

Title: Transforming Bailiff Action IA No: MoJ 170 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)				
	Date: 8 January 2013				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
Contact for enquiries: Anne Marie Goddard 0203 334 6330					

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCBS on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£40m	£40m	£0m	Yes	Zero Net Cost

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

The complexity of the current law and fee structures may generate inefficiencies and unnecessary costs for enforcement agents and the voluntary nature of existing industry standards is associated with some suboptimal customer (debtor) handling behaviours by some agents. This may negatively affect debtors as well as enforcement agents. Government intervention is required to simplify separate enforcement regulations and fee structures and to address the inconsistent application of voluntary standards.

What are the policy objectives and the intended effects?

The policy objectives are to simplify and clarify the enforcement process, enforcement powers and fee structures, and to support industry standards of conduct (by addressing certification and competence requirements), enhancing confidence in the sector and treatment of vulnerable debtors and supporting the sector's reputation. The intended outcome is an enforcement sector which operates effectively and efficiently, including in relation to customer (debtor) handling.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The Government has considered: (i) The continued application of voluntary industry standards, or; (ii) Implementation of the Tribunals, Courts and Enforcement Act 2007 (TCE Act) (preferred option below), or; (iii) Full independent regulation for enforcement agents. The Government does not believe that full independent regulation is appropriate at this time. The preferred option considered in this Impact Assessment is:

Option 1: Implementation of the provisions in the TCE Act - This would provide clarity, simplification and unity of the law. It would provide a single, staged fee structure and introduce certification and competence requirements for all enforcement agents. At the consultation stage, two sub-options for the competence requirements were considered: a) where these would be flexible; b) where these would be defined in relation to set qualifications. In light of consultation responses option b) is preferred.

Will the policy be reviewed? It will be reviewed after implementation – refer to Post Implementation Review for detail.						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: n/a	Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister  Date: 7 February 2013

Summary: Analysis & Evidence

Policy Option 1

Description:

Implementation of Part 3 of, and Schedules 12 and 13 to, the Tribunals, Courts and Enforcement Act 2007, with changes in the law, costs that can be recovered and training and certification

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £40m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£1m	£4.5m	£40m

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

Enforcement agents – aggregate costs to industry

- One-off adjustment and familiarisation costs (around £1m in aggregate).
- Ongoing costs from new certification and training requirements (around £1m per year).
- Ongoing operational costs from the new powers, leading to enforcement agents to adapt their operating procedures (around £3m per year across the sector).

Debtors

- In aggregate, average fees are estimated to be approximately equal to those currently, although some fees could be higher in future.

Creditors

- Costs associated with higher creditor guaranteed fee in future (around £0.5m per year)

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

n/a

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0m	£9.6m	£80m

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

Enforcement agents – aggregate costs to industry

- Doorstep visit operational cost savings, estimated at around £5.5m per year.
- Operational cost savings from clarifying the law, including simplifications to systems and training, estimated at around £4m per year.
- Complaint handling cost savings from dealing with fewer complaints estimated at around £0.1m per year.

Debtors

- In aggregate, average fees are estimated to be approximately equal to those currently, although some fees could be lower in future.

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

- Reputational benefits (unquantified) as enforcement agents should in future operate more transparently and more professionally.
- Benefits to debtors associated with improved behaviour by enforcement agents and improved experiences of the enforcement process.

Key assumptions/sensitivities/risks

Discount rate (%)

- No overall impact on case volumes.
- No overall impact on overall enforcement success rates.
- 50% of successfully enforced debts are repaid at the administration stage.
- Analysis shows no overall impact on total fee revenue for the enforcement agent sector.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £4.5m	Benefits: £9.6m	Net: £5m	Yes	Zero net cost

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?				England and Wales		
From what date will the policy be implemented?				April '14		
Which organisation(s) will enforce the policy?						
What is the annual change in enforcement cost (£m)?				Expect negligible		
Does enforcement comply with Hampton principles?				Yes		
Does implementation go beyond minimum EU requirements?				No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: n/a		Non-traded: n/a
Does the proposal have an impact on competition?				No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?				Costs: n/a		Benefits: n/a
Annual cost (£m) per organisation (excl. Transition) (Constant Price)		Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	No	No

A summary of equalities considerations can be found at Annex H.

Evidence Base (for summary sheets) – Notes

References

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

No.	Legislation or publication
	Ministry of Justice consultation paper: Transforming bailiff action. How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections, February 2012
	<i>Enforcement Fee Structure Review</i> A report by Alexander Dehayen for the Ministry of Justice, November 2009
	Primary Legislation: Tribunals, Courts and Enforcement Act 2007
	Draft Regulations: The Taking Control of Goods Regulations, February 2012
	Response to consultation: Regulation of Enforcement Agents , March 2008
	Consultation paper: Regulation of Enforcement Agents, January 2007
	White Paper: Effective Enforcement. Improved methods of recovery for civil debt and commercial rent and a single regulatory regime for enforcement agents, March 2003
	National Standards for Enforcement Agents published by Lord Chancellor’s Department, April 2002
	Green Paper: Towards Effective Enforcement. A single piece of bailiff law and a regulatory structure for enforcement, July 2001
	Independent Review of Bailiff Law Report, Professor J Beatson QC, June 2000
	Questionnaire in Annex G and responses to these
	<i>Insight work to support transforming bailiff action consultation</i> , Independent Social Research, August 2012

Evidence Base

1. Introduction

- 1.1 Effective enforcement underpins both the criminal and civil justice systems. People ordered to pay a court judgment, criminal penalty, compensation award or simply the debt they owe, such as rent arrears, may have little or no incentive to do so if they know there is no effective means of enforcement. Without prompt and efficient enforcement, the authority of the courts, the deterrent value of penalties and public confidence in the justice system might all be undermined. Effective enforcement action is crucial to business as it underpins the operation of markets and supports market confidence.
- 1.2 Enforcement action may be necessary when a debtor fails to pay or negotiate a reasonable instalment regime with a creditor who is entitled to collect what they are owed. There are several different enforcement options depending on the type of debt, such as attachment of earnings, deductions from benefits, charging orders and seizure and sale of goods by bailiffs. This Impact Assessment (IA) concentrates on enforcement by the seizure and sale of goods by bailiffs. This IA describes bailiffs and enforcement officers as enforcement agents.
- 1.3 The proposals in this IA have long standing approval from the enforcement agent sector. They constitute a set of simplifications and clarifications to existing powers, rules and other provisions. Industry bodies agree that these reforms should enable enforcement agents to operate more efficiently, also to the benefit of debtors, and should support enhanced customer (debtor) handling across the sector.
- 1.4 The proposals in this IA fall under the definition of regulatory reforms. This IA therefore aims to explain, from an enforcement agent sector perspective, why these reforms are justified and desirable. The analysis in this IA draws from two independent research projects commissioned by the Ministry of Justice (MoJ), from evidence provided by consultation exercises, and from other ongoing liaison with the enforcement agent sector.

Background

Number of private enforcement agents

- 1.5 There are several types of private enforcement agent working across several different debt areas. These include:
 - 1) **Private certificated bailiffs.** Private certificated enforcement agents hold a certificate from the county court and must meet certain conditions to do so, for example, show that they are a fit and proper person to hold a certificate. Certification is legally required to operate in the enforcement of council tax, distress for rent¹, non-domestic rates and road traffic debts. Some creditors also require the enforcement agent to be certificated (HM Revenue and Customs (HMRC) and the Child Maintenance Enforcement Commission (CMEC)). In November 2012 there were nearly 1,800 certificated bailiffs on the certificated bailiffs register², of which, around:
 - 1,500 worked for private firms
 - 230 were self employed
 - 70 worked for local authorities as local authority employeesAround 120 firms hire certificated enforcement agents, and nearly 50 of these are members of the main industry body, the Civil Enforcement Association (CIVEA). CIVEA also has a small number of private members.
 - 2) **Private non-certificated bailiffs.** These enforcement agents do not require a certificate to operate, and can enforce debts relating to criminal fines and high-court debts (based

¹ Under the common law remedy of Distress for Rent, certified bailiffs can enter the leased commercial premises of a defaulting tenant and remove and sell goods owned by the tenant up to the value of the rent arrears. In effect, this right to distrain for rent permits a landlord to recover rent arrears, without initiating court proceedings.

² certificatedbailiffs.justice.gov.uk/CertificatedBailiffs/

on existing law or contractual arrangements). For criminal fines, these enforcement agents would require a certificate after 6 months, and for high-court debts they would need to work to a High Court Enforcement Officer (HCEO).

Criminal fines and high-court debts constitute nearly 20% of debt volumes referred to private enforcement agents. The remaining 80% of enforcement work is considered to be undertaken by private certificated enforcement agents, of which there are 1,800. Based on this, it is estimated that there around 450 private non-certificated enforcement agents

- 3) **High court enforcement officers.** HCEOs enforce high court writs, also known as writs of fi fa. They do not require a certificate to operate but must be registered with the High Court Enforcement Officers Association (HCEOA). As of November 2012 there were 64 registered HCEOs. Private non-certificated enforcement agents can carry out the work on their behalf.

- 1.6 Outside of the private enforcement agent industry, there are also county court bailiffs. These enforcement agents are employed civil servants and enforce County Court Judgments (CCJs). County court bailiffs will only be impacted by some elements of the proposals, and due to their public sector nature are outside the scope of the assessment on the enforcement agent industry.

Table 1: Summary of numbers of private enforcement agents

<i>Enforcement agent type</i>	<i>Debt areas operate in</i>	<i>Number of enforcement agents</i>
Private certificated enforcement agents	Council tax; child support; distress for rent; HMRC; non-domestic rates; road traffic debts.	1,800
Private non-certificated enforcement agents	High court writs (working to a HCEO); criminal fines (during 6 month grace period).	450 (This figure includes 64 HCEOs)

Volume of enforcement action

- 1.7 Table 2 below summarises the available information on debt volumes enforced by private enforcement agents. As there is no overall regulatory oversight of enforcement agents or their activity, most of the information has been provided by particular agencies or public bodies.

Table 2: Information on debts enforced by private enforcement agents

Debt Area	Statutory certification requirement	Contractual certification requirement (i.e. creditor requires it)	Information on approximate volumes of enforcements per annum (using enforcement agents)	Average debt size (to nearest £50)³
Council tax	Yes	-	1,500,000 ⁴	£600
Child support	No	Yes (CMEC)	11,500 ⁵	£5,700
Distress for rent	Yes	-	40,000 ⁶	£5,650
HMRC debts: Stamp duty land tax / penalties; customs &	No	Yes (HMRC)	400,000 ⁷	

³ As described in the enforcement industry questionnaires received during the consultation period. The figures reflect a weighted average from the information in the sample.

⁴ The Chartered Institute of Public Finance and Accountancy (CIPFA) produced revenue collection statistics for 2009-10, including enforcement action to levy distress (i.e. seize property) in relation to non-domestic rates and council tax. For council tax, the total volume of accounts at initial billing was 21 million and almost 1.5 million (7%) were referred to enforcement agents. Goods were removed in around 1,000 accounts.

⁵ The Child Maintenance Enforcement Commission reports that over the one year period up to March 2011 there were 11,325 child enforcement distress actions referred to enforcement agents. However, it is unclear what the volume of resultant property seizures was.

⁶ Relates to door to door visits. Distress for rent cases do not require a court order as they relate to private creditors. Precise volume information is therefore unknown, and volumes have been estimated based on the proportion of distress for rent work carried out by a sample of enforcement agent firms (who responded to the enforcement industry questionnaire). There were nearly 900 private certificated enforcement agents associated with the firms in the sample, meaning the responses reflect approximately half of private certificated enforcement agents.

⁷ HMRC do not record specific information on volumes of enforcement, however, they recorded approximately 400,000 door to door visits in 2011 which may include visits for collection of information, debt collection or enforcement

excise duties and other indirect taxes; social security; taxes				
Non-domestic rates	Yes	-	110,000 ⁸	£3,000
Road traffic	Yes	-	1,200,000 ⁹	£150
Criminal fines	No	Yes but with 6 months grace	580,000 ¹⁰	£350
Writs of Fi Fa ¹¹	No	No	45,000 ¹²	£3,700
			Total per annum: 4,000,000 ¹³	

Overall enforcement agent costs and profits

1.8 Overall, the estimated total volume of debts enforced by private enforcement agents is nearly 4 million cases per annum¹³. The estimated industry revenue is around £140m per annum. This revenue estimate has been derived by scaling up information on average current revenues per case from a sample of firms¹⁴ to reflect wider volumes across the industry.

Table 3: Estimating industry revenue (rounded figures)

Revenue per case non-high court debt	£33
Estimated annual volume non-high court debt	3,850,000
Estimated total revenue non-high court debts	£127m
Revenue per case high-court debt	£233
Annual volumes high-court debt	45,000
Estimated total revenue high-court debt	£10m
Estimated total industry revenue	£138m

1.9 Profit margins across the industry are assumed to be around 9%¹⁵, based on independent research commissioned by the MoJ. If overall industry income is nearly £140m per year, overall industry profits would be around £11m per year and overall industry operating costs would be nearly £130m per year. These cost, revenue and profit figures reflect the assumed industry baseline for the analysis in this IA. It is considered these estimates are reasonable as the information underpinning the calculations has been taken from independent research in which the enforcement agent industry was involved.

Current regulatory position

1.10 Many enforcement firms or agents are members of the industry bodies - the Civil Enforcement Association (CIVEA) and the High Court Enforcement Officers Association (HCEOA) – which aim to promote higher standards from within the industry through codes of practice, training and complaints procedures.

⁸ The Chartered Institute of Public Finance and Accountancy (CIPFA) produced revenue collection statistics for 2009-10, including enforcement action to levy distress (i.e. seize property) in relation to non-domestic rates and council tax. It reported that the number of national non-domestic rate accounts was around 1.8 million in 2009-10. Of these, approximately 110,000 (or 6%) of accounts were referred to enforcement agents to seize property, and the resulting number of accounts where goods were removed was around 1,000.

⁹ The total volume of road traffic fine debts is not known with certainty. Some initial estimates from HM Courts and Tribunals Service indicate there might be around 1.2 million road traffic debt fines per year.

¹⁰ The total volume of criminal fine debts is not known with certainty. Some initial estimates from HM Courts and Tribunals Service indicate there might be around 580,000 criminal fines enforced by enforcement agents per year.

¹¹ Writs of fi fa (fieri facias) are the most common type of warrant of execution. They empower High Court Enforcement Officers to seize and, if necessary, to sell the debtors goods to raise money to pay off the debt.

¹² There were 44,900 writs of fi-fa issued in 2010 (www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/judicial-annual.htm) and approximately 151,000 warrants of execution issued in this same period. However, not all warrants would have been successfully enforced.

¹³ The volumes covered in Table 1 relate to a one-year period, however different types of debt cover a different year. For example non-domestic rates and council tax figures for 2009-10 are provided, whereas child support data covers a one-year period up to March 2011. Although these cover different time periods, these have been summed up to give an approximation of a 1 year period.

¹⁴ This accounting data was extracted from the *Enforcement Fee Structure Review* report, a report published alongside the Consultation Paper and consultation stage Impact Assessment, produced by Alexander Dehayen for MoJ. This report underpinned the analysis for the proposed fee structure, and therefore it is considered to be a relatively robust estimate of average revenues per case currently.

¹⁵ This is based on information in the *Enforcement Fee Structure Review* (where average profit margins for non-high court debts were 8.6% and high court debts were 10.85%) and checked against industry information on the wider debt enforcement industry (Plimsoll April 2011).

- 1.11 The National Standards (a voluntary code for enforcement agents), published in 2002 by the then Lord Chancellor's Department also exist to share, build on and improve good practice and raise the level of professionalism across the enforcement sector. These standards are not legally binding, but offer a guide for the industry and creditors to use in setting and benchmarking their professional standards.
- 1.12 The National Standards were amended in January 2012, partially as a reminder to creditors and enforcement agents of their responsibilities. However several problems exist in the enforcement industry which require more significant reforms including: fees; complexities of the law; and regulatory inadequacies or absences that present problems for debtors and enforcement agents.

Past consultation

- 1.13 This IA focuses on reforms to address these issues, which involves bringing the provisions in the Tribunals, Courts and Enforcement Act 2007 (TCE Act) into effect. Past consultation (prior to the TCE Act) included:
- Independent Review of Bailiff Law Report, Professor J Beatson QC, June 2000;
 - Green Paper: Towards Effective Enforcement. A single piece of bailiff law and a regulatory structure for enforcement, July 2001; and
 - White Paper: Effective Enforcement. Improved methods of recovery for civil debt and commercial rent and a single regulatory regime for enforcement agents, March 2003.
- 1.14 The proposed reforms have been long awaited and are largely supported by all sides, particularly the enforcement agent industry. Industry bodies believe that the current law and industry standards do not allow for the most efficient or effective operation of enforcement activity, including in relation to customer handling issues. Industry bodies have been pressing for the proposed reforms for some time.
- 1.15 In summary the main affected groups are:
- Enforcement agents and the enforcement industry, including Central and Local Government who employ their own officers;
 - Creditors including HM Revenue and Customs, Local Authorities and the Child Maintenance and Enforcement Commission;
 - Debtors;
 - HM Courts & Tribunals Service;
 - Third Sector and voluntary organisations, including debt advice organisations;
 - Legal professionals.

Problem under consideration

- 1.16 The existing regime of powers and standards which applies to the enforcement agent sector generates unnecessary costs and inefficiencies, and could benefit from simplification and clarification. Improved application of voluntary standards may also lead to improved customer handling and may enhance the reputation of the enforcement agent sector as a whole, to the benefit of all in the sector.
- 1.17 Annex A provides more detail on the specific problems under consideration, which are summarised below. Annex B provides detail of supporting evidence for change.

Clarification of the law

- 1.18 There is unnecessary complexity from numerous legal and trade requirements. These generate costs to enforcement agents through requiring knowledge of these and operating several different systems, which also leads to complexity for debtors in understanding their rights.
- 1.19 There is difficulty in enforcing voluntary standards of behaviour across the industry, which can undermine these standards and hence undermine the sector's reputation.

Fee structures

- 1.20 The lack of clarity on fees makes it difficult and costly for enforcement agents to apply the correct fee. This also drives complaints which generate further costs for enforcement agents.
- 1.21 Fees are not well aligned with costs in some cases. This means enforcement agents do not always cover their costs unless they engage in unnecessary other activities or otherwise make use of discretionary fee arrangements. Industry bodies do not support having to operate in this way and would prefer a regime where fees are more aligned to activities and costs.

Competence and certification requirements

- 1.22 There are currently inconsistent certification and competence requirements by debt stream, which creates unnecessary complexity.
- 1.23 The certification process is also partial, which could mean that some enforcement agents are lacking key skills. The Independent Social Research (ISR) Report commissioned by MoJ¹⁶ found that industry bodies themselves consider that existing issues with the implementation of industry standards could be tackled by addressing entry requirements to the enforcement agent sector and ensuring agents possess the necessary skills and competences. Industry bodies support these reforms, which tackle issues with voluntary industry standards by addressing entry to the sector, and which are seen as a cost effective way of ensuring that industry standards are met, to the benefit of the entire enforcement agent sector.

Policy Objectives and Policy Proposals

- 1.24 The policy objectives are to simplify and clarify the enforcement process, enforcement powers and fee structures and to support industry standards of conduct (by addressing certification and competence requirements), enhancing confidence in the sector, the treatment of vulnerable debtors and supporting the sector's reputation. As a result the enforcement sector should operate effectively and efficiently, including in relation to customer (debtor) handling.
- 1.25 The policy proposals are set out in detail in Annex C. In summary the proposal is to implement Part 3 of, and Schedules 12 and 13 to, the TCE Act together with subordinate legislation in the form of the Taking Control of Goods Regulations to¹⁷:
- i. Clarify and unify the law.
 - ii. Introduce a new fee structure.
 - iii. Introduce a new and extended certification process.
- 1.26 These three provisions are inextricably inter-related so it is not feasible to implement the provisions separately. The elements have been consulted on as a package of reforms.

Economic rationale for intervention

- 1.27 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in either the way markets operate (e.g. monopolies overcharging consumers) or in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.28 In this case, the intervention would be justified on efficiency and equity (fairness) grounds. As a result of the reforms there should be no change to debt collection outcomes but a simplified and clarified set of powers and provisions should reduced overall enforcement agent costs,

¹⁶ Independent Social Research (ISR) – *Insight work to support transforming bailiff action consultation*, August 2012. This was commissioned by MoJ to support and inform the consultation and to increase our knowledge and understanding of the sector. The full report can be found alongside the consultation response. For the rest of this Impact Assessment the report will be referred to as “ISR Report”.

¹⁷ Following consultation, the intention is to implement Part 3 of the Act. However, with regard to reasonable force the status quo should be maintained. This differs from the legislation in the TCE Act, and therefore a legislative amendment will be required in due course.

generating efficiency gains. This may include fewer activities being undertaken to recover debt. If fees are more closely aligned to activities and costs this would also generate improvements in equity (fairness) and reduce the risk of debtors being subject to overcharging.

2. Costs & Benefits

- 2.1 This Impact Assessment (IA) identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the options considered. The costs and benefits of each option are compared to the do nothing option. IAs place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded), however, in this case there are important aspects that cannot sensibly be monetised, such as potential changes in equity (fairness).

Strength of the evidence base

- 2.2 The main evidence sources include:

- The ISR independent research report commissioned by MoJ during the consultation period, which asked specific research questions about the impact of reforms¹⁹. This was commissioned to improve understanding about how the reforms would affect the enforcement agent sector and to support monetisation of the impacts.
- The ‘*Enforcement Fee Structure Review*’, which is further independent research commissioned by MoJ in 2009. This contains financial information for a number of firms and specifically provided the foundation for the proposed fee structure.
- Consultation responses (of which over 250 were received), particularly those questions relating to impacts identified in the consultation IA, plus responses to the separate additional enforcement industry questionnaire that accompanied the consultation stage IA. This specifically asked firms to provide baseline information and their views about the potential impact of the reforms. 19 firms responded, ranging from small to large. A summary of responses is provided at Annex G. This enabled the impacts to be assessed in greater depth and supported their monetisation.
- Additional ongoing meetings with key stakeholders and conferences held during the consultation period also supplemented MoJ’s understanding of the impacts.
- Other data sources include the certificated bailiffs register, information from CIVEA (enforcement agent industry group) website, and information from HMCTS on their contracts with enforcement agents for criminal fines, which operate according to a similar fee structure to that proposed.

- 2.3 In summary MoJ commissioned two independent research reports and has engaged closely with the sector and with debtor representatives over many months via a number of means including specific questionnaires, consultations and other dialogue, in order to obtain the best possible understanding of the impacts of the reforms on the enforcement agent sector.

- 2.4 Aggregate impacts have been monetised where possible, and where assumptions have been used to underpin figures they have been explained. Assumptions have been necessary in places as some information relating to enforcement agents is commercially confidential and has not been disclosed. The enforcement agent sector is currently not subject to statutory supervision or regulation and a complete dataset covering the provider baseline is not available. Nevertheless

¹⁹ The ISR Research sought evidence about: i) the effect of the introduction of certification and training (amongst the enforcement industry and comparable sectors) on industry practice, and, in turn, the experiences of customers; ii) the enforcement industry’s view of the proposed fee change, in particular whether it offers adequate (or possibly overly adequate) compensation for the introduction of mandatory training and certification; and iii) the potential impact of the reforms on the volume of debts enforced using bailiffs, and whether the debt recovery rates remain the same.

the independent research commissioned and other evidence gathering and engagement exercises held by the MoJ have provided the best possible evidence base to assess the impacts of the reforms.

Industry and other stakeholder support for the proposals

2. 5 The proposals have been developed with stakeholders over a long period of time and all groups see the reforms as an opportunity to improve the current position.

- Enforcement agents support the measures as they simplify and clarify current powers, rules and requirements, enabling them to be applied more efficiently. They support the simplified and clarified fee structure, which should be easier to apply correctly and which matches their activities and costs more closely. The industry supports the new certification and competence requirements, which should enhance the consistent application of industry standards to the benefit of the sector’s reputation, enhancing overall reputation. CIVEA state on their website that the proposals are “long overdue and necessary”.
- Debtor stakeholders welcome measures to simplify and clarify current powers, which should support improved customer (debtor) handling, particularly of vulnerable groups.
- Creditors should benefit from being able to choose from a wider range of fully trained enforcement agents that are able to operate in the sector.

Summary of the baseline for monetisation purposes

2. 6 The Background section of this IA explains the baseline position, which is summarised below:

Table 4: Summary of industry baseline

Number of debts enforced per annum	Nearly 4 million
Annual aggregate industry revenue	Nearly £140m
Annual aggregate industry operating costs	Nearly £130m
Baseline profit margins	9%
Total number of private enforcement agents	2,250 ²⁰ Of which 1,800 currently certificated
Number of bailiff firms	Around 150 (based on MoJ directory searches); including 120 firms hire private certificated enforcement agents

Option 0: Base case (do nothing)

2. 7 Under this option no intervention would be made. The current mix of regulatory and voluntary measures would remain, with no major changes anticipated to regulation, fee structures or training and certification.

2. 8 This is a do nothing option included for comparative purposes. As its costs and benefits are compared against themselves they are necessarily zero, as is its net present value.

Option 1: Implement Part 3 of, and Schedules 12 and 13 to, the Tribunals, Courts and Enforcement Act 2007 (TCE Act) together with subordinate legislation

Description

2. 9 Option 1 considers proposals to implement a package of reforms as detailed in Part 3 of, and Schedules 12 and 13 to, the Tribunals, Courts and Enforcement Act 2007 (TCE Act) together with subordinate legislation in the form of the Taking Control of Goods Regulations.

²⁰ This figure reflects the total estimated number of enforcement agents in the industry, including those employed by firms.

2. 10 As discussed in the policy proposals section, this includes three main elements:
- i. Clarify and unify the law;
 - ii. Introduce a new fee structure;
 - iii. Introduce a new and extended certification process, making it mandatory for all enforcement agents (with certain exceptions – e.g. court officers and police officers) to obtain a certificate to operate.
2. 11 In light of consultation responses, the option for the new certification process, including fixed mandatory accredited qualification is being taken forward. This means that to obtain a certificate, all enforcement agents would have to demonstrate sufficient knowledge of the law, customer care, and dealing with conflict situations and identifying vulnerable situations.
2. 12 Annex D sets out the detail of the fee as included in the consultation response. The only difference from the consultation stage is in relation to the threshold for non-high court debts above which a percentage fee applies. This has increased from £1,000 to £1,500, reflecting consultation responses and the suggestion that debts against individuals should only be subject to an additional percentage element in exceptional cases.

Summary of key assumptions in impact analysis

2. 13 A number of assumptions have been made to underpin the cost benefit assessment below, as it is not known with certainty how enforcement agents, debtors and creditors will behave under the proposals. The key assumptions underpinning the analysis are summarised in the table below. Full detail, including sensitivity analysis, is provided in the assumptions and risks section.

Table 5: Summary of key assumptions

Assumption	Supporting evidence source
Volumes of debts enforced by private enforcement agents would remain constant in future	ISR Report. This found that there are drivers that could increase or decrease these elements and “there is little evidence but a range of views on the effects of the combined proposals on volumes of debt enforced and debt recovery rates.”
Overall enforcement rates would remain constant in future i.e. the same volume of debts would be successfully recovered in future.	
50% of successfully enforced debts would be repaid at the administration stage. ^{21 22}	Information from HMCTS contract for criminal fines which operates according to a similar fee structure to that proposed. ²³

Costs of Option 1

Costs to enforcement agents

Overall summary

2. 14 There are four main types of costs to enforcement agents:
- (i) One-off adjustment and familiarisation costs (around £1m in aggregate).
 - (ii) New certification and training requirements (around £1m per year in aggregate).

²¹ This applies to non-high court only (the majority of cases), as expected revenues for high-court debts have been calculated separately.

²² Further to the 50% assumption, an assumption has been built in to reflect the potential impact of the proposed fee remission policy, which means that in certain cases the fee would be remitted back from the enforcement stage to the administration stage. This is assumed to be 10% of successfully enforced debts. It is not known how many debtors will be entitled to the fee remittance in practice, in part because how the remission will apply is still being formulated and so this should be considered indicative only.

²³ HMCTS contract information from June 2012 shows that depending on the region, between around 20% and 50% of successfully enforced debts were paid at this stage. Payment at the administration stage will be encouraged by advice agencies and guidance, so 50% is considered a reasonable assumption for the purposes of this modelling.

(iii) Additional operational costs from the new powers, leading to enforcement agents to adapt their operating procedures (around £3m ongoing costs per year).

(iv) Reduced fee income in some cases, however, overall the aggregate net change in industry income is estimated to be zero as other fees are expected to be higher.

(i) One-off adjustment and familiarisation costs (£1m)

2. 15 The one-off adjustment costs have been calculated around £0.5m across the industry. This is based on the assumption that there are 150 firms (including some sole traders) and average adjustment costs are £3,000 per firm. There is little detailed evidence about the adjustment costs that firms might be required to incur, so this considered to be a reasonable estimate based on the information available:

- Some firms suggested in their industry questionnaires that adjustment costs would be negligible, whilst others suggested that there would be some adjustment costs from updating software, guidance, training and forms. The general implication was that these costs would not be significant. One firm suggested that adjustment costs could be up to £100,000, although it is unclear to what extent such costs are necessary under the reforms, and why the cost is so high given the information provided by other firms. Anecdotal evidence suggests some smaller firms do not have formal systems in place, so would not incur system costs, and other firms already need to change elements of their management systems regularly to accommodate changing contracts, so could accommodate small updates as part of business as usual.
- As there is such wide variation in the information provided, it is assumed that £3,000 should be sufficient on average to cover required software costs and updating forms, guidance and websites. Around £2,500 is assumed to be reasonable to purchase management accounting and invoicing software (e.g. Sage 50 with several users), and it is considered that any updated forms or websites would cost no more than £500. In practice any adjustment costs are likely to fall more significantly on larger firms, who would equally generate larger revenues to cover such costs.

2. 16 The familiarisation costs to the enforcement industry have been estimated at around £0.5m across the industry. This is based on the assumption that there are 2,250 enforcement agents and average familiarisation costs are £200 per agent. The figure of £200 could reflect around a day and a half's work, assuming annual income of around £30,000 per annum.

(ii) Certification and training costs (£1m)

2. 17 The certification and training requirements have been calculated at up to £1m per annum across the industry. These costs would fall on those enforcement agents (or firms) where certification and / or training to the required standard is not currently undertaken.

2. 18 The extent to which the proposed competence requirements are not already business as usual for some enforcement agents is not known with certainty. The industry has suggested that many reputable enforcement agents are already trained to the proposed new level, and that this is necessary in order to meet existing voluntary industry standards effectively and efficiently.

2. 19 It is possible that these proposals might therefore impact most on enforcement agents who are not fully compliant with the existing industry standards. The figures below include an assumption about how many enforcement agents might already be certificated and trained to the required standard. The full calculation and evidence informing it is detailed below. In summary:

- Certification: 450 agents are assumed to require a certificate at a cost of £700 every two years. This generates an annual certification cost of around £160,000.
- Training: 1,350 agents assumed to require training at a cost of around £1,000 every two years. This generates an annual training cost of around £675,000.
- In total, training and certification costs have been calculated at nearly £1m per annum. A total cost of £1m is used in the NPV calculations which follow to account for training costs

Table 6: Annual certification cost to industry

Total number of certificated enforcement agents	1,800 ²⁴
Total number assumed not certificated	450 ²⁵
Cost to obtain certificate	£700 ²⁶
Total certification cost	£315,000
Annual certification cost (as certificates are renewed every two years)	£157,500

Table 7: Annual training cost to industry

Number of enforcement agents assumed to require training	1,350 ²⁷
Number of enforcement agents assumed to be already trained to the required standard	900 ²⁸
Assumed training cost	£1,000 ^{29, 30}
Total training cost	£1,350,000
Annual training cost (as training will need to be updated every two years)	£675,000
Total annual training & certification cost	£832,000

(iii) Additional operational costs from new powers (£3m)

2. 20 On an ongoing basis, the law changes relate to factors such as when enforcement agents can visit, what goods they can seize, methods of entry, and other procedural elements. These changes are very specific, and would differ depending on the current rules for each debt stream. To determine how they could affect enforcement agents' operations, it would be necessary to map the current requirements for all types of debt, and then information would be needed from enforcement agents to determine whether such changes would impact their operations in practice and, if they did, the potential associated cost. The one law change specifically raised by firms relates to distress for rent cases, where some firms suggested that the new administration stage could lose the element of 'surprise'. This debt stream makes up a very small proportion of overall case volumes.
2. 21 A top-down approach has been taken to monetising potential additional operating costs from the new powers. Information from the enforcement agent industry, for example through the questionnaires received, suggests that the law changes are unlikely to increase operating costs. However, a cautious approach is that the proposals could cause an increase in operating cost of

²⁵ Based on proportions of work where agents can currently work uncertificated – refer to baseline for full detail

²⁶ The total certification cost (around £700) might be broken down as follows:

Court fee: £175

CRB check: £26

Bailiff insurance bond: £200

Newspaper advert: £300

CCJ search: £16

²⁷ This figure was made calculated as follows: All 450 uncertificated enforcement agents are assumed to require training. Of the 1,800 certificated enforcement agents, it is assumed that 50% of them are trained and 50% of them will require the new training. This 50% assumption is considered realistic based on the enforcement industry questionnaires, where 18 of 19 respondents said 80-100% of their agents were trained. Around half of the total number of certificated enforcement agents (888 precisely) were associated with these firms.

²⁸ Based on total number of assumed enforcement agents less those assumed to require training

²⁹ The training requirement has not yet been fully specified, however, the available information suggests the required course would cost approximately £600. This includes estimates from the ISR Report, as well as the cost of training courses quoted online by an enforcement agent firm. The training requirement will be developed with the enforcement agent industry to minimise any potential burden.

³⁰ £400 has been estimated as the value of the time required to undertake the training course, assuming that this is two days work plus any preparatory work or travel time to the training course. It is assumed overall that enforcement agents would have the capacity to undertake the two day training course alongside their work, and so their would be no impact on volumes of debts enforced and total revenues in practice.

up to 2.5% on the current baseline, which across the industry could generate total additional operating costs of around £3m per year.

(iv) Reduced fee income (£0m)

2. 22 Based on the modelling undertaken, the expected annual fee revenue to enforcement agents under the proposals is estimated to be nearly £140m, as set out below. This is equal to current aggregate annual fee revenue. Whilst on average fee income would be roughly the same as now, fees should be better aligned to activities and costs incurred, for example by allowing a fee for the early stages of enforcement work.

Table 8: Expected annual revenues under the proposals – Non-high court debts

Number of non-high court debts per annum enforced by private enforcement agents	Nearly 4 million
Weighted average fee recovery rate for non high-court debts	20% ³¹
Number of non-high court debts per annum where fee recovery is made	Around 750,000 (based on the fee enforcement rate of 20%)
Administration stage fee	£75
Total administration stage fee income	Around £55m (rounded) (the administration fee is received in all successfully enforced debts)
Number of non-high court debts per annum where fee recovery is made at the enforcement stage	Around 300,000 ³²
Enforcement stage fee	£230
Total enforcement stage fee income	Around £70m (rounded)
Number of non-high court debts per annum where fee recovery is made at the sale stage	Around 1,500 ³³
Sale stage fee	£105
Total sale stage income fee income	Around £0.2m
Total % fee income (to account for an additional % fee element in debts above £1,500)	Around £2m ³⁴
TOTAL REVENUE NON-HIGH COURT	Around £128m

Table 9: Expected annual revenues under the proposals – High court debts

Number of high court debts per annum enforced by private enforcement agents	Around 45,000
Assumed fee recovery rate for high-court debts	21% ³⁵
Number of high court debts per annum where fee recovery is made	Nearly 10,000
Weighted average fee per case	Around £1,100 ³⁶
TOTAL REVENUE HIGH COURT	Around £10m

Table 10: Expected annual revenues under the proposals – private enforcement agents

TOTAL REVENUE PRIVATE ENFORCEMENT INDUSTRY	£138m
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³¹ This weighted average fee recovery rate is based on the volumes in the introduction to this IA and the fee recovery rates detailed in the *Enforcement Fee Structure Review*, published alongside the consultation stage Impact Assessment. .

³² This figure incorporates the assumption that 50% of debtors repay their debt at the administration stage, as well as the assumption that in 10% of successfully enforced cases a fee remittance is received, meaning that only the administration fee is charged even though the debt is repaid following a doorstep visit.

³³ Information from the HMCTS contract shows that very few cases go to the sale stage (around 0.2%).

³⁴ This was calculated based on average debt values across the debt streams and the number of cases in which the % fee is assumed to apply.

³⁵ Based on information in the *Enforcement fee structure review*

³⁶ This figure captures the expected stage at which these high-court cases would settle, as well as the expected percentage fee that would apply (as the average writ of fi-fa is greater than £1,000). This is based on information in the *Enforcement fee structure review*.

2. 23 For some individual cases, fee income may be higher or lower than now depending on the circumstances, including the debt stream (and hence the current fee structure in place), the stage of payment, and the extent to which any “reasonable costs” are charged. Annexes E and F show the fee arrangements in place compared to those proposed. It seems likely that the fee income for some cases that will in future settle at the administration stage (as opposed to after a visit) could be lower, while the fee for cases that settle at the enforcement stage, where one visit previously achieved the payment, could be higher.

Costs to Creditors (£0.5m)

2. 24 Creditors might be businesses, public bodies or individuals. Whilst the costs of using enforcement agents are currently usually passed to debtors, in high court debts creditors can be liable for a fee (known as a creditor guaranteed fee) if the debt is not successfully enforced. Under the proposals this would be increased from £60 to £75. The total value of these additional creditor costs is around £0.5m per year. This is based on 45,000 high court writs referred to enforcement agents each year, of which around 9,450 are assumed to be successfully enforced. The additional £15 charge would therefore be required in around 35,550 cases, at an aggregate cost of around £0.5m. Anecdotal evidence suggests that creditors may sometimes negotiate costs with enforcement agents, so the situation is not as clear cut as suggested above. Any additional cost to the creditor through the guaranteed fee would be a transfer to enforcement agents.
2. 25 The proposals are not expected to have a significant direct impact on creditors as it has been assumed that there will be a constant volume of debts enforced in future and that enforcement rates will not change. This assumption is supported by evidence from the ISR Report, which suggests that the volume of debt pursued and enforcement rates can be affected by a range of factors but that there is insufficient evidence to conclude that the volume of debt pursued and enforcement rates will change significantly and if so in which direction. The assumptions and risks section explains how the analysis would change if these assumptions changed.
2. 26 At the margin, there could be a cost associated with the timing of enforcement due to the requirement to send the debtor a notice of enforcement, which could lengthen the process of enforcement for High Court debts or commercial rent cases, where this is a new step. The time delay is assumed to be 7 days, as this is the required time after the administration stage before the case can progress to the enforcement stage. There is a risk that the administration stage could impact enforcement rates in these cases, although the potential extent of this is unclear. Any such cost to creditors would be a benefit to debtors, as the debt repayment is a transfer between these two groups.

Costs to Debtors (£0m)

2. 27 Debtors are largely individuals but could also be businesses, including self-employed persons. Debtors would continue to be liable to meet the overall costs of enforcement-related services undertaken by enforcement agents. As explained above, it is considered that under the proposed fee structure, aggregate industry fee revenue in future would be approximately equal to now, at approximately £140m per annum. This suggests that on average fees paid would be roughly the same as now.
2. 28 In practice some debtors might incur higher fees in future, whilst others might pay lower fees. This would depend on the debt stream (and hence the current fee structure in place), the stage of payment, and the extent to which any “reasonable costs” are incurred. Annexes E and F provide further detail. It is possible that in future debtors who repay at enforcement stage, where one visit would have previously achieved payment, could incur higher fees, whilst the fee for some debtors, who will in future settle at the administration stage (as opposed to after a visit), could be lower.

Costs to HM Courts & Tribunals Service (£0m)

2. 29 There are no expected additional net costs to HM Courts & Tribunals Service.

Costs to HM Revenue and Customs (nq)

2. 30 There may be increased one-off costs associated with amendments HM Revenue and Customs automated processes, however, no additional net costs are anticipated.

Costs to other stakeholders (nq)

2. 31 The third sector, debt advice agencies and legal professionals may incur costs associated with familiarisation with the new regulatory measures. These are expected to be minimal. It is not possible to quantify this potential impact as baseline data is unavailable.

Costs to society and wider economic costs (£0m)

2. 32 There are no anticipated additional costs to society or additional wider economic costs.

Benefits of Option 1

Benefits to enforcement agents

2. 33 Benefits to enforcement agents are expected to arise from:
- (i) Operational savings from fewer doorstep visits. These are estimated at around £5.5m per year in aggregate.
 - (ii) Streamlining the law operational cost savings, from clarifying the law including simplifications to systems and training. These are estimated at around £4m per year in aggregate.
 - (iii) Complaint handling cost savings from dealing with fewer complaints in future, which can take significant time to deal with. This would save around £0.1m per year.
 - (iv) Increased fee income in some cases, however, overall the aggregate net change in industry income is estimated to be zero as other fees are expected to be lower.
 - (v) Reputational benefits (unquantified) from enforcement agents operating more transparently and professionally.

(i) Doorstep visit operational savings (£5.5m)

2. 34 The benefits of enforcing cases at the new administration stage have been calculated at around £5.5m per annum based on the number of cases where a saving might be made and average expected savings per case.
2. 35 At the moment, for several debt types (including council tax – the highest volume debt type), enforcement agents cannot receive a fee (and can therefore be reluctant to allow debtors to pay) before a doorstep visit. In some cases this means that the current fee structures incentivise more enforcement work than is necessary to enforce the debt, with scope for efficiency savings arising from earlier enforcement. The calculation is shown below:

Table 11: Annual benefit associated with administration stage debt enforcement

Number of debts per annum enforced by private enforcement agents	Nearly 4 million
Weighted average fee recovery rate for non high-court debts ³⁷ i.e. proportion of debts successfully enforced and a fee recovered	20% ³⁸
Total number of non-high court debts per annum where debt and fee recovery is made	750,000
Proportion of successfully enforced cases assumed to settle at administration stage	50% i.e. 50% of the 750,000 debts successfully enforced each year with a fee earned are done

³⁷ Only non-high court debts have been included in this calculation as writs of fi-fa (high court) are more complex and very few are assumed to settle at the administration stage.

³⁸ This weighted average fee recovery rate is based on the volumes in the Background section of this IA and the fee recovery rates detailed in the *Enforcement Fee Structure Review*.

	so at the admin stage
Number of cases enforced at administration stage per annum	375,000
Number of cases where saving would be made from settling at administration stage instead of enforcement stage i.e. no doorstep visit involved in future	250,000 ³⁹
Saving per case enforced at administration stage instead of enforcement stage	£23 ⁴⁰
Efficiency saving associated with new administration stage – calculated by looking at the expected saving per case and volumes of cases where saving should arise	£5.5m

(ii) Streamlining the law operational cost savings (£4m)

2. 36 The streamlining of the law is expected to generate further efficiency benefits to enforcement agents through:

- Simplified systems and IT – currently firms charge for different activities and at different levels depending on the debt type. This complicates the billing process and management accounting. Firms would now only have to consider one set of systems, invoicing and billing (apart from the High-Court and non-High Court distinction) which should generate an efficiency benefit.
- Simplifying the training of new staff – new enforcement agents will now only have to learn the law and fee scales according to one debt stream rather than multiple streams (except for high-court and non-high court, although these tend to be different enforcement agents).

2. 37 These efficiency benefits have been confirmed by the industry bodies CIVEA and the HCEOA, and are supported by the enforcement industry questionnaires, although no figures are provided. One firm noted that expected benefits following the introduction of a simplified system are difficult to quantify.

2. 38 Industry views in the questionnaires suggest that the streamlining benefits associated with the proposals should outweigh any potential additional operational costs. On this basis, a cautious estimate has been made that these benefits could equate to around 3% of operating costs, compared to 2.5% assumed in relation to additional operating costs. 3% of current operating costs would generate a saving across the industry of around £4m per year.

(iii) Complaint handling cost savings (£0.1m)

2. 39 Both the ISR research report commissioned by MoJ and the enforcement industry questionnaires show that the proposals should lead to reduced disagreement between enforcement agents and debtors brought about by misinterpretation and misunderstanding of the law, and in particular fees. Due to the simplified nature of the new fee structure there should be a decrease in complaints about fees charged, freeing up the time spent dealing with these for other activities.

2. 40 In aggregate this might save around £0.1m per year. Based on information in the enforcement industry questionnaires, it is assumed that on average firms currently spend around 2.5 hours per week dealing with complaints (although some spend more), and in future this would be reduced to 1 hour per week⁴¹. Assuming the cost of the time saved is £12 per week and there are 150 firms in the industry, the total saving is calculated at nearly £0.1m.

³⁹ Information from the *Enforcement Fee Structure Review* shows that for child support, HMCTS and road traffic debts some debts are repaid before a doorstep visit (around 30%, 35% and 50% of successfully enforced debts respectively), and therefore no saving has been calculated for these cases. It is assumed that for all non-high court debt types, the administration stage recovery would be around 50% in future, as the proposed fees are higher than those currently available (so enforcement agents might make more effort) and the transparent nature of the proposed fee structure is assumed to incentivise debtors to repay at this stage.

⁴⁰ The *Enforcement Fee Structure Review* shows that based to the activity based costing undertaken, the expected cost for administration stage work is £22.72 less than the expected cost for enforcement stage work.

⁴¹ The response of 0-5 hours spend dealing with complaints was the median response in the questionnaire, although some firms spent longer. On this basis, an assumption of 2.5 hours per firm per week was made. The information suggests that a significant reduction in complaints might be seen in future, and so saving 1.5 hours per firm per week is considered a reasonable assumption.

(iv) Increased fee revenue (£0m)

2. 41 Overall, revenue under the proposed fee structure is considered to be approximately equal to the current arrangements, at nearly £140m across the industry. Details of this calculation are provided in the costs section. This suggests that on average, fee income would be roughly the same as now, although fees should be better aligned to costs incurred, for example by allowing a fee for the early stages of enforcement work.
2. 42 However, some fees could be higher in future depending upon the debt stream (and hence the current fee structure in place), the stage of payment, and the extent to which any “reasonable costs” are incurred. Annexes E and F compare the current fee arrangements with those proposed. It is possible that in future debtors who repay at enforcement stage, where one visit previously achieved the payment could incur higher fees, whilst the fee for some debtors who will in future settle at the administration stage (as opposed to after a visit) could be lower.
2. 43 Based on the information available, it appears that several firms may benefit from an increase in profits arising from the ability to charge for the administration stage. The evidence suggests (including the ISR report and enforcement industry questionnaires) that most firms support the new proposed fee structure as part of the wider package of reforms.

(v) Reputational benefits (not quantified)

2. 44 The proposed certification and competence proposals may benefit enforcement agents through positive effects on industry practice and debtor experiences. Information from the ISR Report suggests that these are likely to be largely intangible benefits, for example from enhancing the image and professionalism of the enforcement industry. However, improved training could also improve enforcement agent behaviour and debt recovery performance, and help “drive out” unscrupulous enforcement agents. This, together with reforms to the fee structure, may reduce debtor complaints.
2. 45 The ISR Report suggests that there was general approval of the principle of mandatory certification and the option for mandatory training to a uniform standard.

Benefits to creditors (£0m)

2. 46 Simplifying and clarifying the law could generate efficiency gains for creditors through a clearer idea of how debt enforcement using an enforcement agent would work, and how this compares to other methods.
2. 47 Large creditors could benefit from efficiency savings in their contracting arrangements, as many (although not all) issues related to enforcement activities and fees would be set out in law in future, rather than being left to contract. Clearer and more unified regulations could reduce disagreement and legal challenge from debtors.
2. 48 Creditors may benefit from faster debt recovery if payment at the administration stage results in some debts being settled more quickly than currently. It is assumed that overall debt enforcement rates will remain the same under the proposals, although there is scope for some creditors to recoup their money more quickly if the administration stage is carried out faster than going straight to the doorstep. These benefits may take the form of cash flow benefits.
2. 49 Creditors would benefit from being able to choose from a wider range of fully trained enforcement agents that are authorised to be fit for purpose. Creditors may place a value on any reputational gains to enforcement agents, and in knowing the associated standards that should be upheld.
2. 50 These benefits to creditors have not been monetised as we do not have a reliable baseline covering all creditors hence we cannot reliably estimate their cost savings. In relation to many debt streams creditors are public bodies. In other areas creditors might be businesses including self employed persons.

Benefits to Debtors (£0m)

2. 51 The package of reforms is expected to lead to an overall benefit for debtors through:

- (i) Simpler, clearer, and more consistent rules for enforcement agents across all types of debt.
- (ii) Improved competency skills and accountability of enforcement agents.
- (iii) A clearer fee structure.

(i) Simpler and clearer rules and powers (£0m)

2. 52 A set of simpler, clearer, and more consistent rules for enforcement agents could improve debtors' experiences of the enforcement process, and make it easier to ascertain if any inappropriate behaviour or misconduct has taken place. The law changes incorporate factors such as ensuring that enforcement agents cannot visit at antisocial hours, as well as addressing specific areas where issues have been identified:

- The abolition of the out of court remedy distress for rent for domestic premises will provide the debtor with protection of the court before enforcement action is taken.
- Enforcement agents will be prohibited from entering premises where: the debtor is a child under the age of sixteen or where a child or vulnerable persons are the only persons present in the premises which the enforcement agent proposes to enter.

(ii) Improved enforcement agent competency (£0m)

2. 53 The mandatory training and certification should help to improve enforcement agents' behaviour, for example by improved recognition of vulnerable situations, as well as making it easier to account for misconduct, for example through revoking the certificate. The ISR research report commissioned by MoJ highlights that bailiffs and bailiff stakeholders said that the reforms could have positive effects across the industry in terms of both industry practice and debtor experiences, by:

- Weeding out "rogue bailiffs" who were not certificated and/or did not adhere to best practices;
- Putting pressure on less professional enforcement agencies to provide training or to cease trading;
- Enhancing the image and professionalism of the enforcement industry;
- Providing a clearer recruitment and training process for new entrants, and raise the entry bar.

2. 54 In future, greater sensitivity should be given to 'can't pay' rather than 'won't pay' debtors, and vulnerability will be part of the required training programme. In extreme cases there could be a financial benefit to debtors if the changes prevent debtors having to undertake actions such as taking a short-term high interest loan to pay the enforcement agent. MoJ will be working with the Department for Communities and Local Government (DCLG) and the Advice Sector to address the issue of vulnerability in particular.

(iii) Clearer fee structure (£0m)

2. 55 The new fee structure should benefit debtors through increased equity (fairness). Currently, enforcement agents can charge "reasonable costs" in some cases, which are not known in advance and which could differ across debts. In future, fees charged across all areas would be the same for similar activities and should be more proportionate to the activity incurred, improving equity (fairness).

2. 56 The clear, simple fee structure will mean debtors can see what charges they should expect to incur, which should help reduce fee charging errors. In addition some cases might be enforced at the administration stage in future. As this would not involve a doorstep visit, there would be less interaction with the enforcement agent than currently. This may improve experiences for debtors, who may be intimidated by enforcement agents. The administration stage could also include setting up a payment plan if the debt cannot be immediately paid in full. The single fee for the enforcement (visit) stage could reduce the number of visits made.

2. 57 Some debtors could benefit from the proposed remissions policy, which should provide greater protection for vulnerable debtors. The intention is to allow for remission from the enforcement stage fee back to the administration stage fee for those debtors who can't engage at the administration stage due to possible mental health problems, and where they are consequently subject to a visit. In such situations, the visit (enforcement) stage fee would be waived and only the (lower) administration fee should be charged. This impact has been accounted for in the revenue modelling to the enforcement agent industry.

Benefits to HM Courts & Tribunals Service (£0m)

2. 58 There are no expected additional benefits to HM Courts & Tribunals Service.

Benefits to HM Revenue and Customs (nq)

2. 59 HM Revenue and Customs will be able to include charges for the notice of enforcement which is currently not available

Benefits to other stakeholders (nq)

2. 60 The third sector, debt advice agencies and legal professionals would benefit from simplification and clarification of the law to provide more standardised advice across all types of debt. There could also be a wider benefit if their clients' experience is improved. These ongoing savings have not been monetised as baseline information is unavailable.

Benefits to society and wider economic benefits (£0m)

2. 61 Society might place a value on the improved equity (fairness) for debtors associated with these proposals. There may also be increased economic efficiency if fees are set out clearly and if fees reflect the costs of the underlying activity better. The simplification of procedures and improved transparency might also be associated with improvements in efficiency.
2. 62 There may be wider economic and social benefits from raising knowledge and professional standards in the industry, and if such measures are considered to bring a fairer system to society.

One In One Out (OIOO) implications

2. 63 This section explains the overall OIOO position for the enforcement agent industry.
2. 64 The overall OIOO impact has been assessed as an IN with zero net cost.

Summary of costs to business and the voluntary sector

2. 65 The costs section above explains that business and the voluntary sector are expected to incur the following additional costs in aggregate compared to the base case:

Table 12: Expected one-off costs to business and voluntary sector associated with the proposals

One-off adjustment costs for the enforcement agent sector	£0.5m
One-off familiarisation costs for the enforcement agent sector Annual aggregate industry revenue	£0.5m
Potential familiarisation costs to the voluntary sector and legal services sector	Unquantified
Total one-off costs for OIOO assessment	£1m

Table 14: Aggregate annual ongoing costs to business and voluntary sector

Ongoing costs from new certification and training requirements for the enforcement agent sector	£1m per year
Ongoing operational costs from the new powers, leading to enforcement agents to adapt their operating procedures	£3m per year
Ongoing costs to creditors from increased High Court fee, some of which could be businesses	£0.5m per year

Total ongoing costs for OIOO assessment	£4.5m per annum
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Summary of benefits to business and the voluntary sector

2. 66 The benefits section above explains that business and the voluntary sector are expected to incur the following additional benefits in aggregate compared to the base case:

Table 15: Aggregate annual ongoing benefits to business and voluntary sector

Ongoing savings on doorstep visits	£5.5m per year
Ongoing savings associated with streamlining of law, including simplifications to systems and training.	£4m per year
Complaint handling cost savings from dealing with fewer complaints in future	£0.1m per year
Reputational benefits as enforcement agents should in future operate more transparently and more professionally.	Unquantified
Potential ongoing benefits to the voluntary sector and legal services sector associated with simplified enforcement agent law	Unquantified
Total ongoing savings for OIOO assessment	£9.6m per annum

Summary of overall impact on business and the voluntary sector

Table 16: Summary of overall impact on business and voluntary sector

One off costs	£1m
Ongoing annual costs	£4.5m per annum
Ongoing annual benefits	£9.6m per annum
Total annual benefit	£5m per annum
10 year NPV, including one-off costs	£40m

Micro exemption waiver

2. 67 The majority of enforcement agent businesses are small and medium sized enterprises and many fall within the micro business category. Many are already subject to various enforcement regulations or voluntary codes. A key objective of the measures is to replace the current array of provisions with a clearer and simplified regime and ensure that all operators in the sector conduct themselves appropriately, such as to provide all debtors with more protection against aggressive enforcement agents. In order to achieve this, the reforms would need to apply to all businesses, with no exemption for micro businesses. Firms are not expected to lose out from the reforms, and the provisions have been limited to those necessary for debtor protection.
2. 68 There are benefits and costs for enforcement business in complying with the law and future fee structure. To exempt micro business would mean failing to address unacceptable behaviour and allowing enforcement agents working in these businesses to continue being aggressive and over zealous in their actions. An exemption may also encourage small and medium sized businesses to divide and become micro businesses to avoid regulation. The proposed certification process has concentrated on the suitability and training of the individual enforcement agent rather than unnecessarily burdening the business.
2. 69 An exemption from Micro Business moratorium will be necessary and final clearance will be sought before implementation.

Option 1: Summary of key assumptions and risks

The following key assumptions apply to the analysis of Option 1:

Volume of cases

2. 70 This analysis assumes a constant volume of cases enforced by enforcement agents in future. As highlighted in the ISR Report, there are no very clear and consistent pointers about the likely impact of the reforms on the volume of debt enforced by bailiffs in the future. This is because of several factors that could work in opposite directions:

Potential drivers that could decrease volumes include:

- i. Local authorities decide not to instruct bailiffs on smaller debts where fees under the new regime are perceived to be disproportionate;
- ii. Local authorities take the compliance (administration) stage for council tax in-house and/or choose to negotiate directly with major non-domestic rates clients.

Potential drivers that could increase volumes include:

- iii. Enhanced professional standing of bailiffs resulting from the reforms.

The ISR report also identifies potential impacts on volumes of debts from a range of external factors, such as various welfare reforms.

2. 71 The impact of these factors on the analysis in this IA is explained:

- Creditors and debtors: These factors are not likely to create a direct cost to creditors, who can choose whether to refer the case to the enforcement agent or not. In situations where the case is no longer referred to an enforcement agent, this would represent a benefit to debtors.
- Enforcement agents: These factors create sensitivities in their profitability analysis, especially if local authorities were to take the administration stage of council tax debts in house. In this situation, enforcement agents would receive those cases that are more difficult to enforce. This risk is noted in the enforcement industry questionnaires and the ISR Report, although the likelihood and extent of the potential impact is unclear. Scenario analysis undertaken suggests that under the modelling assumptions, if more than around 50% of council tax debts enforced at the administration stage were enforced by local authorities, there could be a negative impact on aggregate annual profit compared to in the base case.
- For enforcement agents, any straightforward increase or decrease in the volume of cases would not significantly impact profit margins (although there would be an impact on aggregate profit), as many costs to enforcement agents are assumed to be variable.

Recovery rates

2. 72 This analysis assumes that recovery rates would remain the same in future. As with volumes of work, there are several drivers that could impact future recovery rates:

Potential drivers that could increase recovery rates include:

- i. Better trained bailiffs result in more effective enforcement across the whole industry.

Potential drivers that could decrease recovery rates include:

- ii. If debtors are faced with higher fees from enforcement companies; timescales for recovery might also increase with more arrangements for payment by instalment and fewer payments in full;
- iii. Payment arrangements defaulted on are not pursued because of significant cost implications for the bailiff, particularly travel costs;
- iv. Bailiffs lose the element of surprise in commercial rent and cannot levy on goods of third parties found at the premises -in the case of business premises which have been sublet. Assuming nearly 40,000 distress for rent cases per annum and a fee recovery rate of nearly 40% (as these tend to have a higher than average enforcement rate), if the fee of £305 was

- v. Debtors are less willing to pay because they think that bailiffs are unlikely to remove their goods or vehicle because of the cost of involved;
- vi. Bailiffs' power of entry, for some debt streams, may be curtailed by the new reforms if the status quo regarding use of force is not maintained.

Possibly neutral overall impacts could arise if:

- vii. Local authorities take the compliance stage in house. This could lower the recovery rate for local authority debt issued to bailiffs because enforcement agencies would be left with more difficult debtors but would not necessarily affect the overall recovery rate of debt ;
- viii. There is an increase in the early recovery of debt as a result of the introduction of a new compliance stage, but this would not necessarily imply an increase in overall recovery rates.

2. 73 The impact of these factors on the analysis in this IA is explained:

- Creditors and debtors: If the recovery rate increased (decreased) in future, this would represent a cost (benefit) to debtors and a benefit (cost) to creditors. It is unclear how likely it is that the effectiveness of debt repayment will significantly change in future. Enforcement agents advise that they will continue to remove goods in future to maintain an effective threat, even if the cost of doing so might outweigh the fee, as the other elements of the fee should allow for this.
- Enforcement agents did not express significant concerns about changes in enforcement rates in future, and the loss of surprise in the law of distress was the main concern raised. However, this is not expected to impact a significant volume of cases and is not sufficient to negate the expected benefits to enforcement agents of the proposals, as explained above. However, the impacts are sensitive to overall enforcement rates. The impact of a one percent change in the (weighted average) enforcement rate for non-high court debt has been modelled, and each one percent would impact overall annual profit by around £6.5m.

Administration stage repayment rates

- 2. 74 This analysis assumes that administration stage repayment rates would be around 50% for all debt types (except for high-court). This is based on information from the HMCTS contract, where between 20% and 50% of successfully enforced debts were enforced at this stage, depending on the region. As payment at the administration stage will be encouraged by advice agencies and guidance, 50% is considered a reasonable assumption for the purposes of this modelling.
- 2. 75 An assumption for the proposed fee remission has also been incorporated, whereby it is assumed that in 10% of successfully enforced cases the fee would be remitted from the enforcement stage fee back to the administration stage fee. It is not known how many debtors will be entitled to the fee remission in practice, in part because how the remission will apply is still being formulated, and so this should be considered as indicative only.
- 2. 76 The table below highlights how annual enforcement agent aggregate profits could change if administration stage enforcement rates (of those successfully enforced debts) varied, assuming the baseline modelling assumptions. It incorporates that if fewer cases were enforced at the administration stage, there would be a lower operating saving.

% of successfully enforced done at admin stage	Total expected revenue	Profit margin ⁴²
40.0%	£156m	27%
50.0%	£138m	14%
60.0%	£120m	1%

⁴² This captures the impact on operating cost if more or less cases settle at the administration stage.

2. 77 This table demonstrates that the higher the administration stage payment rate the lower the average fee for debtors, and equally the lower the average fee for enforcement agents.

Fee Structure Review analysis

2. 78 The fees relevant for this consultation response IA are based on the "*Enforcement Fee Structure Review*" and subsequent further engagement with stakeholders. The analysis in this review includes profitability impacts which differ to those included in this IA. The reasons for this are:

- The analysis does not capture any potential additional costs or efficiency savings associated with the reforms.
- The analysis does not include the proposed fee remission policy
- The analysis incorporates different administration stage enforcement rates for some debt types to those assumed in this IA. The reason is that this IA considers that HMCTS contract to be the best indicator of the expected impact of the administration stage, due to the similar fee structure in place to that proposed. It is also considered payment at the administration stage will be encouraged by advice agencies and guidance, and hence there could be behavioural impacts that were not accounted for in the *Enforcement Fee Structure Review*.
- This analysis does not model each non-high court debt stream separately, but rather makes use of weighted averages (by volumes within each debt stream).
- The modelling in this IA makes use of updated information on volumes of cases and debt values.

2. 79 Within both sets of analysis, assumptions have been made and the analysis is based on calculations involving average figures. Based on the difficulties in getting commercial data, the fact that firms operate in multiple debt streams, and different management accounting systems, it is unclear that a different method could have been pursued in the profitability assessment or in the analysis where the fee was initially devised.

Other

2. 80 Industry revenue in the base case is assumed to be nearly £140m per annum based on average revenue per case of £33.13 for non-high court debts and £232.82 for high court debts, as detailed in the *Enforcement Fee Structure Review*, and multiplying these figures by the assumed volumes of cases, as detailed on pp. 6.

2. 81 It is assumed that profit margins in the base case are approximately 9% based on information in the *Enforcement Fee Structure Review* and cross-checking this against information in the Plimsoll report (April 2011) for the wider enforcement agent industry. Under this scenario, operating costs per annum to the industry are calculated to be nearly £130m and annual aggregate profit around £11m.

2. 82 80% of enforcement agents are assumed to be certificated based on the volumes of enforcement work requiring certification and volumes of those where enforcement agents can operate without a certificate. It is assumed certificated enforcement agents will continue to obtain a certificate in future.

2. 83 It is assumed that training courses will be readily available in future and that the costs of certification would remain the same.

2. 84 It is assumed that the new provisions will be applied and implemented effectively across private and public sector enforcement bodies, in contrast to existing voluntary codes.

2. 85 The analysis in this IA is based on information from firms who engaged with consultation or ISR Report or the *Enforcement Fee Structure Review*, and it is unclear whether respondents are representative of whole industry.

2. 86 The proposed fee structure does not incorporate an allowance for reasonable costs. This means that in some exceptional cases, enforcement agents might need to apply to the court to allow for exceptional costs. There is a risk that this could generate additional costs to enforcement agents, although volumes of such applications are expected to be minimal.

Summary impact of assumptions on overall analysis

2. 87 The overall impacts of risks materialising and of assumptions changing is:

- Creditors and debtors - might be affected at the margin if a different volume of cases are referred for enforcement in future or if the effectiveness of enforcement changes. A change in enforcement activity would in general reflect a transfer between the creditor and debtor or the debtor and enforcement agent, and so does not have a direct economic impact.
- Enforcement agents – many of the potential sensitivities would reflect a transfer between the enforcement agent and the debtor through the fee charged. Evidence from enforcement agents suggests that the main sensitivity for to them is the risk that local authorities take the administration stage in house, as it could change the feasibility of the fee structure. In spite of this risk, the evidence suggests that enforcement agents remain in support of the proposals and the OIOO assessment provided above remains valid.

3. Enforcement, Sanction and Monitoring

3.1 Compliance with Part 3 of the TCE Act would be the responsibility of creditors, debtors and enforcement agents. However, Schedule 12 to the TCE Act contains remedial actions for:

- The debtor where an enforcement agent breaches a provision of the Schedule;
- The creditor where a debtor interferes with controlled goods; and
- Prescribes that a person is guilty of an offence if they intentionally obstruct a person lawfully acting as an enforcement agent or if they intentionally interfere with controlled goods.

Annex A – More Detail on the Problem under Consideration

Clarification of law

- 4.1 At present, the law relating to enforcement by the seizure and sale of goods is complex, unclear and confusing. It is contained in numerous statutes, secondary legislation and common law and its language is old fashioned. There are also different requirements depending on the type of debt recovered. This confusion can result in enforcement agents being unclear about their legal authority and debtors being unaware of their rights. This generates additional avoidable costs for enforcement agents.
- 4.2 Furthermore, different processes may be required for similar types of debt. For example, neighbouring local councils may have differing obligations and procedures when agreeing contracts with enforcement companies to collect council tax debt. As a result, enforcement agents require knowledge of all the different requirements applying to their clients. This generates additional avoidable costs for enforcement agents.
- 4.3 When an enforcement agent breaches the National Standards for Enforcement Agents there is currently no prescribed remedy available for the debtor. Nor are there any set penalties for contravening the standards. Industry bodies agree that these features may contribute to current voluntary standards not always being adhered to effectively, which undermine the sector's reputation. Detail of possible breaches has been received by the Ministry of Justice (MoJ) in correspondence. The examples include allegations that enforcement agents/agencies:
- Failed to provide proof of identification even when requested to do so.
 - Insisted they would enter premises where 12 and 14 year old children were the only persons present on the premises.
 - Failed to respond to complaints.
 - Misrepresented their powers.
 - Damaged goods and property.
 - Breached Data Protection legislation.
 - Used inappropriate and offensive language.
- 4.4 The ISR research report commissioned by MoJ identifies similar issues, reported by both debtors and enforcement agents themselves. It also identifies that whilst there is little or no widespread robust research evidence on debtor experience of bailiffs, the thousands of case histories held by some advice agencies suggest that there is a problem to be addressed and that the issues raised are not completely isolated.
- 4.5 The ISR research found that there may be little incentive for a debtor to complain about breaches of the voluntary standards. A debtor may complain to the industry trade associations who endorse the standards. However debtors may feel that complaining to the trade associations is not a credible option as they may believe that these associations, funded by enforcement agents, may favour the enforcement agent. Some debtors may also not feel like complaining, be unaware how to do so, or may be put off by any perceived lack of remedial action if they do.
- 4.6 In summary current voluntary standards appear not to be working well enough and industry bodies have been pressing for more government regulation. There have been direct calls for the regulation of enforcement agents, in correspondence to MoJ Ministers and in responses to previous consultations, by enforcement agents, the third sector and members of the public, e.g. 'Your Freedom (2010)' and the recent 'Red Tape Challenge'. The ISR research report reiterates these calls by stakeholders, including enforcement agents. Regulation is considered by enforcement agents to make the market work better, to the benefit of all including debtors.
- 4.7 Some aspects of the law relating to enforcement actions are outdated and seem incompatible with a modern and proportionate enforcement regime. For example, common law dating back to 1812¹ indicates entry by taking up floor boards above a tenant's room may be a valid mode of entry.

¹ Gould v Bradstock 1812

4.8 Distress (i.e. seizing property) is one area where particular concerns have been raised over its potential lack of compliance with the European Convention on Human Rights. There is an outdated common law remedy that enables landlords to recover rent arrears without going to court. The Law Commission's Report *Landlord and Tenant – Distress for Rent (1991)* concluded that distress for rent has a number of legally difficult features and recommended its abolition. A subsequent period of consultation revealed that distress for rent can be an effective remedy for recovering rent arrears, particularly for commercial premises, implying reform rather than abolition is better.

Fee structures

4.9 Each enforcement power brings with it different fee structures, generating application costs for enforcement agents, which are fragmented, lack clarity and are difficult to interpret in some instances. Furthermore, the fees and charges levied by enforcement agents are paid by debtors and not by the creditors that appoint them. This reduces the incentive on creditors to ensure that the fees are proportionate and reasonable.

4.10 The current fee structures may not provide enforcement agents with adequate remuneration in some instances, and debtors may pay quite different charges for similar activities. In turn this might incentivise enforcement agents to undertake unnecessary enforcement actions, such as additional visits, in order to cover their costs. These factors are evidenced in the ISR Report, where enforcement agents agreed that the current fee structure incentivises additional and unnecessary enforcement activity, and discourages settlement to take advantage of greater fees. It also suggests that some enforcement agents are only able to make money through charging "reasonable expenses", and the practice of loading "reasonable costs" was raised by some enforcement agents themselves. Such costs might not be specified in advance and there is no clear definition of "reasonable".

4.11 In summary industry bodies have raised concerns about the current fee structures, and industry bodies support having a new simplified structure with fees set at the right level and which is easy to apply.

4.12 Problems may stem from the following characteristics:

- *Level of fees.* The current statutory fees differ across different debt types, and in many cases do not allow enforcement agents to levy a fee for the initial work undertaken, such as processing the creditor's request and sending a letter to the debtor. Fees may therefore not always align closely with costs. As such, enforcement agents may find it necessary to charge higher fees elsewhere in order to recover costs overall.
- *Inappropriate incentives and potential for abuse.* As a result of the way fee levels are set i.e. by charging for activities rather than outcomes, the current fee regime could generate incentives for inefficient enforcement agent behaviour. This may include undertaking successive stages of enforcement activity, whether or not this activity is necessary to secure repayment, or the incentive to pursue debts where it is possible to charge additional fees by applying the "reasonable costs" provision. This is tied to having to find ways of compensating for fees not covering costs in other areas.
- *Lack of clarity* – The current fee structures are unclear due to their fragmented nature, and the scope for charging "reasonable costs" in some instances adds uncertainty. This lack of clarity makes it more expensive to apply the fee structures and can foster errors. In many cases it is difficult for the debtor to challenge the fees charged as it is not always possible to determine the extent of any errors. Evidence from the ISR Report and the enforcement industry questionnaires² suggests that fee issues are a major driver of complaints across the industry, and dealing with complaints generates further costs for enforcement agents.

² This refers to information received through the enforcement industry questionnaire which accompanied the consultation stage IA.

Certification and Competence Requirements

- 4.13 There is currently a legal requirement for enforcement agents collecting council tax, distress for rent and traffic enforcement to obtain a certificate from the county court. The same requirement does not exist for enforcement agents collecting debts on behalf of CMEC, the magistrates' court or HMRC, although CMEC and HMRC will only contract with certificated enforcement agents. As a result different enforcement agents may operate in different ways.
- 4.14 The current certification process consists of the following elements:
- The applicant must advertise in a newspaper³ their intention to apply for a certificate. This is to allow members of the public to object if they consider the individual unfit to hold a certificate.
 - The applicant completes an application form, including a current Criminal Records Bureau clearance certificate, two relevant references, a security bond of £10,000 (which costs around £200) and a court fee of £175. In the application form, the applicant must declare that they have knowledge of the rules governing distress for rent, however, there are no requirements to demonstrate knowledge of the law governing all of the other debt streams.
 - The applicant has to attend before a judge who must be satisfied that the applicant is a "fit and proper person to hold a certificate". The requirement to demonstrate knowledge of the law of distress is left to the discretion of the judge dealing with the application. The ISR Report suggests that debtor stakeholders and some enforcement agents raised concerns that it is currently "too easy" to get a certificate as it is more or less a court formality. The process can also take up to 90 days, although in some instances it has been known to take longer.
- 4.15 There are no statutory competence requirements or other qualification requirements within the current certification process, and while some reputable companies offer some form of training there is a lack of consistency across the industry as a whole. The trade body CIVEA provides an examination which is open to their members. The trade body HCEOA requires an examination to be passed for agents to become full members, and HCEOA is also currently developing a training package. The ISR Report details that it is the view of many enforcement agents and all stakeholder groups that much current bad practice is linked to the lack of competence / training. This relates to ignorance of the law and a lack of key skills in some cases, as well as some enforcement agents entering the industry who "shouldn't be doing the job". This may damage the wider reputation of enforcement agents and undermine confidence in the sector, damaging reputable operators.

³ Advertising in the newspaper can cost around £120. There has been criticism of both the cost of advertising and that the advert may not be placed in a newspaper local to where the applicant works and therefore not be seen by members of the public who have had dealings with the applicant and may consider they are not a "fit and proper person to hold a certificate".

Annex B - Evidence for Change

5.1 MoJ hold regular stakeholder meetings with:

- Government Departments and bodies responsible for enforcement activity that use enforcement agents including the Department for Communities and Local Government (DCLG), HMRC and CMEC.
- A working group of local authorities.
- Representatives and officers from CIVEA and HCEOA.
- Representatives from the third sector including Citizens Advice, Z2K and Money Advice Trust.

5.2 All of these stakeholders have indicated that there is a need to clarify and simplify the law and fee structures and they support more formal regulation of the industry through implementation of the TCE Act, apart from the third sector, which continues to call for full independent regulation. The majority of respondents from the advice sector have stated that they do not support the current certification process and, rather than have this revised, would prefer to see the introduction of an independent regulator for the industry. Many noted that the current scheme is open to abuse. There is concern that the current scheme relates solely to individual bailiffs with no provision for the actions of companies, nor does it allow for the ongoing monitoring of behaviour.

5.3 There are several surveys and reports published by third sector organisations which provide examples of debtor experiences of enforcement agents. These all contribute to the evidence base to suggest that there is a problem to be addressed. Examples include:

1) In response to an earlier consultation⁴, Citizens Advice relayed information collected from various sources including a snap-shot survey of Citizens Advice Bureau (CAB) advisers covering 18,000 cases relating to enforcement agents. They found that almost 2,500 cases reported enforcement agent harassment, and over 800 returns cited conspicuous bad practice. Whilst from a research perspective these findings might not be completely representative of the whole sector, or might include an element of bias, Citizens Advice suggest that this evidence is still indicative that current supervision of the industry is insufficient.

2) Citizens Advice published a report on the “Putting Bailiffs on the Spot” campaign (Oct ‘08) which related to enforcement action over council tax. There are queries about the sampling method and how robust the findings are, so this information is presented for indicative purposes only. This report indicated that out of 130 Citizens Advice Bureaux:

- 79% reported problems negotiating with enforcement agents.
- 63% reported that enforcement agents harassed or intimidated clients.
- 44% of clients were seen as vulnerable and in 50% of cases involving vulnerable clients, enforcement agents failed to exercise discretion.
- 41% said enforcement agents overcharged the client.
- 39% said enforcement agents misrepresented powers of entry.

5.4 Overall in 2011/12 Citizens Advice Bureaux dealt around 24,700⁵ cases in relation to private enforcement agents, up from almost 23,000 the previous year. It is not possible to assess whether the figures have increased because the problem is worsening or whether this is driven by other factors, for example anecdotally the number of cases being referred to enforcement agents has increased.

⁴ DCA and HO Consultation paper – “regulation of enforcement agents” – April 2007

⁵ https://www.citizensadvice.org.uk/index/aboutus/publications/advice_trends.htm

Annex C - Policy Proposals

- 6.1 The proposal is to implement Part 3 of, and Schedules 12 and 13 to, the TCE Act together with subordinate legislation in the form of the Taking Control of Goods Regulations to⁶:
- iv. Clarify and unify the law.
 - v. Introduce a new fee structure.
 - vi. Introduce a new and extended certification process.
- 6.2 These three provisions are inextricably inter-related so it is not feasible to implement the provisions separately. The elements have been consulted on as a package of reforms.
- 6.3 Part 3 of the TCE Act unifies the existing law relating to seizure and sale of goods for most purposes. It replaces the current law of rent distress with a modified regime for recovering rent arrears in the commercial property sector only, abolishing the common law right to distrain⁷ for rent arrears. It also requires every enforcement agent who would be responsible for taking control of goods to obtain a certificate of fitness from the county court. Part 3 of the TCE Act describes bailiffs and enforcement officers as enforcement agents.
- 6.4 Schedule 12 to the TCE Act prescribes the new procedure to be followed by enforcement agents when seizing goods, to be known as taking control of goods. The Schedule prescribes the entire process to be followed by enforcement agents when taking control of and selling goods, from the serving of a notice to taking control of goods (including which goods may be taken); powers of entry; care of goods seized; the sale of goods seized and the distribution of the sale proceeds. Paragraph 62 of Schedule 12 provides for regulations for the recovery from the debtor of amounts in respect of costs of enforcement related services⁸. The Taking Control of Goods Regulations prescribes the detail stipulated by Schedule 12.
- 6.5 Schedule 13 sets out existing legislation that requires amendment to ensure that the procedure in Schedule 12 will be used. It also contains amendments to terminology, for example where current legislation refers to "walking possession" it is amended to read "controlled goods agreements".

Clarifying the Law

- 6.6 The proposal is to simplify and clarify the law to ensure that the process is clear and transparent without being over burdensome to all parties. The purpose of the Taking Control of Goods Regulations is to set out clearly the detail of the prescribed process that an enforcement agent should follow.
- 6.7 The consultation proposed that any new procedure to take control of goods by 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 legislation and common law, which may raise confusion.
 - Render the law consistent with Human Rights legislation.
 - Balance the sometimes competing rights and responsibilities of creditors and debtors.
 - Establish the use of less invasive ways to take control of goods.
 - Verify the rights and responsibilities of debtors, creditors and enforcement agents when debts have to be enforced.
- 6.8 The detail in Part 3 of, and Schedule 12 to, the TCE Act together with the Taking Control of Goods Regulations address current complexities and inconsistencies in the enforcement process between different types of debt. In particular the Taking Control of Goods Regulations will:

⁶ Following consultation, the intention is to implement Part 3 of the Act. However, with regard to reasonable force the status quo should be maintained. This differs from the legislation in the TCE Act, and therefore a legislative amendment will be required in due course.

⁷ Taking goods from the let premises and either holding them until the arrears are paid or selling them.

⁸ Referred to as fees throughout this impact assessment.

- Define seven categories of debt to make it clear which type of debt allows the use of reasonable force;
- Prescribe modes of entry to make it clear how an enforcement agent may enter premises;
- Prescribe days and hours of entry to make it clear when an enforcement agent may enter premises;
- Stipulate which goods are exempt and make it clear which goods an enforcement agent may not take into control.

Fees

- 6.9 We propose to implement Schedule 12 of the TCE Act which allows for a new fee structure to be placed in legislation, setting out the fees, costs and charges that are recoverable from the debtor.
- 6.10 The policy proposal is that any new fee structure should align fees more closely with the costs of the activity carried out by the enforcement agent, alter incentives to encourage more appropriate enforcement behaviour, and be both clearer and fairer to debtors and enforcement agents.
- 6.11 The fee structure proposed encompasses a number of elements, as detailed below. Annex D provides further detail of the fee structure proposed, including the level of fees and treatment of elements such as order of payment and multiple writs. The fee structure is based on evidence from the “*Enforcement Fee Structure Review*” report⁹, with refinements in light of consultation responses and further stakeholder engagement. Detail is provided at 1.53 below.
- 6.12 The elements of the proposed fee structure are:
- *Staged approach.* A staged approach is planned in order to more closely align incentives of enforcement agents with the required workload. The planned stages are: 1) administration (also known as compliance), 2) enforcement and 3) sale. In particular, the administration stage should allow for the possibility of debts being paid without the necessity of a doorstep visit. The enforcement stage will cover all activity once a doorstep visit has occurred until the sale stage is commenced, where goods are removed and taken to the place of sale.
 - *Fixed fees and variable elements.* These would be linked to the various stages proposed. Fixed fees would allow a closer tie between the fee and costs incurred for activities required at a particular stage. For a number of reasons, such as complexity, higher value debts may be more costly to enforce and so an additional percentage element to the fee is proposed. The fixed fees and variable element have been set with reference to one another to ensure that fees cover costs satisfactorily. Fixed fees should disincentivise unnecessary enforcement activity as no extra charges can be applied (unless there are specific exceptional costs, agreed by a judge).
 - *Uniformity* across all types of debt enforced by enforcement agents within non-High Court and within High Court enforcement cases. The rationale is that many of the activities undertaken are similar across different debt types, apart from the distinction between High Court and other enforcement work. As such, a uniform fee structure would be appropriate and would reduce existing information problems associated with fee charges. It would enable debtors and other stakeholders to understand more easily what fees would be charged. Fees in High Court enforcement cases would differ from non-High Court enforcement, for example an additional enforcement stage exists to reflect the differing legal requirements of High Court enforcement officers. However, the fees remain parallel in some elements, as shown in Annex D.
 - *In High Court cases* remuneration is provided by the creditor for the early work undertaken when enforcement action is not successful. This forms part of the contractual agreement between the creditor and the High Court enforcement officer. Where High Court enforcement is unsuccessful, the creditor pays a fee equal to the administration stage, replacing the current High Court charging policy.

⁹ This report is published along the Consultation Paper and consultation stage Impact Assessment, produced by Alexander Dehayen for MoJ.

- A *remissions policy*, which should allow for possible remission from the Enforcement stage fee back to the Administration stage fee for those debtors incapable of engaging due to possible mental health problems.

6.13 The fees shown in Annex D remain almost the same as at the consultation stage – the difference being in relation percentage threshold for non-high court debts which has increased from £1,000 to £1,500. This reflects consultation responses and the suggestion that council tax debts should only be subject to an additional percentage element in exceptional cases.

6.14 The fees included in Annex D are relevant for implementation in 2012 and would need to be inflated as appropriate to account for inflation between 2012 and the implementation date. The Post Implementation Review (PIR) outlines the approach to reviewing the fee structure and levels in future.

Certification and competence requirements

6.15 The policy proposal is to ensure that there is an accountable and competent workforce that safeguards debtors, and where debtors have access to a fair and effective complaint remedy when things go wrong. It is important that all enforcement agents have a clear understanding of what the enforcement business involves and are prepared and informed before commencing enforcement action.

6.16 The proposal is to implement section 64 of the TCE Act, which requires enforcement agents (with certain exceptions e.g. court officers and police officers) to hold a valid certificate issued by a county court. Provisions would be made (when the reforms are at implementation stage) for complaints against holders of certificates and about suspension and cancellation of certificates. Certificates would be issued subject to conditions, where competence would form part of the assessment criteria. Certification would be a market entry requirement. This would raise professional standards within the industry and enhance protection for debtors.

6.17 The certification process would ensure that all enforcement agents know what their rights and responsibilities are when recovering debts. This would be achieved by ensuring that every enforcement agent responsible for taking control of goods possesses the necessary knowledge and competence.

6.18 At the consultation stage, two options were considered for the competence assessment:

- a. *Flexibility* as to how the enforcement agent demonstrates he/she meets the prescribed assessment criteria to obtain a certificate.
- b. *Fixed mandatory* accredited qualification required to demonstrate the prescribed assessment criteria e.g. knowledge of the law, customer care and dealing with conflict situations, to a consistent standard to obtain a certificate.

6.19 In light of consultation responses, the preferred option is for a fixed mandatory accredited qualification to be taken forward as a method to demonstrate competence. This would deliver consistency across England and Wales for all enforcement agents and the evidence suggests that this more likely to deliver improved enforcement agent behaviour than option a (flexibility).

Alternative Options

6.20 Because this is a Final Stage Impact Assessment, the alternative options which were considered are set out below together with a summary of why they are not being pursued, rather than being subject to the same degree of explanation of the lead option which is being adopted.

6.21 The option of only updating the National Standards was considered, however, for reasons outlined above, the problem under consideration extends beyond the issues that the National Standards can deal with, and therefore further reform as included in the TCE Act is required. The National Standards are being updated as an interim measure.

6.22 Submissions from the British Parking Association (BPA) on possible statutory independent regulation were also included in the consultation paper. Although the government has no

- 6.23 Some groups in the third sector argue that proposals to introduce a regulatory framework for the enforcement industry should go further than those presented in this IA. The majority of respondents from the advice sector have stated that they do not support the current certification process and, rather than have this revised, would prefer to see the introduction of an independent regulator for the industry. They argue that regulation is essential to protect vulnerable debtors and ensure that all enforcement agents are properly controlled and accountable.
- 6.24 The Government believes that implementation of the TCE Act provides the right balance and is sufficient at this time, given the policy objectives and views of different stakeholders.

Annex D: MoJ Proposed Fee Structure for consultation response

Non-High Court

MoJ Proposed Fees for non-High Court Enforcement ¹⁰			
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	
<i>Administration</i>	Instruction received by EAC.
<i>Enforcement</i>	First attendance by EA to debtor's premises / "door step".
<i>Sale</i>	Goods taken to place of sale
<i>Creditor Guaranteed Fee</i>	None

High Court

MoJ Proposed Fees for non-High Court Enforcement ¹			
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	
<i>Administration</i>	Writ received by EAC.
<i>Enforcement 1</i>	First attendance by HCEO / EA to debtor's premises / "door step".
<i>Enforcement 2</i>	HCEO / EA is required to attend debtor's premises due to debtor's failure to comply with notice of seizure or with repayment arrangements previously made.
<i>Sale</i>	Goods taken to place of sale
<i>Creditor Guaranteed Fee</i>	£75.00. To be paid upon completion of Writ with formal notice of abortive return.

Fee Structure Common Features

¹⁰ These fees are relevant for implementation in 2012 and would need to be inflated as appropriate to account for inflation between 2012 and the implementation date. The Post Implementation Review (PIR) outlines the approach to reviewing the fee structure and levels in future.

Fee Structure Common Features	
Percentage Fees	The appropriate percentage shown in the table above is charged on the amount of the debt <i>above</i> the threshold shown.
Order of Payment	When the EA / HCEO recovers less than the full amount due, the repayment of the original debt to the Creditor, and payment of Enforcement Fees, is to be on a pro-rata basis . The proportion of debt repaid, and Enforcement Fees paid, will both be equal to the proportion of the total amount collected to the total amount owed (original debt + fees).
Multiple Warrants / Writs	Allow for multiple administration stage fees but only one enforcement stage fee if on the visit the enforcement agent is attempting to enforce more than one debt.
Exceptional Costs	A court based process to apply for exceptional costs if the cost of the action is excessively over the amount set in the fee structure.
VAT	MoJ is currently investigating the possibility of creating a uniform VAT treatment for all debt types.
Inflation	The fixed fee levels in the Fee Structure should be updated annually to account for inflation through an index-linked measure. Percentage fee levels should be updated periodically. Separately the Fee Structure would be reviewed as part of the Post Implementation Review Process.

Annex E: Fees Comparison for general enforcement

This table mirrors Table 3 in the “*Enforcement Fee Structure Review*”, with an update to the calculation of the percentage fee to reflect the updated threshold.

Scenario	Size of debt (£)	£ Fixed Fees Charged (plus number of additional charges for reasonable costs shown in brackets)							Proposed Fees for non-High Court Enforcement
		Commercial Rent	Council Tax	CSA	HMCS	NNDR	Road Traffic		
A <i>No successful debtor contact/ unsuccessful enforcement</i>	Any	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
B1 <i>Debtor repays in full before EA visit</i>	100	0.00	0.00	10.00	75.00	0.00	11.20	75.00	
B2 <i>Debtor repays by instalments before EA visit</i>	100	0.00	0.00	10.00	75.00	0.00	11.20	75.00	
B3 <i>Debtor pays in full or by instalments after first EA visit</i>	100	0.00 (1)	24.50	10.00 (1)	275.00	24.50	11.20	305.00	
B4 <i>Debtor repays following levy on goods</i>	100	45.65 (3)	79.00 (2)	25.50 (3)	275.00	79.00	47.70	305.00	
B5 <i>Debtor repays when EA attends to remove goods</i>	100	45.65 (3)	79.00 (3)	25.50 (3)	275.00	79.00	47.70	305.00	
B6 <i>Debtor's goods are removed and sold to repay debt</i>	100	60.65 (6)	89.00 (6)	35.50 (6)	440.00 (4)	89.00 (4)	62.70 (3)	410.00	
C1 <i>Debtor repays in full before EA visit</i>	500	0.00	0.00	10.00	75.00	0.00	11.20	75.00	
C2 <i>Debtor repays by instalments before EA visit</i>	500	0.00	0.00	10.00	75.00	0.00	11.20	75.00	
C3 <i>Debtor pays in full or by instalments after first EA visit</i>	500	0.00 (1)	24.50	10.00 (1)	275.00	24.50	11.20	305.00	
C4 <i>Debtor repays following levy on goods</i>	500	70.15 (3)	95.00 (2)	41.50 (3)	275.00	95.00	92.20	305.00	
C5 <i>Debtor repays when EA attends to remove goods</i>	500	70.15 (3)	95.00 (3)	41.50 (3)	275.00	95.00	92.20	305.00	
C6 <i>Debtor's goods are removed and sold to repay debt</i>	500	145.15 (6)	145.00 (6)	91.50 (6)	500.00 (4)	145.00 (4)	167.20 (3)	410.00	
D1 <i>Debtor repays in full before EA visit</i>	5,000	0.00	0.00	10.00	75.00	0.00	11.20	75.00	
D2 <i>Debtor repays by instalments before EA visit</i>	5,000	0.00	0.00	10.00	75.00	0.00	11.20	75.00	
D3 <i>Debtor pays in full or by instalments after EA visit</i>	5,000	0.00 (1)	24.50	10.00 (1)	275.00	24.50	11.20	567.50	
D4 <i>Debtor repays following levy on goods</i>	5,000	140.65 (3)	162.50 (1)	109.00 (3)	275.00	162.50	339.70	567.50	
D5 <i>Debtor repays when EA attends to remove goods</i>	5,000	140.65 (3)	162.50 (2)	109.00 (3)	275.00	162.50	339.70	567.50	
D6 <i>Debtor's goods are removed and sold to repay debt</i>	5,000	215.65 (6)	212.50 (6)	169.00 (6)	1,175.00 (4)	212.50 (4)	414.70 (3)	935.00	

Notes

Numbers in brackets represent the number of fees within the Fee Structure where “reasonable costs” may be charged.

Whilst calculating the fees due under the various scenarios and Fee Structures the following assumptions were made:

- Existing Fee Structures for Stamp Duty Land Tax and Social Security are vague regarding how many visit fees may be charged. It has been assumed that multiple visit fees may be charged.
- For all cases including levying and/or attendance to remove it is assumed that there have been three visits made to the premises.
- Following all levies it has been assumed that “Walking possession” is taken of goods, and not “Close possession”. EACs reported that “Close possession” occurs extremely infrequently. In all cases the period of walking possession is assumed to be 30 days.
- All sales are assumed to take place at the auctioneer’s premises, and the auctioneer’s commission fee is assumed to be 10% of the sales price achieved, which in turn is assumed to be equal to the amount of debt outstanding.

NB fee comparison depends on size of debt

Annex F: Fees Comparison for High Court enforcement

This table is a copy of Table 4 in the “*Enforcement Fee Structure Review*”.

Scenario	Size of debt (£)	£ Fixed Fees Charged (plus number of additional charges for reasonable costs shown in brackets)		
		Writs of FiFa		Proposed Fees for High Court Enforcement
A <i>No successful debtor contact/ unsuccessful enforcement</i>	Any	60.00		75.00
B1 <i>Debtor repays in full before EA visit</i>	600	83.50	(1)	75.00
B2 <i>Debtor repays by instalments before EA visit</i>	600	83.50	(1)	260.00
B3 <i>Debtor pays in full or by instalments after first EA visit</i>	600	83.50	(2)	260.00
B4 <i>Debtor repays following levy on goods</i>	600	93.00	(4)	260.00
B5 <i>Debtor repays when EA attends to remove goods</i>	600	93.00	(4)	740.00
B6 <i>Debtor's goods are removed and sold to repay debt</i>	600	170.50	(6)	1,250.00
C1 <i>Debtor repays in full before EA visit</i>	5,000	193.50	(1)	75.00
C2 <i>Debtor repays by instalments before EA visit</i>	5,000	193.50	(1)	560.00
C3 <i>Debtor pays in full or by instalments after EA visit</i>	5,000	193.50	(2)	560.00
C4 <i>Debtor repays following levy on goods</i>	5,000	203.00	(4)	560.00
C5 <i>Debtor repays when EA attends to remove goods</i>	5,000	203.00	(4)	1,040.00
C6 <i>Debtor's goods are removed and sold to repay debt</i>	5,000	268.00	(6)	1,850.00
D1 <i>Debtor repays in full before EA visit</i>	50,000	1,318.50	(1)	75.00
D2 <i>Debtor repays by instalments before EA visit</i>	50,000	1,318.50	(1)	3,935.00
D3 <i>Debtor pays in full or by instalments after EA visit</i>	50,000	1,318.50	(2)	3,935.00
D4 <i>Debtor repays following levy on goods</i>	50,000	1,328.00	(4)	3,935.00
D5 <i>Debtor repays when EA attends to remove goods</i>	50,000	1,328.00	(4)	4,415.00
D6 <i>Debtor's goods are removed and sold to repay debt</i>	50,000	1,393.00	(6)	8,600.00

Notes

- Numbers in brackets represent the number of fees within the Fee Structure where “reasonable costs” may be charged.

Whilst calculating the fees due under the various scenarios and Fee Structures the following assumptions were made:

- For all cases including levying and/or attendance to remove it is assumed that there have been three visits made to the premises.
- Following all levies it has been assumed that “Walking possession” is taken of goods, and not “Close possession”. HCEOs reported that “Close possession” occurs extremely infrequently. In all cases the period of walking possession is assumed to be 30 days.
- All sales are assumed to take place at the auctioneer’s premises, and the auctioneer’s commission fee is assumed to be 10% of the sales price achieved, which in turn is assumed to be equal to the amount of debt outstanding.

NB fee comparison depends on size of debt

Annex G: Summary of Responses to Questionnaire for Enforcement Agent Industry

A. Detail of respondents

- 19 firms provided responses to the questionnaire for the enforcement agent industry which accompanies the consultation stage IA.
- Respondents varied from small to large firms and between them carried out work across the range of debt areas.

B. Views on the impact of the proposals

- A summary of the views on the impact of the proposals is provided below:

Clarifying the law

1. Do you think your firm would see any benefits from the proposed simplification of the law, such as from streamlining processes? Please give details.
 - Several firms raised benefits including in relation to: training; simplified systems and IT; reduced complaints (especially due to clarification of the fee); and the benefits of the admin stage in the new fee structure.
 - The majority of firms suggested some or all of the above benefits, although a few firms did not raise them.
2. Do you think your firm would see any costs from the proposed simplification of the law, such as from streamlining processes? Please give details.
 - The majority of firms, although not all, suggested that there would be short-term transition costs, including updating systems, paperwork and training processes.
 - A few firms raised potential ongoing costs, including that trainee enforcement agents would not be able to work unsupervised, additional costs whilst carrying out duties, and the issue of creditors undertaking the administration stage.

Training and certification

3. What proportion of your enforcement agents (both directly employed and those you contract with) are certificated / trained?
 - All firms responded with the fact that 80-100% of their enforcement agents are certificated and nearly all put training in the same category (18 out of 19).
4. What do you anticipate the cost of training to be to per enforcement agent, assuming that training would be required for certification? Please consider the cost relative to what you currently spend on training.
 - Expected costs for training varied from £0-£100 to £1000+ with most firms in the £500-£1000 or £1000+ categories. It is unclear how far these figures reflect current training costs or potential additional training costs in future.
5. Assuming that the new certification process includes training, do you envisage that such a certification process would reduce the volume of complaints seen? Please explain.
 - There were mixed views here – several firms suggested that most complaints are fee related although some thought that a more confident and well trained workforce could reduce complaints across the industry. For individual firms the figures suggest their enforcement agents are already

largely certificated.

6. Assuming that the new certification process includes training, do you envisage that such a will reduce the cost of dealing with complaints? Please explain.
- The responses here suggest that some firms expect to benefit from a reduced volume of complaints, which is more likely to stem from the fee element of the package / overall combination than certification and training alone.
7. How much time do you currently spend processing complaints per week (approximate)?
- Responses here varied from under 5 to 10+ hours a week. This might vary depending on the size of the firm or debt areas they work in.

New fee structure

8. What is the expected impact on profitability of the new fee structure to your firm, assuming the same is work carried out as currently, and considering the structure and fee levels proposed in the consultation document?
- Views here varied – with a five firms predicting a decrease, three predicting no change and eleven predicting an increase. Several firms raised sensitivities which could impact their analysis, such as debts not being referred to them.

Overall impact of combined proposals

9. What do you think the overall impact of the proposed reforms would be on your firm in terms of the efficiency and operations of your firm? Please explain.
- Several firms raised potential efficiency benefits including: improved efficiency from streamlining and a standardised fee structure; avoiding costlier manpower on the doorstep; reducing costs of training and administration (including complaints); the ability to improve pre doorstep collection processes and potentially a quicker and easier enforcement process.
10. What do you think the overall financial impact of the proposed reforms would be on your firm, in terms of profitability? Please explain
- Views here varied – with a two firms raising specific issues; six predicting no change / an uncertain impact / not responding and nine predicting an increase. Again, firms raised sensitivities here including the issue of creditors not referring cases; inflation and cash flow impacts.
11. What do you think the overall impact of the proposed reforms would be on your firm, in terms of quality of service? Please explain
- Some firms raised potential benefits including: faster collections; lower complaints and more investment in pre-doorstep enforcement. Firms did not suggest that their quality would decrease in future, assuming that the fee remained adequate.

Annex H: Transforming Bailiff Action: Equalities Considerations

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.

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).

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

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).

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.

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 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.

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.

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.

¹ See 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: