

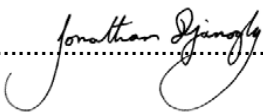
<b>Title:</b> <b>Proposed reforms to charging orders</b> <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MoJ 077
	<b>Date:</b> 26 October 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Michael Anima-Shaun Tel 020 3334 3189

## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> <p>The Government is committed to improving access to, and the efficiency of, civil justice. It is crucial that creditors who have established a legitimate claim should be able to pursue it through a straightforward and accessible system and, if necessary, enforce the judgment by the most appropriate means. The present system of court based enforcement has a number of weaknesses which have been identified as failing both creditors and in some circumstances debtors. The main weaknesses relate to a lack of accurate and up to date information about debtors and the length of time current processes take to reach fruition. Unless there is prompt and effective enforcement the authority of the courts, the authority of the court order and public confidence in the justice system might be undermined.</p>	
<b>What are the policy objectives and the intended effects?</b> <p>The main policy objectives of the proposed reforms to charging orders are to reduce the time spent on internal court procedures and streamline and improve the efficiency of the processes. This should lead to quicker registration of the final charging order, and greater confidence in the civil justice system. In addition one of the proposals widens access to such orders and by doing so will provide increased security for judgment creditors. At the same time the proposals should retain safeguards from the aggressive pursuit of debts for debtors who are complying with judgment debts.</p>	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b> <p>Option 0: Do nothing.</p> <p>Option 1: Introduce the ability for the creditor to apply for a charging order when the debtor is paying by instalments. The introduction of charging orders in relation to instalments was legislated for in Section 93 of the Tribunals, Courts &amp; Enforcement Act, 2007 (TCE Act '07).</p> <p>Option 2: Streamline charging order process by removing the automatic final hearing stage. Judicial Interim Orders will become Final through the lapse of time unless the judgment debtor raises objections, in which case the matter will be considered at a hearing before a judge. This option requires changes to rules of court.</p> <p>In light of consultation responses, our preferred option will be to implement Options 1 &amp; 2.</p>	
<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> Jan 2014 <b>What is the basis for this review?</b> PIR. <b>If applicable, set sunset clause date:</b> December 2014	
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off** For final proposal stage Impact Assessments:

***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: 2 February 2012 .....

# Summary: Analysis and Evidence

# Policy Option 1

Description: Permit charging orders when payment by instalments is taking place (instalment applications)

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

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

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

No monetised costs can be included for this policy option. Debtors and creditors are the two main groups for whom a potential monetary impact has been identified, however, the impact will depend largely upon behavioural responses, and we do not have sufficient information from consultation responses or otherwise to anticipate these.

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

Debtors may repay debt more quickly and more completely and / or might incur additional costs e.g. legal costs, fees and statutory or contractual interest. Such costs will depend on debtor and creditor behaviour. Other third parties with a subsequent interest in the property may lose precedence to a prior charging order. Creditors will incur unrecoverable costs if they secure more charging orders. HMCTS and Land Registry would incur costs of administering more charging orders, matched by increased fee income (so overall financial impact on these two groups is assumed to be neutral).

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

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

No monetised benefits can be included for this policy option. Creditors are the main group for whom a monetary benefit is anticipated (as they may gain security of judgment debt repayment more quickly), however, the impact will largely depend on behavioural responses by creditors and debtors. Consultation responses did not provide detail to analyse such behavioural impacts.

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

Debtors and creditors, in some cases, will incur lower costs of enforcement action associated with instalments such as 'applications to set aside and 'applications to vary' as these should be reduced. HMCTS may incur less cost (matched by less fee income) associated with fewer court instalment actions. Creditors may secure full debt repayment more quickly and / or more completely, and will benefit from greater certainty. Wider economic benefits from greater contractual certainty and enforceability.

### Key assumptions/sensitivities/risks

Court fees and court cost recovery are assumed to remain the same.  
 Land Registry fees and Land Registry cost recovery are assumed to remain the same.  
 Legal professionals assumed to adjust to changing pattern of demand, with increased business.  
 Distributional implications unclear as we have little information on the characteristics of debtors / creditors.  
 Charging orders would displace amended instalment orders in some cases.  
 Overall potential impact on legal aid, if any, is assumed not to be significant.

Discount rate (%)

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	No	NEUTRAL

# Summary: Analysis and Evidence

# Policy Option 2

Description: Streamline the charging order process (streamlining)

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

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

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

No potential costs associated with this option can be monetised due to insufficient data, however, a qualitative assessment of the impact on each group is included below.

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

Adjustment costs for HMCTS for staff training and to update information on the charging order process are expected to be minimal.

There are no, or minimal, anticipated IT adjustment costs.

Debtors may have charging orders registered against them more quickly (although this would not impact the timing of debt repayment).

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

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

We are unable to monetise the expected benefits of this policy, notably the potential administrative savings to HMCTS, however, some scenarios are provided in the evidence base to outline the potential benefit of saving administrative time under different assumptions.

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

Some administrative savings in HMCTS are identified, primarily relating to not scheduling a hearing unless an objection is raised by the debtor.

Creditors may register charging orders more quickly in cases where the hearing generates a delay (and the debtor does not raise an objection).

Creditors save costs by not attending court unnecessarily (when debtor does not turn up).

Possible gains to equity (fairness) if judgment debts are secured more quickly.

Possible wider economic benefits if the policy change leads to greater contractual certainty.

### Key assumptions/sensitivities/risks

Discount rate (%)

The volume of cases is assumed to remain the same but possibly might rise.

Debtor behaviour is assumed to be the same with the same number of people attending a court hearing.

Court fees are assumed to remain the same.

Court capacity (including staff and estate) is assumed not to be affected by these proposals.

We cannot determine exactly how process times will change, however, it is assumed that on average the process may be faster than currently.

Distributional implications unclear as we have little information on the characteristics of debtors / creditors.

Overall potential impact on legal aid, if any, is assumed not to be significant.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NEUTRAL

## 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?	October 2012				
Which organisation(s) will enforce the policy?	HMCTS (Civil Courts)				
What is the annual change in enforcement cost (£m)?	Expect negligible				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: n/a		Non-traded: n/a		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: n/a		Benefits: n/a		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	20
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	20
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	20
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	20
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	20
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	20
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	20
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	20
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	20
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	20

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

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

No.	Legislation or publication
1	<u>Tribunal, Courts and Enforcement Act 2007</u>
2	<u>Consultation Paper: Solving disputes in the county courts: creating a simpler, quicker and more proportionate system: A consultation on reforming civil justice in England and Wales</u> justice internet web page at <a href="http://www.justice.gov.uk/consultations/solving-disputes-county-court.htm">www.justice.gov.uk/consultations/solving-disputes-county-court.htm</a>

# Evidence Base (for summary sheets)

## 1. Introduction

### Background

- 1.1 The Government believes that responsible creditors who are owed money and have gained judgment in a court should have the right to enforce that judgment. Equally, debtors should be protected from the oppressive pursuit of their debts.
- 1.2 Effective enforcement is crucial to both the criminal and civil justice systems. People ordered to pay a court judgment, criminal penalties and compensation awards, or to comply with the terms of a community sentence, have little or no incentive to do so if they know there is no effective means of enforcing it. Unless there is prompt and efficient enforcement, the authority of the courts, the deterrent value of penalties and public confidence in the justice systems might all be undermined.
- 1.3 Under the existing arrangements, following a judgment after a payment has not been received a creditor may apply to the court to enforce the judgment. The creditor will decide which of the following court based enforcement methods they favour such as: attachment of earnings order, charging orders, third party debt orders or warrants of execution.
- 1.4 This impact assessment focuses on charging orders only. A charging order is an order of the court placing a 'charge' on an item of the judgment debtor's immovable property – usually a house or a piece of land, although it can also be applied to stocks and shares or funds in court. Interest is also levied on these charges. Currently charging orders may not be made in relation to a debt which the debtor is paying off by instalments in accordance with an instalments order agreed by the court.
- 1.5 The reforms below apply to all forms of civil case but not to family cases and not to criminal cases. They relate to all cases where a judgment order has been obtained in order to secure money from the debtor. This might be all forms of civil case where payments are owed, not just cases involving money lending.
- 1.6 In 2010 there were approximately 109,000 applications for charging orders in the County Court and almost 94,000 orders made<sup>2</sup>. Volumes of charging orders have been declining since a peak of over 130,000 in 2008, however, charging orders still remain the second most popular enforcement method after warrants of execution. The court fee for a charging order is £100.
- 1.7 Our proposed changes to charging orders aim to: i) improve the efficiency of applying for, and processing, a charging order, and ii) widen access to charging orders to improve enforcement effectiveness, whilst still offering protection to debtors who are genuinely unable to pay.

### Policy Objectives

- 1.8 The objectives of the policies proposed are driven by efficiency and equity, as outlined below:

#### *Efficiency*

- 1.9 Table 1 below shows the main stages in the charging order process. The objective is to streamline this process, where possible, without adversely impacting the outcome seen. This would free up staff time for other uses in the County Court.

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<sup>2</sup> Source: Judicial & Court Statistics, 2010 annual. Almost all charging orders are made in the county court - the Judicial & Court statistics show that only 154 orders were made in the High Court (Queen's Bench Division) in 2010.

**Table 1: Stages of the charging order process**

<b>Key steps – interim order</b>	<b>Notes</b>	<b>Time taken</b>
Process form and fee		Figures from HMCTS performance system show that an interim order is issued around 1 week after an application is made.
Pass papers to the District Judge for approval of interim order, allocating a hearing date if the application is not refused and entering all details on the system at the relevant stages.	Hearing must be at least 21 days after issue of interim order.	
Send interim order, application notice and documents filed in support of interim order to parties involved.		
<b>Key steps – final order</b>	<b>Notes</b>	<b>Time taken</b>
File certificate of service not less than 2 days before the hearing or at the hearing if Judgment creditor serves the order.	Need to demonstrate that the debtor has been informed of the final charging order intended to be registered	Figures from HMCTS performance system show that a final order is issued around 9 weeks after the interim order is made.
Hearing for final order	Debtors do not have to attend the hearing for the charging order to be issued.	
If order is made send a copy to the relevant parties		
Judgment creditor to register notice on Land Charges register (at the Land registry) or other keeper of the relevant asset register if not property.		

- 1.10 The process outlined in Table 1 highlights the two stages where judicial input is required at the interim stage and the final stage. In cases where no objection is made these two stages may not be necessary, as long as debtors are still informed appropriately of the potential enforcement action against them.
- 1.11 Our policy objective is to remove the duplication created by having an interim and final stage, where appropriate. Having a single stage in cases where no objection is raised would lead to a more efficient use of resource without having an adverse impact on outcomes.

*Justice*

- 1.12 It is necessary that in cases where debtors are able to repay their judgment debt, the system enables effective repayment to creditors. The original judgment order is assumed to be just, and therefore a system which enables it to be more easily enforced would be a desirable outcome.
- 1.13 A more efficient enforcement process should assist in achieving this objective. However, other amendments to charging orders may also improve outcomes from a justice perspective. For example, currently if a debtor is repaying their judgment debt by instalments, a creditor cannot obtain a charging order. As a consequence, debtors may benefit from releasing equity in a property without repaying their judgment debt. The policy objective is to prevent such situations occurring through changing the restrictions around when charging orders can be applied for.
- 1.14 Any policy change must be balanced against the impact on the debtors' side. The policy objective is to ensure that incentives are in place to prevent aggressive behaviour by creditors, such as through forcing up payments by instalments until debtors default. It also aims to mitigate any

injustice to debtors, through ensuring appropriate safeguards are in place, such as allowing debtors to apply to the court to have charging orders lifted in certain scenarios.

### *Summary of policy objectives*

- 1.15 If the Government does nothing, the current process and restrictions on applications for charging orders would continue to apply. However this would not address the present failings identified:
- That the process could be more streamlined and operate more efficiently, and final charging orders could be registered more quickly in cases where no objection is raised;
  - That the desire to pursue a charging order may mean that some creditors will continue to make multiple applications to drive up instalment payments;
  - That 'won't pay' debtors may benefit from the sale of a property without repaying their judgment debt;
  - Confidence in the justice system might not improve.

### **Economic rationale for intervention**

- 1.16 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.17 In this case, the intervention would be justified primarily on efficiency grounds.
- 1.18 There would be gains in productive efficiency if fewer judicial system costs and other resources were used to achieve an equivalent outcome in terms of securing a charging order. In addition, a significant reduction in the time and resources required to pursue enforcement action may at the margin lead to more cases being fully enforced, or being enforced more quickly, with wider economic benefits for the operation of markets and for contractual certainty.
- 1.19 The proposal to allow charging orders to be applied for when a debtor is repaying their judgment debt by instalments might also generate other benefits if these allowed judgment orders to be settled more effectively in a wider range of circumstances.

### **Policy Proposals**

- 1.20 We have consulted on the following options in relation to charging orders:
- 1) Introduce the ability for the creditor to apply for a charging order when the debtor is paying by instalments, even if the debtor is complying with the instalment order. The introduction of charging orders in relation to instalments was legislated for in Section 93 of the Tribunals, Courts & Enforcement Act, 2007 (TCE Act '07).
  - 2) Streamline charging order process by removing the automatic final hearing stage at which the creditor is currently obliged to attend. Interim Orders will become Final through the lapse of time unless the judgment debtor raises objections, in which case the matter will be considered at a hearing before a judge. This option requires changes to rules of court.

### **Affected key stakeholder groups**

- 1.21 The proposals will affect the civil courts, creditors, debtors, and third parties – the land registry and legal professionals.
- Civil Courts will be impacted in terms of workload to administer charging order applications and the volume of applications. IT adjustment costs associated with the process changes are expected to be minimal. Changes to procedure will also require forms and customer information leaflets being revised and updated, although these will largely be cost neutral due to their electronic format.



- Creditors will be impacted in terms of their ability and the speed of the placing of the charging order. In some cases there may also be quicker repayment of the judgment debt, if debtors repay the debt earlier to avoid a charging order being placed.
- Debtors will be affected in terms of the speed of the placing of the final charging order, and in some cases whether a charging order is placed. In some cases there may be quicker repayment of the judgment debt. Debtors could benefit from less aggressive behaviour by creditors being adopted in some cases.
- Land Registry may see a volume change and therefore there would be an impact on costs and on fee income, although the net financial impact is expected to be neutral.
- Legal professionals might be affected by a potential increase in the number of charging order applications under the instalments option and by more streamlined processes, which does not always require a hearing.
- Legal Services Commission (LSC) administers legal aid and might be affected if there is a change in demand for legal advice funded by legal aid, which could include advice provided by the not for profit sector. Given that very little legal aid is given for enforcement of judgment debts, it is unclear whether these impacts would arise and if so, how significant they might be. We assume that the overall impact on legal aid, if any, is unlikely to be significant.

## **2. Costs & Benefits**

- 2.1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the options considered. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised which might include how the proposals impact differently on particular groups of society or changes in equity and fairness.
- 2.2 This Impact Assessment considers the impacts on these groups under the proposals for changing the scope and process of obtaining a charging order.
- 2.3 We include quantified figures where possible, however for some impacts we are unable to include a quantitative assessment. This stems from lack of detailed financial data in certain areas, or because there is insufficient information to anticipate the extent of potential behavioural responses. For these impacts we include a qualitative assessment, and provide an explanation as to why a monetary value cannot be assigned.

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

- 2.4 Under this option, no intervention would be made. Therefore, the charging order process for HMCTS and restrictions on when a charging order can be made would remain the same as currently. In particular applications would remain out of scope if a debtor is paying by instalments and is up to date with these, and the charging order process would always involve a hearing, even if no objection is raised by the debtor.
- 2.5 It would be possible for the creditor to seek a revised instalment order if they considered that the debtor's financial circumstances had changed. However if the debtor moved home this would not currently present the creditor with an opportunity to secure complete repayment of the debt at that point in time, despite the debtor coming into a sum of equity with which they may be able to repay the debt.
- 2.6 All options are assessed relative to the base case. As such, the costs and benefits associated with the base case are necessarily zero.

## **Option 1: Introduce the ability for the creditor to pursue a charging order when the debtor is paying by instalments (TCE Act '07 – Section 93)**

### **Description**

2. 7 Under the current system, the County Court or the High Court cannot make a charging order when payments due under an instalment order are not in arrears. When making an application for a charging order, the creditor must specify that the whole, or any part, of an instalment (or instalments) due remains unpaid.
2. 8 This leaves a barrier to the recovery of a judgment debt because debtors with large judgment debts, paying off their debt in small instalments over a prolonged period, are able to benefit from the sale of a property without paying off the debt. The debtor may obtain a capital sum and is under no obligation to make any payments towards the judgment debt. Indeed, under the present system the debtor is at liberty to reinvest the equity to incur larger financial commitments. The only option currently available for creditors is to apply to the court for a review of the existing instalment order. However this might be of little use if the debtor's net income and outgoings remain the same after they have moved house.
2. 9 Permitting creditors to apply for a charging order when payments by instalments are occurring would present creditors with a new opportunity to secure repayment for their debt which would allow them to adopt a fairer long-term approach to debt repayment. This would also reduce the necessity for creditors to force the debtor into breach of an instalment order by continued applications to the court to vary the order.

### **Costs of Option 1**

#### ***Costs to HM Courts and Tribunal Service (HMCTS)***

2. 10 An increase in the number of charging orders applied for and issued as a result of widening the scope for charging orders would be expected. At the same time it is possible that there might be a reduction in the number of applications to amend instalment orders. Overall, county court fees should cover court costs as HMCTS operate a full cost recovery fees model. Therefore, the net financial impact on HMCTS should be neutral, despite the change in the mix of work.
2. 11 The Judicial & Court statistics reported that in 2010 over 700,000 judgment debts were registered. Analysis of these judgment debts indicates that around one third of these (over 200,000), were ordered to be repaid by instalments, so depending on the proportion of these debtors who are homeowners, there could be scope for a significant increase in the number of charging orders. The actual increase in the number of charging orders will depend upon behaviour by creditors and debtors. There is insufficient information to analyse such behavioural responses.
2. 12 Analysis of applications to vary shows that there were around 25,000 applications to vary orders in county courts in 2010, although these relate to all types of orders, not just instalment orders. The vast majority of these were made by the creditor (over 99%) suggesting that a large proportion of these may relate to payments by instalments, although applications to vary other processes such as attachment of earnings orders would also be included.
2. 13 It is assumed there will be no changes to HMCTS capacity, for example through increased or decreased staff or estate requirements, and therefore any change in the mix of work will impact upon county court processing and waiting times, not operational costs. The net impact is currently unclear as it depends on volumes of the two processes, which are unknown (particularly because debtors or creditors may apply to vary payments by instalments on a number of occasions), and the resource required for each of the processes.
2. 14 It is intended that this option will be implemented in conjunction with option 2, streamlining the charging order process. Therefore any increase in volumes will be associated with the new streamlined process, which should make any increase in volumes less burdensome to the county court than currently. The potential benefit associated with streamlining charging orders is discussed in the analysis of option 2.

## Costs to Debtors

2. 15 Widening the scope for charging orders will generate costs to debtors, many of whom may be individuals, through a number of potential mechanisms.
2. 16 Firstly, debtors will be unable to avoid their unsecured judgment debts being secured by a charging order, even if they are repaying the debt through regular instalments. This has no monetary impact on debtors while the asset remains unsold. However, in some cases, debtors may be incentivised to repay their judgment debt in a lump-sum if they wish to avoid a charging order being placed on their home.
2. 17 Secondly, debtors will have to repay their judgment debt in full when they sell a property, when previously they would have been able to keep the full proceeds from the sale. This will therefore impact the speed, and potentially completeness of judgment debt repayment. Ultimately the debtor may finance this by moving into a property of lower value than would have otherwise been the case, or by covering the cost through higher mortgage payments. If the latter occurs, then the debtor would essentially repay the creditor by taking out an increased loan from their mortgage provider.
2. 18 It may be that some debtors may have a disincentive to sell their properties when they would have otherwise sold them, as in future they would no longer be able to do so without repaying their judgment debt. The extent of this is unclear as currently some debtors may voluntarily repay their judgment debt on selling a property, even without a charging order.
2. 19 Thirdly, if completion of the judgment debt repayment now takes place through the charging order rather than by instalments, the debtor will accrue interest for the first 6 years' duration of the charging order. Interest at either contractual or the statutory rate (8%) may also be added at judgment and would continue to accrue on the judgment debt. This implies possible additional interest payment transfers from the debtor to the creditor. As already highlighted, we have insufficient information about how many additional charging orders may now be placed, and how many debt repayments may now occur due to the charging order rather than by instalments. As such, it is not possible to quantify this impact.
2. 20 Table 2 below shows the distribution of charging orders awarded between March and September 2010. Assuming this remains similar, it provides an indication of the extent debtors may be affected in terms of the value of the charge that may be placed, or the amount of debt that may be repaid at an earlier point in time. Almost 94,000 charging orders were made in 2010.

**Table 2: Distribution of charging orders**

	Null	£0	>£0 to 1£k	>£1k to £5k	>£5k to £10k	>£10k to £25k	Above £25k	Total
Charging order awarded	4.3%	0.6%	9.9%	34.9%	23.9%	19.8%	6.5%	100.0%

Source: HMCTS data collected between March & September 2010

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

## Costs to Creditors

2. 21 Creditors will incur cash flow costs from incurring legal costs, court fees and Land Registry fees, which might not be recoverable until the debtor moves house.
2. 22 In addition it is possible that not all of these fees and costs might be recoverable. If they are not then creditors would incur costs from pursuing their debt. Land Registry fees in particular will not be recoverable from the debtor. These are currently £50 per charging order.
2. 23 Given that the creditor chooses whether to apply for a charging order or not, we assume that the benefit to the creditor would outweigh any costs they incur. As discussed above, the impact on debtor incentives could also in some cases increase the speed of debt repayment.

### ***Costs to Land Registry***

2. 24 The Land Registry will incur the costs associated with administering an increased volume of registrations. As with HMCTS costs, we assume that Land Registry costs will be met by increased Land Registry fee income. As the Land Registry operates on a cost recovery basis, the net financial position for the Land Registry would remain neutral, as would the impact on Land Registry operating efficiency. The Land Registry's consultation response confirms that they do not foresee any particular problems from a Land Registry perspective.

### ***Costs to third parties***

2. 25 Other third parties with a subsequent interest in the property may lose precedence to the charging order.

### ***Costs to legal professionals***

2. 26 No costs to legal professionals have been identified – overall there may be a gain in business for legal professionals (outlined in the benefits section). Any impact on legal professionals is a secondary impact.

### ***Distributional costs***

2. 27 Permitting applications for a charging order when debtors are repaying judgment debts by instalments may lead to some debtors paying more quickly than would previously have been the case. Alternatively it may allow creditors to adopt a fairer long-term approach to the repayment of debt from the outset, knowing that they can secure their judgment debt orders with more certainty, even while instalment repayments are being made.
2. 28 At an aggregate level, debtors as a whole are likely to pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse will depend upon the nature of each party. For example in relation to borrowing, the creditors might be financial institutions and the debtors might be less well off individuals. There is insufficient information on the characteristics of debtors and creditors to assess these potential distributional impacts.

### ***Equity (fairness) costs***

2. 29 Some people may consider that there is a cost in terms of reduced equity if a person becomes subject to a charging order when they are paying on time by instalment in accordance with a prior instalment order, without having defaulted. Safeguards will be in place to ensure that a debtor who keeps to the terms of an instalment order and who is unduly prejudiced against selling their property will be able to apply to the court to have the charging order lifted.

### ***Wider social and economic costs***

2. 30 The proposals are not expected to generate wider social and economic costs.

## **Benefits of Option 1**

### ***Benefits for HM Courts and Tribunal Service (HMCTS)***

2. 31 As explained in the costs section, HMCTS operate a full cost recovery fees model in which court fees should cover court costs, hence we expect no net impact on the overall HMCTS financial position. HMCTS should secure more fee income from the increase in the volume of charging orders, however this is expected to cover the costs of processing the additional orders. Furthermore, a lower demand for applications to amend existing instalment orders is expected. This would be associated with reduced fee income. Fee income for other kinds of enforcement which cannot be pursued while a charging order is in place would also fall. Under full cost recovery, this reduced fee income would relate to reduced HMCTS operating costs.
2. 32 There may be court operational efficiency benefits depending on how the increase or decrease in workload from processing the increased volume of charging orders would compare to the reduction in work around instalment orders. As discussed previously, the impact on courts and

processing time is not clear, however, it is possible that an overall benefit from reduced processing time may arise because the charging order is a one-off process whereas instalment orders may be reviewed on a fairly regular basis. The impacts are also likely to vary across various county courts depending on the workload in individual courts.

### ***Benefits to Debtors***

2. 33 Where a charging order is pursued by the creditor in place of amending an existing instalment order in future, debtors would benefit by not incurring the costs associated with multiple applications for amended instalment orders, and by avoiding dealing with aggressive creditors. This may include increased repayments associated with the revised instalment order as well as legal costs and court fees associated with an amended order being made.
2. 34 The same applies in relation to other types of enforcement action which might otherwise be pursued, such as warrants of execution.
2. 35 The most vulnerable debtors will continue to be provided with protection by a range of safeguards, including debt relief orders, individual voluntary arrangements, judicial write offs, Consumer Credit Act provisions, OFT Irresponsible Lending Guidance, pre-issue protocols, and other, procedural requirements.

### ***Benefits to Creditors***

2. 36 The benefits for creditors largely mirror the costs to debtors. Creditors will benefit in a number of ways from being able to secure the judgment debt with a charging order, even if it is being repaid by regular instalments.
2. 37 Firstly, it could lead to quicker repayment of the judgment debt, if the debtor sells their home before the instalment payments are due to end. It will also lead to more successful repayment of the judgment debt if payment by instalments currently means that the creditor does not receive the full amount.
2. 38 Further to potentially quicker and/or more successful judgment debt repayment, creditors may also gain an interest benefit if the judgment debt is repaid through a charging order rather than through instalments, where interest has not been added to the judgment debt. This interest benefit will equate to a real increase in the amount of debt recovery seen by the creditor.
2. 39 Finally, the creditor will no longer need to engage with the court to review the instalment order in the event that the property is sold, generating a time and fee saving to the creditor.

### ***Benefits to Land Registry***

2. 40 The Land Registry will see an increase in fee income associated with the increase in charging orders registered. As above, under full cost recovery, Land Registry fees are assumed to recover Land Registry cost hence the net financial position for the Land Registry should be neutral.

### ***Benefits to legal professionals***

2. 41 Legal professionals may be engaged in a greater volume of charging order work and a reduced volume of amendments to existing instalment orders. The overall impact is unknown, but there may be a gain in business for legal professionals. This is a secondary impact.

### ***Distributional benefits***

2. 42 Permitting charging orders to be placed when a debtor is repaying their debt by instalments may lead to some debtors paying more quickly and / or more completely than would previously have been the case.
2. 43 At an aggregate level, debtors as a whole are likely to pay creditors more quickly, and may also repay debts more completely. Whether the distributional consequences of this transfer are considered to be positive or adverse would depend upon the nature of each party. For example in relation to unpaid business, the creditor might be a small firm and the debtor might be a

wealthy individual. We do not have sufficient information about the nature of each party to make an assessment of the distributional benefits.

### ***Equity (fairness) benefits***

2. 44 The proposals may improve equity as the original judgment order is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve equity. In particular, in circumstances where the debtor is paying off their debt in small instalments, they would no longer be able to benefit from a sale of their property without attempting to clear the remainder of the debt. Unless there are particular extenuating circumstances, preventing this occurring, it is likely to lead to more equitable outcomes through improving enforcement of the judgment debt.

### ***Wider social and economic benefits***

2. 45 The proposals might possibly generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.

### **Option 1: Summary of key assumptions**

2. 46 The following key assumptions apply to Option 1:
- Court fees are assumed to remain the same, however, the potential changes in court activity may impact on court processing time and hence case waiting times.
  - Court capacity (including staff and estate) is assumed not to change.
  - Land Registry fees are assumed to remain at their current levels. Land Registry fees are assumed to cover Land Registry costs with the net financial implication being neutral.
  - We have assumed that the overall impact on legal aid, if any, is unlikely to be significant.

### **Summary of One In One Out position**

2. 47 This option is out of scope of the One In One Out rule as it relates to individual enforcement action.

### **Summary of overall impact on business**

2. 48 The overall impact on business has been assessed as zero net cost. This is because the changes proposed are to expand the availability of charging orders. They do not impose any new regulatory requirements or additional costs to debtors or creditors. Fees are expected to remain fixed, and the decision whether to apply for a charging order is purely a decision for individual creditors if it is to their benefit.
2. 49 To the extent that businesses are creditors there could be a benefit from policies which aim to improve overall debt enforcement, although debtors who are businesses may lose out. In such cases there may be a transfer from one business to another. Where debtors are individuals, businesses may gain overall.

### **Option 2: Streamline charging order processes**

#### **Description**

2. 50 We propose streamlining the charging order process by removing the automatic final hearing stage. The new process will therefore take place as outlined below:
- File an application notice with the court in a prescribed form containing all the relevant information.
  - The application is referred to a District Judge, and where it is proper to make the order, the judge makes an interim charging order.

- The interim charging order becomes final automatically 21 days following service of it, unless an objection is raised. The interim charging order form will be amended to give notice that the order will become final on the date specified in the order.
  - A hearing date will only be set if the debtor raises an objection following the service of the interim charging order, rather than in all cases. The final order would be made once the required time for response has elapsed and if no objection is raised.
2. 51 The main change from the current process is that a hearing will no longer be scheduled with the interim order, and the final stage will be an automatic next step unless the debtor raises an objection. It will still be necessary for the creditor to file a certificate of service and notify the debtor for the order to become final. In cases where the debtor objects in future, the hearing process and final stage will take place according to the current process, although it will be the debtor's responsibility to raise the objection with the court (within the required time period).
2. 52 Overall the policy aims to achieve the following:
- Reduced delay in the final charging order being registered at the Land Registry, in cases where no objection is raised.
  - Free up court resources whilst maintaining the same outcome associated with the charging order process. Some scenarios on impacts on courts are included below to assess the potential scale of this impact.
2. 53 To supplement the policy changes, notices sent to judgment debtors will be revised to provide enhanced information about the process including a brief explanation of the nature and consequences of a charging order. In particular, it will explain that the charging order does not itself bring about the immediate sale of the property charged - experience shows that the majority of defendants who attend at final hearings are under the mistaken impression that the consequence of a final order is that the property will be sold immediately.

## **Costs of Option 2**

### ***Costs to HM Courts and Tribunal Service (HMCTS)***

2. 54 No significant HMCTS IT costs are anticipated. The main one-off cost relates to revising forms guidance leaflets, and web-based information, and informing HMCTS staff of the changes. The update cost is expected to be minimal, and the information distribution will not raise costs as it already exists.
2. 55 Ongoing costs are expected to be negligible as the policy intention is to streamline the charging order process. In future, a hearing will take place only when a debtor raises an objection, therefore this will raise some savings. The process for that hearing will take place in the same way as currently. As such, the only potential additional cost may stem from processing the objection from the debtor. All the subsequent steps, including scheduling a hearing, will remain the same as currently.
2. 56 The volume of debtors currently attending hearings or raising objections to the charging orders being placed is unclear, and would require individual court surveys. However, the Judicial and Court Statistics in 2010 showed that over 85% of applications for charging orders were successful. It is unclear whether unsuccessful ones stem from the judge dismissing these at the interim stage, or whether debtors raised objections. The figures indicate that in a large proportion of cases the final hearing stage may not be required, although in some of these cases debtors may raise objections that are not accepted by the judge - in such cases a hearing will still be required.
2. 57 Court fees and case volumes are assumed to remain the same as currently, hence overall court fee income is also expected to remain the same.

### ***Costs to Debtors***

2. 58 Where debtors do not object to the charging order application, and do not request a hearing, this could result in the charging order being registered more quickly than currently.

2. 59 In terms of the overall speed and completeness of debt repayment we expect a minimal impact as this will be affected by when the property is sold rather than by when the charging order is placed. Given that the process changes are unlikely to have a significant impact on when the judgment debt is repaid, no additional impacts on debtor incentives or debtor behaviour have been identified.
2. 60 For those debtors who do raise an objection, there could be an additional cost through raising this with the court. However, these costs are expected to be minimal as the objection process should involve a routine piece of court correspondence.

#### ***Costs to Creditors***

2. 61 There are no anticipated significant one-off or ongoing additional costs to creditors. In cases where debtors object, the creditor will have to attend the hearing, as in all cases currently.

#### ***Costs to Legal professionals***

2. 62 By no longer having a hearing unless the debtor raises an objection to the interim charging order, this could lead to a reduction in workload for legal professionals who currently attend these hearings. On the other hand, there may be increased demand for legal professionals if there was a change in volume of charging orders applied for as a result of process improvements. The overall position is unclear.
2. 63 Any loss in business to legal professionals will be mirrored by the gain to debtors from no longer paying the related costs (and to creditors in relation to fees which cannot be recovered from the debtor).
2. 64 With any change in the volume of business, it is possible that legal professionals may engage in other activity relating to other types of case, or may engage in other types of work. Legal professionals may incur one-off costs as a result of adjusting to any changing pattern of demand. Whether legal professionals are worse off as a result of these proposals will depend upon how their work profile changes. Any costs for legal professionals would be deemed a secondary impact.

#### ***Distributional costs***

2. 65 It is assumed that the process of registering a charging order will be quicker if the proposed changes are made. As a result at an aggregate level, debtors as a whole are likely to have charging orders registered more quickly. However, this may bear little relation on when creditors are paid their judgment debt. Consequently, we consider the potential distributional costs to be minimal.

#### ***Equity (fairness) costs***

2. 66 The original enforcement hearing would have considered whether the contract which has not been honoured was fair. Implementing more efficiently a judgment ruling which itself is considered to be fair should not lead to reduced equity. In addition it will still be possible for the debtor to challenge the order and attend court if they have reason to believe enforcement by a charging order should not be permitted.

#### ***Wider social and economic costs***

2. 67 The proposals are not expected to generate wider social and economic costs. They simply involve processing reforms which enable charging orders to be made more quickly and with less administrative and judicial system resource.

### **Benefits of Option 2**

#### ***Benefits to HM Courts and Tribunals Service (HMCTS)***

2. 68 Savings may arise from no longer listing cases which are not heard due to the debtor not turning up. As detailed above, it is unclear what the volume of debtors attending hearings is, however, the Judicial and Court Statistics indicate that in most cases (over 85%), the application for a



charging order leads to a charging order being placed. Almost 94,000 charging orders were made in 2010.

2. 69 We consider that judicial and administrative savings might not lead to monetary savings, but rather that this would allow judges or administrative staff to work on other areas, potentially having a positive impact on court processing and waiting times elsewhere. Table 3 below shows a number of indicative scenarios of administrative implications and time saved. It is not possible to identify these more precisely as there is no detailed process information including the time taken to schedule a hearing, send correspondence relating to it, and process paperwork from it. It is also unclear whether all the time saved from the charging order process could be dedicated to other processes, although this is assumed to be the case

**Table 3 – Administrative time saving scenarios associated with removing hearing processes.**

Assumed time saved per case from no longer scheduling hearings. Does not include length of the hearing itself which is considered to be a judicial time saving	Assumed % of total cases not challenged by debtor. (in cases where the charging order is issued)	Overall time saved across County Courts. (Based on 93,619 charging orders being issued per annum).
1 minute	60%	936 hours (39 days)
1 minute	75%	1,170 hours (49 days)
2 minutes	60%	1,872 hours (78 days)
2 minutes	75%	2,340 hours (98 days)

The calculations are based on the total numbers of charging orders issued in 2010, 93,619. The percentage of cases where no challenge (by the debtor) is assumed excludes those cases where the debtor successfully challenges the charging order, as the percentage is applied to the volume of charging orders issued.

2. 70 It is likely that the process changes will affect different courts differently based on the other work they are dealing with, and how each court individually operates. It is not possible to make an assessment of the overall expected time saving across the courts - Table 3 above is included for indicative purposes only.
2. 71 An alternative way to conceptualise the potential time savings is to consider how many additional charging orders could be processed per annum without any impact on court processing and waiting times. HMCTS process information suggests that it takes around 40 minutes to administer and process a charging order. Using the assumptions above, this implies that in the low time saving scenario (i.e. 1 minute saving, and 40% objections), an additional 1400 charging orders lasting 40 minutes each could be processed per annum without any impact on court processing and waiting times, and in the high time saving scenario (i.e. 2 minutes saving and 25% of objections), an additional 3,500 charging orders could be processed per annum.
2. 72 There may be further benefits to judicial resources through no longer allocating time to hearings in cases where no objection is raised, and the debtor currently does not attend. We do not have information on hearing times to quantify this impact, however, indicative evidence is that around 5 minutes are currently allocated to each case for a hearing.

### **Benefits to Debtors**

2. 73 A clearer understanding of the process and its consequences will be offered to debtors, particularly in relation to charging orders and link to the orders for sale process.
2. 74 Debtors will potentially not incur additional costs of objecting to the charging order due to the mistaken belief that the property will be sold immediately.

### ***Benefits to Creditors***

2. 75 Creditors will benefit from a more efficient process, allowing them to register the final charging order more quickly in cases where debtors do not object. Currently the whole process takes around 10 weeks on average, however, in reality straightforward cases are likely to be quicker than this, and this average is brought up by those cases that are more complex. Despite this, it is expected that the process could be speeded up by a few days in cases where no objection is raised as there is one less step in the process, and currently it may not always be possible to schedule a hearing exactly 21 days after the date of the interim order.
2. 76 In cases where no objection is raised, creditors would also see cost savings as they will no longer be required to attend a hearing at court where the debtor might not turn up.

### ***Benefits to Legal Professionals***

2. 77 As explained in the costs section it is unclear how the total volume of business might change for legal professionals. Any overall gain in business to legal professionals would be mirrored by the loss to debtors or creditors (if they cannot recover these from the debtor) from paying the related fees. Any benefits to legal professionals are a secondary impact.

### ***Distributional benefits***

2. 78 It is assumed that the process of registering a charging order will be quicker than the current process if the proposed changes are made. As a result at an aggregate level, debtors as a whole are likely to have charging orders registered more quickly. However, this may bear little relation on when creditors are paid their judgment debt. Consequently, we consider the potential distributional benefit to be minimal.

### ***Equity (fairness) benefits***

2. 79 The proposals are expected to raise equity, as the original judgment is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve fairness. As mentioned in the costs section, debtors will still always have the opportunity to raise an objection and have a hearing with a judge.

### ***Wider social and economic benefits***

2. 80 At the margin the proposals might possibly generate wider social and economic benefits associated with the improved functioning of markets stemming from greater contractual certainty and enforceability.
2. 81 The proposals might provide resource efficiency improvements if fewer resources are required to achieve the same outcome or an improved outcome.

### **Option 2: Summary of key assumptions**

2. 82 The following key assumptions apply to Option 2:
- The volume of charging orders is assumed to remain the same, although demand for charging orders might rise as they might be more attractive to creditors.
  - No change in debtor behaviour is assumed, i.e. the number of debtors who request a hearing in future would be the same as the number of debtors who currently attend court.
  - Court fees are assumed to remain the same. The possible reduction in court costs per case is assumed to lead to a reduction in case processing times and hence in case waiting times. As a result overall court cost recovery would not be affected.
  - Court capacity (including staff and estate) is assumed not to be affected by these proposals.
  - Case outcomes are assumed to be the same as before in relation to court decisions to apply charging orders.
  - We have assumed that the overall impact on legal aid, if any, is unlikely to be significant.

### **Summary of One In One Out position**

2. 83 This option is out of scope of the One In One Out rule as it relates to individual enforcement action.

### **Summary of overall impact on business**

2. 84 The impact on business has still been assessed, and has been assessed as zero net cost. The reason is that changes proposed by this policy are court process changes, so do not impose any new regulatory requirements on businesses, or additional costs to debtors or creditors. Court fees are expected to remain fixed.
2. 85 To the extent that businesses are creditors there could be a benefit from policies which aim to improve overall debt enforcement, although debtors who are businesses may lose out. However, as the policies will generally impact upon when the charging order is placed rather than when the judgment debt is repaid, we consider that this impact will be minimal.

### **3. Enforcement, Sanction and Monitoring**

- 3.1 The responsibility of enforcing a judgment debt remains the judgment creditor's. Action on failure to comply with a court-based enforcement method by a judgment debtor is a matter for the judgment creditor should they wish to continue pursuing recovery of a particular judgment debt.
- 3.1 Compliance with a charging order would continue to be the responsibility of judgment debtor. As long as the judgment debtor meets the instalment payments agreed no penalty should arise. Should the judgment debtor default, the creditor may apply to the court for an order for sale (but case law exists to protect family or primary residences so this is only likely in cases concerning shares, unit trusts or secondary properties or land).

## **4. Specific Impact Tests**

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

4.1 An Equalities Impact Assessment is annexed signed off by the relevant policy Director

### **2) Economic impacts**

#### **i) Competition**

4.2 There are no significant competitive impacts associated with the proposals.

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

4.3 There are no significant small firm impacts associated with the proposals.

### **3) Environmental impacts**

4.4 There are no environmental implications associated with the proposals.

#### **i) Greenhouse gas assessment**

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

#### **ii) Wider environmental issues**

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

### **4) Social impacts**

#### **i) Health and well-being**

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

#### **ii) Human rights**

4.8 The Ministry of Justice considers that the proposal engages Article 8 (respect for the private and family life of individuals, home and correspondence) and that it is compatible with the Convention. Imposition of a charge pursuant to this clause would be compatible with Article 8(2), as this is in the pursuit of a legitimate aim, (to protect the rights and freedoms of the creditor and to provide security for his judgment debt - see *Mercantile Credit v Ellis and Burslov v Russia*, 2003), and necessary in a democratic society as proportionate to the legitimate aim. It would not be possible for an order for sale to be made where a debtor is not in default under an instalment order, (and therefore, in the absence of default, the debtor would not lose his home). The debtor would be able to apply to the court for the charging order to be discharged under section 3(5) of the Charging Orders Act 1979.

#### **iii) Justice system**

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

#### **iv) Rural proofing**

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

### **5) Sustainable Development**

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

## **6) Exemption from Micro Businesses moratorium**

4.12 Part 4 enforcement processes are out of scope of the micro business exemption moratorium for the following reasons:

- Specific enforcement action is excluded from the application of the micro-business exemption moratorium.
- Cost impacts are assessed as neutral and these impacts neither fall on small or micro businesses.
- Part 4 enforcement proposals aim to streamline court rules and court procedures which are not in themselves regulation (albeit that they could result in secondary costs to business).

# Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:**

These proposals have been subject to consultation and public response for their implementation is positive. Our delivery plan involves developing and implementing secondary Regulations and operational mechanisms, and at the same time as the operational mechanisms are being developed, putting in place post implementation review arrangements.

**Review objective:**

The post implementation review will analyse the impact in terms of efficiency of process and user feedback. It will also check there will be no negative impact on access to justice in relation to this process, which could ultimately lead to more successful enforcement. Measurable objectives will be volume of cases completed and the time taken; customer feedback as to quicker enforcement processes and one which can be used more available; and staff and judicial time saved.

**Review approach and rationale:**

These proposals are at post-consultation stage. Consultation responses have indicated that such reforms should be implemented. Subject to any revision at regulations consultation stage evaluation will take place 3 years post consultation. We shall evaluate the effectiveness of the above intended benefits (including process times and customer feedback) post implementation, by a combination of methods. We shall use Her Majesty's Court Service's National Statistical information published in Judicial Statistics, supported by other operational statistical information which provides more specific process detail, such as in HMCTS performance management systems. Working Groups will also continue to form a key role in monitoring the impact of the new court based enforcement changes. We may also consider questionnaires, if they are appropriate to obtain qualitative or additional quantitative information which assists with the analysis of the impact of our proposals.

**Baseline:**

As set out in option 0 – do nothing.

**Success criteria:**

- Improvement of customers' perception of services available to ensure effective enforcement.
- Speedier court processing, particularly with Charging Orders.
- Improved debt recovery for creditors with reduced scope for debtors to avoid repayment.
- Improved safeguard for debtors against disproportionate pursuit of amounts owed (the charging order proposals should assist with this element).

**Monitoring information arrangements:**

Court user feedback will be monitored through correspondence from the public and Parliamentary questions. HMCTS Civil and Family Operations also provide Civil Enforcement Policy with feedback from the queries they have received from court staff and users. Judicial statistics provide indications of court user behaviour.

**Reasons for not planning a PIR:**