

Title: Proposed reforms to charging orders Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	IA No: MoJ 077
	Date: 29 March 2011
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Michael Anima-Shaun Tel 020 3334 3189

Summary: Intervention and Options

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

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 all be undermined.

What are the policy objectives and the intended effects?

The main policy objectives of the proposed reforms to charging orders are to reduce the extent of court involvement 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.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing

Option 1: Introduce the ability for the creditor to pursue 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).

Option 2: Streamline charging order process by removing the automatic final hearing stage. 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.

Our preferred option will be determined in light of consultation responses.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed May 2014
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:.....



..... Date: 22.02.2011

Summary: Analysis and Evidence

Policy Option 1

Description: Permit charging orders when payment by instalments is taking place

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

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

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

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

Debtors would repay debt more quickly and more completely and might incur other costs and fees
 Other third parties with a subsequent interest in the property may lose precedence to a prior charging order
 Creditors may incur unrecoverable costs from securing more charging orders
 HMCS and Land Registry would incur costs of administering more charging orders, matched by increased fee income

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

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

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

Debtors should avoid the costs of other enforcement action (e.g. 'applications to set aside' and 'applications to vary')
 Creditors secure full debt repayment more quickly and more completely
 Wider economic benefits from greater contractual certainty and enforceability
 HMCS and Land Registry would secure increased fee income from administering more charging orders, mirroring their increased costs

Key assumptions/sensitivities/risks

Discount rate (%)

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
 Overall impact on equity and fairness unclear
 Charging orders would displace amended instalment orders in some cases
 Overall potential impact on legal aid, if any, is assumed not to be significant

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: n/a	AB savings: n/a	Net: n/a	Policy cost savings: n/a	Yes/No

Summary: Analysis and Evidence

Policy Option 2

Description: Streamline the charging order process

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

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

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

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

Potential one-off HMCS IT costs associated with changing the charging order process
Debtors may have charging orders registered against them more quickly

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

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

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

Possible improved HMCS efficiency leading to reduced case backlog and reduced case waiting times
Creditors may register charging orders more quickly
Creditors save costs by not attending court unnecessarily (when debtor does not turn up)
Possible gains to equity and fairness
Possible wider economic benefits

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
Distributional implications unclear
Overall potential impact on legal aid, if any, is assumed not to be significant

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: n/a	AB savings: n/a	Net: n/a	Policy cost savings: n/a	Yes/No

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?			01/05/2012		
Which organisation(s) will enforce the policy?			HMCS (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 ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: n/a	Benefits: n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

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
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ 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	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

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. These are charges placed on a person's property which are paid when the person moves home. 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 apply to all forms of civil case but not to family case and not to criminal cases. They relate to all cases where a charging 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 2009 there were approximately 111,000 charging orders issued in the County Court. Our proposed changes aim to improve the efficiency of applying for a charging order as an enforcement method, whilst still offering protection to debtors who are genuinely unable to pay.

Policy Objectives

- 1.7 Efficiency and fairness concerns are driving our proposed reforms. If the Government does nothing then the current process for charging orders would continue to apply. However this would not address the present failings - that the process could be more streamlined and operate more efficiently for users of the service, and confidence in the justice system might not improve.

Policy Proposals

- 1.8 We are consulting on the following in relation to charging orders:
 - 1) Introduce the ability for the creditor to pursue 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. 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.
- 1.9 By streamlining the current charging order process, and potentially permitting charging orders when debtors are paying by instalments, the Government believes that it can provide a simpler, consistent and more effective process of enforcement by:

- Reducing delay in the final charging order being registered at the Land Registry, in cases that no objection is raised.
- Freeing up court resources whilst maintaining the same outcome associated with the charging order process.
- Maintaining the necessary safeguards from the aggressive pursuit of debts for debtors who are complying with judgment debts.
- Enabling charging orders to be applied in a wider range of circumstances.

Economic rationale for intervention

- 1.10 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).
- 1.11 In this case, the intervention would be justified primarily on efficiency grounds. 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.
- 1.12 The proposal to allow charging orders to be applied in a wider range of circumstances might be justified on fairness grounds, if this provided for a fairer means for settling debt than is currently available. There might also be efficiency gains if an improved equilibrium position was reached with debt being enforced more completely and more quickly.

Policy Objectives

- 1.13 The above efficiency and fairness concerns are driving our proposed reforms. If the Government does nothing then the current process for charging orders would continue to apply. However this would not address the present failings - that the process could be more streamlined and operate more efficiently for users of the service, and confidence in the justice system might not improve.
- 1.14 By streamlining the current charging order process, the Government believes that it can provide a simpler, consistent and more effective process of enforcement by:
- Reducing delay in the final charging order being registered at the Land Registry, in cases that no objection is raised.
 - Freeing up court resources whilst maintaining the same outcome associated with the charging order process.
 - Maintaining the necessary safeguards from the aggressive pursuit of debts for debtors who are complying with judgment debts.
 - Enabling charging orders to be applied in a wider range of circumstances.

Affected key stakeholder groups

- 1.15 The proposals would affect the civil courts, creditors, debtors, and third parties – the land registry and legal professionals.
- Civil Courts – Would be impacted in terms of workload to administer charging order applications. There may be some one-off IT costs associated with the process changes.

- Creditors – Would be impacted in terms of their ability and the speed of the placing of the charging order. In some cases there may be quicker repayment of the judgment debt repayment..
- Debtors – Would 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.
- Land Registry – May see a volume change and therefore there would be an impact on costs and on fee income.
- Legal professionals – Might possibly be affected by a potential increase in the number of charging order applications under the instalments option and by more streamlined processes.
- Legal Services Commission (LSC) – The LSC administers legal aid and might possibly 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. It is unclear whether these impacts would arise and if so, how significant they might be. Given this we have assumed 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 different options for changing the scope and process of obtaining a charging order.

Option 0: Base case (do nothing)

- 2.3 Under this option, no intervention would be made. Therefore, the charging order process for HMCS 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 process would always involve a hearing, even if no objection is raised by the debtor.
- 2.4 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.
- 2.5 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

- 2.6 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.
- 2.7 This leaves a barrier to the recovery of a judgment debt because debtors with large judgment debts, paying off their debt in small instalments, 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. 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 creditor's net income and outgoings remain the same after they have moved house.

2. 8 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.

Costs of Option 1

HMCS (Civil Courts)

2. 9 We would expect an increase in the number of charging orders applied for and issued as a result of widening the scope for charging orders. At the same time it is possible that there might be a marginal reduction in the number of applications to amend instalment orders. Overall it is likely that there would be an increase in HMCS costs. However, we assume that current court fees cover court costs hence the net financial impact on HMCS should be neutral.
2. 10 The assumption that court fees, which remain unchanged, would continue to cover court costs despite the change in case volumes implies that court operational efficiency would remain the same.
2. 11 It has also been assumed that there will be no change in HMCS capacity, e.g. increased staff or estate. As such the increase in court case volumes could have a negative impact on the County Court backlog and on court waiting times.

Debtors

2. 12 Widening the scope for charging orders would generate costs to debtors through a number of potential mechanisms.
2. 13 Firstly, they would be unable to avoid their unsecured judgment debts being secured by a charging order, even if they are repaying the debt through regular instalments.
2. 14 Secondly, debtors may now 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 would therefore impact the speed, and potentially completeness of judgment debt repayment. Ultimately the debtor would finance this by moving into a property of lower value than would otherwise have been the case, or by covering the cost through higher mortgage payments. If the latter then the debtor would essentially repay the creditor by taking out an increased loan from their mortgage provider.
2. 15 Thirdly, if completion of the judgment debt repayment now takes place through the charging order rather than by instalments, the debtor would accrue interest for the first 6 years' duration of the charging order. Interest at either contractual or the statutory rate (8%) may also have been added at judgment and would continue to accrue on the judgment debt.
2. 16 There may also be a cost to debtors associated with paying the related legal fees if a charging order is now applied to secure their debt, unless these were remitted.
2. 17 To the extent that the costs to creditors of pursuing their debt are transferred to debtors there may be a cost to debtors. For example court fees and the creditor's legal costs might all ultimately be paid by the debtor (but not Land Registry fees).

Creditors

2. 18 Creditors would incur cash flow costs from incurring legal costs, court fees and Land Registry which might not be recoverable until the debtor moves house.
2. 19 In addition it is possible that not all of these fees and costs might be recoverable. If they were not then creditors would incur costs from pursuing their debt. Land Registry fees in particular would not be recoverable from the debtor.

2. 20 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.

Land Registry

2. 21 The Land Registry would incur the costs associated with administering an increased volume of registrations. As with HMCS costs we assume that Land Registry costs would be met by increased Land Registry fee income, that the net financial position for the Land Registry would be neutral, as would the impact on Land Registry operating efficiency.

Third parties

2. 22 Other third parties with a subsequent interest in the property may lose precedence to the charging order.

Legal professionals

2. 23 Legal professionals may be engaged in a greater volume of charging order case work and a reduced volume of amendments to existing instalment orders. Overall there may be a gain in business for legal professionals. For each provider this is unlikely to involve any one-off capacity adjustment costs.

Distributional costs

2. 24 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.
2. 25 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 borrowing, the creditors might be financial institutions and the debtors might be less well off individuals.

Equity and fairness costs

2. 26 Some people may consider that there is a cost in terms of reduced fairness 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.

Wider social and economic costs

2. 27 The proposals are not expected to generate wider social and economic costs. Such wider costs might in theory arise as a result of debtor-related behavioural responses (e.g. increased crime) or as a result of improved enforcement generating costs elsewhere (e.g. increased state benefits paid to debtors from government bodies).

Benefits of Option 1

HMCS (Civil Courts)

2. 28 HMCS would secure more fee income from the increase in charging orders. This would be offset by the reduced fee income from a possibly reduced volume of applications to amend existing instalment orders and fees for other kinds of enforcement which cannot be pursued while a charging order is in place. This increased fee income would ultimately take the form of a cost to debtors.
2. 29 As explained in the costs section it has been assumed that court fees cover court costs hence we would expect no net impact on overall court cost recovery, and no impact on court operational efficiency.

Debtors

2. 30 Where a charging order is pursued by the creditor in future in place of amending an existing instalment order then the debtors would benefit by not incurring the costs associated with the amended instalment order. 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. 31 The same would apply in relation to other types of enforcement action which might otherwise be pursued, such as warrants of execution.

Creditors

2. 32 The benefits for creditors largely mirror the costs to debtors.
2. 33 Creditors would 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. 34 Firstly, it could lead to quicker repayment of the judgment debt, if the debtor sells their home before the instalment payments would be due to end. It could also lead to more successful repayment of the judgment debt if payment by instalments means that the creditor does not receive the full amount.
2. 35 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 would equate to a real increase in the amount of debt recovery seen by the creditor.
2. 36 Finally, the creditor would 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.

Land Registry

2. 37 The Land Registry would see an increase in fee income associated with the increase in charging orders registered. As above, Land Registry fees are assumed to recover Land Registry cost hence the net financial position for the Land Registry should be neutral.

Legal professionals

2. 38 It is possible that legal professionals may experience an overall increase in business from the increase in the number of charging order applications, even once the reduction in business from fewer amendments to existing instalment orders is taken into consideration.
2. 39 This gain to legal professionals would be mirrored by the loss to debtors or creditors (if they cannot recover these costs from the debtor) from paying the related fees.

Distributional benefits

2. 40 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. 41 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.

Equity and fairness benefits

2. 42 The proposals may raise equity and fairness as the original judgment order is assumed to be fair hence the quicker, more effective and more complete implementation of this judgment should improve fairness.

Wider social and economic benefits

2. 43 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. 44 The following key assumptions apply to Option 1:

- Court fees are assumed to remain the same. The potential increase in court activity may potentially impact the case backlog and hence case waiting times, but overall court cost recovery and operational efficiency would not be affected.
- 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.

Option 2: Streamline charging order processes

Description

2. 45 We propose streamlining the charging order process by removing the automatic final hearing stage and devolving some responsibilities from judges to court clerks. The procedure leading to the grant or refusal of an interim charging order will be devolved to the court clerk. The court clerk would issue an interim order, and a hearing date would only be set if the debtor raises an objection following the service of the interim charging order, rather than in all cases. The judge would make the final order once the required time for response has elapsed and if no objection is raised.
2. 46 To supplement these 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).
2. 47 Through streamlining the process it would also allow some responsibility to be devolved from judges to court clerks, freeing up judicial time which could be used on other cases.
2. 48 As the overall proposed changes would streamline the process, we would also anticipate a time saving for court clerks, allowing them to undertake work in other areas.
2. 49 The policy would aim 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.

Costs of Option 2

HMCS (Civil Courts)

2. 50 Potential HMCS IT costs associated with changing the charging order process. These potential IT costs should be quantified in due course.
2. 51 There may be a transfer of work from judges to court clerks and other staff, but this would be minimised due to the current checking by court staff and duplication of checking by judiciary which currently takes place. Given the benefits to HMCS (see below) we consider that court clerks and other staff would have sufficient capacity to take on this work without an increase in staff being required (i.e. no one-off costs or ongoing costs from increasing capacity). We also consider that court clerks and other staff could take on this work without generating any delays in

the time taken to process cases. As such the proposals would not lead to increased HMCS costs.

- 2. 52 The requirement for debtors to raise an objection and request a hearing might possibly generate additional minor costs associated with this process, which have not yet been specified.
- 2. 53 Court fees are assumed to remain the same as are case volumes, although the latter may increase if anything if demand rises following the process improvements.

Debtors

- 2. 54 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. 55 In terms of the overall speed and completeness of debt repayment we would expect a minimal impact as this would be affected by when the property is sold rather than by when the charging order is placed.

Creditors

- 2. 56 No significant one-off or ongoing additional costs to creditors have been identified.

Legal professionals

- 2. 57 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. 58 Any loss in business to legal professionals would 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. 59 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 would depend upon how their work profile changes. It has been assumed in this Impact Assessment that legal professionals would pursue other work of an equivalent value and would not experience any ongoing costs.

Distributional costs

- 2. 60 It is assumed that the process of registering a charging order will be quicker if the proposed changes are made than the current process. 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 and fairness costs

- 2. 61 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 fairness. In addition it would still be possible for the debtor to attend court.

Wider social and economic costs

- 2. 62 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 judicial system resource.

Benefits of Option 2

HMCS (Civil Courts)

- 2. 63 Savings would arise from no longer listing cases which are not heard due to the debtor not turning up.
- 2. 64 We consider that judicial savings might not lead to monetary savings, but rather that this would allow judges to work on other areas, potentially having a positive impact on the court backlog elsewhere.
- 2. 65 In relation to court officers or other staff, we assume that there would be savings from no longer listing cases which are not heard due to the debtor not turning up. On the other hand court officers and other staff would assume new responsibilities for the accuracy and compliance of applications which were previously undertaken by both court staff and judges. We aim to reduce this duplication and transfer of court files between staff and judiciary which can result in delays. Overall we consider that there might be overall ongoing savings to staff time.
- 2. 66 It has been assumed that these reforms alone are unlikely to enable court capacity to be reduced and hence to generate any related savings e.g. from having fewer staff or buildings. Instead there may be a reduction in ongoing variable court costs per case.
- 2. 67 Total court costs might not necessarily fall. Instead it has been assumed that any reduction in per case costs would lead to a reduction in the County Court backlog and in associated waiting times. As such there may be no impact on overall court cost recovery.

Debtors

- 2. 68 A clearer understanding of the process and its consequences will be offered to debtors.
- 2. 69 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.

Creditors

- 2. 70 Creditors would benefit from a more efficient process, allowing them to register the final charging order more quickly in cases where debtors do not object.
- 2. 71 In cases where no objection is raised, creditors would also see cost savings as they would no longer be required to attend a hearing at court where the debtor might not turn up.

Legal professionals

- 2. 72 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.

Distributional benefits

- 2. 73 It is assumed that the process of registering a charging order will be quicker if the proposed changes are made than the current process. 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 judgement debt. Consequently, we consider the potential distributional benefit to be minimal.

Equity and fairness benefits

- 2. 74 The proposals are expected to raise equity and fairness, as the original judgement is assumed to be fair hence the quicker, more effective and more complete implementation of this judgement should improve fairness.

Wider social and economic benefits

2. 75 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. 76 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. 77 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 the case backlog 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.

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 debtors. 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 (Nick Goodwin)]

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), 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 the instalments order, (and therefore, in the absence of default, the debtor would not lose his home), and 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.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

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 any post implementation review arrangements.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The post implementation review will analyse the impact in terms of efficiency of process and user feedback. It will also check there was no negative impact on access to justice.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] These proposals are at consultation stage. It is not therefore not confirmed yet whether such reforms will 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 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. 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: [The current (baseline) position against which the change introduced by the legislation can be measured]

As set out in option 0 – do nothing.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

- Improvement of customers' perception of services available to ensure effective enforcement.
- Speedier court processing, particularly with attachment of earnings 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: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review] Court user feedback will be monitored through correspondence from the public and Parliamentary questions. HMCS Civil and Family Operations also provide Civil Enforcement Policy with feedback from the queries they have received from court staff and users. Judicial statistics also provide indications of court user behaviour.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]