



Ministry of
JUSTICE

Transforming Bailiff Action Equality Impact Assessment

Introduction

This Equality Impact Assessment (EIA) relates to the implementation of Part 3 of, and Schedule 12 to, the Tribunals, Courts and Enforcement Act 2007 (“the TCE Act”) and subordinate regulations entitled “The Taking Control of Goods Regulations” covering England and Wales.

This EIA accompanies the Transforming Bailiff Action consultation paper and Impact Assessment. It is helpful to consider the issues this paper covers alongside these two papers.

Following the conclusion of the consultation exercise and consideration of responses, the EIA will be updated in light of any new evidence of equality impact.

Equality duties

Section 149 of the Equality Act 2010 (“the EA Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA Act;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the EA Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

The Ministry of Justice (MoJ) has a legal duty to consider how the proposed policy proposals are likely to impact on the protected characteristics and take proportionate steps to mitigate or justify the most negative ones and advance the positive ones. MoJ records its fulfilment of its equality duties by completing an EIA.

Summary

Consideration has been given to the impact of the proposals against the statutory obligations under the EA Act. These are outlined below.

Direct discrimination

Our initial assessment is that the enforcement reforms in the TCE Act are not directly discriminatory within the meaning of the EA Act as they apply equally to all debtors, creditors and enforcement agents irrespective of whether or not they have a protected characteristic; we do not consider that the proposals would result in people being treated less favourably because of the protected characteristic.

Indirect discrimination

Our initial assessment, based on the limited information available, is that among debtors people with the following protected characteristics – disability and lone-parents the majority of whom are women - are over represented.

It is anticipated that those in debt where enforcement action is required will be better protected by these proposed changes, however even if it were established that in some cases (e.g. where fee levels had increased) these effects constituted a particular disadvantage, implementation of the reforms represents a proportionate response to ensuring effective enforcement and contributes to providing more protection against aggressive bailiffs.

Discrimination arising from disability and duty to make reasonable adjustments

In so far as this policy/legislation extends to disabled debtors, creditors and enforcement agents, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled debtors, creditors and enforcement agents so that they are out of scope of the proposals, but it remains important to make reasonable adjustments for disabled debtors, creditors and enforcement agents to ensure appropriate support is given.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

Advancing equality of opportunity

Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of debtors, creditors and enforcement agents who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic.

Fostering good relations

Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposals.

Background

Effective enforcement is crucial to 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. Unless there is prompt and efficient enforcement, the authority of the courts, the deterrent value of penalties and public confidence in the justice system might all be undermined, as might the operation of markets. Whilst debtors should be protected from oppressive pursuit of their debts they should also not be able to avoid facing their financial responsibilities.

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 EIA concentrates on enforcement by the seizure and sale of goods by bailiffs (also referred to as enforcement agents).

Enforcement action is by its very nature intrusive. It is necessary for an enforcement agent to be assertive and firm if they are to be effective. However, there is anecdotal evidence that some enforcement agents may veer towards aggression in the pursuit of effectiveness. The complexity of the current law and fee structures contribute to the problem as this may lead to enforcement agents misrepresenting their legal authority or charging excessive fee. These elements need to be addressed and the Government has given a commitment to provide more protection against aggressive bailiffs.

There are 3 strands to this work.

Law: At present the law relating to enforcement agents' powers, and the seizure and sale of goods is complex and can be unclear and confusing. It is contained in numerous statutes, secondary legislation and common law. The various pieces of regulation mean that different enforcement powers are conferred and different procedures operate according to the type of debt being recovered. This disparity creates difficulties for the debtor in identifying, with sufficient confidence, what an enforcement agent can and cannot do, and in some cases leads to enforcement agents exploiting this disparity, that further undermine debtors' confidence and protection.

Fees: The current fee structure for enforcement agents is also complex; each enforcement power brings with it a different fee structure. Some structures, such as those relating to road traffic offences and council tax, are laid down in statute; others exist only within contractual arrangements drawn up between an enforcement company and its clients, for example HM Courts & Tribunals Service for the enforcement of magistrates' court fines. The costs structures themselves also lack clarity and are difficult to interpret in some instances. These factors combine to make the fee charging process prone to abuse.

Certification and competence requirements: The regulatory structure for enforcement agents in England and Wales is very fragmented. Whilst there are some elements within the industry that are regulated, such as certificated bailiffs, there are others that are only subject to informal regulation through trade associations, such as the Civil Enforcement Association. In addition, there are currently no statutory competence requirements or other qualification requirements, although some reputable companies offer some form of training.

Aims and outcomes of the policy

The reforms are designed to balance the needs of the creditor, debtor and enforcement agent. The aim is to ensure that an enforcement agent has all the tools necessary to carry out enforcement effectively on behalf of the creditor and is adequately remunerated for the work actually carried out. The proposed reforms also seek to:

- provide assurance for the debtor that the action taken by the enforcement agent and the costs charged are appropriate;
- the enforcement agent is properly trained and authorised to carry out such work; and
- that there are remedies available when mistakes are made.

Law

Simplification and clarification of the law would:

- address misrepresentation of powers by enforcement agents;
- unify the law to address the current complex range of primary and secondary legislation and common law;
- render UK law consistent with Human Rights legislation;
- balance the sometimes competing rights of creditors and debtors;
- establish the use of less invasive ways to take control of goods; and
- verify the rights and responsibilities of debtors, creditors and enforcement agents when debts have to be enforced.

During the development of the Taking Control of Goods Regulations a number of inadequacies of the TCE Act have been identified. The policy is to amend Schedule 12 to the TCE Act to rectify these inadequacies by:

- removing the possible power of force against the person;
- creating the power to use reasonable force on entry to commercial premises without a court warrant for High Court and county court debts;
- creating the power to use reasonable force on re-entry to all premises without a court warrant where the enforcement agent has already taken control of goods through a controlled goods agreement, the debtor has breached the payment terms of the agreement and has received notice of the enforcement agent's intention to re-enter the premises; and
- clarifying the definition of abandonment.

Implementation of Part 3 of, and Schedule 12 to, the TCE Act and amendment of Schedule 12 delivers an enforcement regime that is both effective and proportionate whilst providing protection against aggressive bailiffs.

Fees

The creation and implementation of a new fee structure would:

- address the confusion regarding the current differing fee structures;
- more closely align the fee with the cost of the activity carried out by the enforcement agent to deliver proportionate fees for debtors and adequate remuneration for enforcement agents;
- alter incentives to encourage more appropriate enforcement behaviour; and
- deliver clarity and fairness to both debtors and enforcement agents.

A clear, simple fee structure would allow debtors to see what charges they should expect to incur, and as a consequence should prevent overcharging. Overcharging would be easier to identify and take action against.

Certification and competence requirements

Certification and competence requirements would deliver an accountable and competent workforce that contains safeguards through a fair and effective complaint remedy.

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 competences. While certification through the county court would be mandatory for enforcement agents (with certain exceptions e.g. court officers and police officers) there are two proposals for the competence assessment;

- Flexibility as to how the enforcement agent demonstrates he/she meets the prescribed assessment criteria to obtain a certificate; or
- 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.

The preferred option is for a fixed mandatory accredited qualification as this delivers consistency across England and Wales for all enforcement agents. The Transforming Bailiff Action consultation paper seeks views on these proposals¹.

Methodology and evidence sources

The Government does not have access to comprehensive data covering those employed by or who own enforcement agent businesses and those individuals who may be creditors. Similarly, it is not possible to identify whether certain types of enforcement agent businesses, in terms of the characteristics of practitioners, are more or less likely to receive differential income as a result of the proposed changes to the charging structures.

However it has been possible to use the government statistics listed below to show the impact on those groups with protected characteristics that are likely to be debtors and therefore impacted by these changes. The main source is:

- Wealth in Great Britain: Main results, 2006/08 (ONS) – referred to as the WAG report.

Where there is no data on debt (for the assessing the potential race impact), we have used income data as a proxy using the

- Households Below Average Income (HBAI) 1994/95-2009/10 by the Department for Work and Pensions (May 2011);

Although there is a lack of comprehensive statistical evidence on reasonable costs imposed by enforcement agent firms currently, which is inevitably held by private companies and individuals, we do have access to a range of qualitative evidence:

Publications:

Regulation of Enforcement Agents, Citizen's Advice Bureau (April 2007)

The document is the CAB's response to consultation and hence, much of it states their opinion of the proposed policies rather than outlining evidence about the experience of debtors with bailiffs. However, it does cite information from the following evidence sources

- Snap shot survey of CAB clients who had sought advice on behalf of bailiff problems: CAB advisers were asked to complete a quick questionnaire about the experiences of CAB clients in nine areas of bailiff practices. 507 returns were submitted by 131 CAB offices; we do not know if it is representative of the experiences of all debtors subject to bailiff action.

¹ Chapter 5, Regulatory Regime and Chapter 6, Training, Transforming Bailiff Action Consultation Paper, February 2012

- Evidence from CAB casework on enforcement by bailiffs (18,172) and harassment (2,481) by bailiffs – known as CASE data. This is management information of all enquiries. However not all CAB branches provide the data and key demographic data about the client was not available for all cases
- Evidence from 815 qualitative bureaux evidence statements submitted about conspicuous bad practice – this provides examples of extreme bad practice so is not representative of all cases.

Debt Collection and Mental Health: the evidence report, Royal College of Psychiatrists and the Money Advice Trust (2010)

This report presents the findings from research on the experience and views of UK creditor staff on working with indebted customers who report a mental health problem. Primarily based on an anonymous survey of 1270 frontline collections staff working in 19 different creditor organisations, the report provides a previously unavailable insight into the challenges and business opportunities facing creditors.

The research project ran from August 2009 to October 2010, while the survey took place between March and June 2010.

- 19 different organisations participated. These included creditors (high-street banks, credit card companies, and mortgage lenders) and debt collection agencies and debt purchasers. The report used the term ‘creditor’ as a catch-all term for both credit-providing bodies and debt collection agencies.
- Within these 19 organisations, 1448 individuals were randomly selected to take part in the survey. 178 did not respond to the invitation to take part.
- 1270 respondents completed the survey. This represents a response rate of 88%.

For more details about the survey and its limitations see Annex 3

Papers:

Debt and Health; Proportionate Enforcement for Vulnerable debtors, Mind and Citizens Advice Bureau paper to the Ministry of Justice (April 2010).

The paper highlighted the well-documented circular relationship between debt and mental health and expressed concern that the proposed changes to the fees structure may have a negative effect on people with mental health problems. The paper also outlined the different dimensions of vulnerability in relation to mental health.

General Correspondence:

The Ministry of Justice receives correspondence from Constituency MPs, Peers, organisations and individuals on the powers and regulation of enforcement agents.

Other:

Annex 1 lists other existing sources of information used to help identify the likely equality impacts on different groups of people.

Analysis

This analysis examines the proposal to implement Part 3 of the TCE Act and has identified the following likely equality impacts on debtors.

Impact on debtors

The three strands of this work will impact on debtors as follows:

- a more just outcome will be achieved via clearer and more standardised regulatory measures across the various types of debt recovery streams;
- improving equity (fairness) will be achieved via clearer, more predictable fee structure which is more closely tied to the service received; and
- further improvements in terms of equity (fairness) will be achieved via the introduction of certification and competence requirement reforms.

Potential sex impacts

Debt

The WAG report provides an analysis of the proportion of households in arrears by household type. It is reported that lone parent households with dependant children were far more likely to have fallen into arrears on one or more household bill, mortgage or non-mortgage borrowing commitments (31%). The majority of lone parent households are headed by women.

The 2007 CAB report² highlighted casework in which, all but six per cent of enquiries the gender of the enquirer was recorded. In those enquiries about enforcement by bailiffs (where gender is known), 58 per cent were women and 42 per cent were men. In the second data series entitled harassment by bailiffs women accounted for 64 per cent of enquiries with 36 per cent from men. The report estimated that women account for a similar proportion (63 per cent) of CAB evidence reports on bad bailiff practices. This suggests that women are more likely to report poor bailiff practices.

Household type was recorded in 10,539 of the enforcement by bailiffs series and in 1,414 of the harassment by bailiffs series. Of these, 26 per cent of enquiries in the enforcement series were lone parents as were 28 per cent of enquiries in the harassment series. We estimate that lone parent families accounted for an estimated 27 per cent of the bureau evidence reports of bad bailiff practices (where the family type of the client was known)³. This compares to 16 per cent of lone parents in the general population.⁴

Furthermore lone parent families seem to be overrepresented in CAB cases in comparison to their share of all family types in the UK population; around 7 per cent of all households (10 per cent including lone parents of non dependent children) or 17.5 per cent of all families according to figures from the Office of National Statistics⁵.

This shows that single-parent households, the majority of which are headed by women, are more likely to face debt problems and therefore likely to be affected by these changes than other households.

² Regulation of Enforcement Agents, April 2007 (Citizen's Advice Bureau)

³ Ibid.

⁴ Source Focus on Families, ONS (2007) using data from 2001 census

⁵ See Social Trends 37, Office of National Statistics (2007) and Focus on Families: Office of National Statistics, July 2005.

Potential race impacts

Income

The 'Households Below Average Income Analysis 1994/5 - 2007/08 shows that households headed by someone from a minority ethnic group were more likely to have a lower household disposable income. This is particularly true of the Pakistani/Bangladeshi group with over 50% of these households in the bottom grouping of disposable household income. This suggests that minority ethnic groups may be impacted to a higher degree than other groups on grounds of income as debtors are more likely to be in lower income households.

Debt

There are no official statistics available to determine whether minority ethnic groups fall into debt more or less than other groups.

One alternative source of information on the ethnicity is from the CAB report⁶ which recorded the ethnicity of people making enquiries about debt to the CAB. Around 16,100 people made enquiries about enforcement (recorded under the enforcement series) and 2,213 made enquiries about harassment (recorded under the harassment series). The proportion of total responses by ethnic group is shown in Table 1 in Annex 2 Evidence Tables. It shows that the White and Asian or Asian British groups are underrepresented both as a proportion of all CAB clients and as a proportion of the UK population as a whole in both the enforcement and the harassment series. On the other hand, Black or Black British, Chinese or Other and Mixed race appear to be overrepresented as a proportion of the UK population as a whole, with the Black or Black British group also overrepresented as a proportion of CAB clients. This suggests that those of Black or Black British background may be more likely to have debt problems and be more impacted by these proposals.

Potential disability impacts

Debt

The Wealth in Great Britain report 2006/2008 (ONS) indicates that the propensity to be in arrears on household bills, mortgage and non-mortgage borrowing by households was 26% where the household head was sick or disabled. This is nearly three times as much as those employed or self-employed which averaged 9%.

However, qualitative evidence suggests that people with some mental health conditions may have reduced capacity to engage with regular day to day activities which may pose more issues for those in debt. *Debt Collection and Mental Health: the evidence report* states that customers with mental health problems may experience difficulties with communication. This may take the form of finding written correspondence too difficult to deal with, or experiencing difficulties in managing or understanding telephone calls. For example, people with schizophrenia, bipolar disorder or severe depression may simply be unable to answer the telephone, open their post, or leave their house when they are unwell or experiencing a crisis. Such difficulties may become especially pronounced when indebted individuals are dealing with their creditors.⁷

⁶ Regulation of Enforcement Agents, April 2007 (Citizen's Advice Bureau)

⁷ Debt Collection and Mental Health; the evidence report by the Royal College of Psychiatrists and the Money Advice Trust (2010)

Concern has been expressed that people with some mental health conditions may be unable to respond to the early stages of the proposed fee structure⁸ /enforcement process and therefore be exposed to the higher fees associated with the later stages (see Annex 2 Evidence Tables – Table 2a and 2b). Mind and Citizens Advice are concerned that, “If there are insufficient safeguards, debtors who are vulnerable for the reasons outlined above may have no realistic opportunity to comply at the earlier stage and would automatically be escalated to the ‘enforcement stage’ and face much higher fees⁹.”

There may also be a potential issue for debtors with disabilities who require carer/ support worker help who may have difficulty being available within the proposed times of entry to domestic properties (06:00-21:00). We would welcome further views through the consultation on this issue and also suggestions as to what mitigating actions could be introduced.

From the CAB report¹⁰ nearly 12,000 of the enforcement series enquiries and 1,637 of the harassment series information about disability or health problems of the enquirer was recorded. In the enforcement series 25 per cent of enquiries reported a disability or health problem with 24 per cent reporting the same in the harassment series. In the enforcement series around 12 per cent reported a disability which compares to around 25 per cent for all enquiries recorded on CASE. This suggests that CAB are receiving fewer enquiries about bailiffs from people with disabilities than they receive on other subject areas.

Potential age impacts

Debt

Individuals under the age of 18 are not allowed to take out loans or credit card agreements or other hire purchase agreements. The registered keeper of a vehicle, however, may be pursued for the recovery of a decriminalised road traffic penalty. The proposals therefore have a limited impact on individuals under the age of 18. However, children could be impacted if their parents are pursued for debts.

The WAG report identifies that the likelihood of owing any money in outstanding borrowing was highest for households headed by someone aged 25-34 (68%) and this group were also most heavily borrowed, owing a median amount of £3,700.

Potential religion and beliefs impacts

Debt

There is no evidence from the WAG report to identify the levels of arrears and thus the potential for debt collection proceedings according to religion and belief. It is therefore not possible to assess the impact of the proposals on this particular group.

Potential sexual orientation impacts

There is no evidence from the WAG report to identify the levels of arrears and thus the potential for debt collection proceedings from these groups. It is therefore not possible to assess the impact of the proposals on this particular group.

⁸ A staged approach is proposed in order to more closely align incentives of enforcement agents with the required workload. The proposed stages are: administration, enforcement and sale.

⁹ Debt and Health: Proportionate Enforcement for Vulnerable Debtors, Mind and Citizens Advice Bureau paper to the Ministry of Justice (April 2010).

¹⁰ Regulation of Enforcement Agents, April 2007 (Citizen’s Advice Bureau)

Potential marriage/ civil partnership impacts

There is no evidence from the WAG report to identify the levels of arrears and thus the potential for debt collection proceedings from these groups. It is therefore not possible to assess the impact of the proposals on this particular group.

Potential Gender Reassignment Impacts

There is no evidence from the WAG report to identify the levels of arrears and thus the potential for debt collection proceedings from these groups. It is therefore not possible to assess the impact of the proposals on this particular group.

Potential Pregnancy and Maternity Impacts

There is no evidence from the WAG report to identify the levels of arrears and thus the potential for debt collection proceedings from these groups. It is therefore not possible to assess the impact of the proposals on this particular group.

Impact on creditors, enforcement agents (bailiffs) and others

The three strands of this work will impact on creditors as follows:

- there may be a reduction in the time and resources required for each debt recovery action, which may lead to more cases being fully enforced and/or enforced more quickly, with wider economic benefits for the operation of markets and for contractual certainty.

The three strands of this work are likely to impact on enforcement agents as follows:

- an improvement in equity (fairness) as enforcement agents will be more adequately remunerated for work carried out, for example fees related more closely to costs;
- simplification and clarification of fees may improve administrative efficiency;
- the certification process will ensure that all enforcement agents know what their rights and responsibilities are when recovering debts; and
- raise professional standards within the industry.

There is a lack of data on possible equality impacts for these groups. We are seeking additional data during the consultation period, including through the questionnaire annexed to the Impact Assessment.

Mitigation and Justification

Law

The removal of the power to use force against the person enhances human rights, promotes equality and safeguards the liberty of all debtors.

A number of restrictions and safeguards are being imposed on the use of reasonable force to minimise and eliminate the adverse equality impacts.

Domestic property

The proposed amendments to Schedule 12 to the TCE Act preserve the current common law protection for domestic premises on entry. Where a debtor has been unable to engage with the enforcement process an enforcement agent would not be permitted to use reasonable force to enter their domestic premises.

Commercial Property

However, where the enforcement agent is acting under a writ or warrant of control issued for the purpose of recovering a sum payable under a High Court or county court judgment the enforcement agent is permitted to use reasonable force on entry to commercial premises. This is considered an appropriate balance as running a successful commercial enterprise requires the skill and ability to manage finances and engage with regular day to day activities, including the payment of business debts.

The proposed amendments to Schedule 12 also permit the use of reasonable force to re-enter any premises. However, a number of restrictions and safeguards have been imposed. To use reasonable force on re-entry the debtor;

- must have engaged with the enforcement process because the enforcement agent must have already taken control of the debtor's goods through a controlled goods agreement;
- must have breached the payment terms of the agreement; and
- must have received notice of the enforcement agent's intention to re-enter the premises.

There are circumstances where it would be inappropriate for an enforcement agent to take control of goods, most notably where vulnerability impacts on a debtor's capacity to engage with or understand the enforcement action. In addition it may be difficult for the debtor to make an informed decision on how best to address repayment of their debt. This could cause the debtor to come to an unfavourable decision resulting, ultimately, in their further detriment. There is scope in the Taking Control of Goods Regulations to define "vulnerable" to minimise and eliminate adverse equality impacts that builds on current vulnerability strategies including the voluntary National Standards for Enforcement Agents (Annex 4).

Currently lone parent families are specifically named as a potentially vulnerable group in the National Standards for Enforcement Agents. The Standards also define people with a disability as being potentially vulnerable and enforcement agents are required to use discretion as to whether they should act at all in such cases. This suggests that enforcement agents may be using discretion in many but not all cases where the debtor is a disabled person.

The Transforming Bailiff Action consultation paper seeks views on (a) the need to include and (b) define "vulnerable" in the law¹¹.

Consideration on whether restrictions on the days and times when an enforcement agent can enter residential property to take control of goods is identified within the consultation document. In the event that the reforms are implemented, consideration needs to be given on how enforcement agents can best gather advance intelligence on the debtor in order to make a judgement as to which religious or cultural festival, if any, the debtor observes.

There would be benefits to society where regulatory measures prohibit enforcement agents from entering premises where the debtor is a child under the age of sixteen or where a child or vulnerable persons¹² are the only persons present in the premises which the enforcement agent proposes to enter.

¹¹ Chapter 3, Clarifying the Law, Transforming Bailiff Action Consultation Paper, February 2012 contains a section on vulnerability.

¹² This assumes that any agreed definition of vulnerable persons includes those under 16 and that a definition is agreed in the Taking Control of Goods Regulations

Fees

The proposed fee structure is based on core activities, grouped together into stages with a defined trigger activity for each stage to minimise the adverse equality impacts see Table 2a and b. Once the trigger activity has been undertaken the fee for stage becomes payable. This staged activity supports the concept of early compliance providing the opportunity for all debtors to make payment at the Administration/Compliance stage. Moreover, where the debtor has previously been unable to respond to the creditor, who has now progressed to enforcing the outstanding debt, the staged approach gives the enforcement agent the opportunity to engage with the debtor while protecting the debtor from disproportionate costs. The staged activity also prevents abuse by the enforcement agent by only one fee being payable, per stage, regardless of the number of times an activity takes place. There is also agreement in principle that where the debtor can prove their lack of engagement is due to vulnerability because of their mental health, enforcement fees could be remitted back to the Administration/Compliance stage level. The Transforming Bailiff Action consultation paper seeks wider views and opinion on remitting fees.¹³

These restrictions and safeguards provide the appropriate level of protection for all debtors.

We consider the potential impacts to be justified on the basis it is a proportionate means of achieving the legitimate aim of ensuring that enforcement agents recover outstanding debts on behalf of creditors while providing protection for debtors from aggressive enforcement.

Certification and training

It is important that all enforcement agents have a clear understanding of what the enforcement business actually does and are prepared and informed before commencing enforcement action. Currently, there are no set training requirements for enforcement agents. This is a significant gap. Some businesses have, however, introduced their own training regimes to ensure that their bailiffs are aware of their responsibilities.

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 competences. While certification would be mandatory for enforcement agents (with certain exceptions e.g. court officers and police officers) the Transforming Bailiff Action consultation paper explores alternative policy proposals for competence requirements.

Monitoring

We will be considering how to monitor the implementation of these reforms for positive, negative and mixed equality impacts.

It is intended that a post implementation review will be conducted three years after implementation of Part 3 of, and Schedule 12 to, the TCE Act.

¹³ Chapter 4, Costs of Enforcement Related Services, Transforming Bailiff Action Paper, February 2012.

Consultation

These are some of the stakeholder groups that we have been consulting with:

- 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;
- Third Sector and voluntary organisations, including debt advice organisations

In particular to discuss potential impacts for people with protected characteristics we have consulted CAB, Mind and the Zacchaeus 2000 Trust.

Annex 1 Existing sources of information used to help identify the likely equality impacts on different groups of people

Stakeholder Engagement / Working Groups:

- The Taking Control of Goods Regulations Working Group comprising of representatives from the Enforcement Industry and Ministry of Justice legal and policy officials.
- The Inter Departmental Working Group, and Sub Group, on Bailiffs.
- Stakeholder meetings with the advice and third sector including Mind and Citizens Advice.

Stakeholder feedback:

Debt and mental health; Proportionate enforcement for vulnerable debtors – Mind and Citizens Advice Bureau.

Consultations:

Targeted pre consultation exercise (September 2009) on the draft *Taking Control of Goods Regulations* with:

- Other Government Departments; and
- Enforcement Law Reform Group, comprising representatives from the enforcement and credit services industries and the advice sector.

A number of comments and suggestions were received on the definition for “vulnerable”. While support exists for a definition concern was expressed that a universally acceptable definition could not be drafted.

A range of comments were also received on the permitted days for taking control of goods. There was conflicting support for enforcement agents to be (a) exempt from and (b) permitted to take control of goods on Bank Holidays. There was also little agreement on how to handle religious days and cultural festivals – whether through regulatory or discretionary measures.

Memoranda submitted at the Tribunals, Courts and Enforcement Bill Committee Stage:

- Memorandum submitted by Rev Paul Nicolson (TRI 2)
- Memorandum submitted by the Local Authority Civil Enforcement Forum (TRI 6)
- Memorandum submitted by the Enforcement Services Association (ESA) and the Association of Civil Enforcement Agencies (ACEA) (TRI 12)
- Memorandum submitted by MENAI (TRI 16)

Memoranda submitted during the parliamentary passage of the Tribunals, Courts and Enforcement Bill reveals apprehension over plans to allow enforcement agents to use force against the person.

Memorandum submitted by the Rev Paul Nicolson states “The Bill prohibits force against the person by bailiffs, unless permitted by regulations. Regulations would permit restraint against debtors who interfere or threaten to interfere with their seizure of goods. The government has received a copy of the minute from the meeting of the Enforcement Law Reform Group comprising bailiffs, creditors and the advice sector showing that none of them want the government to allow bailiffs to restrain debtors who interfere with their work, preferring to rely on the general right to self defence. Such a bad law will certainly be used and abused.”

Memorandum submitted by the Enforcement Services Association (ESA) and the Association of Civil Enforcement Agencies (ACEA) states “There is concern about the proposals for an enforcement agent to be able to restrain a debtor by the use of reasonable force. If the agent is being subjected to physical abuse by a debtor then there is sufficient protection within existing law to enable him to defend himself and, we would suggest, restrain the debtor to enable him to carry out his lawful duties. This is a matter of some concern and there is a general view that there is already sufficient protection in the law.”

Analysis of existing sources of information further reveals concern over current restrictions on the use of reasonable force on re-entry. Memorandum submitted by the Local Authority Civil Enforcement Authority states, “A court order should not be necessary if returning to remove or inspect goods previously secured.” There is concern that current powers may result in the removal of goods by the enforcement agent in the first instance driving up the cost to the debtor. Amending the power to use reasonable force on re-entry impacts on all debtors by encouraging greater flexibility in how the enforcement agent proceeds.

Annex 2 Evidence tables

Table 1 Proportion of total CAB enquirers by ethnic group

Ethnicity	Enforcement series	Harassment series	All CAB clients recorded on CASE	UK population ¹⁴
Asian or Asian British	3.9%	3.8%	4.7%	4.00%
Black or Black British	6.8%	6.6%	4.7%	2.00%
Chinese or Other	1.1%	1.4%	2.1%	0.80%
Mixed Race	1.9%	1.7%	1.4%	1.20%
White	86.3%	86.4%	86.9%	92.10%

Note. N=about 16,100 (enforcement series) and n= 2,213 (harassment series)

Source: Regulation of Enforcement Agents, April 2007 (Citizen's Advice Bureau)

¹⁴ Focus on Ethnicity and Identity, Office of National Statistics, March 2005 (based on 2001 census data)

Table 2a and 2b to show suggested fee levels with the introduction of uniform costs

Proposed Costs non-High Court (bailiff) enforcement

Stage	Fixed costs	Cumulative	Proportion of debt (assume £1,000)
Admin/ compliance	£75.00	£75.00	7.5%
Enforcement	£230.00	£305.00	30.5%
Sale	£105.00	£410.00	41%

Proposed Costs High Court (bailiff) enforcement

Stage	Fixed costs	Cumulative	Proportion of debt (assume £1,000)
Admin/ compliance	£75.00	£75.00	7.5%
Enforcement 1	£185.000	£260.00	26. %
Enforcement 2	£480.00	£740.00	74%
Sale	£510.00	£1250.00	125%

Source: calculated from stage data given in the IA

Annex 3 Details about the Debt Collection and Mental Health: the evidence report, Royal College of Psychiatrists and the Money Advice Trust (2010)

Survey

- The survey consisted of 28 questions.
- The survey asked collections staff about their experience of working with customers with a range of mental health problems. These included common conditions (such as depression and anxiety), rarer problems which can affect perceptions of reality (such as schizophrenia), and conditions often associated with shifts between high, normal, and low mood (such as bipolar disorder). The survey also included diseases such as dementia. It did not cover everyday stress. It also did not cover drug, alcohol, or gambling problems.
- The survey questions covered 7 areas: working in collections and recovery; customers with mental health problems; talking to customers and third parties; support from third parties; specialist teams; medical evidence; and reflection and improvement.
- The survey was developed in partnership with our Steering Group. The group had membership drawn from the British Bankers' Association, Finance and Leasing Association, Council of Mortgage Lenders, Credit Services Association, Money Advice Liaison Group, Citizens Advice, Advice UK, Money Advice South West, Sheffield CAB, Springfield Law Centre, Rethink, Mind, the Institute of Psychiatry and individuals with personal experience of indebtedness and mental health problems.

Limitations

- All respondents completed the surveys at their place of work. Managers and team leaders were generally responsible for administering surveys and reminding non-respondents to complete these. While we worked to ensure that completed surveys were directly and anonymously passed from respondents to the Royal College of Psychiatrists via an online survey mechanism, respondents may still have had concerns about being individually accountable for their responses or being collectively accountable for their team's responses.

19 different creditor organisations participated. These included creditors (banks, credit card companies, and mortgage lenders) and debt collection agencies and debt purchasers.

- No sufficiently detailed sampling frame was available from which to take a random sample of organisations. Therefore organisations were approached by the research team on the basis of their 'market share' and/or their availability to participate.
- Within each organisation, we selected a random sample from debt collection units' staff lists. Where organisations had more than one debt collection unit, we attempted to randomly select units. Where this was not possible we assumed that no significant differences existed between units.
- The 1270 staff who participated in the survey all worked in the collection and recovery of arrears on financial products, and had direct interaction with customers by telephone or in writing.

- The survey was conducted with 1136 frontline staff (those working in mainstream collections and recoveries) and 134 staff working in a specialist team dealing with vulnerable customers. Unless specified, all data presented in this report is based on the responses of mainstream staff.
- In terms of the type of financial product that respondents dealt with, 696 staff dealt exclusively with unsecured products (such as credit cards, unsecured loans and current account overdrafts), 423 staff exclusively with secured products (such as mortgages and secured loans), and 151 with a mixture of both.

Annex 4

Extract from the National Standards for Enforcement Agents on vulnerable situations

- Enforcement agents/agencies and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures agreed between the agent/agency and creditor about how such situations should be dealt with. The appropriate use of discretion is essential in every case and no amount of guidance could cover every situation, therefore the agent has a duty to contact the creditor and report the circumstances in situations where there is potential cause for concern. If necessary, the enforcement agent will advise the creditor if further action is appropriate. The exercise of appropriate discretion is needed, not only to protect the debtor, but also the enforcement agent who should avoid taking action which could lead to accusations of inappropriate behaviour.
- Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 18; they can ask when the debtor will be home - if appropriate.
- Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.
- Wherever possible, enforcement agents should have arrangements in place for rapidly accessing translation services when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.
- Those who might be potentially vulnerable include:
 - the elderly;
 - people with a disability;
 - the seriously ill;
 - the recently bereaved;
 - single parent families;
 - pregnant women;
 - unemployed people; and,
 - those who have obvious difficulty in understanding, speaking or reading English.