recommendation 7

The enforcement agent will only be able to enter or re-enter a property by any door or any usual means by which entry is gained to the property.

Days and Times

74. The consultation paper set out the proposals for the days and times an enforcement agent can enter a property and take control of goods. The proposal is that the enforcement agent may enter premises any day and may enter residential premises between 6.00am and 9.00pm. (Questions 14–18)
75. The majority of respondents agreed with the proposal although the advice sector expressed concerns on vulnerability. We have fully considered all the responses and in particular the comments from the advice sector on the need to observe the Equality Act 2010 in observing culture and religious festivals. The legislation needs to reflect the widest parameters and we would look to the National Standards and Contracts to introduce the necessary restrictions. We will consider such limitations and restrictions when revising the content of the National Standards (as set out in paragraph 11).

Recommendation 8

The enforcement agent will be able to enter premises any day with time limits of 6.00am until 9.00pm for entry in wholly residential premises.

Exempt goods

76. The consultation paper set out proposals to clearly define exempt goods. (Question 19)
77. Enforcement and creditor respondents expressed concern about the prescriptive nature of the list and in particular that changes in technology mean many electronic devices that are not providing basic domestic needs are caught by the descriptions set out in the regulations.
78. The advice sector expressed concern about the generality of the list and recommend that there should be protection for goods in use which they argue is the current position.
79. We will work with stakeholders to consider their concerns and produce a workable list for the regulations.

Controlled goods agreement

80. The purpose of a controlled goods agreement is to allow the enforcement agent to take control of the goods but leave them in the possession of the debtor. This means the enforcement agent will not remove or sell the goods, providing the debt and the cost of the enforcement are paid by a specified date. The consultation sought views on who, other than the debtor, may sign the controlled goods agreement, in particular where the debtor is absent from the premises and there are goods available for the enforcement agent to remove.
81. The advice sector was concerned that if anyone other than the debtor could sign the controlled goods agreement this could result in the enforcement agent abusing the procedure. It is our intention that in respect of domestic premises (individual debt) the debtor should be able to authorise another person to enter into a controlled goods agreement. This is to cover situations where the debtor is not at the premises and is willing to enter in to an agreement and wants to avoid goods being removed and further costs being incurred. It would be for the debtor to nominate that person – not the enforcement agent.
82. When the debt is owed by a business, the controlled goods agreement should be able to be signed by a person in apparent authority. This would avoid goods having to be removed and further costs being incurred. (Questions 20–21)

Recommendation 9

The debtor should be able to authorise another person to enter into a controlled goods agreement on their behalf.

Where the debt is a business debt a person in apparent authority at that business should be able to enter into a controlled goods agreement.

Secure the goods on the premises

83. The consultation sought views on securing the whole of the premises or such part of the premises that is occupied solely for the purpose of a trade or a business. It is clear from the response that these provisions are required where the enforcement agent has had to take control of all the goods to cover the debt and costs, and where the enforcement agent has concerns that the debtor will remove the goods to avoid enforcement. (Question 22)

Recommendation 10

Where the enforcement agent has to take control of all goods in a trade or business premises to cover the debt and costs and has concerns that the debtor will remove the goods to avoid enforcement – the enforcement agent will be able to secure the entire premises.

Secure goods on a highway

84. The consultation paper discussed the securing of vehicles particularly those identified on the highway and the need to include a time period for the debtor to be able to pay the debt and avoid the expense of removal. The consultation paper proposed that the vehicle must remain immobilised for 24 hours. (Question 23)
85. The responses to this proposal were generally not in favour. Some respondents argued that 24 hours was too short as it did not allow the debtor sufficient time to sort out repayment plans. However, the enforcement industry considered 24 hours to be too long as in that time the immobilisation device may get damaged or vandalised. Unless the enforcement agent remained with the vehicle they would not be able to prove that it was in fact the debtor who interfered with the vehicle therefore committing an offence under Schedule 12.

“Agreed, this [24 hours] should allow sufficient time for the debtor to make payment. To leave a vehicle secured for longer may result in vandalism.” Public creditor

“[We] support the time limit as it allows debtors time to raise funds without incurring significant removal costs, however, there is an obvious risk that vehicles might be removed in the intervening period by debtors or vandalised by others. The council would therefore recommend that such a time limit is monitored to assess any issues that may arise” Public creditor

“Leaving a vehicle clamped for even a few hours will only attract criminal behaviour (breaking into the vehicle, damaging the vehicle or illegally removing the clamp). The maximum period, if any, should be two hours. Our preference is that there is no time period at all.”
Enforcement sector

“A minimum period of 24 hours might risk vandalism being caused to the vehicle by 3rd parties. A shorter period would reduce the risk”

Public creditor

“If a vehicle is seized (and immobilised) at an enforcement visit with the knowledge of the debtor then 2 hours should be sufficient for the debtor to obtain and pay over the monies owed and the enforcement agent should be allowed to charge waiting time after the first hour.”

Enforcement sector

86. We agree that it is necessary to have a time period to allow the debtor the opportunity to pay the debt or come to an alternative agreement with the enforcement agent. We do not agree that 24 hours is too short as the debtor will have had several opportunities to settle the debt without the need to remove goods. Part 3 of the TCE Act makes it an offence if a person intentionally interferes with controlled goods. We will, however, need to explore the issue of possible time limits with the enforcement industry, advice sector and creditor organisations to ensure that such limitations would not result in the enforcement agent removing the goods immediately for sale thus resulting in increased costs for the debtor.

Sale stage

87. The consultation paper set out the detail of the process for goods being sold by the enforcement agent to settle the debt and sought specific views on the minimum period before sale and the division of proceeds of sale. The proposals included setting a minimum period of 7 days before a sale may proceed, which the majority of respondents supported. The paper also sought information from respondents as to other methods of sale that should be included in the regulations. Many respondents mentioned online and electronic auctions which have been included in the definition of “public auction house” in the draft regulation 39(3). No other new methods of sale were identified. Some respondents did, however, recommend that sale on premises should not be restricted to High Court, county court and tax debts and should be made available to cover all business debt.
88. The consultation paper proposed that where the proceeds of sale are insufficient to cover the debt and all costs (including auctioneer costs) that the funds should cover the auctioneer costs first with the rest of the proceeds being distributed on a pro rata basis between the creditor and the enforcement agent. The majority of respondents agreed to the proposal, although some respondents suggested that there should be an equal split or that the enforcement costs should be paid first. The auctioneer is independent of the process and auctioneer’s fees are not part of the costs of the enforcement agent and are therefore not covered by Schedule 12 of the TCE Act. It is therefore, in the Government’s view, necessary to ensure that the auctioneer’s costs are paid first from the proceeds of sale. The division of the rest of the proceeds should be on a

pro rata basis to encourage enforcement agents to seek the best price for the goods sold.

Recommendation 11

The minimum period before sale will be 7 days from removing the goods unless the goods would become unsaleable or their value would be substantially reduced.

No other methods of sale will be added to the regulations.

The regulations will be amended to allow sale on premises for business debts.

The regulations will include a provision setting out that insufficient funds will be distributed on a pro rata basis between the creditor and the enforcement agent.

Commercial Rent Arrears Recovery

89. The consultation paper set out the proposals for Commercial Rent Arrears Recovery. Section 71 of the TCE Act (when commenced) will abolish the common law right to distraint for arrears of rent and will provide protection to residential tenants. Section 72 however, will permit a landlord under a lease of commercial premises to use the procedure of Schedule 12 to the TCE Act to recover from the tenant, rent payable under a lease without needing to take the matter to court.
90. The consultation sought specific views on the information required from a landlord for authorisation to an enforcement agent, a minimum rent period and the content of a notice to a sub tenant.
91. Half of respondents provided answers to these questions. Respondents thought that the information from the landlord to the enforcement agent was insufficient and should also include details of:
 - The amount of rent to be recovered;
 - The period for which the rent is owed; and
 - an indemnity from the landlord to the enforcement agent for any potential action due to a wrongful instruction being issued.
92. The majority of respondents did not agree with the minimum rent period of 7 days arrears. Some argued that it was too long and others too short. The remedy is only available for commercial rent and therefore it is not necessary to extend the seven day period. There does appear, however, to be strong arguments for retaining the period of 1 day as it currently exists. In particular, where the debtor is on the verge of insolvency or such a time period introduces delays into rental payments.
93. We will work with creditors and the enforcement industry to consider the consequence of the time period.

94. The majority of respondents agreed with the content of the notice to the sub-tenant.

Recommendation 12

The information required from the landlord will be amended to include:

- the amount of rent to be recovered
- the period for which the rent is owed; and
- an indemnity from the landlord to the enforcement agent for any potential action due to a wrongful instruction being issued.

Ensuring all parties are aware of all their rights and responsibilities

95. It is important that all parties are aware of all their rights and responsibilities. The National Standards and information on GOV.UK are a good start. In addition the Taking Control of Goods Regulations introduce new notices, at every stage, to ensure that the debtor is fully aware of the consequences of their actions or inaction. The consultation paper sought views on seven new notices. The majority of respondents agreed that a set of prescribed notices would be helpful.
96. It is important that any information is clear and unambiguous and where possible in plain English. Suggestions have also been made for additional information to be included. (Question 32)
97. We will continue to work with stakeholders on the content of the notices and warnings and also consider what other leaflets or guidance should be developed to assist all the parties.

Costs of Enforcement Related Services

98. The consultation paper set out a new proposed costs structure which is based on a set of core activities grouped into stages with fixed amounts attributed to each stage. The following table summarises the actions included within each stage. The fee charged to the debtor would reflect the stage at which the debt is repaid.

Action	Non-High Court	High Court
<ul style="list-style-type: none"> • Issue of the notice of enforcement • Initial communication with debtor • Processing payment or managing instalment plans 	Administration / compliance stage	Administration / compliance stage

Action	Non-High Court	High Court
<ul style="list-style-type: none"> • First visit • Processing payment or managing instalment plans • Manage process for controlled goods agreement 	Enforcement stage	Enforcement stage 1
<ul style="list-style-type: none"> • Arrange for removal of goods • All subsequent visits 	Enforcement stage	Enforcement stage 2
<ul style="list-style-type: none"> • Removal and transport of goods to place of sale • Management of auction activities • Management of funds and payment to judgement creditor 	Sale stage	Sale stage

99. The purpose of the structure is to ensure that there is clarity and transparency and to incentivise proportionate enforcement action. The consultation sought views on the core activities and the grouping into stages. (Questions 33, 34, and 35)
100. The advice sector expressed concerns that the structure is based on an average firm and as such, does not take account of efficient firms' costs which would be lower than average. They were also concerned that it included Directors costs. Directors' costs are essentially an element of firms' running costs so there was no reason to exclude them. Information was not available to identify which firms were efficient and which were not due to the firms operating across a wide variety of types of debts and with different reporting system. The average firm data were therefore the best data available.
101. The enforcement sector mentioned that the core activities did not cover applications to the court. As we have stated earlier in this report, it is our intention to remove any unnecessary applications to the court. We do not want to encourage enforcement agents to make applications to the courts and therefore these will not be included as a core activity. If the enforcement agent considers that there is a need to claim the cost, they can make an exceptional cost application to cover it.
102. The advice sector proposed that the first visit should be included in the compliance stage to encourage proper negotiation and require payment arrangements to be reasonable and affordable for the person's circumstances. They also recommend that if the payments demanded are over an unrealistic timescale, then the enforcement agent should not be able to proceed to the enforcement stage when the person fails to comply with the unrealistic arrangement.
103. It should be noted that the debt is not owned by the enforcement agent; they are enforcing the debt for the creditor. Their role is to collect the

debt and costs or seize and sell goods to cover the debt and costs. As already set out in this report the creditor has a role to play in the agreement of any repayment plan.

104. The introduction of the compliance stage provides an added opportunity for the debtor to settle the debt and was put forward to avoid the necessity of the enforcement agent visiting the property. To include a visit to the property in the compliance stage would result in the enforcement agent being able to immediately move to the enforcement stage and would result in an even higher administration/compliance stage fee.
105. In the majority of cases where there is a vulnerability issue it is not identified until the enforcement agent has made a first visit to the debtor. The consultation sought views on whether there should be the possibility of a remission of fees to the compliance stage. (Question 36)
106. The majority of stakeholders agreed that where it can be shown that the debtor is incapable of engaging with the process at an early stage, that the debtor should be given the opportunity to get the necessary assistance/advice without incurring the enforcement stage fee.
107. Views were sought on the fixed amounts attributed to each stage (Question 37). This generated a mixed response. The advice sector are concerned that the fixed costs for each stage have been based on the least effective type of enforcement – i.e. road traffic enforcement. They argue that the proposals are completely inappropriate for very small debts, and that a different fee scale should apply for debts such as those below £100. However, this argument does not allow that the cost of some of the activities for the compliance stage are similar for all size of debt or debt type which means there would be little benefit for different fee scales for different debt types.
108. The enforcement sector is concerned that the 'Sale' stage includes the removal of goods and transportation to the place of sale as well as a number of required actions such as making or obtaining and issuing a valuation. The fee also appears to have to cover the not insignificant costs of actual removal, insurances and costs of actual sale. In their view the fee of £105 will not cover the core activities under any circumstances. It is essential to note that the auctioneer's fees are not captured by the fee structure as they are not the costs of the enforcement agent. Exceptional costs for removal of particularly expensive goods are covered later in this report.
109. We have considered all the views expressed and are still confident that introducing the costs at the level proposed is the correct way forward. There should be a clear and transparent costs regime that ensures debtors are fully aware of the cost of any inaction. Whilst the structure and costs attracted a diverse range of opinions, no specific evidence was provided to support an alternative fee structure proposal. We will

review the fee structure and level as part of the monitoring process outlined later in this report.

Recommendation 13

The core activities, groupings and amounts attributed to the stages will remain as proposed in the consultation paper.

In certain circumstances the debtor will be given extra time to get assistance/advice without incurring the enforcement stage fee.

110. Views were sought on the proposal for an additional percentage cost on the balance of any debt over £1,000 (Question 38). The advice sector questioned the need for this suggesting that it did not seem reasonable for domestic goods but may however be reasonable in cases involving high value, specialist business equipment.
111. Local Authorities were concerned about local taxation debts in particular Council Tax and Non-Domestic Rates.

“Many clients will have debts over £1,000 but there is no evidence that having a higher amount of debt indicates a higher level of assets or assets that are more costly to enforce. It would appear reasonable that this additional percentage cost applies to high-value, specialist business equipment in relation to business debts only.” Advice sector

“There are many SME’s in the City that occupy premises with rateable values in excess of £50,000 or £100,000. These could be asked to pay more than £2,000 in bailiff fees for 1 year’s debt. This too is completely disproportionate. It will actually remove business from the bailiffs as local authorities will be anxious for their debt, rather than bailiff fees to be paid, and may be less inclined to pass liability orders to bailiffs.”
Public creditor

112. Following consideration of all comments we have reviewed the percentage and thresholds with the enforcement sector and have considered possible amendments to the threshold. In particular it was important, where possible, to ensure that the majority of council tax debt was not affected by the threshold. We therefore recommend setting the threshold at £1,500 rather the £1,000 set out in the consultation.

Recommendation 14

The threshold for percentage fees in non-High Court debt should be £1,500.

113. Several respondents considered that there was a need to address the issue of multiple warrants. It is clear that where there are multiple warrants being dealt with at the same time, the compliance stage would

be appropriate for every warrant. However, where one visit is undertaken to collect all warrants only one enforcement stage fee would be applicable.

Recommendation 15

The compliance stage fee is applicable to all warrants.

Multiple warrants enforced at the same time will only attract one enforcement fee.

114. The majority of respondents agreed that there was a need for an exceptional costs process. This should cover the additional costs incurred, over and above the normal costs, including dealing with specialist or very high value goods. Each case should be judged on its own merits and should be decided via the court process.
115. The advice sector and some creditors expressed concern that this could be abused. It is clear that creditors should be fully aware of the action that is being taken on their behalf by the enforcement agent and should also be fully aware of the costs that are being passed on. We will therefore develop an exceptional costs process similar to the process that already exists for High Court Enforcement Officers, including an extra step requiring the creditor to indicate their approval to the application.
116. Where the enforcement agency can demonstrate that the extra costs they have incurred are necessary they should be able to apply to the court for additional costs under the exceptional costs process.
117. The consultation paper sought views on the differences in the costs structure between High Court and non-High Court debt. This received a mixed response.(Question 40)
118. Many noted that High Court enforcement was potentially more costly, with the enforcement officer's personal responsibility to the creditor and the creditor's requirement to cover administration costs for failed enforcement. However, many respondents questioned the degree of difference in fees and others questioned the evidence that this assertion was based upon.
119. We have considered all the responses and are satisfied that the complexity of High Court enforcement combined with the higher value of the debts to be enforced and the level of personal responsibility of the authorised officer to the creditor and their duty to the court, mean that High Court enforcement has a significantly higher costs base that justifies a different charging structure.

Recommendation 16

High Court Enforcement and non-High Court Enforcement will have separate charging structures.

120. The proposed structure aligns more closely with the cost of the activity carried out by the enforcement agent and will alter incentives to encourage more appropriate enforcement behaviour and be both clearer and fairer to debtors and enforcement agents. The proposed changes to the structures are set out below.

Non-High Court

MoJ Proposed Fees for non-High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0–£1,500	>£1,500
Administration	£75.00	0%	0%
Enforcement	£230.00	0%	7.5%
Sale	£105.00	0%	7.5%

Fee Structure Features	
Stage Triggers	
Administration	Instruction received by Enforcement Agent Company.
Enforcement	First attendance by Enforcement Agent to debtor’s premises / “door step”.
Sale	Goods taken to place of sale
Creditor Guaranteed Fee	None

High Court

MoJ Proposed Fees for High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0–£1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement 1	£185.00	0%	7.5%
Enforcement 2	£480.00	0%	0%
Sale	£510.00	0%	7.5%

Fee Structure Features	
Stage Triggers	
Administration	Writ received by Enforcement Agent Company.
Enforcement 1	First attendance by High Court Enforcement Officer / Enforcement Agent to debtor's premises / "door step".
Enforcement 2	High Court Enforcement Officer / Enforcement Agent is required to attend debtor's premises due to debtor's failure to comply with notice of seizure or with repayment arrangements previously made.
Sale	Goods taken to place of sale
Creditor Guaranteed Fee	£75.00. To be paid upon completion of Writ with formal notice of abortive return.

121. The consultation sought views on whether the costs structure was likely to have an adverse effect on the recovery of non-Domestic Rate cases in view of the very high value cases and the timing of the enforcement activity. The majority of respondents did not consider there would be an adverse effect. Some local authorities expressed concerns that the 7.5% fee could have an adverse effect on small businesses and the low sale fee may result in the enforcement agent not being willing to undertake the work. (Question 41)
122. The introduction of the compliance stage will enable businesses to agree a repayment plan with the enforcement agent and therefore not be caught by the 7.5% fee.
123. The consultation proposed that where there is a partial payment the monies should be distributed on a pro rata basis between the creditor's debt and the enforcement agent's costs. The majority of respondents agreed. Of those respondents who did not agree the majority suggested a 50/50 split. The enforcement sector suggested that the compliance fee should be deducted first and that subsequent fees should be pro rata. (Question 42)
124. For uniformity with the distribution with proceeds of sale it is proposed that distribution should be on a pro rata basis.

Recommendation 17

Partial payments shall be distributed on a pro rata basis.

125. The consultation paper sought views on updating the costs structure to take account of inflation and a suitable time frame for a comprehensive review of the structure. (Questions 43–45)
126. The majority of respondents agreed that the costs structure should be updated to take account of inflation prior to implementation and should be updated annually by indexing to a measure of inflation. The fee levels were set with an intended implementation date of April 2012 and therefore will need to be inflated as appropriate to take account for inflation between 2012 and the implementation date. The measure of inflation will be considered when an implementation date is agreed.
127. The majority of respondents agreed that three years is a suitable time frame for the costs structure to be comprehensively reviewed and potentially recalibrated. It will be necessary, however, to undertake a Post Implementation Review of the entire reforms and to leave such a review for three years would not be acceptable. It will be necessary to carry out a proportionate check to ensure the reforms have had their intended effect, particularly concerning vulnerable debtors. In particular, we will want to ensure that debtors have been afforded reasonable protection, but not disproportionate to the rights of the creditor. The impacts on enforcement agents, on debt recovery effectiveness and on the justice system also need to be considered, including:
- Whether there is evidence that the public have been provided with greater protection against unnecessary and aggressive action;
 - Whether the new system is less complicated and complex for the public;
 - Whether the reforms allow the enforcement industry to operate effectively; and
 - The impact of the new fee structure on all groups, including potential unintended consequences.
128. We therefore intend to have a staged process review at one, three and, if necessary, five years. The extent of the review three and five years would depend on results from the earlier stages. The approach to the review will be to seek views from all our stakeholders on the impact of the Regulations. We will need to understand from them the impact the reforms have had from an operational perspective. We will also need to consider the impact for creditors, debtors, enforcement agents and the judicial system, as well as taking views from debt advice organisations.

Regulatory Regime

129. The consultation paper proposed a certification process for every enforcement agent. We sought views on the detail of the process and also asked respondents to provide us with proposals of any alternative or less regulatory options that they considered would be more suitable for enforcement agents.

130. The majority of respondents suggested that there were no alternatives or less regulatory options available. (Question 46) Concerns were also expressed that the certification scheme does not go far enough as it covers only individual enforcement agents and not their firms or High Court Enforcement Officers. Suggestions for regulatory regimes which would cover the entire industry included:

- the creation of a statutory regulator;
- self regulation; and
- the creation of an Ombudsman or the use of existing Ombudsman.

Self regulation was only viewed as acceptable by some respondents if it included effective and regular monitoring, sanctions and an independent complaints process.

131. The Government considers that the changes to the law, introduction of a transparent costs structure and the enhancement of the certification process is targeted and proportionate and is a major step forward in enforcement reform. We do not consider that independent regulations is required at this time, however, as has already been mentioned there will be a staged process Post Implementation Review which will commence at one, three and five years. This will enable us to review the certification process including complaints to ensure that it is both workable and sufficient.

Recommendation 18

Implement section 64 of the TCE Act and produce regulations about the regulation of enforcement agents.

132. The consultation paper sought views on whether the application for certification should be held in the enforcement agents local court and whether they should be dealt with by specialist district judges. (Questions 47 and 48)

133. There was a mixed response as to the location of court dealing with applications. Some respondents suggested that they should be dealt with in one central location to allow the development of expertise and specialist working practices which would enable evidence gathering and monitoring of complaints. The majority of respondents agreed that there should be specialist judiciary dealing with applications and complaints.

134. We will continue to work with stakeholders from the enforcement and advice sectors in developing the content of the regulations and will also work with HM Courts and Tribunals Service and the judiciary on the court procedure.

135. The British Parking Association submitted two alternative proposals for regulation which were included in the consultation paper. Only 50% of all

respondents commented on the proposals and the majority were not in favour. The main concern was that the organisation would not be sufficiently independent to deal with complaints as it is suggested members of the industry would form part of the council. We do not consider there is any need to pursue further regulation at this time.

Competence Requirements

136. The consultation paper set out a brief outline of criteria which represented the basic level of knowledge and competence we consider necessary for an enforcement agent to obtain a certificate in the county court. The paper sought views on the criteria, whether the training should be mandatory and whether there should be a requirement for further training or development after the granting of the certificate. (Questions 50–52)
137. The majority of respondents agreed to the competence criteria. They also agreed that the training should be mandatory and that there should be continuing development following the certificate. Only six respondents did not agree with mandatory training, two of whom suggested that there should be no enforcement agents. Other views were expressed as set out below:

“We believe that on-the-job training is the best option as no training is better than real life experience. This should be followed by a written exam as well as allowing an enforcement agent to prove his knowledge upon questioning by a Court Judge.” Enforcement sector

“The proposed changes with regard to the certification process is the measure that will ensure that an enforcement agent is a fit and proper person. Completion of classroom based training on its own will not achieve this end, although formal training will fill some of the knowledge gaps that may currently exist. A robust personal examination, encompassing background checks and knowledge tests will be more effective than a mandatory training module(s).” Enforcement sector

“Training is necessary, but grandfather rights should prevail”
Enforcement sector

138. We will continue to work with stakeholders from the enforcement and advice sectors as well as current training providers as we develop the content of the competences. We will build on existing training already under development to reduce any unnecessary additional burdens on existing business.

Recommendation 19

There should be set competence criteria for entry in to the enforcement profession and a mandatory training regime.

Remedies and Complaints handling

139. The consultation paper set out the existing complaints procedures and sought views on whether this was sufficient. (Question 53)
140. The majority of the enforcement sector and creditors agreed that the existing complaints process was sufficient and did not require any further Government intervention. The advice sector, however, did not agree and argued that the processes already in existence have proved to be ineffective or inadequate. Complaint processes operated by enforcement trade associations as well as those operated in house by bailiff companies are useful, but they cannot by definition be independent or focus on grievances in a meaningful and objective way. They suggest that there should be an independent complaints process.
141. The Local Government Ombudsman supports the Governments position on not introducing a complaints body covering the industry as they are concerned about the impact that such a proposal would have on their own jurisdiction.
142. We consider that the proposed changes to the law, fees and the certification process will address some of the current complaint issues. It is clear, however, that there is a need to work with all stakeholders and the Local Government Ombudsman to clarify the details of the complaints process so that there is a greater understanding as to how debtors can seek redress. In particular, setting out the remedies that are available and where they could be obtained.

High Court and County Court Jurisdiction Order 1991

143. The consultation paper sought views on whether the High Court and County Court Jurisdiction Order 1991 should be amended to remove the current restrictions of enforcement to recover judgment debts. Less than half of respondents provided answers to this question. The majority agreed although concerns were expressed, this should not be limited to High Court Enforcement Officers. Respondents opposed to the change suggested that the High Court Enforcement Officers fees would be disproportionate to the debt and that with possible increase in volumes of cases it would be necessary to review their fee structure before any changes were introduced. (Question 54)
144. We will consider the impact of the new fee regimes before any final decision is made on whether to amend the jurisdiction order.

Impact Assessment

145. Most respondents agreed that we had identified the range and extent of impacts of these reforms. A Final Impact Assessment has been published alongside this report which includes an annex on equalities considerations.

Equalities Considerations

146. Having regard to our responsibilities under the Equality Act 2010 we have considered the likely broad impacts of these proposals on individuals with protected characteristics.
147. The proposals are aimed at simplifying and clarifying the enforcement process, improving the accountability of enforcement agents and addressing unnecessary or aggressive enforcement activity. They are therefore likely to have positive impacts on debtors or on those who are on low incomes (who are more likely to be in debt).
148. We have used ONS data to identify the protected characteristics of those who are likely to be impacted by the proposals. The main source of information on potential debtors is the Wealth and Assets Survey (WAS), a longitudinal household survey that gathers information on savings, debt and other factors that affect financial planning.¹ Where there are no data on debt to support potential impact on particular groups (e.g. for assessing the potential race impact), income data from the Department for Work and Pensions (DWP) analysis of Households Below Average Income (HBAI) have been used as a proxy.²
149. Since the following people with protected characteristics are more likely to be in debt or over-represented amongst those on low incomes (compared to the general population), we therefore consider them to be the main beneficiaries of the proposals:
- Disabled debtors
 - 25–34 year old debtors
 - Those from black, Asian or minority ethnic background (who are more likely to be on lower incomes)
 - Lone-parent debtors (the majority of whom are women).
150. This is because of a number of specific measures aimed at protecting those who are in debt where enforcement action is required, including an enhanced competence and certification process; mandatory training; and better protection for vulnerable people.
151. It is possible however, that in some cases (e.g. where fee levels will increase) that the proposals could have adverse impacts for debtors with consequential equalities impacts because of the factors explained

¹ See <http://www.ons.gov.uk/ons/rel/was/wealth-in-great-britain-wave-2/index.html>

² Adams, N. et al (eds.) (2012) *Households Below Average Income: An analysis of the income distribution 1994/95 – 2010/11* London: DWP

above. There are a number of measures that have therefore been put in place to minimise these possible equalities impacts including an administrative stage prior to active enforcement. This provides debtors with an additional opportunity to pay. If there is evidence during the active enforcement stage that a debtor is vulnerable and has previously been unable to engage with the debt recovery process, there is the opportunity for reversion to the administrative stage with only the administrative stage fee being payable; and the application of only one enforcement fee for cases with multiple warrants.

152. Reasonable adjustments will be needed for disabled debtors, creditors and enforcement agents (e.g. those with mental health issues or learning difficulties) to ensure appropriate support is given in applying the proposals to them. In particular, consideration will need to be given to the possible ways of identifying situations of debtor vulnerability as the content of bailiff training and bailiff competence and certification requirements are developed.
153. Whilst there were no particular new equalities issues raised during the consultation, we remain aware of the need to ensure that cultural and religious holidays and festivals are considered in any enforcement activity.

Analysis of Responses

Standards and guidance

- Q.1** Do you agree with the contents of the National Standards? If not, please supply proposals for inclusion.
- Q.2** Do you consider the existing law and the revised National Standards for enforcement agents is sufficient to address the problems we have identified or do you consider there is still a need for further Government intervention as set out in the remainder of the paper?
- Q.3** Do you consider there are any gaps in the range of information available on DirectGov? If so please supply proposals for inclusion.

	Yes	No	No response
Question 1	59%	23%	18%
Question 2	11%	72%	17%
Question 3	63%	8%	29%

While the majority of respondents agreed with the content of the National Standards, most respondents made suggestions for their improvement. Respondents who were most dissatisfied with the National Standards were the advice sector, representative bodies, debtors and members of the public. In each of these groups, more respondents disagreed with the National Standards than agreed.

Of the existing content the definition of “vulnerable” persons was the area of most concern. This was seen to be too proscriptive and potentially open to abuse. Many respondents felt that vulnerability should instead be assessed on a case-by-case basis. These comments came from most categories but were of particular concern to the enforcement, public creditor and advice sectors.

Possible areas for inclusion within the Standards were also identified, with the majority of these suggestions coming from the advice sector. As well as indicating that the current content of the Standards would benefit from greater detail and expansion, they suggested a number of additions which could be made. These included guidance on:

- liaising with the advice sector;
- repayment offers;
- providing “breathing space” to debtors
- the public law duties of the enforcement agent (reference to the Human Rights Act 1998 and the Equality Act 2010);

- third party goods;
- powers and mode of entry;
- and guidance on treatment of multiple warrants.

The main criticism of the Standards was that they did not go far enough due to their voluntary nature. There were responses from all sectors stating that without a legal obligation there was little to compel rogue bailiffs to abide by them. This was reflected in the responses to question 2 which revealed that even with a revision of the National Standards, there was still a considerable appetite for change to the current law.

Q.2 Do you consider the existing law and the revised National Standards for Enforcement Agents is sufficient to address the problems we have identified or do you consider there is still a need for further Government intervention as set out in the remainder of the paper?			
Category of respondent	Yes	No	No response
Advice sector	3%	76%	21%
Private creditor	20%	30%	50%
Public creditor	18%	71%	11%
Debtor	0%	71%	29%
Enforcement sector	7%	89%	4%
Judiciary	0%	83%	17%
Ombudsman organisations	25%	50%	25%
Members of Parliament	100%	0%	0%
Members of the Public	0%	81%	19%
Representative Bodies	7%	67%	26%
Total	13%	70%	17%

There were calls from all sectors to clarify the current laws which were seen as unnecessarily complex. A few ways to achieve this were commented upon. Many enforcement respondents felt this could be achieved with the implementation of the Tribunals, Courts and Enforcement Act 2007 while respondents from most of the other sectors, but in particular the advice sector, called for the establishment of an independent regulator. Few responses to this question from other sectors went into details regarding the proposed government intervention.

The consultation revealed that the majority of respondents felt that there were gaps in the information regarding bailiffs on the DirectGov website, with particular concern from the enforcement, public creditor and advice sectors. Many enforcement and creditor respondents felt that the information provided was misleading and often in direct conflict with the guidance contained within

the National Standards. In particular, advising debtors that they do not have to open the door to bailiffs, whilst factually correct, was widely felt to be very unhelpful to both the debtor and enforcement agents.

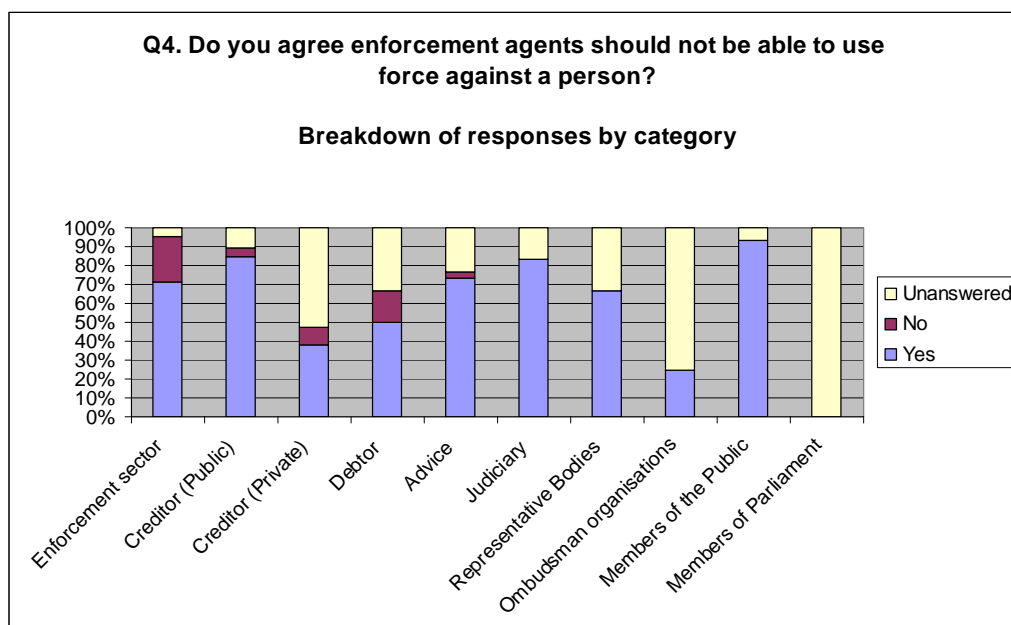
As with the National Standards, the advice sector stated that they would like to see more detail in the existing information on the website as well as suggesting new areas to be included. These included explanations of debt streams, fees, frequently used terminology and advice, or links to advice, for example on repayment schemes.

Several respondents expressed an interest in being involved in any revision of the website.

Use of force

Q.4 Do you agree enforcement agents should not be able to use force against a person? If not please explain why, providing supporting argument and evidence of when it wouldn't be useful.

	Yes	No	No response
Question 4	75%	8%	17%



The majority of respondents agreed that force against a person should never be used by enforcement agents and there was agreement across the sectors on this. In several categories there were no returns at all which considered the use of force to be acceptable (members of the public, the judiciary, representative bodies and ombudsman organisations). The group with the highest level of support for the use of force against a person was the enforcement sector – although only in 24% of their returns. Respondents in

favour of the use of reasonable force believed it was necessary in certain situations, for example where a debtor physically prevents or impedes the bailiff from carrying out their duties or where the bailiff needed to protect themselves from an attack by a debtor. Some respondents who felt that reasonable force should not be allowed did concede that it may be necessary for self-defence although it was also pointed out that existing legislation regarding self-defence should be sufficient in these cases.

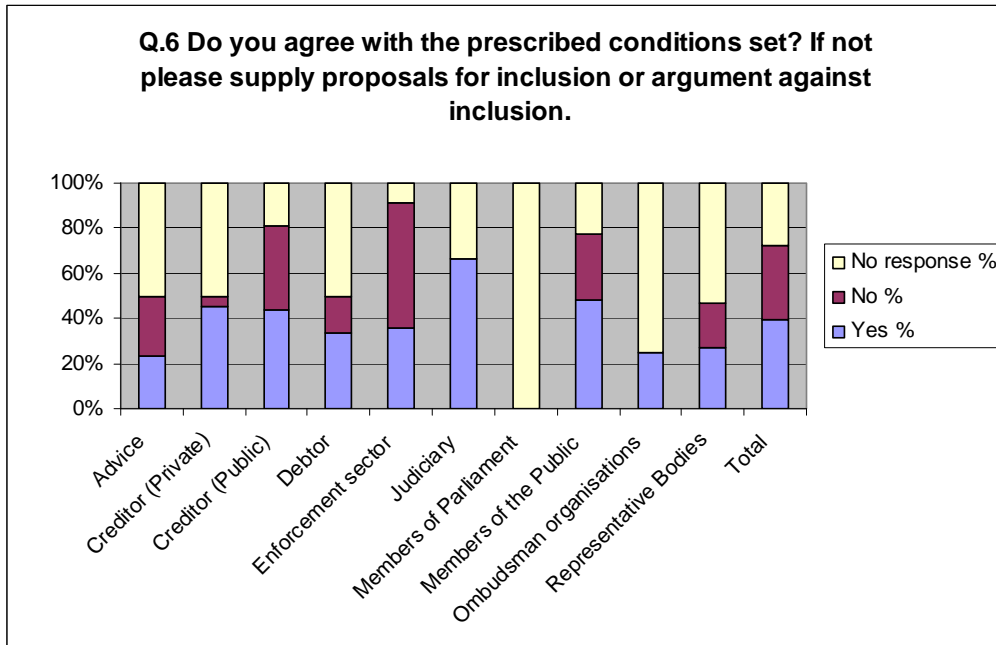
Entry to premises

- Q.5** Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain entry to premises and that the conditions should be prescribed in regulations? If not, please explain why.
- Q.6** Do you agree with the prescribed conditions set? If not, please supply proposals for inclusion or argument against inclusion.
- Q.7** Do you consider an enforcement agent executing a High Court or county court debt should:
- a) have to apply to the court to use reasonable force if necessary on entry to any business premises; or
 - b) should they have a general power?

	Yes	No	No response
Question 5	61%	16%	23%
Question 6	39%	33%	28%

	A	B	No response	Neither A or B
Question 7	25%	31%	41%	3%

The majority of respondents agreed that a court should authorise the use of reasonable force to gain entry to premises and that this authorisation should be judged against a set of prescribed conditions. There was agreement on this across the sectors. It was felt that this approach would ensure that the action was appropriate and proportionate, safeguarding debtors from aggressive bailiffs whilst preventing debtors from “hiding behind a locked door”. The enforcement sector was the group with the most concerns about this suggestion citing the creation of an additional administrative burden, which would delay the enforcement process and add to its costs. Several members of the public did not feel forced entry was ever acceptable.



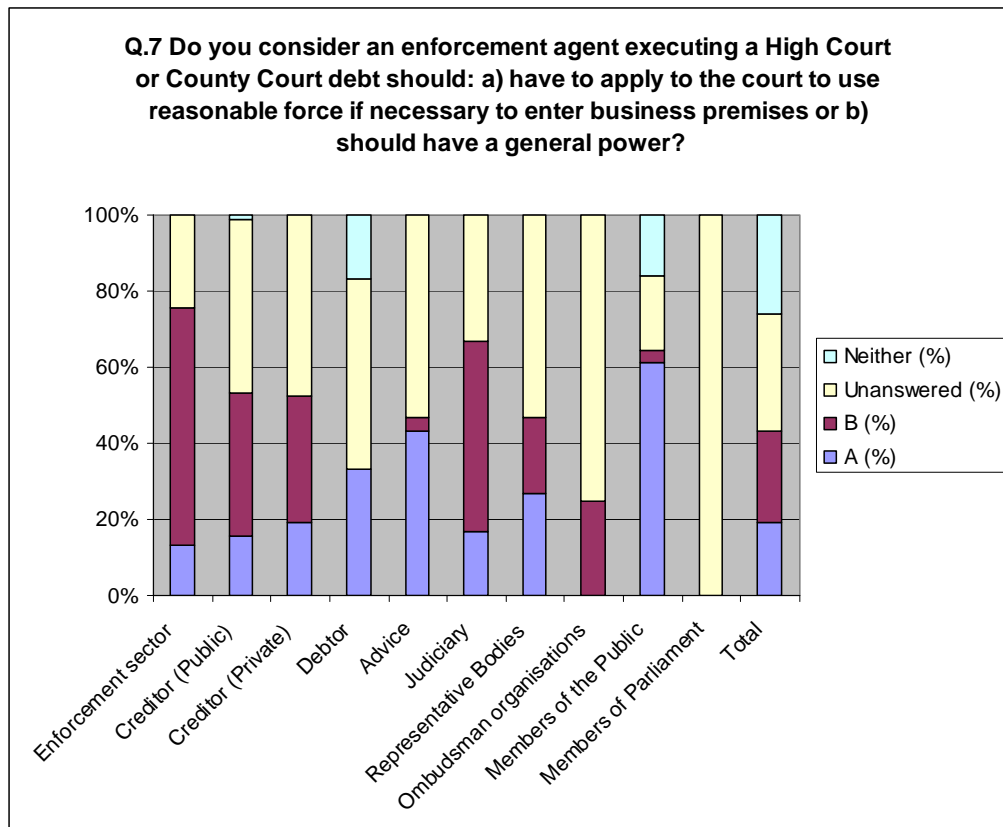
There was a mixed response across the sectors, to the prescribed conditions by which the court would make its assessment. However, the advice sector and the enforcement sector were the only groups where more respondents disagreed with the prescribed conditions than agreed. On the enforcement side, the main concern again was that the conditions potentially create a loophole by which debtors would be able to move goods to an alternative address, preventing their seizure. Advice sector respondents who disagreed with the conditions wished to see the inclusion of the following considerations:

- the way in which the person in debt has behaved;
- the circumstances of the person in debt (including creditor assessment of any vulnerability);
- the likelihood that goods worth taking into control will be found, given what is known about the person, their debts and the area in which the person lives; and
- no application to suspend the action or request to amend the payment terms has been received.

Most respondents were in favour of a general power for enforcement agents executing a High Court or county court debt to use reasonable force to gain entry to business premises although responses within sectors were relatively mixed. The groups most in favour tended to be enforcement, public and private creditors, judiciary and ombudsman respondents. Many of these respondents noted that making a court application would increase the length and costs of enforcement action and place an additional burden on courts. Some public creditors and judiciary respondents noted that such an application would be a duplication of powers already for High Court

Enforcement Officers and a few bailiff and public creditors agreed that granting a general power would actually serve to maintain the status quo.

Those against such a proposal tended to be the advice sector, debtors and members of the public who were concerned that such a power would be open to abuse. They believed that requiring this application would act as a safeguard against this. 20 respondents argued that the general power to use reasonable force, if necessary, on entry to any business premises should be available to all debt types and not restricted to High Court and county court debts. 10 of these respondents were from the enforcement sector, the remainder were private and public creditors.



Re-entry to premises

Q.8 Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain re-entry to premises and that the conditions should be prescribed in regulations? If not, please explain why.

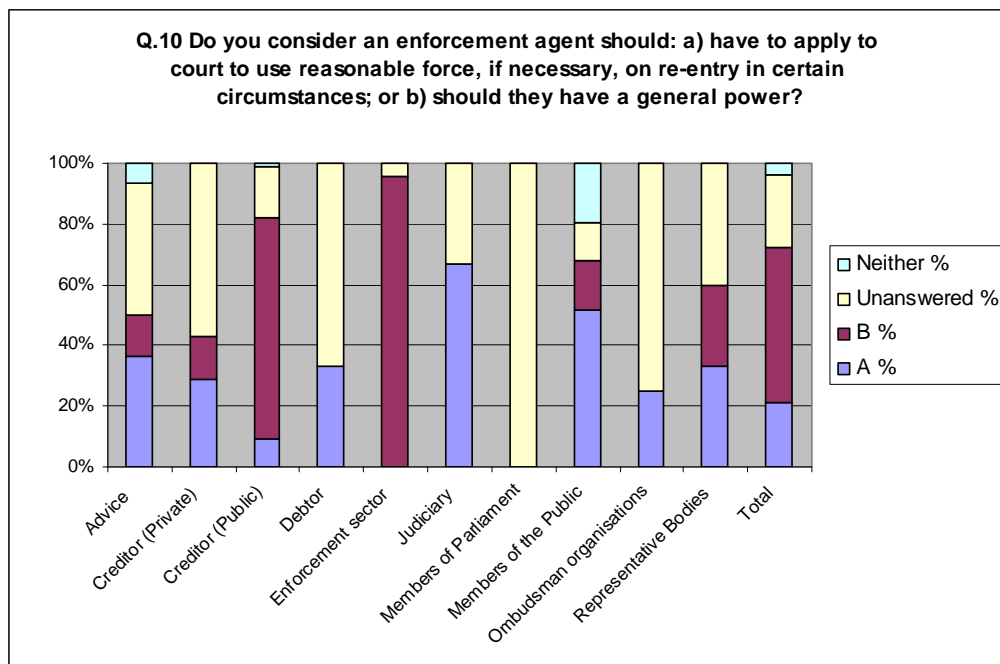
Q.9 Do you agree with the prescribed conditions set? If not, please supply proposals for inclusion or argument against inclusion.

Q.10 Do you consider an enforcement agent should:

- a) have to apply to the court to use reasonable force, if necessary, on re-entry in certain circumstances; or
- b) should they have a general power?

	Yes	No	No response
Question 8	28%	44%	28%
Question 9	26%	37%	37%

	A	B	No response	Neither A or B
Question 10	21%	51%	24%	4%



The majority of respondents did not agree that a court needed to be satisfied of set conditions before authorising the use of reasonable force to gain re-entry to premises nor did they agree with the conditions that have been set out in the regulations.

Most respondents were in favour of a general power. Those categories most in support of this were the enforcement sector and public creditors. All enforcement sector respondents who answered question 10 were in favour of a general power to use reasonable force to gain re-entry to all premises in certain circumstances without an additional application to court.

A general power was seen as necessary to ensure effective enforcement. Without such powers, or with the powers as set out in the prescribed

conditions, it was argued that the enforcement process would become overly lengthy, providing debtors additional time to remove goods to alternative premises, with little incentive for enforcement agents to enter into controlled goods agreements with debtors on the first visit. As with question 7, there was concern amongst some that further applications to court would overburden the court system and would prove expensive – something which enforcement respondents did not believe had been factored into the proposed fee structure.

The advice sector, members of the public and judiciary were the groups most against a general power. As with question 7, the main area for concern was that a general power would be open to abuse. While these groups were generally against a general power to re-enter domestic premises there was less concern over a general power to re-enter commercial premises.

Enforcement action

Taking control of goods

Q.11 Do you agree with the 12 month time limit for taking control of goods? If not please, explain why, providing an alternative and supporting argument.

Q.12 Do you agree with the term for the minimum period of notice prior to taking control of goods? If not, please explain why, providing an alternative and supporting argument.

	Yes	No	No response
Question 11	57%	22%	21%
Question 12	59%	22%	19%

There was support for the 12 month time limit for taking control of goods and the 7 day minimum period of notice to do this. The enforcement sector, judiciary and public creditors were strongly in favour of both proposals. The advice sector was the only group where more respondents disagreed than agreed to both questions. Whilst the remaining categories were, overall, in support of the proposals, there was a more even divide between those who agreed and those who disagreed.

Those in favour of the notice period and time limit stated that both of these were reasonable periods of time. There were numerous comments, particularly from public creditors and the enforcement sector, that the 7 day notice period in particular was more than sufficient as a debtor would already have had several opportunities to pay. However, some respondents felt that a greater clarification of when the notice period/time limit actually began would be helpful.

Those against the 12 month time limit were mainly opposed as they felt that this was not sufficient in council tax cases where a 24 month notice period was considered more relevant. Those against the minimum 7 day notice

period held opposing views – that it was too long or too short a period. Those who felt it was too short were concerned about debtors who may genuinely not receive the notice, for example if they are on holidays, while others wanted to see it raised to 14 days to reflect Commercial Rent Arrears Recovery practice, creating uniformity across debt types. Many bailiff and private creditors who considered the period too long were concerned that it provided time for the debtor to abscond.

Modes and timing of entry

Q.13 Do you agree with the modes of entry and re-entry? If not, please explain why.

Q.14 Do you agree that the enforcement agent should be able to enter premises any day? If not, please propose limits with accompanying argument.

Q.15 Do you agree with the time limits of 6.00am and 9.00pm for entry in wholly residential premises? If not, please propose alternative limits with accompanying argument.

Q.16 Do you agree the enforcement agent should be able to take control of goods any day? If not, please propose limits with accompanying argument.

Q.17 Do you agree with the time limits of 6.00 pm and 9.00pm for taking control of goods? If not, please propose alternative limits with accompanying argument.

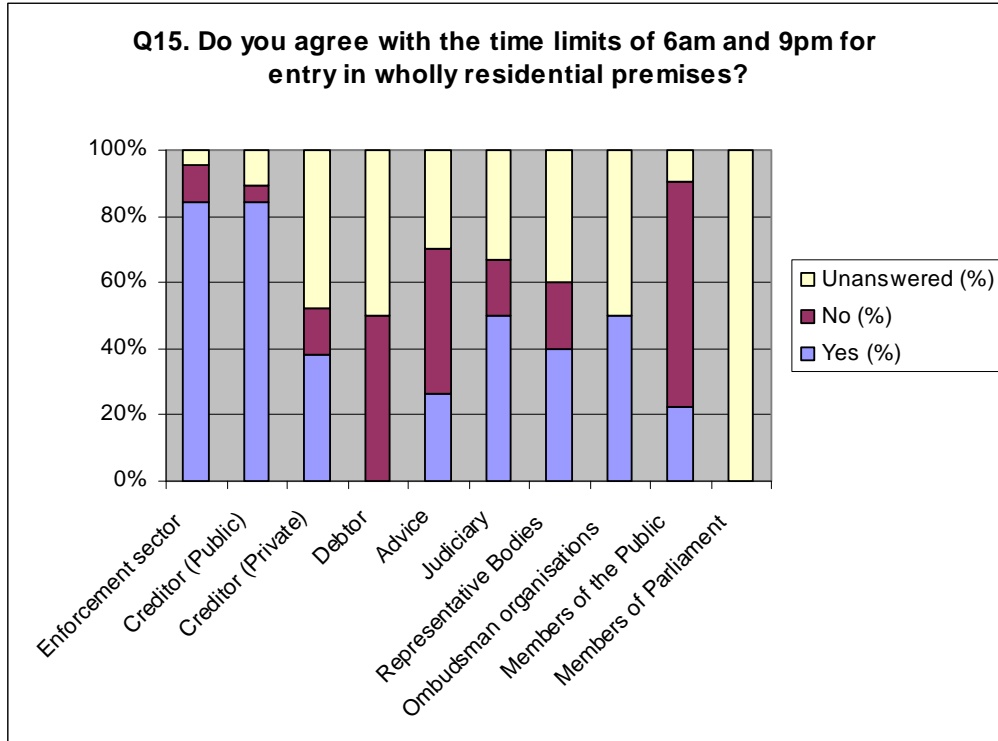
Q.18 Do you agree with allowing the enforcement agent to proceed outside the hours limit where process has already commenced? If not, please explain why.

As the table below highlights, the majority of respondents agreed with the proposals set out in questions 13 to 18 for the modes and timing of entry to premises and the control of goods. The respondents who were in favour of these proposals tended to be the enforcement sector, public and private creditors, the judiciary and representative bodies.

	Yes	No	No response
Question 13	66%	11%	23%
Question 14	58%	23%	19%
Question 15	60%	21%	19%
Question 16	59%	21%	20%
Question 17	52%	26%	22%
Question 18	64%	13%	23%

On the whole these groups welcomed the changes to the permissible modes of entry with many stating that it would prevent disreputable bailiffs from using them as scare tactics. Many felt that such changes were long overdue in modernising the industry and would clear up any ambiguity as to what enforcement agents were allowed to do. Allowing entry on any day of the week was welcomed with respondents pointing out that restricting activity during religious holidays was often not practical as bailiffs did not usually have information about the debtor that allowed this judgement to be made. Many pointed to the National Standards as providing useful guidance on activities during such days.

These groups also generally welcomed the suggested proposals concerning time limits, seeing these as reasonable and appropriate limits. However, some noted that 6am may still be too early, that such limits should not apply to vehicles on the highway and that if enforcement action was to be completed outside of these hours it should be brought to a conclusion within a reasonable time period (e.g. within 30–60mins). Many public creditors stated that the times were a useful starting point that could be, if necessary, restricted further in their contracts with bailiff companies. Others stated that if necessary authority to visit and take control of goods outside of these hours could be sought from the court e.g. in the case of shift workers.



While responses from the advice sector, debtors and members of the public were mixed, the majority tended to be more opposed to the proposals than in support of them. Some respondents felt that allowing entry on any day potentially contravened the Equality Act 2010 through indirect discrimination. They suggested that it was unlikely action would take place on Christmas Day

but would take place on the holidays of other religions. The time limits were considered to be both too early and too late, potentially causing embarrassment to the debtor and distress to any children present during these times. There was also concern that there would be no access to free advice lines/centres during these hours. Alternative time limits of 8/9am to 7/8pm were floated. The main criticism relating to question 18, regarding the conclusion of action outside the prescribed hours, centred around the argument that this would complicate the legislation and further confuse debtors. Some of these respondents noted that while the proposals were not suitable for domestic premises, consideration could be given to commercial premises.

Taking control of goods

Q.19 Do you agree with the range of exempt goods? If not, please offer proposals for inclusion or argument against inclusion.

	Yes	No	No response
Question 19	44%	37%	19%

Responses were mixed on the range of exempt goods. The advice sector generally felt that a definitive list was required whereas others felt that this would be too unwieldy and restrictive. Many enforcement respondents proposed that items should only be taken where a debtor had more than one. There were several inclusions in the range which were questioned across the groups. These included internet/telephone devices where they could be classed as luxury items (iPads, smart televisions). There was confusion from many respondents as to why items in a safe would be exempt and several enforcement and public creditors felt that this effectively undermined the enforcement process. There was also a call for a greater clarity over certain items in the range such as “appliances” and “heating and lighting”. There was great concern amongst the advice sector that toys were not separately listed as exempt. The enforcement sector and public creditors raised concerns about vehicles displaying a blue badge (the Blue Badge scheme is for drivers or passengers with severe mobility problems, allowing them to park close to where they need to go). By automatically exempting blue badge vehicles, these respondents feared the creation of a loophole where the badge may be moved from vehicle to vehicle to prevent seizure.

Q.20 Do you agree that the debtor should be able to authorise another person to enter into a controlled goods agreement? If not, please explain why?

Q.21 Do you agree that a person in apparent authority should be able to enter into a controlled goods agreement? If not, please explain why.

	Yes	No	No response
Question 20	67%	14%	19%
Question 21	62%	17%	21%

Respondents across the sectors generally responded positively to these questions. However, there were some notes of caution. It was felt that there should be greater clarity as to the type of individual who could enter into such an agreement – a business partner or manager was seen as suitable, a casual employee was not. Many respondents were concerned that this tool would be open to abuse with enforcements agents putting unnecessary pressure on third parties to sign these agreements. Public creditors and the advice sector were keen to see these measures limited to business premises to protect potentially vulnerable young adults or elderly relatives agreeing to this in a domestic setting. Other respondents were concerned as to how disputes over authorisation would be resolved and welcomed greater consideration of this.

Many creditors and enforcement agents felt that it would be helpful to allow authorisation to be given electronically to avoid the delays caused by waiting for a physical signature.

Securing goods

Q.22 Can you provide any recent evidence which supports or challenges the approach to empower enforcement agents to secure entire premises?

	Yes	No	No response
Question 22	27%	36%	37%

The majority of respondents were not in favour of a power allowing enforcement agents to secure entire premises. However, limited evidence was presented either supporting or challenging the suggestion. Almost all respondents were in agreement that such a power should be restricted to business premises. Some enforcement agents felt it would be useful, particularly in cases where the debtor was likely to remove goods. It was noted that the power could be open to abuse and that care should be taken to ensure that the power was only used to seize goods and not to force the closure of the business.

Supporting evidence for power to secure entire premises

“I was once instructed to distraint for rent at a shop in a shopping centre to the value of £97,000.....the shop owner told me once I left he will have all the goods removed. I had no option but to remain on the property until the following morning until the van could attend. If I was able to secure the shop I would not have had to stay at the shop. I believe that this option would be a great tool in situations such as this. It is important that this would only be used as a last resort and not just to chuck someone out of a shop for a £200 debt. There should be a limit of £2000.00 in order to use this option”. Enforcement sector

“.....where distraint took place at a snooker club for non-domestic rates and specialist contractors could not attend until the following morning to dismantle the snooker tables for removal to proceed. The owners of the club threatened to smash the tables up if the enforcement agents left the premises. The enforcement officers therefore stayed in attendance overnight until the snooker tables could be dismantled and removed without being damaged. Under the circumstances detailed within regulations the enforcement agents need the power to be able to secure the entire premises and supervise the entry by the debtor or any third party to prevent goods being damaged or clandestinely removed.” Enforcement sector

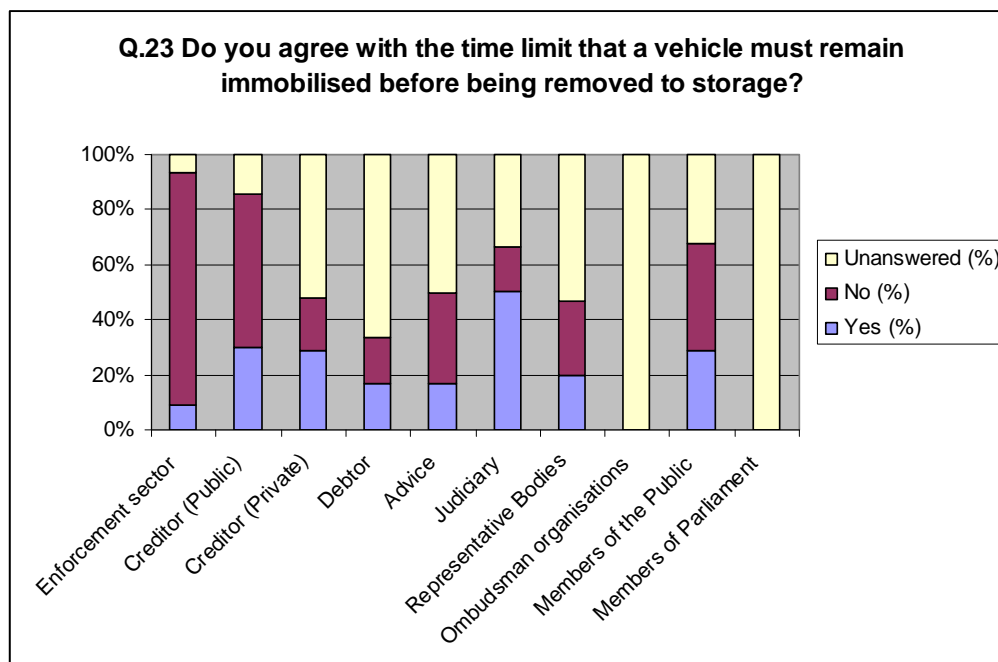
Q.23 Do you agree with the time limit that a vehicle must remain immobilised before being removed to storage? If not, please explain why, providing an alternative period with supporting arguments.

	Yes	No	No response
Question 23	24%	48%	28%

Respondents to this question were generally not in favour of the time limit although opinion was mixed within categories of respondents, as the chart below demonstrates.

Evidence against power to secure entire premises

“In the past 4 years, we have responded to approx 35,000 enquiries from the public regarding a bailiff visit. In that time, we have never received a single enquiry regarding a bailiff securing the entire premises and I am therefore at a loss to understand the merit of such an inclusion in this proposal.” Advice sector



Those in favour of the 24 hour period felt that it provided sufficient time for the debtor to make the payment and have the vehicle released. Respondents who felt that this period was too long tended to be from the enforcement sector. They felt that there was the danger that the vehicle could be vandalised within this time or that the debtor would remove the clamp. These concerns were also echoed by many public and private sector creditors. Some respondents preferred to see the period increased – some to as much as 14 days – to allow sufficient time for any debtors on holiday or otherwise absent to pay the fine.

Sale of goods

Q.24 Do you agree with the term set for the minimum period before a sale may proceed? If not, please explain why, providing an alternative period with supporting argument.

Q.25 Are there any methods of sale other than private contract, sealed bids or advertisement that should be included in the regulations? If so, please provide full details

	Yes	No	No response
Question 24	64%	10%	26%
Question 25	18%	47%	35%

Respondents from across the groups agreed with the proposed minimum time period before a sale may proceed. Many respondents felt that this was reasonable and provided a final opportunity for debtors to pay. There were some reservations, from creditors, enforcement agents and the advice sector, as to who would value the goods at this stage as enforcement agents were not

deemed by some to be qualified to do this. Those opposed to this suggestion mainly came from the creditor and members of the public categories. Private creditors wished the period to be shorter, ranging from 0 to 3 days. Some public creditors and members of the public felt that 14 days was a more realistic time frame.

Alternative methods of sale were made from all categories of respondents and reflected those detailed in the draft regulations. Support was expressed for the ability to sell items via the internet and in particular eBay. Many felt that such action had the potential to net a greater sale value than the traditional auction house. There was also interest in seeing an extension to regulation 39(2), which provides for sale on site, to be extended to include non-domestic rates and rent debts as well as assets which are difficult to move.

Q.26 Do you agree with the methods of dealing with the proceeds of sale?
If not, please explain why, providing an alternative with supporting argument.

	Yes	No	No response
Question 26	49%	16%	35%

The majority of respondents – both those responding yes and no to this question – agreed that the auctioneer should be paid first. A few private and public creditors were keen to see that at least some of the original debt was paid off, some enforcement respondents wished to see their costs covered first and others noted that where “priority” debts, such as child maintenance, had been identified these should be paid first.

Q.27 Are there any other circumstances where goods may be deemed as abandoned?

	Yes	No	No response
Question 27	15%	40%	45%

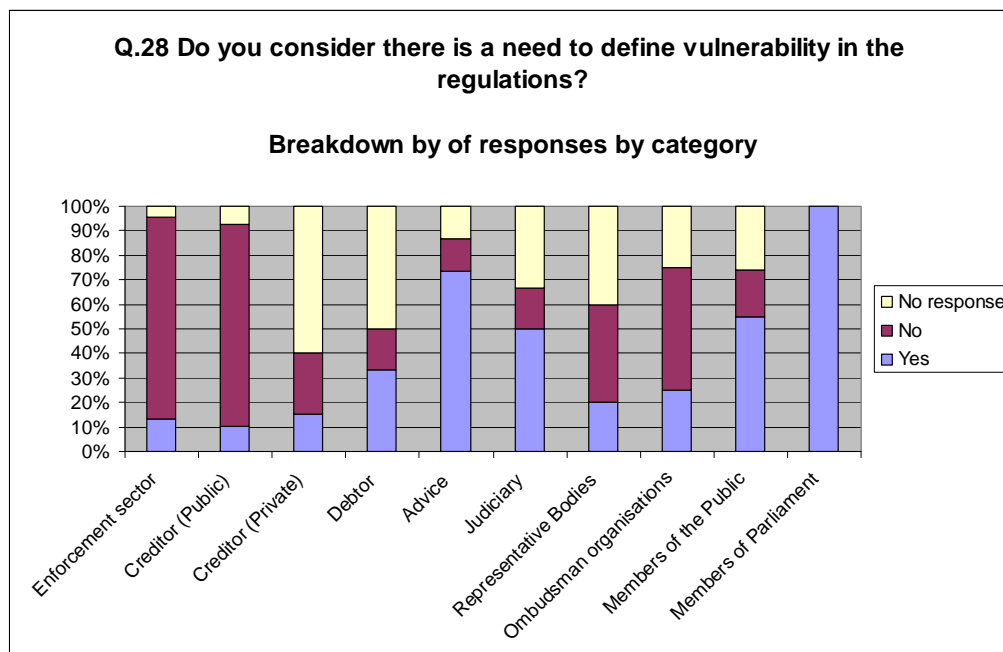
Most respondents had no comment regarding question 27 concerning abandonment. The few comments that were made wished to see clarification of the time limit in which bailiffs may retain goods. This view was shared by the advice and enforcement sectors as well as representative bodies. It was felt that an item which had not sold after 2 to 3 auctions should be returned to the debtor. Concern was raised by one public sector creditor as to who would pay for the costs of collection if ownership did default to the debtor.

Vulnerability

Q.28 Do you consider there is a need to define vulnerability in the regulations? If so, please provide a workable definition with supporting argument.

	Yes	No	No response
Question 28	27%	55%	18%

Most respondents did not wish to see vulnerability defined in regulations.



While there were differing views within each sector about whether it is necessary to define vulnerability there was agreement across all groups, that a workable definition of vulnerability was problematic. Both respondents in favour and against such a proposal raised the same concerns. A list of vulnerable people was seen to be too prescriptive and had the potential to either miss people out or include others unnecessarily, reducing assessment to a tick box exercise.

Vulnerability was seen to be a fluid state which people may move in and out of which would not be captured by a rigid “list” approach. However, the advice sector felt that one key group, people in financial difficulty, should be included if such a list approach was adopted, as they had previously been left out of consideration.

Most respondents preferred to have vulnerability assessed on a case by case basis. Many of those in favour of a definition agreed with this and asked that the definition be suitably broad to allow enforcement agents to make this

assessment. The National Standards were seen as a good guide that could be built upon.

Most respondents were in agreement that any consideration of vulnerability, whether enshrined in the regulations or not, should be supported by training for the enforcement agent.

Distress for rent

Q.29 Do you agree with the information required from a landlord for the authorisation of an enforcement agent to take control of goods? If not, please explain why, providing further information you consider should be included.

	Yes	No	No response
Question 29	27%	19%	54%

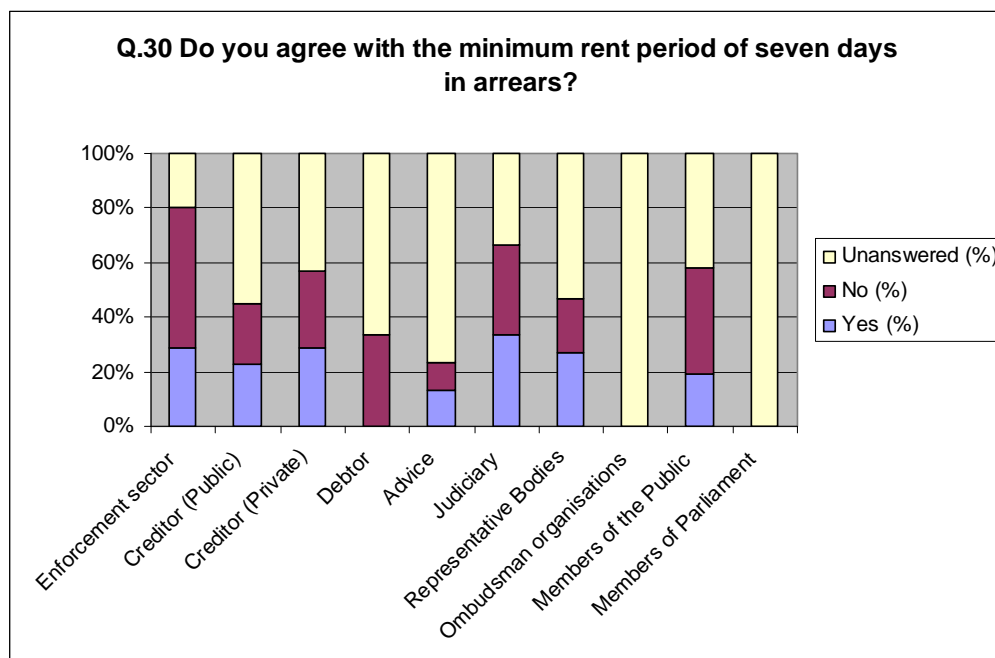
There was a mixed response to this question, particularly across public sector creditor and enforcement respondents but almost all respondents raised the same points for consideration. In addition to the information already proposed, it was strongly felt that the amount owed and the rental period to which it related should be provided by the landlord as a basic minimum. There was also considerable support for an indemnity to be provided to the bailiff, covering them for any action undertaken on the landlord's behalf, which was later proved to be in error. Other suggestions requested including details of the premises for which rent was owed and whether the authorisation to act covered a one-off visit or additional bailiff action relating to the debt.

There was agreement that authorisation from the landlord should be in writing but that an electronic form, with no signature, should be sufficient.

Q.30 Do you agree with the minimum rent period of seven days in arrears? If not, please explain why, providing an alternative and supporting arguments.

	Yes	No	No response
Question 30	23%	28%	49%

As the chart below indicates, responses to this question were mixed across most sectors.



Those in support of this minimum time period felt that it provided an additional opportunity for the debtor to pay together with the flexibility for local discretion for longer terms to be applied where necessary. However, some noted that it may be reasonable to extend this period for commercial premises as they generally do not have as many opportunities to pay as residential tenants.

Greater clarity was welcome as to whether it was seven days before action could be taken or seven days before notice of action could be given. Several respondents, particularly creditors, felt that if it was the latter it would add an unacceptable delay in recovery. Other arguments against this period included that it would promote the idea of an acceptable level of debt/late payment, that it provides time for debtors to abscond or remove goods and that it may contravene provisions in tenancy agreements. Many public creditor and enforcement respondents felt that the current practice of one day should remain.

Q.31 Do you agree with the content of the notice to the sub-tenant? If not please explain why, providing further information.

Q.32 Do you agree with the content of the notices and warnings? If not, please offer proposals for inclusion or argument against inclusion.

	Yes	No	No response
Question 31	45%	2%	53%
Question 32	54%	13%	33%

Respondents were in favour of these proposals, however concern was raised that the current proposals did not address some complex situations. For example, if the sub tenant does not comply, there are no regulations to enable the landlord/enforcement agent to take action against them to ensure payment – would this only be resolved through repossession of the property from the tenant. It was also felt to exacerbate the existing problem with Section 6 Notices under the Law of Distress Amendment Act 1908 whereby a sub-tenant pays their rent to its immediate landlord who then fails to pay rent to the superior landlord. The regulations specify that such a notice will take effect 14 days after the notice has been served.

The standardisation of notices, providing greater clarity for debtors, was broadly welcomed. Many enforcement agents wished to have greater clarity on the flexibility they would have over the format of these notices – would they, for example, be able to alter them to accommodate headed paper etc. Many advice sector respondents were concerned with suggestions that the notices could be reformatted, fearing that essential information would be lost in the “small print”. The advice sector also wished to see the information rewritten in plain English with the inclusion of information on where to seek free advice.

Fees

Core activities

Q.33 Do you agree that the set of core activities in the costs structure cover all types of the enforcement activity undertaken regardless of debt type? If not, please explain why, providing an alternative with supporting argument.

Q.34 Do you agree with the grouping, into stages of these activities? If not, please explain why, providing an alternative with supporting argument.

Q.35 Do you agree the activities are grouped correctly? If not, please explain why, providing an alternative with supporting argument.

	Yes	No	No response
Question 33	50%	23%	27%
Question 34	63%	6%	31%
Question 35	58%	9%	33%

Respondents were generally content with the core activities identified and their grouping into stages. The fee structure was seen as easy to understand, transparent and weighted to encourage debtors to engage with the process at an earlier stage. Several public sector creditors and enforcement sector respondents noted that they were pleased with how a similar version of this structure, currently used by HMCTS, was progressing. However, concerns were raised. Several advice sector respondents felt that the activities listed in the compliance/administration stage were too passive and did not encourage enforcement agents to actively seek to engage the debtor. It was felt that

enforcement agents may give little attention to this stage, instead rushing to the enforcement stage to secure the larger fee. There was some appetite for the first visit to be included in the compliance/administration stage, rather than the enforcement stage, and for repayment options to be negotiated at this earlier point in the process.

Many enforcement agents and creditors wished to see restrictions preventing local authorities from claiming the compliance/administration fee for themselves. They also raised concerns that court applications (regarding forced entry/re-entry and time limits for taking control of goods) and third party disbursements (tow trucks etc) had not been factored into this fee structure. These respondents were unclear as to who was expected to cover these costs. Several respondents, from various categories, also noted that they were unclear as to how multiple warrants would be treated.

Remission

Q.36 Do you consider there is a need for remission? If so, please offer proposals as to the level of evidence required to prove that mental health has contributed to the lack of engagement.

	Yes	No	No response
Question 36	67%	9%	24%

Most respondents saw a need for remission. Suggested forms of evidence focussed on a letter from a social worker or doctor and the proof of receipt of certain benefits. Alternatives such as having a dedicated vulnerable cases unit in each enforcement firm were suggested. Several respondents did not feel that remission was acceptable noting instead that such cases were not suitable for enforcement action at all.

Costs

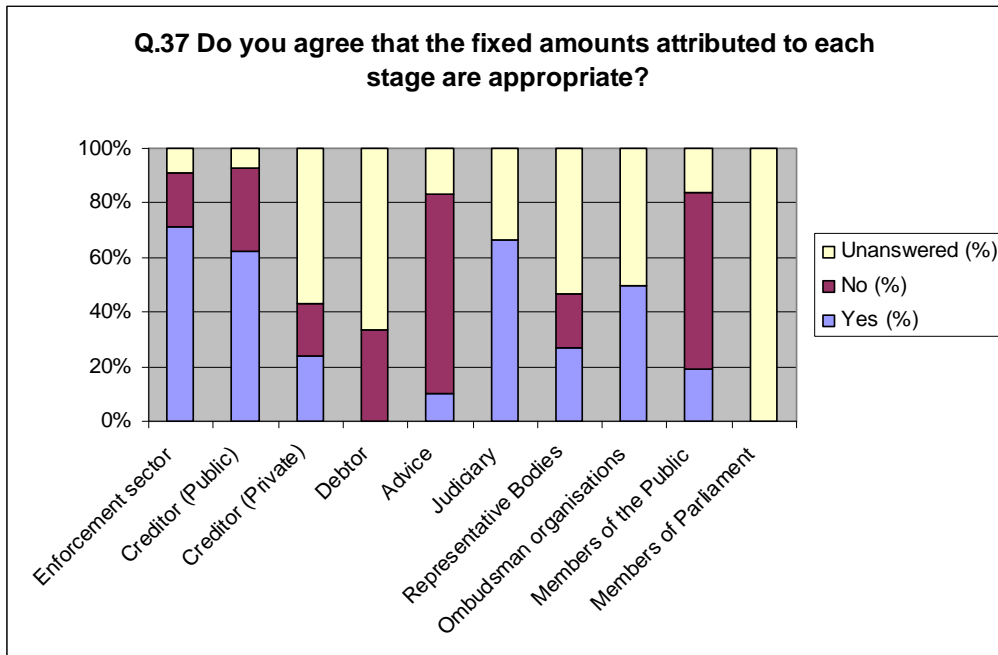
Q.37 Do you agree that the fixed amounts attributed to each stage are appropriate? If not, please explain why?

Q.38 Do you agree the percentage costs attributed to the relevant stages are appropriate and the threshold is correctly placed? If not, please explain why, providing an alternative with supporting argument.

Q.39 Is there a need for an exceptional costs process? If so, please offer proposals how such a scheme would operate including the thresholds for such a process?

	Yes	No	No response
Question 37	46%	35%	19%
Question 38	49%	26%	25%
Question 39	46%	18%	36%

The groups most in favour of the new fees were the enforcement sector, public sector creditors, judiciary and ombudsmen organisations whilst those least in favour tended to fall under the advice sector and members of the public categories.



Whilst most respondents saw the need for a revised structure, some concerns were raised. There were queries about the figures used to calculate the costs. The advice sector challenged the inclusion of directors costs and stated that all costs had been calculated using the most expensive type of enforcement as the basis (RTA) while enforcement agents were concerned that costs for court applications had not been considered.

It was noted that setting standard fees for each stage and all debt, meant that there was little incentive for debtors to settle early in each stage as they would pay the same as those paying later on. Some debtors with certain debt types would now have to pay substantially more in fees than they would previously and, as not all debt types require all the core actions listed, some respondents were concerned that it would lead to an unacceptable rate of return for enforcement companies. It was felt that these factors, coupled with the view from some advice bodies that the fees were disproportionately high, may result in the pursuit of fewer debts.

Concern for council tax debtors led many advice sector respondents to oppose the proposed percentage fee/threshold. It was felt that this would place an unreasonable burden on debtors who were already struggling. Public sector creditors tended to be in support of the percentage but felt that the threshold should be higher. Others wished to see the percentage introduced on a sliding scale while some respondents felt that it should be restricted to commercial debtors only. A small number of respondents identified a computational error in the percentage fee calculation in scenarios D3–D6 of

Tables 3 and 47 of the *Enforcement Fee Structure Review*. The correct figures are detailed in the footnote below.³ Table 3 was replicated in the consultation stage impact assessment.

Concerns from the enforcement sector tended to focus on the sale fee, which was seen as far too low for the actions it covered. Some queried whether some of these costs (such as tow trucks) could be covered in the exceptional costs process, although some public creditors and advice sector respondents disagreed with this proposal. In relation to exceptional costs, bailiffs were split as to whether they refer to a court before they apply such charges while many public creditors wanted such cases to be referred back to them before a decision is taken.

The possibility that local authorities may claim the initial compliance/administration fee was of concern to many enforcement agents and was raised repeatedly in response to many of these questions regarding costs.

Q.40 Do you agree with the differences in the costs structure between High Court and non-High Court debt? If not, please explain why.

Q.41 Do you consider the costs structure will have an adverse effect on recovery of Non-Domestic Rate cases? If so, please provide detail.

Q.42 Do you agree with the order of payment of monies on partial payments? If not, please explain why, providing an alternative with supporting argument.

	Yes	No	No response
Question 40	32%	24%	44%
Question 41	14%	47%	39%

There was a mixed response to question 40. Many noted that High Court enforcement was potentially more costly, with the enforcement officer's personal responsibility to the creditor and the creditor's requirement to cover administration costs for failed enforcement. However, many respondents questioned the degree of difference in fees and others questioned the evidence that this assertion was based upon.

Most respondents felt that the cost structure would not have a negative impact on recovery of Non Domestic Rates with many commenting that the process provided debtors with numerous opportunities to pay and with most only charged the initial £75 fee. Those who disagreed felt that the fees were

³ The correct figures are:
 Table 3, scenarios D3–D5: £605, scenario D6: £1,010;
 Table 47, scenarios D3–D5: £3,980; scenario D6: £7,760.

excessive for small businesses forcing many to close and preventing some creditors from pursuing the debt in the first place. Some bailiffs commented that the low sale fee would prevent removals thus undermining the threat of enforcement action.

Q.42 Do you agree with the order for payment of monies on partial payments? If not, please explain why, providing an alternative with supporting argument.

	Yes	No	No response
Question 42	49%	18%	33%

Most respondents agreed with the pro rata proposal. It was seen to be fairer to the creditor ensuring that they recovered at least some of the debt whilst removing any incentive on the bailiff's part to cease pursuit of the debt once fees had been received. Several respondents suggested an alternative arrangement in which the payments are split 50/50 between the creditor and enforcement agent. Once fees are cleared 100% would return to the creditor. Some enforcement agents were keen to see a minimum payment in place if the local authority recalls the debt, for example the compliance fee would be paid in full.

Inflation and review

	Yes	No	No response
Question 43	51%	23%	26%
Question 44	55%	19%	26%
Question 45	51%	21%	28%

Q.43 Should the costs structure be updated to take account of inflation prior to implementation?

Q.44 Should the costs structure be updated annually by indexing to a measure of inflation?

Q.45 Is three years a suitable timeframe for the costs structure to be comprehensively reviewed and potentially recalibrated? If not, please explain why, providing an alternative with supporting argument.

There was a great deal of support to update the costs structure in line with inflation and to update it regularly in the future. Public creditors and enforcement agents were in particular favour of this. As the fees were calculated in 2009, it was felt that an update was needed to ensure they were in line with costs and adequately rewarded enforcement agents for the work carried out. The advice sector was less supportive, noting that the fees are already high and that very few debtors would have seen their incomes

increase in line with inflation. There was also some reluctance across the sectors to an annual update of the cost structure. It was feared that this may cause confusion amongst debtors, create problems where debt spans several years and caused a heavy administrative burden on enforcement companies.

Suggestions for a timeframe reviewing the cost structure ranged from 1 to 5 years, with 3 and five years being the most popular suggestions. It was argued that this would allow the system to become properly established and would reduce the administrative burden on enforcement companies.

Regulation

Q.46 Do you consider there are alternative or less regulatory options that would be suitable for enforcement agents? If so, please provide proposals?

	Yes	No	No response
Question 46	4%	69%	27%

There was very little support for alternative or less regulatory options. Options suggested included the introduction of certification for High Court Enforcement Officers. The advice sector and some bailiff companies actually wanted to see greater regulation with many citing the introduction of a single independent regulator as the best solution.

Certification

	Yes	No	No response
Question 46	4%	69%	27%
Question 47	31%	41%	28%
Question 48	65%	7%	28%

Q.47 Do you agree that the application for a certificate should be made by the enforcement agent at the local court to the area where they will be carrying out the main part of their business? If not, please explain why, providing an alternative with supporting argument.

Q.48 Do you agree that the application for a certificate should be dealt with by specialised District Judges? If not, please explain why, providing supporting argument.

The majority of respondents did not agree with the suggestions regarding certification. Many respondents from the advice sector stated that they did not support the current certification system at all and did not wish to see it revised. Their key complaints were that it regulated individuals rather than companies and was often a rubber stamping exercise with nothing in place to prevent disreputable bailiffs who have lost their certificate from reapplying elsewhere.

These respondents called for further regulation or failing this, a national database which may go some way to resolving these issues.

Enforcement respondents generally did not feel that an application to a local court was a practical option as most bailiffs covered many areas. However, specialist District Judges were seen as a good idea. It was felt that they would provide for better consistency and a more in depth knowledge of their work allowing for more robust scrutiny and better protection for debtors. Others argued that all judges should be competent enough and some raised concerns over costs.

Q.49 Do you have any comments on either of the proposals submitted by the British Parking Association (BPA)?

	Yes	No	No response
Question 49	10%	41%	49%

Respondents across the sectors did not agree with these proposals. The primary concern from enforcement agents was that the BPA is unlikely to appreciate the complexity of the industry. Others agreed that the BPA were not the independent regulator many of them wanted to see. There were significant concerns about the cost of the proposal with some respondents stating they were unclear how it would be funded.

Training

Q.50 Do you agree the competence criteria is an acceptable entry in the profession?

Q.51 Do you consider that mandatory training is necessary to ensure an enforcement agent is fit and proper to hold a certificate? If not, please provide alternative proposals.

Q.52 Do you consider an enforcement agent should undertake any further training or development after the granting of the certificate? If so, please provide proposals.

	Yes	No	No response
Question 50	70%	5%	25%
Question 51	76%	2%	22%
Question 52	70%	7%	23%

A large majority of respondents were in support of the competence criteria, mandatory training and ongoing training proposals listed in the consultation. Additional suggestions included training for office staff dealing regularly with members of the public and the requirement to regularly renew a bailiff's

certificate. Many enforcement respondents were keen to have the flexibility to run their own in-house courses or on the job training which would then be assessed. The existing Civil Enforcement Association (CIVEA)/Institute of Revenues Rating and Valuation (IRRV) examinations were seen as a useful standard setting tool and it was felt these could be mandatory. Refresher training was generally seen as essential with timeframes for this ranging from 1 to 5 years.

A few responses from bailiffs felt that training was not necessary and that certification by a judge was the best way to ensure standards while some advice responses felt that without an independent regulator these proposals would not work.

Complaints

Q.53 Do you agree with our proposals on the complaints handling strategy? If not, please provide alternatives with supporting argument.

	Yes	No	No response
Question 53	58%	23%	19%

Many respondents felt that the voluntary proposals were not sufficient and did not address a number of issues. Complaints to a trade association were not seen as adequate as they would not address bailiffs who were not members. Different trade associations also meant there is potentially a lack of consistency in complaints handling. Alternative suggestions revolved around an independent regulator or, at the very least a final stage, to be overseen by an independent body. Some respondents from the advice sector suggested the establishment of an enforcement services ombudsmen or, where this was not possible, the use of existing organisations such as the Financial Ombudsmen Services or the Local Government Ombudsmen. It was noted that the complaints procedure should not be prohibitively expensive. It was suggested that a new regulator could be funded through a similar charging model to that used by the Financial Ombudsmen Services organisation.

High Court

Q.54 Do you consider that the jurisdiction order should be amended? If so, please provide alternatives with supporting argument.			
Category of respondent	Yes %	No %	No response %
Advice	27%	20%	53%
Private creditor	19%	19%	62%
Public creditor	26%	7%	67%
Debtor	17%	0%	83%
Enforcement sector	73%	11%	16%
Judiciary	17%	0%	83%

Q.54 Do you consider that the jurisdiction order should be amended? If so, please provide alternatives with supporting argument.			
Category of respondent	Yes %	No %	No response %
Members of Parliament	0%	0%	100%
Members of the Public	13%	16%	71%
Ombudsman organisations	0%	25%	75%
Representative Bodies	33%	20%	47%
Total	32%	12%	56%

The majority of respondents were in favour of proposals to amend the jurisdiction order. While a clear majority of the enforcement sector, public creditors and debtor responses were in favour, responses from many other sectors were mixed.

Those in favour welcomed a move to a single system which would be easier to understand and would provide creditors with greater choice. Enforcement agents were supportive of the move allowing access to a wider range of cases. However, those opposed had a number of concerns. The High Court system was viewed as less effective, difficult to challenge and disproportionately expensive for the debtor. Some respondents were concerned that this move would eliminate protections outlined in the Consumer Credit Act 1974. Other respondents were willing to consider the change but only on the condition that the level of HCEO fees were revised downwards.

Impact Assessment

Q.55 Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.

Q.56 Do you agree that we have correctly identified the extent of impacts under these proposals? Please give reasons.

Q.57 Do you have any evidence of equality impacts that have not been identified within the equality impact assessment? If so, how could they be mitigated?

	Yes	No	No response
Question 55	49%	17%	34%
Question 56	48%	14%	38%
Question 57	4%	53%	43%

Most respondents agreed that the Impact Assessment identified the range and extent of impacts under this proposal. However, many suggested areas which

they felt required further consideration while others, in particular the advice sector, public creditors and members of the public, identified areas that they did not feel had been considered at all. These suggestions are set out in the table below.

Possible impacts which may require new or additional consideration	
The impact of...	on...
Increased fees	Debtors
No independent complaints or redress system	Debtors
No independent regulator	Debtors, enforcement agents and creditors
The enhanced certification process	Enforcement agents and debtors
Bailiff action	Vulnerable debtors, those sharing a house with debtors (debtor's family, other private tenants)
Creditors manipulating the fee structure	Enforcement agents and debtors
New regulations	Debtors behaviour
Multiple warrants	Enforcement agents and debtors
VAT	Debtors, enforcement agents and creditors

The majority of respondents did not have evidence of equality impacts that were not identified in the equality impact assessment. Those who answered yes to question 57, suggested other sources of data which could be considered in order to identify such impacts. These included a 2007 analysis by Citizens Advice of the profiles of clients experiencing bailiff enforcement action for non payment of council, the data collected by the civil and social justice survey which attributes the majority of debt problems to illness, disability and changing circumstances and research carried out by Policis for the Money Advice Trust which looks at the scale of vulnerability amongst debt clients and offers six alternative definitions of vulnerability. It was felt that these research studies may be of assistance assessing equality impacts.

Consultation Co-ordinator contact details

If you have any comments about the way this consultation was conducted you should contact Sheila Morson on 020 3334 4498, or email her at: sheila.morson@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ**

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Category	No. of responses
Advice	30
Private creditor (<i>businesses, private landlords, property companies, legal services with clients who are creditors in the private sector</i>)	20
Public creditor (<i>local authorities, government agencies, courts service</i>)	96
Debtor (<i>individuals or companies who have identified themselves as having experiences of being debtors</i>)	6
Enforcement sector (<i>enforcement companies, individual enforcement agents, suppliers to enforcement sector</i>)	45
Judiciary	6
Members of Parliament	1
Members of the Public (<i>individuals who have not indicated whether they are either creditors or debtors</i>)	31
Ombudsman organisations (<i>ombudsmen services</i>)	4
Representative Bodies (<i>trade unions, lobby groups, professional associations for creditors, debtors, the enforcement sector and the public sector</i>)	15

Annex B – Stakeholder Engagement

Date	Sector	Stakeholder Organisations / Representative Group
22/2	Public creditor	Local Authority Special Interest Group Local Authorities responsible for traffic enforcement
28/2	Advice sector	Zaccheus 2000 Trust Citizen's Advice [meeting with Lord McNally]
07/3	Enforcement sector	Civil Enforcement Association Bailiff companies
08/3	Enforcement sector [and private creditor]	Civil Court Users Association Liaison Group
23/3	Enforcement sector, public and private creditors, and advice sector	Enforcement Law Reform Group
29/3	Government	Inter-departmental Working Group:
30/3	Public creditor	Local Authority Working Group
18/4	Enforcement sector [and public and private sector]	British Parking Association Annual Conference – public event.
19/4	Enforcement sector [and private creditor]	Civil Court Users Association
25/4	Enforcement sector and public creditor	Bailiff and Enforcement Special Interest Group
25/4	Enforcement sector, private and public creditors	IRRV Conference Institute of Revenues Rating and Valuation Local Authorities and Enforcement Industry
27/4	Debtors	Consumer user – Debtor Group
3/5	Private Creditor	British Property Federation
4/5	Enforcement sector	High Court Enforcement Officers Association
27/9	Enforcement sector, private creditors and advice sector	UK.gov and National Standards for Enforcement Agents Working Group

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