



HM Revenue
& Customs

Direct recovery of debts

Summary of Responses
November 2014

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Foreword

The vast majority of taxpayers pay what they owe in full and on time. However, a persistent minority choose not to pay. This provides an undeserved advantage to those who are wilfully seeking to play the system, and creates costs which are ultimately borne by the compliant majority. The Direct Recovery of Debts, announced by the Chancellor in the 2014 Budget, is an important tool in helping to level the playing field between those who pay what they owe, when they owe it, and those who do not.

The Government recognises that its proposals in this area have prompted a debate, and is thankful to all respondents for their constructive contributions, including those provided by professional and representative groups. We have heard and listened to the legitimate concerns about the operation of this power as it was set out in the consultation document and we are committed to getting it right.

In response to what we heard during the consultation, the Government is introducing:

- a guaranteed face-to-face visit for every debtor who is considered for debt recovery through this measure
- additional support for vulnerable customers
- strengthened governance processes
- a new appeal route for debtors to take their case to a County Court.

This Government is determined that everyone should make their fair contribution to paying for public services and bringing down the deficit. This determination includes cracking down on those who are deliberately trying to avoid paying what they owe. HMRC's use of Direct Recovery of Debts powers will be strictly limited and targeted, only at the small group of debtors who refuse to pay what they know they owe. It will not affect the vast majority of compliant individuals and businesses.

The Government will publish draft legislation in due course to allow us to take further views from experts. In order to allow for an extended period of scrutiny, the Government intends to legislate in a Finance Bill in 2015, during the next Parliament.

The Government is grateful to all those who have provided helpful views, feedback and suggestions throughout this consultation.

A handwritten signature in black ink, appearing to read 'David Gauke'.

David Gauke MP

Executive Summary

- 1.1 The consultation on “Direct Recovery of Debts” (DRD) was published on 6 May 2014 and closed on 29 July 2014. It set out the process and safeguards to implement the Chancellor’s announcement, at Budget 2014, that HMRC would be given the power to recover tax and tax credit debts directly from the bank and building society accounts (including Individual Savings Accounts) of debtors.
- 1.2 The Government received 124 responses, from a wide range of individuals, organisations and businesses.
- 1.3 The Government has heard the concerns voiced during the consultation and is grateful for the constructive and informative suggestions it received – both from individuals and from representative groups, particularly those representing the tax and accountancy professions, businesses, the voluntary and community sectors and financial institutions. Many respondents shared the Government’s objective to collect tax and tax credit debt from those who make a conscious decision to avoid paying what they owe. There was recognition that a small minority of individuals and businesses intentionally tried to “play the system” and hold off paying taxes until HMRC had pursued lengthy and expensive action to recover the money owed.
- 1.4 The Government is introducing robust new safeguards to address the points raised during the consultation.
- 1.5 In response to concerns about the risk of DRD being used in error and the potential impact on vulnerable customers, the Government is:
 - **guaranteeing that every debtor will receive a face-to-face visit** from HMRC agents, before their debts are considered for recovery through DRD. This meeting will provide a further opportunity for HMRC to:
 - personally identify the taxpayer and confirm it is their debt
 - explain to debtors what they owe, why they are being pursued for payment, and discuss payment of the debt
 - discuss options to resolve the debt, including offering a Time to Pay arrangement to the debtor, where appropriate
 - identify debtors who are in a vulnerable position and offer them the support they need to settle their debts.
 - Only debtors who have received this face-to-face visit and are not identified as vulnerable, have sufficient money in the bank and have still refused to settle their debts, or enter an appropriate Time to Pay arrangement, will be considered for debt recovery through DRD;

- **establishing a new vulnerable customers unit**, which will work closely with the voluntary sector and whose prime focus will be dealing with DRD cases in the early stages of its operation
- **committing to work with voluntary organisations and professional bodies** on HMRC's communications with debtors affected by DRD, to ensure they are well tailored and provides helpful advice on how to seek further assistance
- applying **DRD to a smaller number of cases in the first year** of its operation (2015-16), allowing HMRC to start the process on a small, targeted basis and gain experience and feedback.

1.6 In response to concerns about the importance of independent oversight and the need for clear channels for debtors to appeal their case, the Government is:

- **extending the window for debtors to object to HMRC from 14 days to 30 days**, once debt recovery through DRD has been initiated. Money will be held in the account but no funds will be transferred to HMRC until this period has passed
- introducing **an option for debtors to appeal against HMRC's decision to a County Court on specified grounds, including hardship and third party rights**
- **strengthening HMRC's governance procedures** for DRD, including oversight by the Commissioners of Her Majesty's Revenue and Customs
- committing to **enhanced transparency** on this power and publishing, in the Tax Assurance Commissioner's Report, statistics on the number of times this power is used and appeals that are raised
- **a full review of DRD, covering its implementation and impact on customers**, will be carried out by HMRC after the policy has been operational for two years, and laid before Parliament.

1.7 In response to concerns raised about debtors' privacy and the use of their bank account data, the Government has decided **not to implement the requirement for banks to provide 12 months of data on a debtor's account history under DRD.**

1.8 These new safeguards supplement those that were outlined in the consultation document, namely:

- only debts of £1,000 or more will be eligible for recovery through DRD
- HMRC will always leave £5,000 across a debtor's accounts, as a minimum, once the debt has been held
- only funds up to the value of the debt will be held

- a dedicated, specialist team in HMRC will be responsible for all DRD cases
- a dedicated helpline will be available for those affected to contact the DRD team directly. This will be available to debtors affected by this policy, banks and building societies, the voluntary and community sector and tax agents.

1.9 The Government understands that there have been some strong concerns about how this policy will operate and is extremely grateful for all of the feedback it has received. The Government believes that these new safeguards will help to ensure that this policy is targeted specifically at those debtors who are refusing to pay what they owe, and that robust protection is in place for vulnerable customers and those who need additional support.

1.10 Draft legislation will be published in due course for consultation. This will give a further opportunity for the Government to take suggestions on how best to structure this process and how to ensure debtors' rights – and HMRC's responsibilities - are properly reflected in legislation. In order to allow for an extended period of scrutiny, the Government intends to legislate in a Finance Bill in 2015, during the next Parliament.

Introduction

Overview

- 2.1 The Chancellor announced in the 2014 Budget that HMRC would introduce the Direct Recovery of Debts (DRD). This is a new means for HMRC to recover tax and tax credit debts directly from the bank and building society accounts (including Individual Savings Accounts) of debtors.
- 2.2 The vast majority of people pay their taxes in full and on time. Last year, £506 billion in revenue was paid by around 35 million taxpayers. Around 90% was paid on time but around £50 billion was not, and became a debt.
- 2.3 Some people require an additional prompt or reminder to pay what they owe, and a significant number of people pay once HMRC begins to pursue the money owed. Last year, HMRC made around 16 million contacts with debtors by letter, phone, SMS or other means. This included making more than 900,000 visits to follow up on around 400,000 cases of debt.
- 2.4 HMRC encourages people to get in touch as soon as possible if they require additional assistance with their taxes, or believe they will have difficulty paying. The Department has a strong track record in this area:
 - As of September 2014, HMRC had £2.4 billion in just under 800,000 Time to Pay arrangements, allowing individuals and businesses to pay off what they owe in manageable instalments. Nearly half of these arrangements involved customers with tax credits debts. HMRC routinely takes a sympathetic approach to those who need additional support and, when people realise they are not going to be able to pay on time, HMRC encourages its customers to get in touch as soon as possible.
 - HMRC's 'Needs Enhanced Support' service provides additional telephone support for Pay As You Earn (PAYE) and Self-Assessment customers with advisers who have the time, skills, knowledge and empathy to handle customers' enquiries at a pace that suits them. Between May and September 2014, this new service handled more than 46,000 calls from customers who needed extra support.
- 2.5 However, a very small minority of taxpayers still refuse to pay what they owe, despite having the money to do so. This is unfair on those who meet their obligations. Taxes are vital for funding the UK's public services and those who don't pay are gaining an unfair financial advantage over those who do.
- 2.6 DRD will help to level the playing field. It is a targeted measure that will affect a small number of individuals and businesses who are making an active decision to not pay, or delay paying, the money they owe – even though they have sufficient funds in their accounts.
- 2.7 A consultation on the design of this power and its safeguards began on 6 May 2014 and closed on 29 July 2014. The consultation document and the associated meetings with stakeholder groups primarily covered:

- i. The process by which DRD will operate
- ii. The type and extent of the information to be provided by deposit takers to HMRC
- iii. The rights of appeal and objection available to debtors
- iv. Whether the proposed safeguards were proportionate and balanced

2.8 In total, the government received 124 responses to the consultation. These included responses from a wide range of individuals, organisations and businesses. A breakdown of the capacities in which respondents made their comments is below:

- 18 from accountancy firms
- 4 from legal firms or legal advisers
- 3 from consultants and professional bodies
- 19 from representative bodies
- 1 from a trade union
- 1 from a financial organisation
- 5 from other businesses
- 5 from charities and voluntary organisations
- 68 from individuals.

2.9 A full list of respondents to the consultation, excluding individuals, is in Annex A.

2.10 This document summarises the responses received during this consultation. It presents the Government's revised approach to the operation of DRD and associated safeguards.

Summary of respondents' views

2.11 The consultation document sought views on nine specific aspects of DRD. It covered HMRC's administration of the policy, the process by which HMRC would contact banks and building societies, and asked for views on whether the proposed safeguards were proportionate and balanced.

2.12 Many of the responses went much wider than the nine consultation questions. Many respondents raised more general concerns about the policy itself. The Government has carefully considered all responses, including those that were outside the scope of the consultation.

2.13 Many respondents were supportive of the Government's ambition to collect tax and tax credit debt from those who are making a conscious decision to avoid paying what they owe. There was recognition that a small minority of individuals and businesses intentionally tried to "play the system" and hold off paying taxes until HMRC had pursued lengthy and expensive action to recover the money owed. Others noted the inequitable position this created between compliant and non-compliant taxpayers, with one respondent setting out a view representative of other comments: "We fully support the principle that, in discharging this duty,

HMRC should help those who wish to comply in paying their taxes, balanced with the need to be fair to all taxpayers by pursuing those who are not willing to comply. We also agree that HMRC should seek to reduce the debt owing to it, in the most effective way possible. “

- 2.14 A number of respondents supported the objective of ensuring debtors paid in full and on time, but raised concerns about HMRC’s ability to use such a power effectively, fairly, in a targeted manner.
- 2.15 Many respondents indicated that they were not supportive of the overall proposal that had been set out in the consultation document, or opposed the principle of HMRC being able to recover debt from a bank or building society account without oversight from the courts.
- 2.16 Others questioned whether DRD was necessary, given HMRC’s existing routes to recover debt.
- 2.17 Some responses provided valuable contributions on how to improve the policy, especially by improving the effectiveness of the safeguards, including how to handle cases involving vulnerable taxpayers.
- 2.18 The Government acknowledges the concerns that were raised during the consultation and thanks respondents for their constructive proposals.
- 2.19 The following key themes from the responses, and the Government’s response to each of these, are below:

Supporting vulnerable customers

- 2.20 A number of respondents raised concerns about the impact on vulnerable customers. There was concern that, although the Government’s intention is for this power to target the “can pay, won’t pay” population of debtors, there was a risk that it could affect those who, for legitimate reasons, need additional assistance or time to pay their debts. There was also a concern that HMRC’s use of this policy could inadvertently cause hardship and distress for vulnerable customers.
- 2.21 The Government is absolutely clear that this policy is aimed at the “can pay, won’t pay” population of debtors, namely:
- those who are in a position to pay but choose not to, or delay payment for as long as they can
 - those who deliberately avoid engaging with HMRC.

The Government agrees that it is important to focus the policy on these debtors, and that safeguards should be improved to identify and remove vulnerable customers from this process.

2.22 **The Government is therefore guaranteeing that every debtor will receive a face-to-face visit** from HMRC's agents, before their debts are considered for recovery through DRD. These agents will receive additional training to help them identify and work with vulnerable customers. This meeting should put beyond doubt that this is the correct taxpayer and that the debt is owed. This will provide a further opportunity for HMRC to:

- personally identify the taxpayer and confirm it is their debt
- explain to debtors what they owe, why they are being pursued for payment, and discuss payment of the debt
- discuss options to resolve the debt, including offering a Time to Pay arrangement to the debtor, where appropriate
- identify debtors who are in a vulnerable position and offer them the support they need.

2.23 Only debtors who have received this face-to-face visit, have not been identified as vulnerable, have sufficient money in the bank and have still refused to settle their debts will be considered for debt recovery through DRD. Having worked through the specific concerns raised by respondents, the Government is confident that this will provide a robust safeguard for those who genuinely need additional assistance. **However, the Government wants to go further in this area and is therefore:**

- **establishing a new vulnerable customers unit** in HMRC's Debt Management division. This team will be specially trained to deal with debt issues involving vulnerable customers that need specialist support
- **committing to work with voluntary organisations and professional bodies** on letters and other communication with debtors affected by DRD. In recognition of the constructive feedback provided by specialist organisations in the voluntary sector, HMRC is keen to work with them to ensure communication is well tailored and provides helpful advice to debtors on how to seek further assistance, such as the contact details of independent, voluntary organisations who can advise on dealing with HMRC, appealing against the exercise of this power, or managing individuals' or businesses' circumstances when they have got into debt.

Embedding the right of appeal and independent oversight

2.24 A majority of respondents expressed concern about HMRC's ability to recover money from debtors' bank accounts without the option of independent review.

2.25 The Government firmly believes that debtors should have clearly defined channels to appeal to court if they do not agree with HMRC's decisions, including when applying this power. This was a viewpoint shared by many respondents,

who emphasised the need for debtors to be able to effectively challenge decisions with which they did not agree.

2.26 Taxpayers have existing rights to object to HMRC if they believe the tax they are due to pay is incorrect, and can appeal to the independent Tax Tribunal if they do not agree with HMRC's decision on their liability. DRD will not affect these existing rights.

2.27 Once HMRC has identified eligible cases for debt recovery through DRD, it will instruct the debtor's bank to hold funds up to the value of the debt. The consultation document suggested that no funds should be transferred to HMRC for a period of 14 days. This provides an additional window for debtors to get in touch with HMRC and:

- provide information if they believe they have been incorrectly targeted or believe the debt is incorrect or no longer owed
- arrange to pay by other means
- discuss their case and, where appropriate, agree a Time to Pay arrangement to pay their tax in instalments
- object to HMRC's use of DRD and request an internal review of their case.

2.28 The Government recognises that many respondents believed this period of time was too short and didn't account for people who could be on holiday or who needed time to take advice. In response to consultation feedback, **the Government is extending the window to 30 calendar days – from the start of DRD being initiated to the earliest point at which funds could be transferred to HMRC.**

2.29 No money will be transferred to HMRC until this window has concluded. During this 30 day window, the debtor will be able to object to HMRC by requesting an internal review of their case, as described above. HMRC will process this review promptly, and no money will be transferred to HMRC until the review has been completed.

2.30 A clear and recurring theme from consultation responses was that debtors should have the right to appeal to a court if they do not believe DRD should have been used in their case. In order to embed independent review in the DRD process, **the Government is therefore introducing an option for debtors to appeal against HMRC's decision to a County Court on specified grounds, including hardship and third party rights.** This appeal route will be enshrined in legislation.

Box 1: Direct Recovery of Debts – routes of appeal and opportunities to object to HMRC

Debtors will have several ways to challenge the use of DRD:

- Taxpayers already have appeal rights if they do not agree that the tax or tax credit debt due is correct. The exact process differs depending on the type of tax, but usually involves first requesting an internal review by HMRC. If the taxpayer does not agree with HMRC's decision, they can appeal to an independent Tribunal. DRD will not affect these existing rights.
- Debtors who are considered for DRD will receive a guaranteed face-to-face visit from HMRC's agents. Even those who have failed to respond to the numerous attempts to contact them – by letter, telephone or SMS message – will again be made aware of their debt and have a further opportunity to discuss their case. This will confirm beyond doubt the identity of the taxpayer and that the debt is owed.
- Once DRD has been applied, debtors will have as a minimum 30 days before any money is transferred to HMRC. During this window, in which money is held in their account, the debtor can get in touch with HMRC directly and object to the use of DRD if they believe HMRC has made a mistake, or that removing the funds will cause undue hardship. HMRC will promptly carry out an internal review of their case. If there is clear evidence that DRD action will cause undue hardship, it will instruct the debtor's bank to release an appropriate amount to the debtor.
- If the debtor still does not agree with HMRC's decision, they will have a further right to appeal to a County Court on HMRC's use of DRD or on the grounds of hardship.

2.31 A number of respondents were concerned that HMRC could seek to use this power on a large scale, using it routinely to collect any money that had not been paid by the due date. The Government has been clear that this is not the intention of the policy and that it will only be used against debtors who have repeatedly been contacted and have not paid what they owe, and will be subject to rigorous checks and safeguards. HMRC has more than 15 million interactions with debtors through letters and telephone calls each year. DRD will only apply to a small minority of taxpayers that are not engaging with HMRC. However, the Government recognises there is a broader concern about HMRC's use of this power being subject to the appropriate level of scrutiny. The Government is therefore committing to **enhanced transparency** of HMRC's use of this power.

2.32 The Government proposes publishing statistics in the Tax Assurance Commissioner's Annual Report. This will include statistics detailing the number of times HMRC has used DRD and the number and outcome of appeals it has received.

2.33 HMRC will also work closely with professional organisations and tax agents through its existing stakeholder groups such as the Compliance Reform Forum

and Joint Initiative Steering Group, drawing upon their expertise and experience and receiving feedback on its use of this power.

2.34 **A full review of DRD, covering its implementation and impact on customers**, will be carried out by HMRC after the policy has been operational for two years, and laid before Parliament. At this juncture there will be sufficient evidence to assess whether the policy has been effective at achieving its goals.

Strengthening governance and oversight to minimise the risk of error

2.35 Many respondents expressed concerns about HMRC's ability to use this power effectively. There was concern that HMRC could inadvertently use DRD in cases where the tax liability was incorrect, or the debt had been established in error (for example, against the wrong person).

2.36 Several representative organisations cited examples of their own clients who had been asked to pay tax bills which had later turned out to have been issued in error, or for the incorrect amount.

2.37 These organisations also expressed concerns that there may be people who do owe the debt, but need to be handled more sympathetically – the aged and the vulnerable, for example.

2.38 Many respondents felt that more information was needed about how HMRC proposed to put right mistakes and about the extent and operation of any compensation arrangements.

2.39 The Government also recognises that respondents had specific concerns about instances of error in relation to DRD, given the manner in which it operates. These issues were expressed particularly by those in the tax and accountancy professions, who frequently act as agents to HMRC on behalf of their clients. In the light of the concerns raised, **the Government is introducing additional checks and safeguards for debts recovered through DRD**. The Government is:

- guaranteeing a **face-to-face visit** to every debtor who is considered for debt recovery through DRD, as set out above
- **strengthening HMRC's governance procedures** for DRD, including oversight by the Commissioners of Her Majesty's Revenue and Customs
- applying **DRD to a smaller number of cases in the first year** of its operation (2015-16), allowing HMRC to start the process on a small, targeted basis and gain experience and feedback
- establishing a **dedicated DRD team of HMRC specialists** to handle these cases, as set out in the consultation document. This team will receive specialist training to help them identify and handle cases

involving vulnerable customers. This proposal was welcomed by several respondents

- ensuring debtors are provided with a telephone number to speak to the DRD team directly, **via a dedicated phone line**. Banks and building societies will also be able to contact HMRC with queries via this route

2.40 If, even with all of the safeguards in place, HMRC is found to have made a mistake in its administration of DRD, it will consider paying financial redress which is appropriate and fair, in line with its existing policies for dealing with customer complaints. If customers remain unhappy, they can ask the Adjudicator to review their case. The Adjudicator acts as a fair and unbiased referee looking into complaints about HMRC.

Support for customers through the HMRC Helpline

2.41 Most respondents welcomed the proposal that there would be a dedicated HMRC helpline staffed by fully trained officials to deal with any issues arising about the operation of DRD, rather than handling these calls through a mainstream call centre.

2.42 Some had been concerned that if cases went through HMRC's general enquiry telephone lines, the officer answering the call might not have sufficient knowledge of the case or about the DRD process to answer the call satisfactorily. Some voluntary organisations stressed that HMRC officers should be fully trained in identifying cases that involved vulnerable taxpayers.

2.43 One respondent suggested that it would be preferable if the helpline were available to all taxpayers, not just those already subject to a DRD notice. It is important that debtors whose accounts are subject to DRD are able to contact HMRC quickly if they wish to object, pay the debt by other means or have a query about the process. For this reason, it is intended that the helpline should be for those debtors only.

Ensuring protection for debtors' privacy

2.44 The consultation document proposed that HMRC would request 12 months of a debtor's financial history from their bank or building society, before recovering a debt through DRD. The Government proposed this safeguard in order to avoid hardship by helping HMRC determine the appropriate level of funds to leave in the account after recovering the debt.

2.45 A number of respondents had concerns about the privacy implications, and were uncomfortable with HMRC having access to this information. A small number of respondents expressed concern that HMRC could use its powers under DRD to proactively trawl through bank accounts where it suspected an individual was not paying enough tax.

- 2.46 The Government has been clear that information requested under DRD would be used solely for assessing hardship, and to determine whether the £5,000 minimum balance HMRC proposed to leave behind in debtors' bank accounts would be adequate. However, in light of respondents' concerns about privacy, **the Government has decided not to implement the requirement for banks to provide 12 months of data on a debtor's account history under DRD.**
- 2.47 The Government is reaffirming its commitment to always leave £5,000 across a debtor's accounts, once the debt has been held. Debtors affected by this policy will have ample opportunity in which to contact HMRC and make the case for hardship, and HMRC already has a well-established process for assessing these.

Addressing the interaction with insolvency

- 2.48 A number of respondents raised concerns about the potential interaction of DRD with insolvency proceedings. Some believed that HMRC could exercise its DRD power directly before, or during, an insolvency. In the process, it would gain an advantageous position over other creditors. Some respondents described this as "Crown Preference by stealth"; a reference to the situation pre-2002 where some tax debts received preferential status in the event of insolvency.
- 2.49 The banking community were concerned that these proposals could affect their own position in insolvencies. Banks and building societies often hold fixed charges such as mortgages. These are paid ahead of unsecured creditors. They were concerned that this may impact on a bank's right of set-off as well as a lender's facilities which may run across groups with cross default provisions
- 2.50 The Government is clear that this is not the intention of DRD, but acknowledges respondents' concerns that HMRC could inadvertently find itself in such a position. It is therefore **committing to ensure that HMRC does not receive any advantage during insolvencies** through its use of DRD. It will continue to work with experts to make sure the legislation achieves this outcome.

Protecting the rights of joint account holders

- 2.51 Some respondents had concerns that joint accounts, including partnership accounts, were in the scope of this policy. There was a particular concern that funds belonging to one joint account holder (who did not have a debt with HMRC) could be recovered to pay the debt of another joint account holder.
- 2.52 The Government has been clear that it wishes to strike a balance between recovering money from debtors who are refusing to pay while protecting the rights of other account holders. It is also evident that if these accounts were not in scope, it would provide an obvious opportunity for debtors to circumvent paying what they owe.

2.53 The Government is reaffirming its safeguards for joint account holders:

- DRD will only be applied to a pro-rata proportion of the account's balance;
- all account holders will be notified that action has been taken; and
- all account holders will have equal rights to object or appeal.

2.54 The Government believes that, in conjunction with the additional measures it is announcing in this document, joint account holders should have adequate protection and clear appeal routes if they feel their funds have been wrongly targeted.

Minimising the impact on banks and building societies

2.55 The banking community had concerns about associated costs for banks, building societies and other deposit holders. They have suggested that an impact assessment be conducted by HMRC to ascertain these costs.

2.56 Some respondents raised concerns that debtors affected by this policy would direct their complaints towards their bank or building society, rather than contacting HMRC to discuss their case.

2.57 Apart from the direct costs to deposit takers of operating the DRD process, one respondent raised the issue of the cost of legal challenges or the reputational damage resulting from the wrongful application of these powers. There was a risk that it could lead to customers thinking their money was not safe and cashing out their savings, leading to a return to cash "under the mattress".

2.58 The Government will commit to work closely with the sector to:

- minimise the administrative impact on banks and building societies
- make sure any communications are clear that the debtor should contact HMRC and how to do so
- ensure that debtors are promptly directed toward HMRC's DRD team if they have queries about how this power has been used.

Interaction with existing legislation in Scotland

2.59 Some respondents noted that, in Scotland, there are existing processes that allow HMRC to recover debts in a similar, though not identical, manner to DRD. Under section 128 of the Finance Act 2008, HMRC have recourse to the summary warrant procedure in Scotland. This allows HMRC, at relatively low cost and without the requirement of litigation, to apply for a warrant to enforce the debt. This enforcement is carried out by Sheriff Officers and can include

arrestments on bank accounts. These respondents believed that this made the introduction of DRD in Scotland unnecessary and that there was a risk it could interfere with existing debt collection procedures.

2.60 The Government has considered the possible implications of introducing DRD in Scotland, in the context of its existing debt collection procedures and the different legal infrastructure and context of Scotland compared to the rest of the UK. In recognition of the different legal regime in Scotland, the Government has therefore decided to legislate for DRD to apply to England, Wales and Northern Ireland only.

The scope of the consultation

2.61 Some respondents were concerned that the Government was consulting on the process and operation of DRD, rather than on the choice of policy itself. The purpose of this consultation was to seek views on how best to tackle those who have sufficient funds in bank and building society accounts to pay the tax they owe but choose not to. In DRD, the Government has set out a process for doing so, building on best practice worldwide.

2.62 The Government has sought, through this consultation, to be open about the best way to do this and how to design the process so that it targets the right people and does not create unnecessary hardship. The Government is grateful for all of the constructive responses it has received on how best to do so.

Summary

2.63 Box 2, below, summarises the new safeguards, alongside those set out in the original consultation document.

Next steps

2.64 Draft legislation will be published in due course for technical consultation. This will give a further opportunity for the Government to take suggestions on how best to structure this process and how to ensure debtors' rights – and HMRC's responsibilities - are properly reflected in legislation. In order to allow for an extended period of scrutiny, the Government intends to legislate in a Finance Bill in 2015, in the next Parliament.

Box 2: Direct Recovery of Debts Safeguards

Announced in consultation document (published 6 May)	New measures, in response to consultation feedback
<ul style="list-style-type: none"> • Only debts of £1,000 or more will be subject to DRD • HMRC will always leave a minimum of £5,000 across a debtor's bank and building society accounts, as a minimum, once the debt has been held • A specialist, dedicated team within HMRC will be responsible for all DRD cases • A helpline for DRD cases, providing a direct route into the specialist team, will be available to debtors and banks/building societies affected • Once the debtor has been notified of DRD action, debtors will have a window before any money is transferred to HMRC – this was proposed as 14 calendar days. During this period, the debtor has the right to object to HMRC or provide evidence of hardship • If the debtor objects and HMRC does not uphold the debtor's objection, they will continue to have the right to judicial appeal on the use of DRD • Joint account holders will be protected through pro-rata safeguards for joint accounts. All joint account holders will be notified of DRD action and will have equal rights to object or appeal • The debtor will be fully recompensed for any losses incurred as the direct result of an error made by HMRC 	<ul style="list-style-type: none"> • Guaranteeing that every debtor will receive a face-to-face visit from HMRC's Field Force agents, before their debts are considered for recovery through DRD. Only debtors who have received this face-to-face visit, are not identified as vulnerable and have still refused to pay will be considered for debt recovery through DRD • Establishing a new vulnerable customers unit, which will work closely with the voluntary sector and whose prime focus will be dealing with DRD cases in the early stages of its operation • Committing to work with voluntary organisations on HMRC's communications with debtors affected by DRD, to include details of where to find independent and impartial advice • Applying DRD to a smaller number of cases in the first year of its operation (2015-16), allowing HMRC to start the process on a small, targeted basis and gain experience and feedback • Extending the window for debtors to object to HMRC from 14 days to 30 days, once debt recovery through DRD has been initiated. Money will be held in the account but no funds will be transferred to HMRC until this period has passed • Introducing an option for debtors to appeal against HMRC's decision to a County Court on specified grounds, including hardship and third party rights • Strengthening HMRC's governance procedures for DRD, including oversight by the Commissioners of Her Majesty's Revenue and Customs

<ul style="list-style-type: none">• HMRC will request 12 months of debtors' account information to establish how much the debtor needs to pay upcoming regular expenses to help assess hardship	<ul style="list-style-type: none">• Committing to enhanced transparency on this power and publishing, in the Tax Assurance Commissioner's Report, statistics on the number of times this power is used and appeals that are raised.• In response to concerns raised about debtors' privacy and the use of their bank account data, the Government has decided not to implement the requirement for banks to provide 12 months of a debtor's account history under DRD.
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Responses

Overview of responses

- 3.1 As covered in the previous chapter, the Government received responses to the consultation that went wider than the nine questions it posed in the consultation document.
- 3.2 The Government is grateful for all comments made and views expressed concerning its proposals. The Government has carefully evaluated the issues raised in responses to the consultation and in roundtable discussions and has subsequently revised and strengthened the safeguards around the operation of this proposal.

Responses to specific consultation questions

- 3.3 The consultation document asked specific questions about the proposed process and safeguards for DRD. In addition to these specific questions, HMRC was grateful to receive feedback on how best to structure the DRD process so that it:
- targets the intended population of debtors – those who have the resources to pay but were intentionally choosing not to
 - provides adequate protection for vulnerable debtors, and those who need additional assistance.
- 3.4 On the specific points of process that were asked in the consultation document:

Is 12 months' worth of account information sufficient for HMRC to establish how much the debtor needs to pay upcoming regular expenses?

- 3.5 The consultation document proposed asking banks and building societies for 12 months of a debtor's account information. This safeguard would allow HMRC to assess hardship and, where appropriate, leave more than £5,000 across a debtor's accounts after recovering the debt.
- 3.6 The Government received a variety of responses on this issue:
- Some respondents had concerns that 12 months was too much, and favoured HMRC either accessing less information or none at all. There were strong concerns over individuals' privacy and HMRC's ability to access this data. One respondent pointed out that the Department for Work and Pensions, which has a similar power only require three months' account information. One respondent questioned whether the government had considered the implications of requesting such a substantial amount of information.

- Some respondents argued that 12 months of transaction data was not enough information to make an accurate assessment of hardship. There was a risk that this would not reflect spending patterns over a longer period and could lead to HMRC inadvertently causing hardship
- Others questioned the usefulness of bank account information when deciding whether to collect a debt. Some respondents made the case that, particularly in the case of businesses, historic information was of limited value and more detailed financial data, such as a forecast of future cashflow, would be far more relevant.
- Irrespective of the quantity of data, some respondents questioned whether HMRC would have sufficient expertise to assess an appropriate level of funds for an individual or business to avoid hardship, based on historic transactions.

3.7 The proposal for banks and building societies to supply customer account information to HMRC was intended as a safeguard to protect debtors and would only ever be used in DRD cases. However, on balance the Government recognises concern over privacy and will drop this safeguard. The additional safeguards outlined in the previous chapter will ensure:

- HMRC has robust procedures for identifying and handling DRD cases involving vulnerable customers
- debtors will have the opportunity to contact HMRC and object on hardship grounds if £5,000 is insufficient
- debtors will have clear channels to appeal their case to the courts if they don't agree.

Is five working days sufficient time for deposit takers to comply with account information requests?

3.8 Respondents representing banks and building societies consider that five working days is insufficient time to gather together all of the information required by HMRC.

3.9 One respondent pointed out that it might be difficult for HMRC always to identify the correct deposit taker. For example a request for ISA information to an ISA manager may need to be passed on to the administrator and that five days will probably not be sufficient.

3.10 Another respondent pointed to the third party information notice legislation under Schedule 36 of Finance Act 2008. This provides for a period of 30 days to comply with a notice.

By leaving a minimum balance in a debtor's account, HMRC needs to strike a sensible balance between avoiding putting taxpayers into hardship and collecting money owed to the Government in an efficient manner. Is £5,000 a proportionate and appropriate sum to meet these objectives?

- 3.11 Most of those who responded to this question were of the opinion that the setting of a minimum balance is subjective and one size does not fit all.
- 3.12 A number of respondents suggested that £5,000 could be an inadequate amount of money for some businesses, as they were likely to have larger daily and monthly fluctuations in their account balances due to regular payments.
- 3.13 One respondent suggested that perhaps the limit be based on a period of outgoings.
- 3.14 Respondents generally agreed that £5,000 should be enough in most cases. HMRC is committed to engaging with debtors to avoid causing undue hardship to the vulnerable and to viable businesses.

What changes will deposit takers need to make to their systems to administer this policy and will this impose any administrative burdens?

- 3.15 Representatives of the banks and building societies highlighted the need to train branch and call centre staff to deal with the administration of DRD and to answer customers' questions. They raised concerns that customers affected by DRD could direct their dissatisfaction towards employees of their organisations. Clear instructions would need to be provided to debtors, to make it clear that this action had been initiated by HMRC and that queries should be directed as such.
- 3.16 They also suggested that IT systems may require updating.
- 3.17 HMRC will continue to work with banks and building societies to minimise administrative burdens. Banks and building societies will have direct access to the DRD team via the Helpline and their call centre staff will have details of how to get in touch with HMRC, so they can direct debtors straight to the Helpline.

Is 14 days an appropriate length of time for the debtor to object to HMRC or pay by other means?

- 3.18 The majority of respondents to this question believe that 14 days is insufficient time for the debtor to object or pay by other means.
- 3.19 Respondents pointed out that a 14 day deadline could easily be missed due to the normal pressures of daily life, because of illness or because the debtor is on holiday.
- 3.20 Two respondents asked for more clarity on when the 14 day period would start.

3.21 Most respondents suggested that 28 or 30 days would be a more realistic deadline.

3.22 One respondent suggested that there should be a 24 hour helpline for debtors who wished to object.

What would be a suitable time limit for the deposit taker to comply with an order to release funds, either to the debtor or to HMRC?

3.23 One respondent representing deposit takers has suggested that a minimum of ten days will probably be required for single amounts and perhaps a little longer for instalments.

3.24 Another respondent suggested that if the funds are being released back to the “debtor” then release should be as near to instantaneous as possible.

What sort of sanction should fall on deposit takers who do not comply either with the initial notice to supply account information or the instruction to release the held amount to HMRC?

3.25 HMRC received very few responses to this question. Some of those who did reply suggested that any sanctions should be in line with HMRC’s current information powers sanctions.

3.26 Some financial organisations said that the process and time limits should be confirmed first, before making a decision on this question. Given the perceived difficulty of complying with the regime as currently proposed in the consultation document, the imposition of sanctions did not seem appropriate to these respondents.

3.27 The Government intends to draft legislation to introduce a penalty on deposit takers for not complying with a notice from HMRC, in line with existing sanctions for failure to comply with HMRC information notices, and will include this in draft legislation.

Is protecting a proportion of the credit balances of joint accounts the best way to protect non-debtor account holders?

3.28 The majority of respondents to this question expressed reservations about applying DRD to joint accounts.

3.29 Most respondents focused on the difficulties of ascertaining the correct proportions of the total balance owned by each party to the account. They felt that simply splitting the balance on a pro-rata basis did not properly protect non-debtor account holders.

- 3.30 Other respondents considered that this was a complex area of law that would require the input of the Courts.
- 3.31 Some respondents were concerned about privacy issues and one suggested that the disclosure of information about a joint account might not sit well with HMRC's duty of confidentiality to taxpayers under s18 of the Commissioners for Revenue and Customs Act 2005.
- 3.32 Another respondent believed that more detail should be given as to the recourse that the non-debtor joint account holder would have.

Are the safeguards appropriate and proportionate?

- 3.33 Although respondents broadly supported the proposed safeguards many were concerned that they did not go far enough in supporting vulnerable customers and those facing genuine financial difficulties. Others felt that the Government has not yet provided enough detail about the operation of the safeguards
- 3.34 A major concern expressed by respondents was the lack of judicial oversight within the process. One respondent contrasted DRD with High Court freezing injunctions. In the High Court the underlying cause of action is examined at the point of enforcement. However for DRD the debt itself is not considered within the appeals process.
- 3.35 Respondents were particularly concerned that without independent oversight the same officers of HMRC would be acting as prosecutor, claimant and judge, and that this concentration of power gives rise to the potential for bias. However one respondent suggested that HMRC should consider setting up a completely separate team to deal with any appeals.
- 3.36 Others felt that there was a need to communicate this policy as widely as possible so that all taxpayers were aware of HMRC's enforcement powers if their tax debt rises above £1,000 and they choose not to pay.
- 3.37 There were particular concerns about the detail of the appeals procedure. Respondents have asked for comprehensive guidance to be published detailing the grounds for appeal, how to appeal, evidence needed to support and appeal, and who will decide the outcome.
- 3.38 One respondent suggested that HMRC should write to the debtor 30 days before the accounts are frozen to remind them that the debt remains outstanding and that HMRC can use various methods, including taking control of goods and taking cash from an account, to settle the debt.
- 3.39 Another respondent told us that HMRC should consider the role that tax agents could play as an additional safeguard. If agents were also to be copied in to the notifications being proposed as part of the safeguard options it could further

ensure that the intended recipient is made aware of their position. Another said that any appeal period should be long enough to allow debtors' tax agents to become fully involved in the process.

- 3.40 Some respondents told us that they were concerned that HMRC might overuse this power and apply it to inappropriate cases. As a safeguard it was suggested that the Government ought to be required to report annually on the application of the DRD.

List of stakeholders consulted

The Government is grateful to all organisations (listed below) and private individuals who participated in this consultation.

Association of Accounting Technicians
Association of Certified Chartered Accountants
Accountingweb
Association of British Credit Unions
Atlas Tax Chambers
Association of Tax Technicians
Baker Tilly
British Bankers' Association
British Chambers of Commerce
BDO LLP
Building Societies Association
CBW Tax Ltd
Chartered Accountants Ireland
Chemicode Engineering
Chartered Institute of Taxation
Chartered Institute of Payroll Practitioners
City of London Law Society
Civil Court Users Association
Consumer Council
Deloitte
Ernst & Young
FPB: Forum of Private Business
Frank Hirth plc.
Federation of Small Businesses
Grant Thornton
Harwood Hutton Ltd
Independent Certified Practising Accountants
Insolvency Lawyers' Association
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Chartered Secretaries and Administrators
Institute of Directors
Institute of Financial Accountants
International Financial Data Services
Law Society of England and Wales
Low Income Tax Reform Group
Lloyds Banking Group
Loan Market Association
London Society of Chartered Accountants
Money Advice Trust
National Farmers' Union

PCG
Pinsent Masons
PwC
R3: Insolvency Practitioners
Rowlands Accountants
Smith & Williamson
Stepchange
Stirling Park LLP
Tax Help for Older People
TaxAid
TaxPayers' Alliance
TISA Investment and Savings
Walker Love
Westminster Advice Forum
Wilkins Kennedy

In addition, we received responses from 68 individuals.