

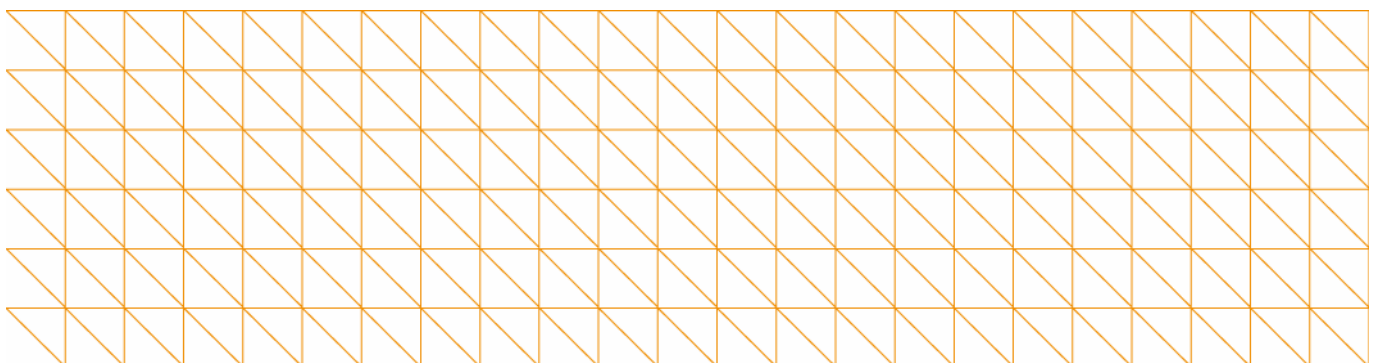


Administration and Enforcement Restriction Orders: setting the parameters

Response to Consultation

CP(R) 01/08

18 September 2009





Ministry of
JUSTICE

HER MAJESTY'S
COURTS SERVICE
hmcs

Administration and Enforcement Restriction Orders: setting the parameters

**Response to consultation carried out by the Ministry of Justice.
This information is also available on the Ministry of Justice website at
www.justice.gov.uk**

Contents

Introduction	3
Background	4
Foreword	5
Summary of responses	6
Responses to specific questions	8
Conclusion and next steps	26
Consultation Co-ordinator contact details	27
The consultation criteria	28
Annex A – List of respondents	29

Administration and Enforcement Restriction Orders: setting the parameters
Summary of responses

Introduction

This document is the post-consultation paper to the consultation on *'Administration and Enforcement Restriction Orders: setting the parameters'*.

It covers:

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

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

Civil Policy & Customer Intelligence Branch
Post Point 4.17
102 Petty France
London
SW1H 9AJ

Telephone: 020 3334 3171

E-mail: Ghulam.Chowdhury1@justice.gsi.gov.uk

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

Alternative format versions of this publication can be requested from Ghulam Chowdhury, Civil Policy & Customer Intelligence Branch 020 3334 3171
e-mail: Ghulam.Chowdhury1@justice.gsi.gov.uk.

Background

The consultation paper '*Administration and Enforcement Restriction Orders: setting the parameters*' was published on 16 January 2008. It invited comments on areas where secondary legislation will be used to establish the constraints and limits required for the effective operation of both the revised Administration Order (AO) and the Enforcement Restriction Order (ERO).

Foreword

The government is committed to supporting debtors during the current economic downturn. However, due to the need for supporting IT changes in the courts, it will not be possible to introduce either the reformed AO scheme or the ERO until April 2011, at the earliest. This would result in an unacceptable delay in providing help to debtors. Therefore, the Government intends to defer further work on both the reformed AO and the ERO to allow resources to be focussed on work to develop and, if possible, implement the Lord Chancellor's powers to approve non-court based Debt Management Schemes (DMS) contained in the Tribunals, Courts and Enforcement Act 2007.

The Government intends to use the majority of the conclusions from this consultation to support work on approved non-court based DMS.

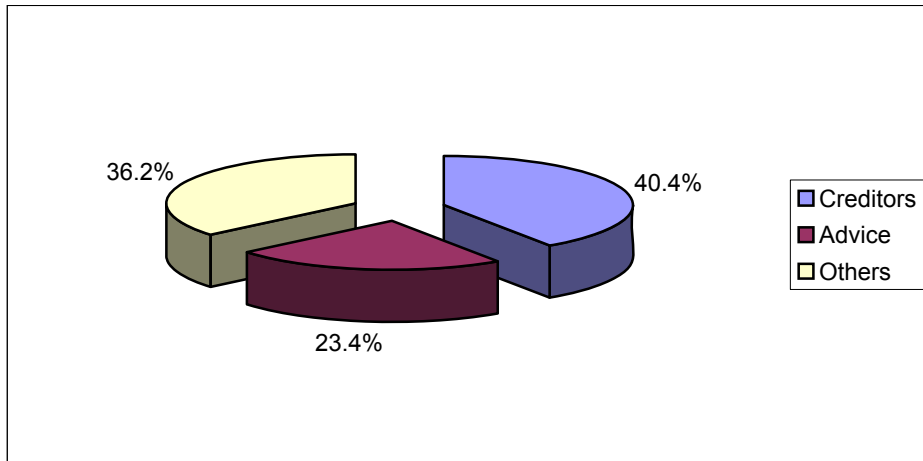
If introduced, approved non-court based DMS would allow debtors' problems to be addressed in a holistic manner, with the provision of debt advice, money handling, the identification of the most appropriate debt solution and, where appropriate, management of that debt solution all carried out in one place. The Government considers that this would offer the best prospect for delivering early support for debtors.

The Government intends to carry out a public consultation on its proposals for approved non-court based DMS before the summer recess, with a view to their possible introduction in early 2010.

Summary of responses

1. We received 49 responses representing around 16% of the papers distributed.
2. Responses were received from:
 - Creditor sector – 19 respondents;
 - Debt advice sector – 11 respondents;
 - Government bodies – 8 respondents including responses from Government departments and local councils;
 - Judiciary – 5 respondents; and
 - Other groups/Organisations – 4 respondents.
3. Of these, 47 replied to the questions asked and 2 organisations provided general comments that, although helpful and informative, were too general to be included in the summary of responses to specific questions.
4. In this paper, responses from the judiciary, government bodies and other groups and organisations have been combined into one category entitled 'others' to assist with clarity when reporting results.
5. A full list of respondents is at Annex A.
6. We are grateful to all that took the time to respond.
7. Figure 1 below highlights the sectors that responded to the questions.

Figure 1



8. The paper asked 12 questions on the following 7 areas:

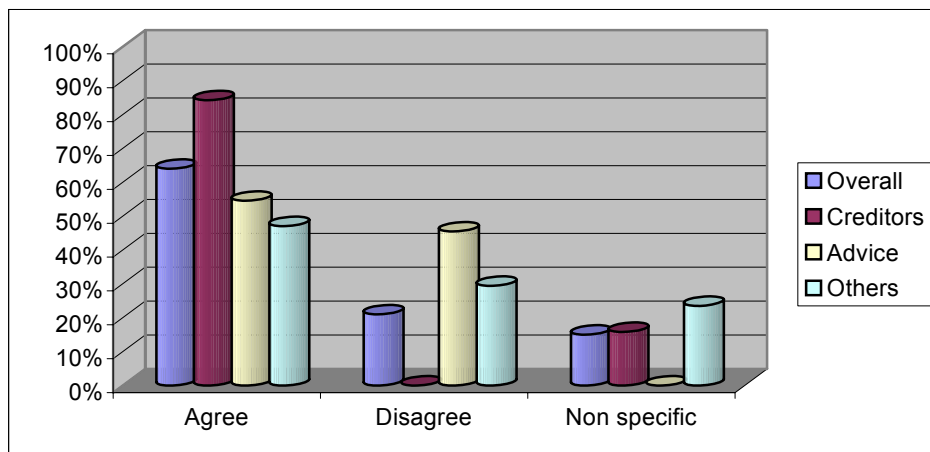
- Section 1 – Excluded debts;
- Section 2 – Effects of bringing legal proceedings;
- Section 3 – Total debt limit (AOs only);
- Section 4 – Surplus income and Repayment Rates;
- Section 5 – Information;
- Section 6 – Disposal of Assets; and
- Section 7 – Calculating debts.

9. Responses were evaluated for the level of support/opposition and to take account of alternative or complementary suggestions that could be incorporated.

Responses to specific questions

Q1: Do you agree that the types of debt detailed in paragraph 25 of the consultation paper should be excluded from the revised AO and ERO? (These were rent arrears where the debtor is still in possession of the property, Council tax and future payments in respect of ongoing commitments (e.g. council and other tax liabilities, utilities).)

10. We received 47 responses. Of these, 64% agreed that these debts should be excluded from the revised AO and ERO, and 21% disagreed. 15% of the responses were non-specific.



11. 84% of the creditor sector agreed that these debts should be excluded from the revised AO and ERO. Respondents from the advice sector were roughly divided with 55% agreeing and 45% disagreeing that these debts should be excluded.

12. However, despite the level of support for the proposal a number of respondents raised what they believed to be critical concerns about not including arrears of Council Tax.

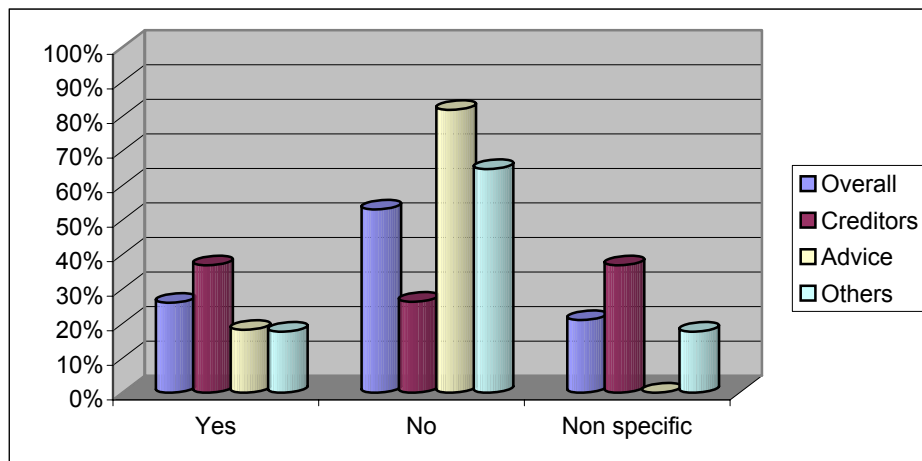
13. The Institute of Revenues, Rating and Valuation generally supported the proposal but added:

“The exclusion of council tax from the AO and ERO process may not however sit easily with local authorities’ role in addressing social exclusion issues. If the Administration Order process were to relate to historic debt only, there would probably be some merit in retaining the inclusion of council tax debt in the scheme”.

14. Others commented that Council Tax was treated as a 'priority commitment'. This could lead to statements of means being unrepresentative in respect of surplus income and would effectively make the schemes unavailable to anyone with arrears of Council Tax (Local Government Association (LGA) estimates suggest that over 2 million households every year have problems paying their Council Tax)
15. After full consideration of the points raised (both for and against the proposal) we believe that it is vital that there is the ability to include arrears of Council Tax in these orders. Therefore Council Tax will not be specifically excluded from the revised schemes.
16. Our position on rent arrears, where the debtor remains in possession of the property, and future commitments remains the same. These debts will therefore be excluded from both schemes.

Q2: Do you think that other types of debt should be excluded from the revised AO and ERO schemes?

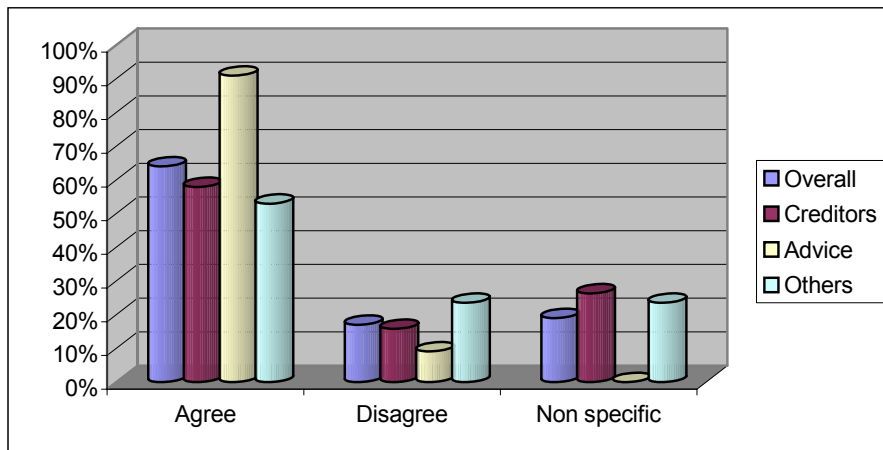
17. We received 47 replies. Overall 53% of respondents felt that no other types of debt should be excluded from the revised AO and ERO schemes, whilst 26% felt that some other debts should be excluded. 21% of responses were non-specific.



18. The majority of the advice sector (82%) thought that no other types of debt should be excluded from the revised AO and ERO schemes, whilst only 26% of the creditor sector had the same view.
19. None of the responses disagreeing with the proposal demonstrated a compelling need to specifically exclude other debts. Therefore no other debts will be excluded from the schemes.

Q3: Do you agree that there should not be any exceptions from the restriction? (That is, preventing creditors with qualifying debts from presenting a bankruptcy petition (but not from joining a petition) and from seeking any other remedy to recover their debt while an AO/ERO is in force without the consent of the court.)

20. We received 47 replies. Of these, the majority (64%) of respondents agreed that there should be no exception from this restriction. 17% of respondents disagreed and 19% were non-specific.



21. Her Majesty's Council of Circuit Judges commented:

"Yes. If creditors are to be attracted to use Administration Orders or EROs they must be confident that other creditors are not able to gain an advantage over them by being outside the AO or ERO. Thus, in principle, the restriction on presenting a petition or seeking any other remedy should apply to all those with qualifying debts."

22. Institute of Credit Management stated:

"The institute considers that additional exemptions would add an element of uncertainty and that this would undermine confidence in the scheme for both debtors and creditors."

23. The British Bankers Association said:

"Yes – We agree that regulations should not exempt specific classes of debt from the general restriction on creditors, with qualifying debts. Any exceptions would allow some creditors to present a bankruptcy petition and also seek other remedies to recover their debt while an AO/ERO is in force, without the consent of court, effectively giving them 'preferential' status over others."

24. However, organisations such as The Funding Corporation thought that there should be further exceptions. They commented:

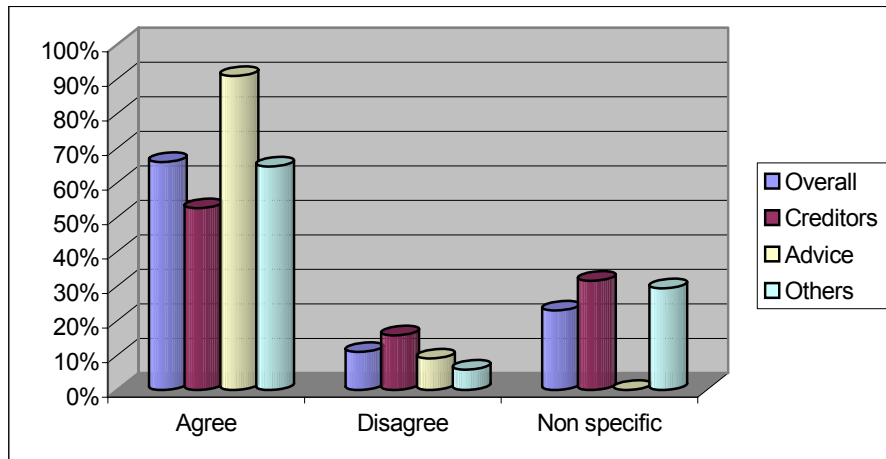
“Yes – Hire purchase or other similar motor finance debts should be excluded from these schemes. The provision of, or loss of usage of a motor vehicle can often be a key element in the reduction in household earnings as the loss of mobility places undue restrictions on the debtor’s ability to fulfil the requirements of their employment or family commitments. This is evidenced in the manner in which Hire Purchase debt is usually exempt from bankruptcy petitions to ensure that the debtor’s earning potential is not further curtailed.”

25. It appears that such comments may be the result of a misunderstanding of the provisions within the Tribunals, Courts and Enforcement Act (TCEA) 2007. Sections 112AB1(a) and 117U1(a) make it clear that debts secured against an asset (e.g. mortgages, hire purchase agreements) are excluded from both schemes.

26. We therefore do not propose to exclude any creditor or type of debt from this restriction.

Q4: Do you agree that debtors should have a minimum of £50 p.m. of surplus income before being allowed to enter the AO scheme?

27. We received 47 replies. Overall, 66% of respondents agreed that debtors should have a minimum of £50 per month of surplus income before being allowed to enter the AO scheme. 11% disagreed and 23% were non-specific.



28. 91% of the advice sector and 53% of the creditor sector agreed that debtors should have a minimum of £50 p. m. surplus income before being allowed to enter the AO scheme.

29. Chiltern District Council replied:

“Yes. There has to be some potential to meet the debts listed under the order, so £50 per month surplus would be a reasonable level.”

30. Lloyds TSB commented:

“Yes – We welcome the recognition that the current lack of a prescribed test has led on occasions to repayment levels being set unreasonably low.”

31. Money Advice Trust commented:

“This figure is in line with the Debt Relief Orders (DROs) and we do not at this point wish to put forward alternative proposals. There should be provision to review this figure in the future in the light of experience.”

32. British Bankers Association said:

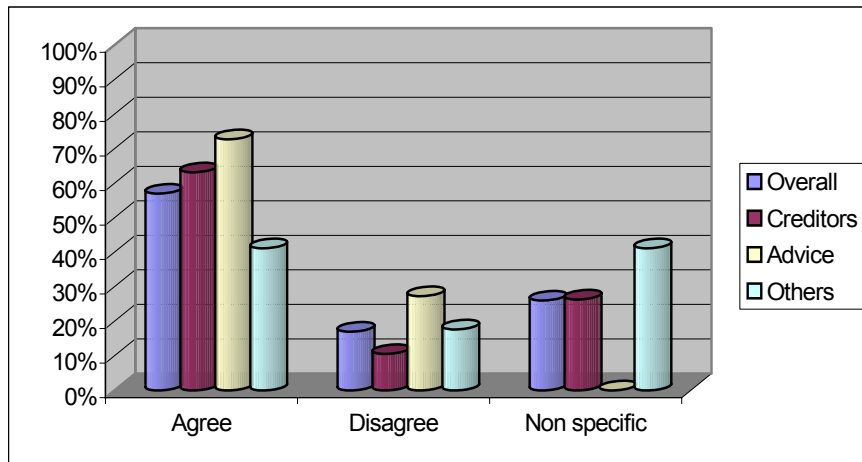
“This should help reduce the number of orders failing, increase returns to creditors and reduce the time taken for orders to reach conclusion (i.e. full repayment).”

33. However, some respondents disagreed suggesting that debtors should have more than £50 p.m. surplus income before being allowed to enter the scheme. The view was that debtors may not declare some expenditure to ensure that they had sufficient surplus to enter the scheme and this could lead to many not being able to maintain payments.

34. However, there was a high level of support and there will therefore be a requirement that debtors must have at least £50 p.m. surplus income before being allowed to enter the AO scheme.

Q5: Do you think that a minimum repayment rate of £50 p.m. should be introduced?

35. We received 47 replies. Overall 57% of respondents thought that a minimum repayment rate of £50 p. m. should be introduced, 17% of respondents disagreed and 26% were non-specific.



36. 73% of the advice and 63% of the creditor sectors agreed that a minimum repayment rate of £50 per month should be introduced.

37. Finance and Leasing Association (FLA) commented:

“All surplus income should be repaid to the creditors and accordingly, a minimum repayment of £50 p.m. should be introduced.”

38. British Bankers Association commented:

“Yes. Due to the disproportionate costs of processing small sums, very low returns, the high failure rate of orders and the time taken for orders to reach conclusion, we think that the introduction of a minimum rate would ensure reasonable returns to creditors and help improve success rates of orders.”

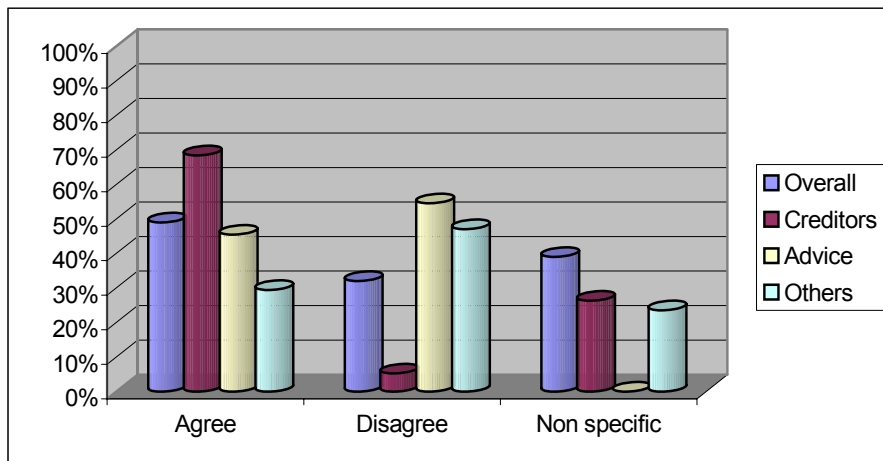
39. However, Restons Solicitors disagreed proposing a minimum of £150 p. m. They stated:

“a larger sum will prevent debtors from manipulating their own figures to ensure that they can enter a scheme thus allowing them a hiatus in which to dispose of assets”.

40. In view of the support for the proposal a minimum repayment rate of £50 p.m. will be introduced for the AO scheme.

Q6: Do you think that all surplus income should be repaid?

41. We received 47 replies. Overall, 49% of respondents thought that all surplus income should be repaid whilst 32% did not. 19% of respondents were non-specific.



42. 68% of the creditor sector thought that all surplus income should be repaid whereas only 45% of the advice sector agreed with this.

43. Civil Courts Users Association stated:

“Yes in order to rehabilitate the debtor as quickly and effectively as possible and make AOs as successful as possible for the creditors.”

44. Of those who disagreed, Chiltern District Council stated:

“If the order required all excess income to be paid to the order, there is the possibility that this will be counter productive and act as a disincentive to the debtor to try and maximise his/her income.”

45. The Association of Business Recovery Professionals commented:

“The debtor should be allowed to keep a certain amount of surplus income in reserve to act as a cushion in case of unforeseen events. If all surplus income was paid into the scheme, the arrangement would fail as soon as it encountered an unexpected difficulty. In our view this is a matter that should be at the discretion.”

46. The Institute of Money Advisers commented:

“No: We believe that the debtor should be allowed to keep the first £50 of surplus income and then pay a proportion thereafter of the excess. By taking 100% of a debtor’s excess income the AO will remove what is probably the biggest single incentive to remaining in work.”

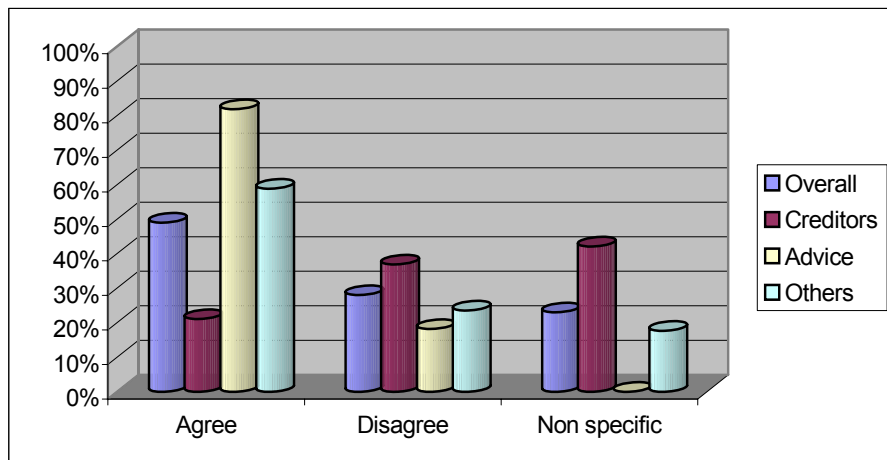
47. The Government takes the view that the use of the Common Financial Statement (CFS) will ensure that all normal domestic needs are provided for. In addition, the provisions of Section 112R could be used to allow debtors to apply for a reduction or a break in repayments to deal with emergencies. However, we do acknowledge the need to provide incentives for people to stay in work and/or to improve their financial prospects.

48. The Government therefore now agrees that debtors should be left with a portion of any surplus income above the minimum repayment level to ensure that repayment rates are not seen as a disincentive to improving their overall financial position (where possible).

49. Consideration will be given, separately, to how this can be implemented.

Q7: Considering the provision we intend to make in the order, are annual updates of information adequate?

50. We received 47 replies. Overall, 49% of respondents agreed that annual updates of information would be adequate, 28% of respondents disagreed and 23% were non-specific.



51. As the chart shows the responses to this question were mixed with 82% of the advice sector agreeing compared to 21% from the creditor sector. In this instance it is important to note the numbers disagreeing and being non-specific.

52. Chiltern District Council commented:

“Yes. However there must be a requirement for debtors to notify the Court of any changes within the year, particularly an increase or reduction in income.”

53. Citizens Advice commented:

“Citizens Advice believes that annual updates will provide the courts and creditors with sufficient information as to the debtor’s situation whilst still being relatively easy for most to adhere to. However, Citizens Advice believes that it is essential that courts are allowed a certain amount of discretion, so that this period can be extended for those whose situation will not or is unlikely to improve during the term of the order. For example, debtors with long term health problems who can demonstrate that they will never work again or retired debtors who will be living on fixed incomes.

In regard to the ERO, Citizens Advice believes there is no further need to request more information once an order is set up.”

54. However, organisations such as HM Council of Circuit Judges, Civil Courts Users Association, Credit Services Association, Lloyds TSB and the British Bankers Association felt that a biannual update would be more appropriate.

55. Her Majesty’s Council of Circuit Judges stated:

“No. It seems to us that once a year is too long an interval between updates and that making a term of the order that debtors must notify the court of any changes in their circumstances is unlikely to be effective. We would suggest a compulsory 6 monthly update.”

56. Civil Courts Users Association commented:

“We feel that 6 monthly updates are more appropriate. These updates should be supported by documentary evidence where appropriate and additional punitive measures should be considered if the updates are not adhered to.”

57. Credit Services Association commented:

“6 monthly would be more appropriate, particularly as the creditor may not get all the money that they lent it is only fair that in these cases all surplus income is paid to the creditor. Therefore regular updates are important as a matter of fairness to the creditor.”

58. Lloyds TSB stated:

“No – We support the requirement for debtors to update details of their financial circumstances during the term of the order and furthermore that this should be formally reviewed on a periodic basis. We also support the proposals for making the terms and conditions of the order, for both the AO and the ERO, that debtors must notify the court of any significant change of personal circumstances (e.g. changes to employment or marital status, unanticipated receipt of money of £500 or more). However, we believe that the proposals above would not identify circumstances where a debtor sees an increase in surplus monthly income (say in the range of £10–40 pm) for potentially up to 12 months, as such circumstances could be deemed to fall outside the criteria above. The addition of such a sum to the monthly repayment at an earlier stage could make a significant difference to the repayment period. We therefore believe that the periodic reviews should be six-monthly rather than annually.”

59. British Bankers Association replied:

“We would suggest that a bi-annual update to the Court is more appropriate. We would also comment that there is no incentive for debtors to increase their repayments. Consideration should be made of punitive measures for non adherence, for example, increased repayments or repayments for a longer term.”

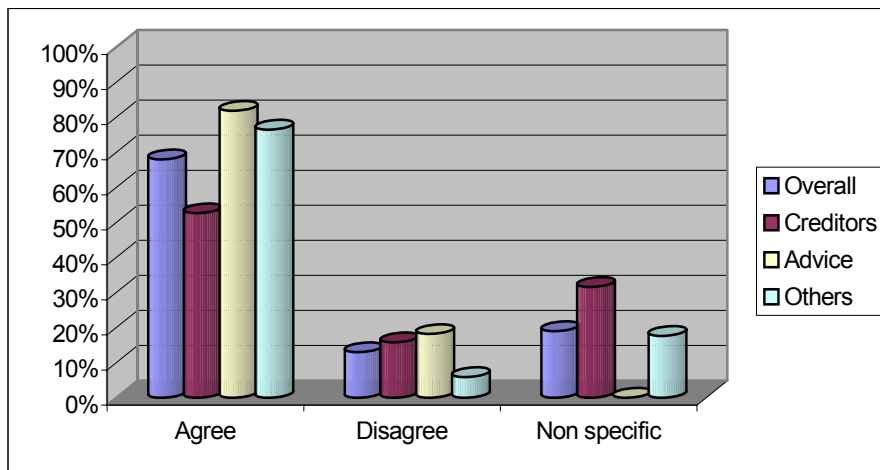
60. It has always been our intention to notify debtors on both the statement of means and the order that they must inform the court of ‘windfalls’ or significant changes to circumstances within 7 days.

61. Balancing the responses received and considering the needs of the various sectors we agree that there should be a requirement that debtors must file an updated statement of means every 6 months for the AO scheme.

62. Given that an ERO can only be in force for a maximum of 12 months we intend to leave the question of updating statements of means to the court’s discretion.

Q8: Do you agree that debtors should not have to notify the court when sales are expected to raise less than the asset limit for the DRO scheme?

63. We received 47 replies. Overall, 68% of respondents agreed that debtors should not have to notify the court when sales are expected to raise less than the asset limit for the DRO scheme. 13% of respondents disagreed and 19% were non-specific.



64. There was general agreement with this proposal.

65. Civil Courts Users Association replied:

“Yes, if less than the asset limit, which should be £300. They should only notify if the sale is over £300.”

66. British Bankers Association replied:

“Yes – We agree that there should not be a requirement to notify the court where the anticipated sale value (collectively when more than 1 item being sold) is less than the asset limit for the DRO scheme, currently in the region of £300–£500, as this information would be of little practical value. Goods falling below a minimum value threshold should simply be exempted from the requirements, due to the low anticipated value of any sale.

However, we suggest that the asset limit is £300.00 and also transfers of assets, rather than just sales, should be included.”

67. Money Advice Trust also agreed, stating:

“Yes. This would be administratively burdensome for the courts and an onerous requirement for the client.”

68. However, organisations such as HMRC and Restons solicitors disagreed.

69. HMRC stated:

“Expected to raise’ may be open to abuse by selling at auction, particularly on-line auctions, with an unrealistically low starting price.”

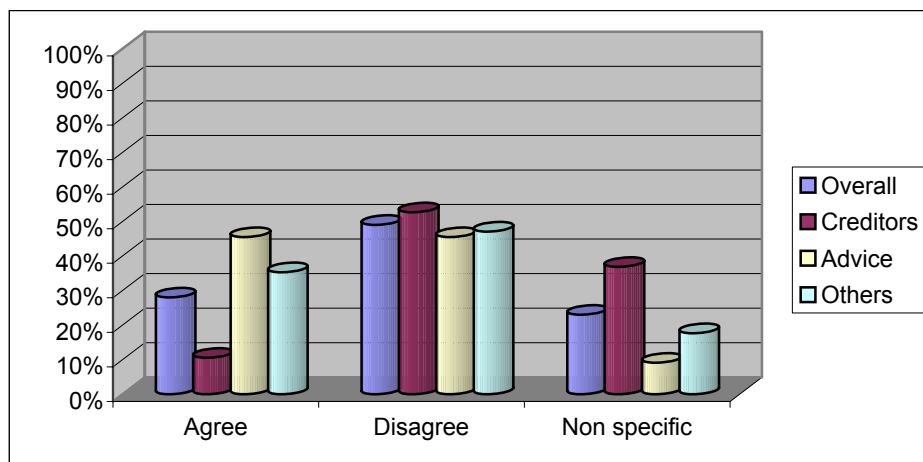
70. Restons solicitors stated:

“No, debtors should be educated into advising the Courts fully of their financial situation. Allowing debtors to simply dispose of assets without advising the Court means that debtors are less likely to do so when the value of the assets sold is in excess of the limit. What is to prevent debtors selling assets to friends or family at an under value to avoid having to advise the court?”

71. Given the overall level of support for the proposal, debtors will only be required to notify the court of proposed sales of assets where the anticipated total sale value exceeds the DRO asset limit – currently £500.

Q9: Do you think that goods should be exempted on grounds other than value?

72. We received 47 replies. Overall 28% of respondents agreed that goods should be exempted on grounds other than value, 49% of respondents disagreed and about 23% were non-specific.



73. As the chart shows there was a very mixed response to this question.

74. The Institute of Credit Management stated that in their view:

“value is the only valid criteria”.

75. Citizens advice stated:

“Citizens Advice believes that the Ministry of Justice should take as pragmatic a stance as possible regarding goods, as an overly rigid policy will mean that certain client groups are disproportionately affected. Citizens Advice therefore recommends that all assets over £300 should be listed on the application form along with a statement from the debtor as to why they are needed. The court could then deal with each application on its own merits and make a decision as to which assets are included in the order which is sent to creditors. Creditors could then see a list of those assets which are deemed non-essential and make a decision as to whether or not they are going to oppose the order.

CA believe that this system should also apply to items of sentimental value such as wedding or engagement rings.”

76. Money Advice Trust (MAT) agreed. They stated:

“Yes. If there is no need to notify the court about exempt goods, ie “tools, vehicles used by the debtor for work purpose, clothing, bedding, furniture, and household equipment necessary to satisfy basic needs”, then we are not sure which other goods could reasonably be subject to exemption. However, we suggest that there is an argument for exempting non-work vehicles for people living in rural locations, particularly in relation to households that include school-age children, people with disabilities etc.

In situations where a list of assets is required to be provided, it may be appropriate to devise a form for completion that includes a field which the person in debt can complete to make the case for the exemption of particular goods.”

77. However, organisations such as the British Bankers association and Chiltern District Council thought that goods should not be exempted on grounds other than value.

78. British Bankers association stated:

“No – We do not think that goods other than those specified as exempt should be exempted on grounds other than value, to ensure that the schemes are not used to provide debtors protection from enforcement while assets are disposed.”

79. Chiltern District Council replied:

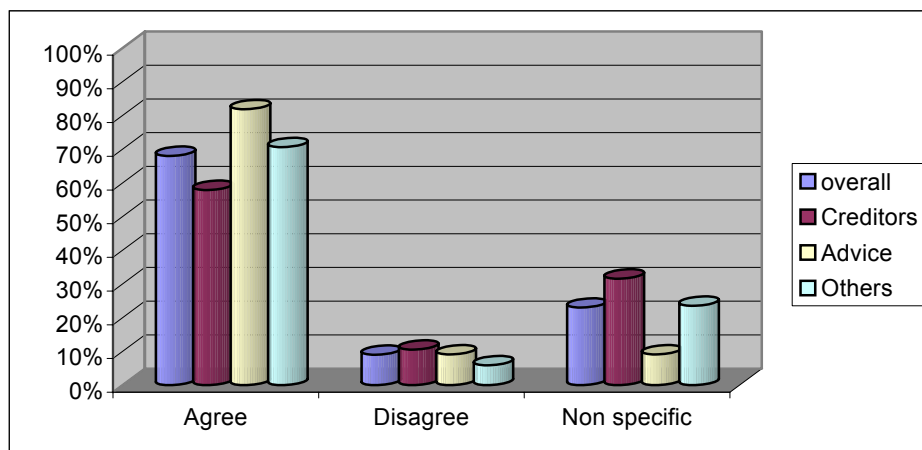
“No. The provisions within Schedule 12 allowing for exemption of some goods other than on value adequately cover this.”

80. Paragraph 53 of the consultation paper states that sections 112M(5) and 117J(5) of the Act already make it clear that this provision does not apply to goods that are exempt for the purposes of Schedule 12 to the TCEA 2007 (such as tools, vehicles used by the debtor for work purposes, clothing, bedding, furniture and household equipment necessary to satisfy basic needs), goods protected by other enactments or prescribed property.

81. In view of the provisions in the primary legislation and in the absence of any workable alternative we do not intend to exempt goods from the requirements about notifying the court on grounds other than value.

Q:10 Do you agree that 21 days is sufficient notice of the intention to dispose of goods?

82. We received 47 replies. Overall, 68% of respondents agreed that 21 days is sufficient notice of the intention to dispose of goods. 9% of respondents disagreed and 23% were not specific.



83. Again the response to this question was overwhelming support.

84. Insolvency Practices Council replied:

“agree to the 21 days notice proposed for disposing of goods.”

85. Credit Services Association replied (CSA):

“21 days is sufficient notice.

Property – where property is concerned the notice should be given as soon as property is put on the market rather than 21 days before the completion date. There are concerns that the ERO could be used to buy time to dispose of property where it is known a creditor is seeking a charge on the property. During the period of the ERO the property could be marketed with a view to completion immediately the ERO is removed.”

86. British Bankers Association stated:

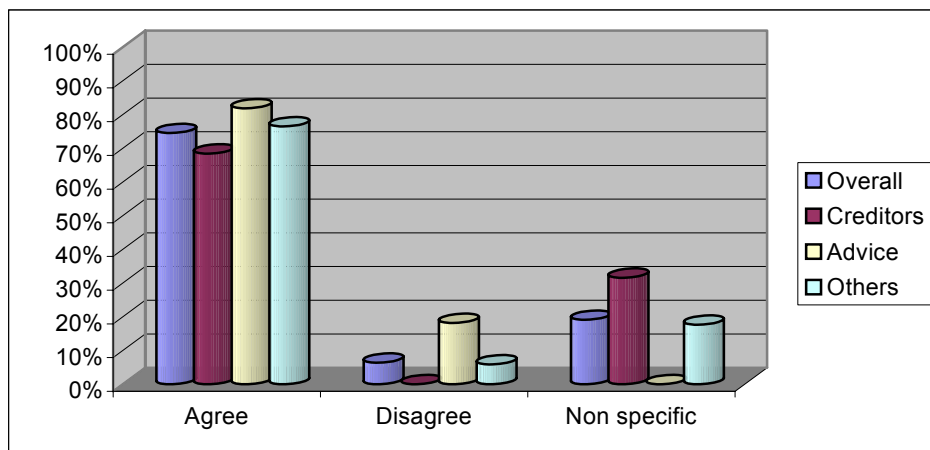
“Yes – We agree that 21 days would be a reasonable period”.

87. A number of respondents, including some who generally supported the proposal, queried whether 21 days would allow the court sufficient time to deal with and respond to the request to dispose of goods. However, this is an operational matter for HMCS rather than for legislation.

88. Therefore, in view of the level of support received, we intend to introduce a requirement that debtors inform the court 21 days in advance of any proposed sale where the anticipated value exceeds the DRO asset limit.

Q11: Do you agree with the proposals for calculating debts?

89. We received 47 replies. Overall, 75% of respondents agreed with the proposals for calculating debts, 6% disagreed and 19% were non-specific.



90. The proposed method of calculating debts was supported by all sectors.

91. Civil Courts Users Association replied:

“Yes, providing the Creditor has the ability to object.”

92. In view of the level of support we intend to adopt the method outlined in the paper (described below) for the AO scheme.

Methodology

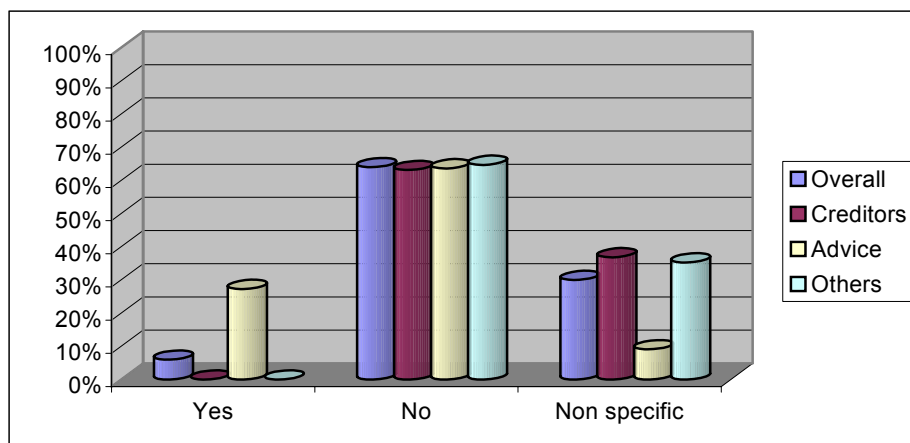
“a copy of the proposed order (with the debtor’s figures for the amount of each debt) will be forwarded to each creditor. The creditor will then be given the opportunity to agree the amount and add any interest up to the date of the proposed order. This is the system that is already in existence for the current version of AO and it works efficiently and effectively.

If the debt is deferred then the creditor will be able to supply the court with an estimate of the amount of debt (including interest) at the time the debt is due for payment.

Once the creditor has confirmed or updated the amount on the proposed order it is not intended that the debtor will be consulted further on the amount of the debt”.

Q12: Is it considered that any group is/groups are represented disproportionately amongst debtors? In particular, is there any evidence to suggest that these proposals will discriminate on the grounds of race and ethnicity, gender or disability status?

93. There were 47 responses. Overall, 6% of respondents felt that groups are represented disproportionately amongst debtors, 64% of respondents did not feel that any group is represented disproportionately and 30% were non-specific.



94. Most of the creditor and advice sectors did not feel that these proposals will discriminate on the grounds of race and ethnicity, gender or disability status.

95. The Association of Business of Business Recovery Professionals stated:

“We cannot think of any group defined by reference to the criteria listed which would be unfairly discriminated against by these proposals.”

96. The Association of Her Majesty’s District Judges stated:

“Whilst there are suggestions that in some instances, some groups appear to be represented amongst debtors disproportionately, we are not aware of any clear evidence to suggest that this is in fact the case. As to the second, we are not aware of any such evidence.”

97. Citizens Advice stated:

“CAB debt clients are disproportionately from lower income backgrounds. Our research for the Deeper In Debt report showed that 40 percent of all CAB debt clients live in households that are totally reliant on state benefits.

Some 65 percent of CAB debt clients are tenants. This is more than double the proportion of tenants in the general population.

The Deeper In Debt report also showed that 23 percent of respondents households included someone who had a disability and 10 percent of respondents described themselves as not white.

The report also showed that 60 percent of CAB debt clients were between 24 and 65 years old and 56 percent of all parents who took part in the report were lone parents.

We believe that the proposals made in this consultation paper may discriminate against these groups of debtors as they could leave a large gap between the debt remedies and restrict these debtors access to debt relief.”

98. Money Advice Trust stated:

“Yes, As a general and very broad assessment, the two socio-economic groupings most at risk of over-indebtedness are above-median income households with high levels of commitments and households on chronically low incomes (with the exception of 'older-older' people, who typically have very low levels of debt).

Vulnerable and socially-excluded constituencies are disproportionately represented in the low-income cohort, including people with literacy and numeracy problems, people with disabilities (including learning disabilities), and people with mental health problems. For example, it is estimated that 75% of people with chronic mental health problems are not in employment and that people with mental health problems are three times more likely than others to be in debt.”

99. Institute of Money Advisers stated:

“Yes, there is a considerable body of evidence which suggests that people with disabilities who have lived for many years on benefits are likely to experience debt and in particular be debtors who have had little opportunity to acquire assets. Therefore we believe this group are disproportionately represented among debtors and particularly among debtors who might be eligible for DROs; however we do not consider that this amounts to discrimination.”

100. In view of the responses we consider that there may be groups that are represented disproportionately amongst debtors, generally. However, we are satisfied that there is no evidence to suggest that these proposals will discriminate against any group on the grounds of race and ethnicity, gender or disability status.

Conclusion and next steps

101. In light of the responses received the Government has decided to alter its position in respect of Council Tax arrears (at the time an order is made) and what proportion of surplus income should form the repayment rate.
102. The position with Council tax arrears has been agreed with the Local Government Association and key stakeholders will be consulted on devising a method allowing debtors to retain a portion of their surplus income (above the minimum repayment rate) whilst ensuring that creditors needs and rights to recover debts are considered.
103. The Government feels that there was sufficient support to introduce the remaining measures in line with the statement at the end of each section. However, due to the need for supporting IT changes, it will not be possible to implement these measures until April 2011 at the earliest. In order to provide the earliest possible support for debtors, in the current economic climate, the Government therefore intends to use the findings from this consultation to support the development of 'approved' non-court based Debt Management Plans with a view to their possible implementation in April 2010.
104. We are also satisfied that there is no evidence to suggest that these proposals will discriminate on the grounds of race and ethnicity, gender or disability status.

Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact Ms Julia Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4492 or email her at consultation@justice.gsi.gov.uk

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

Julia Bradford
Consultation Co-ordinator
Ministry of Justice
6.36, 6th Floor
102 Petty France
London
SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

The consultation criteria

The seven consultation criteria are as follows:

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

Annex A – List of respondents

APACS
Ashhurst LLP
Association of British Insurers
Association of Business Recovery Professionals
Association of Finance Brokers
Association of Her Majesty's District Judges
Bannons
British Bankers Association
Cattles
Chiltern District Council
Citizens Advice
Civil Courts Users Association
Consumer Credit Counselling Service
Council of Mortgage Lenders
Credit Services Association
Enforcement Services Association
Finance & Leasing Association
Gemstone Financial Management Limited
Genworth Financial
HBOS
Her Majesty's Court Service
Hertfordshire County Council
HM Council of Circuit Judges
HM Revenue & Customs
Insolvency Practices Council
Insolvency Service
Institute of Credit Management
Institute of Money Advisers
Institute of Revenues, Rating and Valuation
Jeremy Sutcliffe
Kam Gohil

Administration and Enforcement Restriction Orders: setting the parameters
Summary of responses

Leeds County Council

Lloyds TSB

London Borough of Sutton

Lord Justice Leveson, Senior Presiding Judge

MBNA

Money Advice

Money Advice Trust

Myvesta Foundation

Nationwide

P & A Receivables

Preston City Council

Restons Solicitors

Royal Bank of Scotland

Royal Courts of Justice

Sandwell Metropolitan Borough Council

The Funding Corporation

Think Money Group

© Crown copyright
Produced by the Ministry of Justice

Alternative format versions of this publication can be requested from
Ghulam Chowdhury, Civil Policy & Customer Intelligence Branch 020 3334 3171
e-mail: Ghulam.Chowdhury1@justice.gsi.gov.uk