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Department for
Constitutional Affairs
Justice, rights and democracy

The draft Tribunals, Courts and Enforcement Bill

The draft Tribunals, Courts and Enforcement Bill

Presented to Parliament by the
Secretary of State for Constitutional Affairs and Lord Chancellor
and the Chief Secretary to the Treasury
by Command of Her Majesty
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Draft Tribunals, Courts and Enforcement Bill

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BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

TRIBUNALS AND INQUIRIES

CHAPTER 1

FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL

Establishment

1 The First-tier Tribunal and the Upper Tribunal

(1) There is to be a tribunal, known as the First-tier Tribunal, for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act.

(2) There is to be a tribunal, known as the Upper Tribunal, for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act.

(3) The Upper Tribunal is to be a superior court of record.

Members and composition of tribunals

2 Senior President of Tribunals

(1) Her Majesty may, on the recommendation of the Lord Chancellor, appoint a person to preside over both of the First-tier Tribunal and the Upper Tribunal.

(2) A person appointed under subsection (1) is to be known as the Senior President of Tribunals.

(3) Schedule 1 makes further provision about the Senior President of Tribunals and about recommendations for appointment under subsection (1).

(4) A holder of the office of Senior President of Tribunals must, in carrying out the functions of that office, have regard to—

(a) the need for tribunals to be accessible,

(b) the need for proceedings before tribunals—

(i) to be fair, and

(ii) to be handled quickly and efficiently, and

(c) the need for members of tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters.

(5) In subsection (4) "tribunals" means—

(a) the First-tier Tribunal,

(b) the Upper Tribunal,

(c) employment tribunals,

(d) the Employment Appeal Tribunal, and

(e) the Asylum and Immigration Tribunal.

3 Judges and other members of the First-tier Tribunal and the Upper Tribunal

(1) Each of the First-tier Tribunal, and the Upper Tribunal, is to consist of its judges and other members.

(2) A person is a judge of the First-tier Tribunal if he—

(a) is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2,

(b) is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3,

(c) is a district judge,

(d) is a District Judge (Magistrates' Courts),

(e) is a member of a panel of chairmen of employment tribunals,

(f) is a member of the Asylum and Immigration Tribunal appointed under paragraph 2(1)(a) to (d) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (c. 41) (legally qualified members),

(g) is a person who holds an office specified under subsection (10) for the purposes of this paragraph, or

(h) is a Chamber President or a Deputy Chamber President, whether of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal, and does not fall within any of paragraphs (a) to (g).

(3) A person is one of the other members of the First-tier Tribunal if he—

(a) is a member of the First-tier Tribunal by virtue of appointment under paragraph 2(1) of Schedule 2,

(b) is a member of a panel of members of employment tribunals that is not a panel of chairmen of employment tribunals, or

(c) is a member of the Asylum and Immigration Tribunal appointed under paragraph 2(1)(e) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (c. 41) (members other than "legally qualified members").

(4) A person is a judge of the Upper Tribunal if he—

(a) is the Senior President of Tribunals,

(b) is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3,

(c) is a puisne judge of the High Court (in England and Wales or Northern Ireland),

(d) is a judge of the Court of Session,

(e) is a circuit judge,

(f) is a sheriff in Scotland,

(g) is a county court judge in Northern Ireland,

(h) is the Chief Social Security Commissioner, or any other Social Security Commissioner, appointed under section 50(1) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8),

(i) is a Social Security Commissioner appointed under section 50(2) of that Act (deputy Commissioners),

(j) is a member of the Asylum and Immigration Tribunal appointed under paragraph 2(1)(a) to (d) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (legally qualified members) who—

(i) is the President or a Deputy President of that tribunal, or

(ii) has the title Senior Immigration Judge but is neither the President nor a Deputy President of that tribunal,

(k) is a deputy judge of the Upper Tribunal,

(l) is a person who holds an office specified under subsection (10) for the purposes of this paragraph, or

(m) is a Chamber President or a Deputy Chamber President, whether of a chamber of the Upper Tribunal or of a chamber of the First-tier Tribunal, and does not fall within any of paragraphs (a) to (l).

(5) A person is one of the other members of the Upper Tribunal if he—

(a) is a member of the Upper Tribunal by virtue of appointment under paragraph 2(1) of Schedule 3, or

(b) is a member of the Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996 (c. 17).

(6) A person is also a judge of the First-tier Tribunal, but only as regards functions of the tribunal in relation to appeals such as are mentioned in subsection (1) of section 5 of the Criminal Injuries Compensation Act 1995 (c. 53), if he is an adjudicator appointed under that section by the Scottish Ministers.

(7) References in subsections (2)(c) and (d) and (4)(c) to (g) to office-holders do not include deputies or temporary office-holders.

(8) Schedule 2—

contains provision for the appointment of persons to be judges or other members of the First-tier Tribunal, and

makes further provision in connection with judges and other members of the First-tier Tribunal.

(9) Schedule 3—

contains provision for the appointment of persons to be judges (including deputy judges), or other members, of the Upper Tribunal, and

makes further provision in connection with judges and other members of the Upper Tribunal.

(10) The Lord Chancellor may by order specify an office for the purposes of subsection (2)(g) or (4)(l).

(11) An office may be specified under subsection (10) only if it appears to the Lord Chancellor—

(a) that the functions of the office include adjudicative functions (whether or not a holder of the office is called a judge or is a member of a court or tribunal), and

(b) that the nature of the office is such that a holder of it ought to be fitted to be a judge of the First-tier Tribunal or (as the case may be) the Upper Tribunal.

4 Chambers: jurisdiction and Presidents

(1) The Lord Chancellor may, with the concurrence of the Senior President of Tribunals, by order make provision for the organisation of each of the First-tier Tribunal and the Upper Tribunal into a number of chambers.

(2) The Lord Chancellor must—

(a) for each chamber of the First-tier Tribunal, and

(b) for each chamber of the Upper Tribunal,

appoint a person to preside over that chamber.

(3) A person may be appointed under subsection (2) to preside over more than one chamber.

(4) A person appointed under subsection (2) is to be known as a Chamber President.

(5) Each of the Lord Chancellor and the Senior President of Tribunals may, with the concurrence of the other, by order—

(a) make provision for the allocation of the First-tier Tribunal's functions between its chambers;

(b) make provision for the allocation of the Upper Tribunal's functions between its chambers;

(c) amend or revoke any order made under this subsection.

(6) Schedule 4—

makes provision about eligibility for appointment as a Chamber President, and

makes further provision about Chamber Presidents and chambers, including provision for the appointment of Deputy Chamber Presidents and Acting Chamber Presidents.

5 Senior President of Tribunals: power to delegate

(1) The Senior President of Tribunals may delegate any function he has in his capacity as Senior President of Tribunals—
  (a) to any judge of the Upper Tribunal, or
  (b) to any judge of the First-tier Tribunal.

(2) A delegation under subsection (1) is not revoked by the delegator's becoming incapacitated.

(3) Any delegation under subsection (1) that is in force immediately before a person ceases to be Senior President of Tribunals continues in force until varied or revoked by a subsequent holder of the office of Senior President of Tribunals.

(4) The delegation under this section of a function shall not prevent the exercise of the function by the Senior President of Tribunals.

6 Report by Senior President of Tribunals

(1) Each year the Senior President of Tribunals must give the Lord Chancellor a report covering, in relation to the cases coming before the First-tier Tribunal and the Upper Tribunal—
  (a) matters that the Senior President of Tribunals wishes to bring to the attention of the Lord Chancellor, and
  (b) matters that the Lord Chancellor has asked the Senior President of Tribunals to cover in the report.

(2) The Lord Chancellor must publish each report given to him under subsection (1).

Review of decisions and appeals

7 Review of decision of First-tier Tribunal

(1) The First-tier Tribunal may review a decision made by it on a matter in a case, other than an excluded decision, if an application has been made under section 8(4) for permission (or, in Northern Ireland, leave) to appeal on a point of law arising from the decision.

(2) The First-tier Tribunal may under subsection (1) review a decision—
  (a) of its own initiative, or
  (b) on application by a person who for the purposes of section 8(2) has a right of appeal in respect of the decision.

(3) On a review under subsection (1), the First-tier Tribunal must decide whether the decision under review was wrong, whether in law or otherwise.

(4) If the First-tier Tribunal, on a review under subsection (1), concludes that the decision under review was wrong, the First-tier Tribunal may set aside the decision.

(5) If a decision is set aside under subsection (4), the First-tier Tribunal must re-decide the matter concerned.

(6) For the purposes of subsection (1), an "excluded decision" is any decision of the First-tier Tribunal that is an excluded decision for the purposes of section 8(1).

8 Right to appeal to Upper Tribunal

(1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the Upper Tribunal on any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision.

(2) Any party to a case has a right of appeal, subject to subsection (7).

(3) That right may be exercised only with permission (or, in Northern Ireland, leave).

(4) Permission (or leave) may be given by—
(a) the First-tier Tribunal, or
(b) the Upper Tribunal,
on an application by the party.

(5) For the purposes of subsection (1), an "excluded decision" is—
(a) any decision of the First-tier Tribunal on an appeal made in exercise of a right conferred by the Criminal Injuries Compensation Scheme in compliance with section 5(1)(a) of the Criminal Injuries Compensation Act 1995 (c. 53) (appeals against decisions on reviews),
(b) any decision of the First-tier Tribunal on an appeal under section 28(4) or (6) of the Data Protection Act 1998 (c. 29) (appeals against national security certificate),
(c) any decision of the First-tier Tribunal on an appeal under section 60(1) or (4) of the Freedom of Information Act 2000 (c. 36) (appeals against national security certificate),
(d) a decision of the First-tier Tribunal under section 7—
(i) not to review an earlier decision of the tribunal,
(ii) that an earlier decision of the tribunal was not wrong, or
(iii) not to set aside an earlier decision of the tribunal that the tribunal has decided was wrong, or
(e) any decision of the First-tier Tribunal that is of a description specified in an order made by the Lord Chancellor.

(6) A description may be specified under subsection (5)(e) only if—
(a) in the case of a decision of that description, there is a right to appeal to a court, the Upper Tribunal or any other tribunal from the decision and that right is, or includes, something other than a right (however expressed) to appeal on any point of law arising from the decision, or
(b) decisions of that description are made in carrying out a function transferred under section 26 and prior to the transfer of the function under section 26(1) there was no right to appeal from decisions of that description.

(7) The Lord Chancellor may by order make provision for a person to be treated as being, or to be treated as not being, a party to a case for the purposes of subsection (2).

9 Proceedings on appeal to Upper Tribunal

(1) Subsections (2) and (3) apply if the Upper Tribunal, in deciding an appeal under section 8, finds that an error has been made on the point of law concerned.

(2) The Upper Tribunal may—
  (a) set aside the decision of the First-tier Tribunal, and
  (b) either—
    (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
    (ii) make the decision which it considers the First-tier Tribunal should have made.

(3) If the Upper Tribunal considers that the error of law does not vitiate the decision of the First-tier Tribunal, the Upper Tribunal may affirm the decision.

(4) In acting under subsection (2)(b)(i), the Upper Tribunal may also—
  (a) direct that the members of the First-tier Tribunal who are chosen to reconsider the case are not to be the same as those who made the decision that has been set aside;
  (b) give procedural directions in connection with the reconsideration of the case by the First-tier Tribunal.

(5) In acting under subsection (2)(b)(ii), the Upper Tribunal may make such findings of fact as it considers appropriate.

10 Right to appeal to Court of Appeal etc

(1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the relevant appellate court on any point of law arising from a decision made by the Upper Tribunal other than an excluded decision.

(2) Any party to a case has a right of appeal, subject to subsection (12).

(3) That right may be exercised only with permission (or, in Northern Ireland, leave).

(4) Permission (or leave) may be given by—
  (a) the Upper Tribunal, or
  (b) the relevant appellate court,
on an application by the party.

(5) An application may be made under subsection (4) to the relevant appellate court only if permission (or leave) has been refused by the Upper Tribunal.

(6) The Lord Chancellor may, as respects an application under subsection (4) for which the relevant appellate court is the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland, by order make provision for permission (or leave) not to be granted on the application unless the Upper Tribunal or (as the case may be) the relevant appellate court considers—
  (a) that the proposed appeal would raise some important point of principle or practice, or
  (b) that there is some other compelling reason for the relevant appellate court to hear the appeal.

(7) For the purposes of subsection (1), an "excluded decision" is any decision of the Upper Tribunal—
  (a) on an appeal under section 28(4) or (6) of the Data Protection Act 1998 (c. 29) (appeals against national security certificate),
  (b) on an appeal under section 60(1) or (4) of the Freedom of Information Act 2000 (c. 36) (appeals against national security certificate),

(c) on an application under section 8(4)(b) (application for permission or leave to appeal), or

(d) that is of a description specified in an order made by the Lord Chancellor.

(8) A description may be specified under subsection (7)(d) only if—

(a) in the case of a decision of that description, there is a right to appeal to a court from the decision and that right is, or includes, something other than a right (however expressed) to appeal on any point of law arising from the decision, or

(b) decisions of that description are made in carrying out a function transferred under section 26 and prior to the transfer of the function under section 26(1) there was no right to appeal from decisions of that description.

(9) Before the Upper Tribunal decides an application made to it under subsection (4), the Upper Tribunal must specify the court that is to be the relevant appellate court as respects the proposed appeal.

(10) The court to be specified under subsection (9) in relation to a proposed appeal is whichever of the following courts appears to the Upper Tribunal to be the most appropriate—

(a) the Court of Appeal in England and Wales;

(b) the Court of Session;

(c) the Court of Appeal in Northern Ireland.

(11) In this section except subsection (9), "the relevant appellate court", as respects an appeal, means the court specified as respects that appeal by the Upper Tribunal under subsection (9).

(12) The Lord Chancellor may by order make provision for a person to be treated as being, or to be treated as not being, a party to a case for the purposes of subsection (2).

(13) Rules of court may make provision as to the time within which an application under subsection (4) to the relevant appellate court must be made.

11 Proceedings on appeal to Court of Appeal etc.

(1) Subsections (2) and (3) apply if the relevant appellate court, in deciding an appeal under section 10, finds that an error has been made on the point of law concerned.

(2) The relevant appellate court may—

(a) set aside the decision of the Upper Tribunal, and

(b) either—

(i) remit the case to the Upper Tribunal or, where the decision of the Upper Tribunal was on an appeal or reference from another tribunal or some other person, to that other tribunal or person, with directions for its reconsideration, or

(ii) make the decision which it considers the Upper Tribunal, or (as the case may be) the other tribunal or person, should have made.

(3) If the relevant appellate court considers that the error of law does not vitiate the decision of the Upper Tribunal, the relevant appellate court may affirm the decision.

(4) In acting under subsection (2)(b)(i), the relevant appellate court may also—

(a) direct that the persons who are chosen to reconsider the case are not to be the same as those who—

(i) where the case is remitted to the Upper Tribunal, made the decision of the Upper Tribunal that has been set aside, or

(ii) where the case is remitted to another tribunal or person, made the decision in respect of which the appeal or reference to the Upper Tribunal was made;

(b) give procedural directions in connection with the reconsideration of the case by the Upper Tribunal or other tribunal or person.

(5) In acting under subsection (2)(b)(ii), the relevant appellate court may make such findings of fact as it considers appropriate.

(6) Where—

(a) under subsection (2)(b)(i) the relevant appellate court remits a case to the Upper Tribunal, and

(b) the decision set aside under subsection (2)(a) was made by the Upper Tribunal on an appeal or reference from another tribunal or some other person,

the Upper Tribunal may (instead of reconsidering the case itself) remit the case to that other tribunal or person, with the directions given by the relevant appellate court for its reconsideration.

(7) In acting under subsection (6), the Upper Tribunal may also—

(a) direct that the persons who are chosen to reconsider the case are not to be the same as those who made the decision in respect of which the appeal or reference to the Upper Tribunal was made;

(b) give procedural directions in connection with the reconsideration of the case by the other tribunal or person.

(8) In this section "the relevant appellate court", as respects an appeal under section 10, means the court specified as respects that appeal by the Upper Tribunal under section 10(8).

"*Judicial review*"

12 Upper Tribunal's "judicial review" jurisdiction

(1) The Upper Tribunal has power, in cases arising under the law of England and Wales or under the law of Northern Ireland, to grant the following kinds of relief—

(a) a mandatory order;

(b) a prohibiting order;

(c) a quashing order;

(d) a declaration;

(e) an injunction.

(2) The power under subsection (1) may be exercised by the Upper Tribunal if—

(a) certain conditions are met (see section 15), or

(b) the tribunal is authorised to proceed even though not all of those conditions are met (see section 16(3) and (4)).

(3) Relief under subsection (1) granted by the Upper Tribunal—

(a) has the same effect as the corresponding relief granted by the High Court on an application for judicial review, and

(b) is enforceable as if it were relief granted by the High Court on an application for judicial review.

(4) In deciding whether to grant relief under subsection (1)(a), (b) or (c), the Upper Tribunal must apply the principles that the High Court would apply in deciding whether to grant that relief on an application for judicial review.

(5) In deciding whether to grant relief under subsection (1)(d) or (e), the Upper Tribunal must—

(a) in cases arising under the law of England and Wales apply the principles that the High Court would apply in deciding whether to grant that relief under section 31(2) of the Supreme Court Act 1981 (c. 54) on an application for judicial review, and

(b) in cases arising under the law of Northern Ireland apply the principles that the High Court would apply in deciding whether to grant that relief on an application for judicial review.

(6) For the purposes of the application of subsection (3)(a) in relation to cases arising under the law of Northern Ireland—

(a) a mandatory order under subsection (1)(a) shall be taken to correspond to an order of mandamus,

(b) a prohibiting order under subsection (1)(b) shall be taken to correspond to an order of prohibition, and

(c) a quashing order under subsection (1)(c) shall be taken to correspond to an order of certiorari.

13 Application for relief under section 12(1)

(1) This section applies in relation to an application to the Upper Tribunal for relief under section 12(1).

(2) The application may be made only if permission (or, in a case arising under the law of Northern Ireland, leave) to make it has been obtained from the tribunal.

(3) The tribunal may not grant permission (or leave) to make the application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(4) Subsection (5) applies where the tribunal considers—

(a) that there has been undue delay in making the application, and

(b) that granting the relief sought on the application would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(5) The tribunal may—

(a) refuse to grant permission (or leave) for the making of the application;

(b) refuse to grant any relief sought on the application.

(6) The tribunal may award to the applicant damages, restitution or the recovery of a sum due if—

(a) the application includes a claim for such an award arising from any matter to which the application relates, and

(b) the tribunal is satisfied that such an award would have been made by the High Court if the claim had been made in an action begun in the High Court by the applicant at the time of making the application.

(7) An award under subsection (6) may be enforced as if it were an award of the High Court.

(8) Where—

(a) the tribunal refuses to grant permission (or leave) to apply for relief under section 12(1),

(b) the applicant appeals against that refusal, and

(c) the Court of Appeal grants the permission (or leave),

the Court of Appeal may go on to decide the application for relief under section 12(1).

(9) Subsections (4) and (5) do not prevent Tribunal Procedure Rules from limiting the time within which applications may be made.

14 Quashing orders under section 12(1): supplementary provision

(1) If the Upper Tribunal makes a quashing order under section 12(1)(c) in respect of a decision, it may in addition—

(a) remit the matter concerned to the court, tribunal or authority that made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the Upper Tribunal, or

(b) substitute its own decision for the decision in question.

(2) The power conferred by subsection (1)(b) is exercisable only if—

(a) the decision in question was made by a court or tribunal,

(b) the decision is quashed on the ground that there has been an error of law, and

(c) without the error, there would have been only one decision that the court or tribunal could have reached.

(3) Unless the Upper Tribunal otherwise directs, a decision substituted by it under subsection (1)(b) has effect as if it were a decision of the relevant court or tribunal.

15 Limits of jurisdiction under section 12(1)

(1) This section applies where an application made to the Upper Tribunal seeks (whether or not alone)—

(a) relief under section 12(1), or

(b) permission (or, in a case arising under the law of Northern Ireland, leave) to apply for relief under section 12(1).

(2) If Conditions 1 to 3 are met, the tribunal has the function of deciding the application.

(3) If the tribunal does not have the function of deciding the application, it must by order transfer the application to the High Court.

(4) Condition 1 is that the application does not seek anything other than—

(a) relief under section 12(1);
(b) permission (or, in a case arising under the law of Northern Ireland, leave) to apply for relief under section 12(1);
(c) an award under section 13(6);
(d) interest;
(e) costs.

(5) Condition 2 is that the application does not call into question anything done by the Crown Court.

(6) Condition 3 is that the application falls within a class specified for the purposes of this subsection in a direction given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 (c. 4).

(7) The power to give directions under subsection (6) includes—
(a) power to vary or revoke directions made in exercise of the power, and
(b) power to make different provision for different purposes.

(8) Where the application is transferred to the High Court under subsection (3)—
(a) the application is to be treated for all purposes as if it—
(i) had been made to the High Court, and
(ii) sought things corresponding to those sought from the tribunal, and
(b) any steps taken, permission (or leave) given or orders made by the tribunal in relation to the application are to be treated as taken, given or made by the High Court.

(9) Rules of court may make provision for the purpose of supplementing subsection (8).

(10) The provision that may be made by Tribunal Procedure Rules about amendment of an application for relief under section 12(1) includes, in particular, provision about amendments that would cause the application to become transferrable under subsection (3).

(11) For the purposes of subsection (8)(a)(ii), in relation to an application transferred to the High Court in Northern Ireland—
(a) an order of mandamus shall be taken to correspond to a mandatory order under section 12(1)(a),
(b) an order of prohibition shall be taken to correspond to a prohibiting order under section 12(1)(b), and
(c) an order of certiorari shall be taken to correspond to a quashing order under section 12(1)(c).

16 Transfer of judicial review applications from High Court

(1) In the Supreme Court Act 1981 (c. 54), after section 31 insert—

"31A Transfer of judicial review applications to Upper Tribunal

(1) This section applies where an application is made to the High Court—
(a) for judicial review, or
(b) for permission to apply for judicial review.

(2) If Conditions 1, 2 and 3 are met, the High Court must by order transfer the application to the Upper Tribunal.

(3) If Conditions 1 and 2 are met, but Condition 3 is not, the High Court may by order transfer the application to the Upper Tribunal if it appears to the High Court to be just and convenient to do so.

(4) Condition 1 is that the application does not seek anything other than—
(a) relief under section 31(1)(a) and (b);
(b) permission to apply for relief under section 31(1)(a) and (b);
(c) an award under section 31(4);
(d) interest;
(e) costs.

(5) Condition 2 is that the application does not call into question anything done by the Crown Court.

(6) Condition 3 is that the application falls within a class specified under section 15(6) of the Tribunals, Courts and Enforcement Act 2006."

(2) In the Judicature (Northern Ireland) Act 1978 (c. 23), after section 25 insert—

"25A Transfer of judicial review applications to Upper Tribunal

(1) This section applies where an application is made to the High Court—
(a) for judicial review, or
(b) for leave to apply for judicial review.

(2) If Conditions 1, 2 and 3 are met, the High Court must by order transfer the application to the Upper Tribunal.

(3) If Conditions 1 and 2 are met, but Condition 3 is not, the High Court may by order transfer the application to the Upper Tribunal if it appears to the High Court to be just and convenient to do so.

(4) Condition 1 is that the application does not seek anything other than—
(a) relief under section 18(1)(a) to (e);
(b) leave to apply for relief under section 18(1)(a) to (e);
(c) an award under section 20;
(d) interest;
(e) costs.

(5) Condition 2 is that the application does not call into question anything done by the Crown Court.

(6) Condition 3 is that the application falls within a class specified under section 15(6) of the Tribunals, Courts and Enforcement Act 2006."

(3) Where an application is transferred to the Upper Tribunal under 31A of the Supreme Court Act 1981 (c. 54) or section 25A of the Judicature (Northern Ireland) Act 1978 (transfer from the High Court of judicial review applications)—
(a) the application is to be treated for all purposes as if it—
(i) had been made to the tribunal, and
(ii) sought things corresponding to those sought from the High Court,
(b) the tribunal has the function of deciding the application, even if it does not fall within a class specified under section 15(6), and

(c) any steps taken, permission given, leave given or orders made by the High Court in relation to the application are to be treated as taken, given or made by the tribunal.

(4) Where—

(a) an application for permission is transferred to the Upper Tribunal under section 31A of the Supreme Court Act 1981 (c. 54) and the tribunal grants permission, or

(b) an application for leave is transferred to the Upper Tribunal under section 25A of the Judicature (Northern Ireland) Act 1978 (c. 23) and the tribunal grants leave,

the tribunal has the function of deciding any subsequent application brought under the permission or leave, even if the subsequent application does not fall within a class specified under section 15(6).

(5) Tribunal Procedure Rules may make further provision for the purposes of supplementing subsections (3) and (4).

(6) For the purposes of subsection (3)(a)(ii), in relation to an application transferred to the Upper Tribunal under section 25A of the Judicature (Northern Ireland) Act 1978—

(a) a mandatory order under section 12(1)(a) shall be taken to correspond to an order of mandamus,

(b) a prohibiting order under section 12(1)(b) shall be taken to correspond to an order of prohibition, and

(c) a quashing order under section 12(1)(c) shall be taken to correspond to an order of certiorari.

Miscellaneous

17 Tribunals Procedure Rules

(1) There are to be rules, to be called "Tribunal Procedure Rules", governing—

(a) the practice and procedure to be followed in the First-tier Tribunal, and

(b) the practice and procedure to be followed in the Upper Tribunal.

(2) Tribunal Procedure Rules are to be made by the Tribunal Procedure Committee.

(3) In Schedule 5—

Part 1 makes further provision about the content of Tribunal Procedure Rules,

Part 2 makes provision about the membership of the Tribunal Procedure Committee,

Part 3 makes provision about the making of Tribunal Procedure Rules by the Committee, and

Part 4 confers power to amend legislation in connection with Tribunal Procedure Rules.

(4) Power to make Tribunal Procedure Rules is to be exercised with a view to securing—

(a) that the tribunal system is accessible and fair,

(b) that proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently,

(c) that the rules are both simple and simply expressed, and

(d) that the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.

(5) In subsection (4)(a) "the tribunal system" means the system for deciding matters within the jurisdiction of the First-tier Tribunal or the Upper Tribunal.

18 Practice directions

(1) The Senior President of Tribunals may give directions—

(a) as to the practice and procedure of the First-tier Tribunal;

(b) as to the practice and procedure of the Upper Tribunal.

(2) A Chamber President may give directions as to the practice and procedure of the chamber over which he presides.

(3) Directions under subsection (1) may, in particular, provide for functions—

(a) of the First-tier Tribunal, or

(b) of the Upper Tribunal,

to be exercised by staff of either tribunal.

(4) A power under this section to give directions includes—

(a) power to vary or revoke directions made in exercise of the power, and

(b) power to make different provision for different purposes (including different provision for different areas).

(5) Directions under subsection (1) may not be given without the approval of the Lord Chancellor.

(6) Directions under subsection (2) may not be given without the approval of—

(a) the Senior President of Tribunals, and

(b) the Lord Chancellor.

(7) Subsections (5) and (6)(b) do not apply to directions to the extent that they consist of guidance about any of the following—

(a) the application or interpretation of the law;

(b) the making of decisions by members of the First-tier Tribunal or Upper Tribunal.

(8) Subsections (5) and (6)(b) do not apply to directions to the extent that they consist of criteria for determining which members of the First-tier Tribunal or Upper Tribunal may be chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Lord Chancellor.

19 Supplementary powers of Upper Tribunal

(1) In relation to the matters mentioned in subsection (2), the Upper Tribunal—

(a) has, in England and Wales or in Northern Ireland, the same powers, rights, privileges and authority as the High Court, and

(b) has, in Scotland, the same powers, rights, privileges and authority as the Court of Session.

(2) The matters are—

(a) the attendance and examination of witnesses,
(b) the production and inspection of documents, and
(c) all other matters incidental to the Upper Tribunal's functions.

(3) Subsection (1) shall not be taken—
(a) to limit any power to make Tribunal Procedure Rules;
(b) to be limited by anything in Tribunal Procedure Rules other than an express limitation.

(4) A power, right, privilege or authority conferred in a territory by subsection (1) is available for purposes of proceedings in the Upper Tribunal that take place outside that territory (as well as for purposes of proceedings in the tribunal that take place within that territory).

20 First-tier Tribunal and Upper Tribunal: sitting places

Each of the First-tier Tribunal and the Upper Tribunal may decide a case—
(a) in England and Wales,
(b) in Scotland, or
(c) in Northern Ireland,
even though the case arises under the law of a territory other than the one in which the case is decided.

21 Enforcement

(1) A sum payable in pursuance of a decision of the First-tier Tribunal or Upper Tribunal made in England and Wales—
(a) shall be recoverable as if it were payable under an order of a county court in England and Wales;
(b) shall be recoverable as if it were payable under an order of the High Court in England and Wales.

(2) An order for the payment of a sum payable in pursuance of a decision of the First-tier Tribunal or Upper Tribunal made in Scotland (or a copy of such an order certified in accordance with Tribunal Procedure Rules) may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(3) A sum payable in pursuance of a decision of the First-tier Tribunal or Upper Tribunal made in Northern Ireland—
(a) shall be recoverable as if it were payable under an order of a county court in Northern Ireland;
(b) shall be recoverable as if it were payable under an order of the High Court in Northern Ireland.

(4) This section does not apply to a sum payable in pursuance of an award under section 13(6).

(5) The Lord Chancellor may by order make provision for subsection (1) or (3) to apply in relation to a sum of a description specified in the order with the omission of one (but not both) of paragraphs (a) and (b).

(6) Tribunal Procedure Rules may make provision as to where, for purposes of this section, a decision is to be taken to be made.

22 Assessors

(1) If it appears to the First-tier Tribunal or the Upper Tribunal that a matter before it involves a question of special difficulty, it may direct that in dealing with that matter it shall have the assistance of a person or persons appearing to it to have relevant knowledge or experience.

(2) The remuneration of a person who gives assistance to either tribunal as mentioned in subsection (1) shall be determined and paid by the Lord Chancellor.

(3) The Lord Chancellor may—
  (a) establish panels of persons from which either tribunal may (but need not) select persons to give it assistance as mentioned in subsection (1);
  (b) under paragraph (a) establish different panels for different purposes;
  (c) after carrying out such consultation as he considers appropriate, appoint persons to a panel established under paragraph (a);
  (d) remove a person from such a panel.

23 Mediation

(1) A person exercising power to make Tribunal Procedure Rules or give practice directions must, when making provision in relation to mediation, have regard to the following principles—
  (a) mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties;
  (b) where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings.

(2) Practice directions may provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings.

(3) The provision that may be made by virtue of subsection (2) includes provision for a member to act as mediator in relation to disputed matters in a case even though the member has been chosen to decide matters in the case.

(4) Once a member has begun to act as mediator in relation to a disputed matter in a case that is the subject of proceedings, the member may decide matters in the case only with the consent of the parties.

(5) Staff of the First-tier Tribunal or the Upper Tribunal may, subject to their terms of appointment, act as mediators in relation to disputed matters in a case that is the subject of proceedings.

(6) Before giving a practice direction that makes provision in relation to mediation, the person giving the direction must consult the Advisory, Conciliation and Arbitration Service.

(7) The Lord Chancellor may by order prescribe fees payable in respect of mediation conducted by staff of the First-tier Tribunal or the Upper Tribunal.

(8) Fees payable under subsection (7) are recoverable summarily as a civil debt.

(9) Subsection (8) does not apply to the recovery in Scotland of fees payable under subsection (7).

(10) In this section—

"member" means a judge or other member of the First-tier Tribunal or a judge or other member of the Upper Tribunal;

"practice direction" means a direction under section 18(1) or (2);

"proceedings" means proceedings before the First-tier Tribunal or proceedings before the Upper Tribunal.

24 Costs or expenses

(1) The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and

(b) all proceedings in the Upper Tribunal,

shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5) In subsection (4) "wasted costs" means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.

(6) In this section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.

(7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.

25 Fees

(1) The Lord Chancellor may, with the consent of the Treasury, by order prescribe fees payable in respect of—

(a) anything dealt with by the First-tier Tribunal, or

(b) anything dealt with by the Upper Tribunal.

(2) An order under this section may, in particular, contain provision as to—

(a) scales or rates of fees,

(b) exemptions from or reductions in fees,

(c) remission of fees in whole or in part.

(3) Before making an order under this section, the Lord Chancellor must consult—

(a) the Senior President of Tribunals, and

(b) the Administrative Justice and Tribunals Council.

(4) The Lord Chancellor must take such steps as are reasonably practicable to bring information about fees under this section to the attention of persons likely to have to pay them.

(5) Fees payable under this section are recoverable summarily as a civil debt.

(6) Subsection (5) does not apply to the recovery in Scotland of fees payable under this section.

(7) Until the Administrative Justice and Tribunals Council first has ten members appointed under paragraph 1(2) of Schedule 7, the reference to that council in subsection (3) is to be read as a reference to the Council on Tribunals.

CHAPTER 2

TRANSFER OF TRIBUNAL FUNCTIONS

26 Transfer of functions of certain tribunals

(1) The Lord Chancellor may by order provide for a function of a scheduled tribunal to be transferred—

(a) to the First-tier Tribunal,

(b) to the Upper Tribunal,

(c) to the First-tier Tribunal and the Upper Tribunal with the question as to which of them is to exercise the function in a particular case being determined by a person under provisions of the order,

(d) to the First-tier Tribunal to the extent specified in the order and to the Upper Tribunal to the extent so specified,

(e) to the First-tier Tribunal and the Upper Tribunal with the question as to which of them is to exercise the function in a particular case being determined by, or under, Tribunal Procedure Rules,

(f) to an employment tribunal,

(g) to the Employment Appeal Tribunal,

(h) to an employment tribunal and the Employment Appeal Tribunal with the question as to which of them is to exercise the function in a particular case being determined by a person under provisions of the order, or

(i) to an employment tribunal to the extent specified in the order and to the Employment Appeal Tribunal to the extent so specified.

(2) In subsection (1) "scheduled tribunal" means a tribunal in a list in Schedule 6 that has effect for the purposes of this section.

(3) The Lord Chancellor may, as respects a function transferred under subsection (1) or this subsection, by order provide for the function to be further transferred as mentioned in any of paragraphs (a) to (i) of subsection (1).

(4) An order under subsection (1) or (3) may include provision for the purposes of or in consequence of, or for giving full effect to, a transfer under that subsection.

(5) A function of a tribunal may not be transferred under subsection (1) or (3) if, or to the extent that, the provision conferring the function—

(a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or

(b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.

(6) Subsection (5) does not apply to—

(a) the Secretary of State's function of deciding appeals under section 41 of the Consumer Credit Act 1974 (c. 39),

(b) the Secretary of State's function of deciding appeals under section 7(1) of the Estate Agents Act 1979 (c. 38), or

(c) functions of an adjudicator under section 5 of the Criminal Injuries Compensation Act 1995 (c. 53) (but see subsection (7)).

(7) Functions of an adjudicator under section 5 of the Criminal Injuries Compensation Act 1995, so far as they relate to Scotland, may be transferred under subsection (1) or (3) only with the consent of the Scottish Ministers.

(8) A function of a tribunal may be transferred under subsection (1) or (3) only with the consent of the National Assembly for Wales if any relevant function is exercisable in relation to the tribunal by the Assembly (whether by the Assembly alone, or by the Assembly jointly or concurrently with any other person).

(9) In subsection (8) "relevant function", in relation to a tribunal, means a function which relates—

(a) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or

(b) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal.

27 Transfers under section 26: supplementary powers

(1) The Lord Chancellor may by order make provision for abolishing the tribunal by whom a function transferred under section 26(1) is exercisable immediately before its transfer.

(2) The Lord Chancellor may by order make provision, where functions of a tribunal are transferred under section 26(1), for a person—

(a) who is the tribunal (but is not the Secretary of State), or

(b) who is a member of the tribunal, or

(c) who is an authorised decision-maker for the tribunal,

to be taken (instead or in addition) as being the holder of a new office.

(3) In subsection (2) "new office" means—

(a) the office of judge or other member of the First-tier Tribunal or Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 or 3, or

(b) the office of deputy judge of the Upper Tribunal.

(4) For the purposes of subsection (2), a person is an "authorised decision-maker" for a tribunal if—

(a) the tribunal is listed in column 1 of an entry in the following Table, and

(b) the person is of the description specified in column 2 of that entry.

(1) *Tribunal*	*(2)* *Authorised decision-maker*
Adjudicator to Her Majesty's Land Registry	Member of the Adjudicator's staff who is authorised by the Adjudicator to carry out functions of the Adjudicator which are not of an administrative character
The Secretary of State as respects his function of deciding appeals under section 41 of the Consumer Credit Act 1974 (c. 39)	Person who is a member of a panel under regulation 24 of the Consumer Credit Licensing (Appeals) Regulations 1998 (S.I. 1998/1203)
The Secretary of State as respects his function of deciding appeals under section 7(1) of the Estate Agents Act 1979 (c. 38)	Person appointed, at any time after 2005, under regulation 19(1) of the Estate Agents (Appeals) Regulations 1981 (S.I. 1981/1518) to hear an appeal on behalf of the Secretary of State

(5) Where a function of a tribunal is transferred under section 26(1), the Lord Chancellor may by order provide for procedural rules in force immediately before the transfer to have effect, or to have effect with appropriate modifications, after the transfer (and, accordingly, to be capable of being varied or revoked) as if they were—

(a) Tribunal Procedure Rules, or

(b) employment tribunal procedure regulations, or Appeal Tribunal procedure rules, within the meaning given by section 42(1) of the Employment Tribunals Act 1996 (c. 17).

(6) In subsection (5)—

"procedural rules" means provision (whether called rules or not)—

(a) regulating practice or procedure before the tribunal, and

(b) applying for purposes connected with the exercise of the function;

"appropriate modifications" means modifications (including additions and omissions) that appear to the Lord Chancellor to be necessary to secure, or expedient in connection with securing, that the procedural rules apply in relation to the exercise of the function after the transfer.

(7) The Lord Chancellor may, in connection with provision made by order under section 26 or the preceding provisions of this section, make by order such incidental, supplemental, transitional or consequential provision, or provision for savings, as the Lord Chancellor thinks fit, including provision applying only in relation to cases selected by a member—

(a) of the First-tier Tribunal,

(b) of the Upper Tribunal,

(c) of the Employment Appeal Tribunal, or

(d) of a panel of members of employment tribunals.

(8) Subsections (1), (2) and (5) are not to be taken as prejudicing the generality of subsection (7).

28 Power to provide for appeal to Upper Tribunal from tribunals in Wales

(1) Subsection (2) applies if—

(a) a function is transferred under section 26(1)(a), (c), (d) or (e) in relation to England but is not transferred under section 26(1) in relation to Wales, or

(b) a function that is not exercisable in relation to Wales is transferred under section 26(1)(a), (c), (d) or (e) in relation to England and, although there is a corresponding function that is exercisable in relation to Wales, that corresponding function is not transferred under section 26(1) in relation to Wales.

(2) The Lord Chancellor may by order—

(a) provide for an appeal against a decision to be made to the Upper Tribunal instead of to the court to which an appeal would otherwise fall to be made where the decision is made in exercising, in relation to Wales, the function mentioned in subsection (1)(a) or (as the case may be) the corresponding function mentioned in subsection (1)(b);

(b) provide for a reference of any matter to be made to the Upper Tribunal instead of to the court to which an appeal would otherwise fall to be made where the matter arises in exercising, in relation to Wales, the function mentioned in subsection (1)(a) or (as the case may be) the corresponding function mentioned in subsection (1)(b).

(3) The Lord Chancellor may by order provide for an appeal against a decision of a scheduled tribunal to be made to the Upper Tribunal, instead of to the court to which an appeal would otherwise fall to be made, where the decision is made by the tribunal in exercising a function in relation to Wales.

(4) In subsection (3) "scheduled tribunal" means a tribunal in a list in Schedule 6 that has effect for the purposes of that subsection.

(5) An order under subsection (2) or (3)—

(a) may include provision for the purposes of or in consequence of, or for giving full effect to, provision made by the order;

(b) may include such incidental, supplemental, transitional or consequential provision or savings as the Lord Chancellor thinks fit.

29 Transfer of Ministerial responsibilities for certain tribunals

(1) The Lord Chancellor may by order—

(a) transfer any relevant function, so far as that function is exercisable by a Minister of the Crown—

(i) to the Lord Chancellor, or

(ii) to two (or more) Ministers of the Crown of whom one is the Lord Chancellor;

(b) provide for any relevant function that is exercisable by a Minister of the Crown other than the Lord Chancellor to be exercisable by the other Minister of the Crown concurrently with the Lord Chancellor;

(c) provide for any relevant function that is exercisable by the Lord Chancellor concurrently with another Minister of the Crown to cease to be exercisable by the other Minister of the Crown.

(2) In subsection (1) "relevant function" means a function, in relation to a scheduled tribunal, which relates—

(a) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or

(b) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal.

(3) In subsection (2) "scheduled tribunal" means a tribunal in a list in Schedule 6 that has effect for the purposes of this section.

(4) A relevant function may not be transferred under subsection (1) if, or to the extent that, the provision conferring the function—

(a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or

(b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.

(5) Any reference in subsection (1) to a Minister of the Crown includes a reference to a Minister of the Crown acting jointly.

(6) An order under subsection (1)—

(a) may relate to a function either wholly or in cases (including cases framed by reference to areas) specified in the order;

(b) may include provision for the purposes of, or in consequence of, or for giving full effect to, the transfer or (as the case may be) other change as regards exercise;

(c) may include such incidental, supplementary, transitional or consequential provision or savings as the Lord Chancellor thinks fit;

(d) may include provision for the transfer of any property, rights or liabilities of the person who loses functions or whose functions become shared with the Lord Chancellor.

(7) An order under subsection (1), so far as it—

(a) provides under paragraph (a) for the transfer of a function, or

(b) provides under paragraph (b) for a function to become exercisable by the Lord Chancellor, or

(c) provides under paragraph (c) for a function to cease to be exercisable by a Minister of the Crown other than the Lord Chancellor,

may not, after that transfer or other change has taken place, be revoked by another order under that subsection.

(8) Section 1 of the 1975 Act (power to transfer Ministerial functions) does not apply to a function of the Lord Chancellor—

(a) so far as it is a function transferred to the Lord Chancellor under subsection (1)(a),

(b) so far as it is a function exercisable by the Lord Chancellor as a result of provision under subsection (1)(b), or

(c) so far as it is a function that has become exercisable by the Lord Chancellor alone as a result of provision under subsection (1)(c).

(9) In this section—

"Minister of the Crown" has the meaning given by section 8(1) of the 1975 Act but includes the Commissioners for Her Majesty's Revenue and Customs;

"the 1975 Act" means the Ministers of the Crown Act 1975 (c. 26).

30 Transfer of powers to make procedural rules for certain tribunals

(1) The Lord Chancellor may by order transfer any power to make procedural rules for a scheduled tribunal to—

(a) himself, or

(b) the Tribunal Procedure Committee.

(2) A power may not be transferred under subsection (1) if, or to the extent that, the provision conferring the power—

(a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or

(b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.

(3) An order under subsection (1)(b)—

(a) may not alter any parliamentary procedure relating to the making of the procedural rules concerned, but

(b) may otherwise include provision for the purpose of assimilating the procedure for making them to the procedure for making Tribunal Procedure Rules.

(4) An order under subsection (1)(b) may include provision requiring the Tribunal Procedure Committee to make procedural rules for purposes notified to it by the Lord Chancellor.

(5) An order under this section—

(a) may relate to a power either wholly or in cases (including cases framed by reference to areas) specified in the order;

(b) may include provision for the purposes of or in consequence of, or for giving full effect to, the transfer;

(c) may include such incidental, supplementary, transitional or consequential provision or savings as the Lord Chancellor thinks fit.

(6) A power to make procedural rules for a tribunal that is exercisable by the Tribunal Procedure Committee by virtue of an order under this section must be exercised by the committee with a view to securing—

(a) that the system for deciding matters within the jurisdiction of that tribunal is accessible and fair,

(b) that proceedings before that tribunal are handled quickly and efficiently,

(c) that the rules are both simple and simply expressed, and

(d) that the rules where appropriate confer on persons who are, or who are members of, that tribunal responsibility for ensuring that proceedings before that tribunal are handled quickly and efficiently.

(7) In this section—

"procedural rules", in relation to a tribunal, means provision (whether called rules or not) regulating practice or procedure before the tribunal;

"scheduled tribunal" means a tribunal in a list in Schedule 6 that has effect for the purposes of this section.

31 Power to amend lists of tribunals in Schedule 6

(1) The Lord Chancellor may by order amend Schedule 6—

(a) for the purpose of adding a tribunal to a list in the Schedule;

(b) for the purpose of removing a tribunal from a list in the Schedule;

(c) for the purpose of removing a list from the Schedule;

(d) for the purpose of adding to the Schedule a list of tribunals that has effect for the purposes of any one or more of sections 26, 28(3), 29 and 30.

(2) The following rules apply to the exercise of power under subsection (1)—

(a) a tribunal may not be added to a list, or be in an added list, if the tribunal is established otherwise than by or under an enactment;

(b) a tribunal established by an enactment passed or made on or before the last day of the Session in which this Act is passed must not be added to a list, or be in an added list, that has effect for the purposes of section 26;

(c) if any relevant function is exercisable in relation to a tribunal by the National Assembly for Wales (whether by the Assembly alone, or by the Assembly jointly or concurrently with any other person), the tribunal may be added to a list, or be in an added list, only with the consent of the Assembly;

(d) a tribunal may be in more than one list.

(3) In subsection (2)(c) "relevant function", in relation to a tribunal, means a function which relates—

(a) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or

(b) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal.

(4) In subsection (1) "tribunal" does not include an ordinary court of law.

(5) In this section "enactment" means any enactment whenever passed or made, including an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

32 Orders under sections 26 to 30: supplementary

(1) Provision in an order under any of sections 26 to 30 may take the form of amendments, repeals or revocations of enactments.

(2) In subsection (1) "enactment" means any enactment whenever passed or made, including an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978).

CHAPTER 3

ADMINISTRATIVE SUPPORT FOR CERTAIN TRIBUNALS

33 The general duty

(1) The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of—

(a) the First-tier Tribunal,
(b) the Upper Tribunal,
(c) employment tribunals,
(d) the Employment Appeal Tribunal, and
(e) the Asylum and Immigration Tribunal,

and that appropriate services are provided for those tribunals (referred to in this section and in sections 34 and 35 as "the tribunals").

(2) Any reference in this section, or in section 34 or 35, to the Lord Chancellor's general duty in relation to the tribunals is to his duty under subsection (1).

(3) The Lord Chancellor must annually prepare and lay before each House of Parliament a report as to the way in which he has discharged his general duty in relation to the tribunals.

34 Tribunal staff and services

(1) The Lord Chancellor may appoint such staff as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals.

(2) Subject to subsections (3) and (4), the Lord Chancellor may enter into such contracts with other persons for the provision, by them or their sub-contractors, of staff or services as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals.

(3) The Lord Chancellor may not enter into contracts for the provision of staff to discharge functions which involve making judicial decisions or exercising any judicial discretion.

(4) The Lord Chancellor may not enter into contracts for the provision of staff to carry out the administrative work of the tribunals unless an order made by the Lord Chancellor authorises him to do so.

(5) Before making an order under subsection (4) the Lord Chancellor must consult the Senior President of Tribunals as to what effect (if any) the order might have on the proper and efficient administration of justice.

(6) An order under subsection (4) may authorise the Lord Chancellor to enter into contracts for the provision of staff to discharge functions—

(a) wholly or to the extent specified in the order,
(b) generally or in cases or areas specified in the order, and
(c) unconditionally or subject to the fulfilment of conditions specified in the order.

35 Provision of accommodation

(1) The Lord Chancellor may provide, equip, maintain and manage such tribunal buildings, offices and other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals.

(2) The Lord Chancellor may enter into such arrangements for the provision, equipment, maintenance or management of tribunal buildings, offices or other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals.

(3) The powers under—

(a) section 2 of the Commissioners of Works Act 1852 (c. 28) (acquisition by agreement), and

(b) section 228(1) of the Town and Country Planning Act 1990 (c. 8) (compulsory acquisition),

to acquire land necessary for the public service are to be treated as including power to acquire land for the purpose of its provision under arrangements entered into under subsection (2).

(4) In this section "tribunal building" means any place where any of the tribunals sits, including the precincts of any building in which it sits.

CHAPTER 4

OVERSIGHT OF ADMINISTRATIVE JUSTICE SYSTEM, TRIBUNALS AND INQUIRIES

36 The Administrative Justice and Tribunals Council

(1) There is to be a council to be known as the Administrative Justice and Tribunals Council.

(2) In Schedule 7—

Part 1 makes provision about membership and committees of the Council,

Part 2 makes provision about functions of the Council,

Part 3 requires the Council to be consulted before procedural rules for certain tribunals are made, confirmed etc., and

Part 4 contains interpretative provisions.

37 Abolition of the Council on Tribunals

(1) The following are abolished—

(a) the Council on Tribunals, and

(b) the Scottish Committee of the Council on Tribunals.

(2) In consequence of subsection (1), sections 1 to 4 of the Tribunals and Inquiries Act 1992 (c. 53) cease to have effect.

(3) The Lord Chancellor may by order transfer to the Administrative Justice and Tribunals Council the property, rights and liabilities of—

(a) the Council on Tribunals;

(b) the Scottish Committee of the Council on Tribunals.

CHAPTER 5

SUPPLEMENTARY

38 Delegation of functions by Lord Chief Justice etc.

(1) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise any of his functions under the provisions listed in subsection (2).

(2) The provisions are—
paragraphs 3(2) and (6)(b) and 6(3)(a) of Schedule 2;
paragraphs 3(2) and (6)(b) and 6(3)(a) of Schedule 3;
paragraphs 2(2) and 6(1) of Schedule 4;
paragraphs 21(2), 22, 24 and 25(2)(a) of Schedule 5.

(3) The Lord President of the Court of Session may nominate a judge who is a member of the First or Second Division of the Inner House of that Court to exercise any of his functions under the provisions listed in subsection (4).

(4) The provisions are—
paragraph 3(3) of Schedule 2;
paragraphs 3(3) and 6(4) of Schedule 3;
paragraph 2(3) of Schedule 4;
paragraphs 23, 24, 25(2)(b) and (c) and 28(1)(b) of Schedule 5.

(5) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise any of his functions under the provisions listed in subsection (6)—
(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
(b) a Lord Justice of Appeal (as defined in section 88 of that Act).

(6) The provisions are—
paragraphs 3(4) and 6(3)(b) of Schedule 2;
paragraphs 3(4) and 6(3)(b) of Schedule 3;
paragraph 2(4) of Schedule 4;
paragraphs 24 and 25(2)(c) of Schedule 5.

39 Consequential and other amendments, and transitional provisions

(1) Schedule 8, which makes—
amendments consequential on provisions of this Part, and
other amendments in connection with tribunals and inquiries,
has effect.

(2) Schedule 9, which contains transitional provisions, has effect.

40 Orders and regulations under Part 1: supplemental and procedural provisions

(1) Power—
(a) of the Lord Chancellor to make an order, or regulations, under this Part,
(b) of the Senior President of Tribunals to make an order under section 4(5), or

(c) of the Scottish Ministers, or the National Assembly for Wales, to make an order under paragraph 26(2) of Schedule 7,

is exercisable by statutory instrument.

(2) The Statutory Instruments Act 1946 (c. 36) shall apply in relation to the power to make orders conferred on the Senior President of Tribunals by section 4(5) as if the Senior President of Tribunals were a Minister of the Crown.

(3) Any power mentioned in subsection (1) includes power to make different provision for different purposes.

(4) Without prejudice to the generality of subsection (3), power to make an order under section 26 or 27 includes power to make different provision in relation to England, Scotland, Wales and Northern Ireland respectively.

(5) No order mentioned in subsection (6) is to be made unless a draft of the statutory instrument containing it (whether alone or with other provision) has been laid before, and approved by, each House of Parliament.

(6) Those orders are—

(a) an order under section 8(7), 10, 26, 27(1), 28, 29, 30 or 31;

(b) an order under section 25 that provides for fees to be payable in respect of things for which fees have never been payable;

(c) an order under section 27(2), (5) or (7), or paragraph 30(1) of Schedule 5, that contains provision taking the form of an amendment or repeal of an enactment comprised in an Act.

(7) A statutory instrument that—

(a) contains—

(i) an order mentioned in subsection (8), or

(ii) regulations under Part 3 of Schedule 9, and

(b) is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,

is subject to annulment in pursuance of a resolution of either House of Parliament.

(8) Those orders are—

(a) an order made by the Lord Chancellor under this Part, other than—

(i) an order under section 23(7) or 27(2) or (5),

(ii) an order under section 27(7) making provision in connection with an order under section 27(2) or (5), or

(iii) an order under paragraph 2(1) of Schedule 9;

(b) an order made by the Senior President of Tribunals under section 4(5).

(9) A statutory instrument that contains an order under section 23(7) shall be laid before Parliament after being made.

(10) A statutory instrument that contains an order made by the Scottish Ministers under paragraph 26(2) of Schedule 7 is subject to annulment in pursuance of a resolution of the Scottish Parliament.

PART 2

JUDICIAL APPOINTMENTS

41 Judicial appointments: "judicial-appointment eligibility condition"

(1) Subsection (2) applies for the purposes of any statutory provision that—
  (a) relates to an office or other position, and
  (b) refers to a person who satisfies the judicial-appointment eligibility condition on an N-year basis (where N is the number stated in the provision).

(2) A person satisfies that condition on an N-year basis if—
  (a) the person has a relevant qualification, and
  (b) the total length of the person's qualifying periods is at least N years.

(3) In subsection (2) "qualifying period", in relation to a person, means a period during which the person—
  (a) has a relevant qualification, and
  (b) gains experience in law (see section 43).

(4) For the purposes of subsections (2) and (3), a person has a relevant qualification if the person—
  (a) is a solicitor or a barrister (but see section 42), or
  (b) holds a qualification that under section 42(1) is a relevant qualification in relation to the office, or other position, concerned.

(5) In this section—
  "barrister" means barrister in England and Wales;
  "solicitor" means solicitor of the Senior Courts of England and Wales;
  "statutory provision" means—
    (a) a provision of an Act, or
    (b) a provision of subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30)).

(6) Schedule 10, which makes amendments—
  for the purpose of substituting references to satisfying the judicial-appointment eligibility condition in place of references to having a qualification mentioned in section 71 of the Courts and Legal Services Act 1990 (c. 41),
  for the purpose of reducing qualifying periods for eligibility for appointment to certain judicial offices from ten and seven years to seven and five years respectively, and
  for connected purposes,
  has effect.

42 "Relevant qualification" in section 41: further provision

(1) The Lord Chancellor may by order provide for a qualification specified in the order to be a relevant qualification for the purposes of section 41(2) and (3) in relation to an office or other position specified in the order.

(2) A qualification may be specified under subsection (1) only if it is one awarded—

(a) by the Institute of Legal Executives, or

(b) by a body other than the Institute of Legal Executives that, when the qualification is specified, is designated by Order in Council as an authorised body for the purposes of section 27 or 28 of the Courts and Legal Services Act 1990 (c. 41) (bodies authorised to confer rights of audience or rights to conduct litigation).

(3) An order under subsection (1) may, in relation to a qualification specified in the order, include provision as to when a person who holds the qualification is, for the purposes of section 41, to be taken first to have held it.

(4) Before making an order under subsection (1), the Lord Chancellor must consult—

(a) the Lord Chief Justice of England and Wales, and

(b) the Judicial Appointments Commission.

(5) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his function under subsection (4)(a).

(6) Where—

(a) a qualification is specified under subsection (1),

(b) the qualification is one awarded by a body such as is mentioned in subsection (2)(b), and

(c) after the qualification is specified under subsection (1), it becomes the case that the body —

(i) is not designated for the purposes of section 27 of the Courts and Legal Services Act 1990, and

(ii) is not designated for the purposes of section 28 of that Act,

the provision under subsection (1) specifying the qualification ceases to have effect, subject to any provision made under paragraph 33(1) of Schedule 4 to that Act (transitional and incidental provision in connection with revocation of authorised body's designation).

(7) For the purposes of section 41 and this section, a person shall be taken first to become a solicitor when the person's name is entered on the roll kept under section 6 of the Solicitors Act 1974 (c. 47) (Law Society to keep list of all solicitors) for the first time after the person's admission as a solicitor.

(8) For the purposes of section 41 and this section, a person shall be taken first to become a barrister—

(a) when the person completes pupillage in connection with becoming a barrister, or

(b) in the case of a person not required to undertake pupillage in connection with becoming a barrister, when the person is called to the Bar of England and Wales.

(9) For the purposes of section 41 and this section—

(a) a barrister,

(b) a solicitor, or

(c) a person who holds a qualification specified under subsection (1),

shall be taken not to have a relevant qualification at times when, as a result of disciplinary proceedings, he is prevented from practising as a barrister or (as the case may be) as a solicitor or as a holder of the specified qualification.

(10) The Lord Chancellor may by order make provision supplementing or amending subsections (7) to (9).

(11) In this section—

"barrister" means barrister in England and Wales;

"solicitor" means solicitor of the Senior Courts of England and Wales.

(12) Power to make an order under this section is exercisable by statutory instrument.

(13) An order under this section may make different provision for different purposes.

(14) No order may be made under this section unless a draft of the statutory instrument containing it (whether alone or with other provision) has been laid before, and approved by a resolution of, each House of Parliament.

43 Meaning of "gain experience in law" in section 41

(1) Subsections (2) and (3) apply for the purposes of section 41.

(2) A person gains experience in law during a period if throughout that period the person is engaged in any one or more of the following—

(a) the carrying-out of judicial functions of any court or tribunal;

(b) acting as an arbitrator;

(c) practice or employment as a lawyer;

(d) whether or not in the course of practice or employment as a lawyer—

(i) advising on the application of the law,

(ii) assisting persons involved in proceedings for the resolution of issues arising under the law,

(iii) acting as mediator in connection with attempts to resolve issues that are, or if not resolved could be, the subject of proceedings, or

(iv) drafting documents intended to affect persons' rights or obligations;

(e) teaching or researching law;

(f) any activity of a broadly similar nature to an activity within any of paragraphs (a) to (e).

(3) A person is to be treated as gaining experience in law during a period if throughout that period—

(a) the person is an employee taking time off in exercise of holiday entitlement;

(b) the person is not an employee but is taking a break corresponding to one within paragraph (a);

(c) the person is an employee taking time off, or is not an employee but is taking a break, in connection with the person's becoming a parent of a child as a result of the child's birth or adoption;

(d) the person is prevented from gaining experience in law by reason of ill-health or disability.

(4) For the purposes of subsection (2), it does not matter whether an activity mentioned in that subsection—

(a) is done on a full-time or part-time basis;

(b) is or is not done for remuneration;
(c) is done in the United Kingdom or elsewhere.

(5) Subsection (3)(c) applies—
(a) in a case where the time taken off, or break taken, in connection with the birth or adoption on a particular occasion of a child or children exceeds 12 months, only to the first 12 months of that time off or break;
(b) in the case of a person who is an employee, whether the time taken off is called maternity leave, paternity leave or adoption leave or is called none of those things;
(c) whether or not the time is taken off, or the break is taken, in exercise of a statutory right.

PART 3

ENFORCEMENT BY TAKING CONTROL OF GOODS

CHAPTER 1

PROCEDURE

44 Enforcement by taking control of goods

(1) Schedule 11 applies where an enactment, writ or warrant confers power to use the procedure in that Schedule (taking control of goods and selling them to recover a sum of money).

(2) The power conferred by a writ or warrant of control to recover a sum of money, and any power conferred by a writ or warrant of possession or delivery to take control of goods and sell them to recover a sum of money, is exercisable only by using that procedure.

(3) Schedule 12—
(a) amends some powers previously called powers to distrain, so that they become powers to use that procedure;
(b) makes other amendments relating to Schedule 11 and to distress or execution.

(4) The following are renamed—
(a) writs of fieri facias, except writs of fieri facias de bonis ecclesiasticis, are renamed writs of control;
(b) warrants of execution are renamed warrants of control;
(c) warrants of distress, unless the power they confer is exercisable only against specific goods, are renamed warrants of control.

45 Enforcement agents

(1) This section and section 46 apply for the purposes of Schedule 11.

(2) An individual may act as an enforcement agent only if one of these applies—
(a) he acts under a certificate under section 46;
(b) he is exempt;
(c) he acts in the presence and under the direction of a person to whom paragraph (a) or (b) applies.

(3) An individual is exempt if he acts in the course of his duty as one of these—
  (a) a constable;
  (b) an officer of Revenue and Customs;
  (c) a person appointed under section 2(1) of the Courts Act 2003 (c. 39) (court officers and staff).

(4) An individual is exempt if he acts in the course of his duty as an officer of a government department.

(5) For the purposes of an enforcement power conferred by a warrant, an individual is exempt if in relation to the warrant he is a civilian enforcement officer, as defined in section 125A of the Magistrates' Courts Act 1980 (c. 43).

(6) A person is guilty of an offence if, knowingly or recklessly, he purports to act as an enforcement agent without being authorised to do so by subsection (2).

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level one on the standard scale.

46 Certificates to act as an enforcement agent

(1) A certificate may be issued under this section—
  (a) by a judge assigned to a county court district;
  (b) in prescribed circumstances, by a district judge.

(2) Regulations may make provision about certificates under that section, including in particular provision—
  (a) for fees to be charged for applications;
  (b) for certificates to be issued subject to conditions, including the giving of security;
  (c) for certificates to be limited to purposes specified by or under the regulations;
  (d) about complaints against holders of certificates;
  (e) about suspension and cancellation of certificates;
  (f) to modify or supplement Schedule 11 for cases where a certificate is suspended or cancelled or expires;
  (g) requiring courts to make information available relating to certificates.

(3) A certificate under section 7 of the Law of Distress Amendment Act 1888 (c. 21) which is in force on the coming into force of this section has effect as a certificate under this section, subject to any provision made by regulations.

47 Common law rules replaced

(1) This Chapter replaces the common law rules about the exercise of the powers which under it become powers to use the procedure in Schedule 11.

(2) The rules replaced include—
  (a) rules distinguishing between an illegal, an irregular and an excessive exercise of a power;
  (b) rules that would entitle a person to bring a claim in civil proceedings for a breach to which paragraph 61(3) of Schedule 11 applies;
  (c) rules of replevin;
  (d) rules about rescuing goods.

(3) This section does not apply in relation to goods distrained (or executed against) before the coming into force of this section.

(4) For the purposes of subsection (3), "distrained" includes being made subject to a walking possession agreement.

48 Pre-commencement enforcement not affected

The commencement of Schedule 11 for the purposes of any power does not affect the continuing exercise of that power in relation to goods if any of the following has been done under that power before that commencement—

(a) the goods have been distrained or executed against;

(b) they have been made subject to a walking possession agreement.

49 Transfer of county court enforcement

In section 85(2) of the County Courts Act 1984 (c. 28) (under which writs of control give the district judge, formerly called the registrar, power to execute judgments or orders for payment of money) for "the registrar shall be" substitute "any person authorised by or on behalf of the Lord Chancellor is".

50 Magistrates' courts warrants of control

In the Magistrates' Courts Act 1980 (c. 43) after section 125 insert—

"125ZAWarrants of control

(1) This section applies to a warrant of control issued by a justice of the peace.

(2) The person to whom it is directed must endorse the warrant as soon as possible after receiving it.

(3) For the purposes of this section a person endorses a warrant by inserting on the back the date and time when he received it.

(4) No fee may be charged for endorsing a warrant under this section."

51 County court warrants of control etc

For section 99 of the County Courts Act 1984 substitute—

"99 Endorsement of warrants of control etc

(1) This section applies to—

(a) a warrant of control issued under section 85(2),

(b) a warrant of delivery or of possession, but only if it includes a power to take control of and sell goods to recover a sum of money and only for the purposes of exercising that power.

(2) The person to whom the warrant is directed must, as soon as possible after receiving it, endorse it by inserting on the back the date and time when he received it.

(3) No fee may be charged for endorsing a warrant under this section."

52 Power of High Court to stay execution

(1) If, at any time, the High Court is satisfied that a party to proceedings is unable to pay—

(a) a sum recovered against him (by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise), or

(b) any instalment of such a sum,

the court may stay the execution of any writ of control issued in the proceedings, for whatever period and on whatever terms it thinks fit.

(2) The court may act under subsection (1) from time to time until it appears that the cause of the inability to pay has ceased.

(3) In this section a party to proceedings includes every person, whether or not named as a party, who is served with notice of the proceedings or attends them.

CHAPTER 2

RENT ARREARS RECOVERY

Abolition of common law right

53 Abolition of common law right

The common law right to distrain for arrears of rent is abolished.

Commercial rent arrears recovery

54 Commercial rent arrears recovery (CRAR)

(1) A landlord under a lease of commercial premises may use the procedure in Schedule 11 (taking control of goods) to recover from the tenant rent payable under the lease.

(2) A landlord's power under subsection (1) is referred to as CRAR (commercial rent arrears recovery).

55 Landlord

(1) In this Chapter "landlord", in relation to a lease, means the person for the time being entitled to the immediate reversion in the property comprised in the lease.

(2) That is subject to the following.

(3) In the case of a tenancy by estoppel, a person is "entitled to the immediate reversion" if he is entitled to it as between himself and the tenant.

(4) If there are joint tenants of the immediate reversion, or if a number of persons are entitled to the immediate reversion as between themselves and the tenant—

(a) "landlord" means any one of them;

(b) CRAR may be exercised to recover rent due to all of them.

(5) If the immediate reversion is mortgaged, "landlord" means—

(a) the mortgagee, if he has given notice of his intention to take possession or enter into receipt of rents and profits;

(b) otherwise, the mortgagor.

(6) Subsection (5) applies whether the lease is made before or after the mortgage is created, but CRAR is not exercisable by a mortgagee in relation to a lease that does not bind him.

(7) Where a receiver is appointed by a court in relation to the immediate reversion, CRAR is exercisable by the receiver in the name of the landlord.

(8) Any authorisation of a person to exercise CRAR on another's behalf must be in writing and must comply with any prescribed requirements.

(9) This Chapter applies to any other person entitled to exercise CRAR as it applies to a landlord.

56 Lease

(1) "Lease" means a tenancy in law or in equity, including a tenancy at will, but not including a tenancy at sufferance.

(2) A lease must be evidenced in writing.

(3) References to a lease are to a lease as varied from time to time (whether or not the variation is in writing).

(4) This section applies for the purposes of this Chapter.

57 Commercial premises

(1) A lease (A) is of commercial premises if none of the demised premises is—

(a) let under lease A as a dwelling,

(b) let under an inferior lease (B) as a dwelling, or

(c) occupied as a dwelling.

(2) The "demised premises" in this section include anything on them.

(3) "Let as a dwelling" means let on terms permitting only occupation as a dwelling or other use combined with occupation as a dwelling.

(4) Premises are not within subsection (1)(b) if letting them as a dwelling is a breach of a lease superior to lease B.

(5) Premises are not within subsection (1)(c) if occupying them as a dwelling is a breach of lease A or a lease superior to lease A.

(6) This section applies for the purposes of this Chapter.

58 Rent

(1) "Rent" means the amount payable under a lease (in advance or in arrear) for possession and use of the demised premises, together with—

(a) any interest payable on that amount under the lease, and

(b) any value added tax chargeable on that amount or interest.

(2) "Rent" does not include any sum in respect of rates, council tax, services, repairs, maintenance, insurance or other ancillary matters (whether or not called "rent" in the lease).

(3) The amount payable for possession and use of the demised premises, where it is not otherwise identifiable, is to be taken to be so much of the total amount payable under the lease as is reasonably attributable to possession and use.

(4) Where a rent is payable under or by virtue of Part 2 of the Landlord and Tenant Act 1954 (c. 56), the amount payable under the lease for possession and use of those premises is to be taken to be that rent.

(5) This section applies for the purposes of this Chapter except section 53.

59 The rent recoverable

(1) CRAR is not exercisable except to recover rent that meets each of these conditions—
  (a) it has become due and payable before notice of enforcement is given;
  (b) it is certain, or capable of being calculated with certainty.

(2) The amount of any rent recoverable by CRAR is reduced by any permitted deduction.

(3) CRAR is exercisable only if the net unpaid rent is at least the minimum amount immediately before each of these—
  (a) the time when notice of enforcement is given;
  (b) the first time that goods are taken control of after that notice.

(4) The minimum amount is to be calculated in accordance with regulations.

(5) The net unpaid rent is the amount of rent that meets the conditions in subsection (1), less—
  (a) any interest or value added tax included in that amount under section 58(1)(a) or (b), and
  (b) any permitted deductions.

(6) Regulations may provide for subsection (5)(a) not to apply in specified cases.

(7) Permitted deductions, against any rent, are any deduction, recoupment or set-off that the tenant would be entitled to claim (in law or equity) in an action by the landlord for that rent.

60 Intervention of the court

(1) If notice of enforcement is given in exercise (or purported exercise) of CRAR the court may make either or both of these orders on the application of the tenant—
  (a) an order setting aside the notice;
  (b) an order that no further step may be taken under CRAR, without further order, in relation to the rent claimed.

(2) Regulations may make provision about—
  (a) the further orders that may be made for the purposes of subsection (1)(b);

(b) grounds of which the court must be satisfied before making an order or further order.

(3) In this section "the court" means the High Court or a county court, as rules of court may provide.

61 Use of CRAR after end of lease

(1) When the lease ends, CRAR ceases to be exercisable, with these exceptions.

(2) CRAR continues to be exercisable in relation to goods taken control of under it—

(a) before the lease ended, or
(b) under subsection (3).

(3) CRAR continues to be exercisable in relation to rent due and payable before the lease ended, if the conditions in subsection (4) are met.

(4) These are the conditions—

(a) the lease did not end by forfeiture;
(b) not more than 6 months has passed since the day when it ended;
(c) the rent was due from the person who was the tenant at the end of the lease;
(d) that person remains in possession of any part of the demised premises;
(e) any new lease under which that person remains in possession is a lease of commercial premises;
(f) the person who was the landlord at the end of the lease remains entitled to the immediate reversion.

(5) In deciding whether a person remains in possession under a new lease, section 56(2) (lease to be evidenced in writing) does not apply.

(6) In the case of a tenancy by estoppel, the person who was the landlord remains "entitled to the immediate reversion" if the estoppel with regard to the tenancy continues.

(7) A lease ends when the tenant ceases to be entitled to possession of the demised premises under the lease together with any continuation of it by operation of an enactment or of a rule of law.

62 Agricultural holdings

(1) This section applies to the exercise of CRAR where the premises concerned are an agricultural holding.

(2) CRAR is not exercisable to recover rent that became due more than a year before notice of enforcement is given.

(3) For the purposes of subsection (2), deferred rent becomes due at the time to which payment is deferred.

(4) "Deferred rent" means rent the payment of which has been deferred, according to the ordinary course of dealing between the landlord and the tenant, to the end of a quarter or half-year after it legally became due.

(5) The permitted deductions under section 59(7) at any time include any compensation due to the tenant in respect of the holding, under the 1986 Act or under custom or agreement, that has been ascertained at that time.

(6) In this section—

the "1986 Act" means the Agricultural Holdings Act 1986 (c. 5);

"agricultural holding" has the meaning given by section 1 of the 1986 Act.

Right to rent from sub-tenant

63 Right to rent from sub-tenant

(1) This section applies where CRAR is exercisable by a landlord to recover rent due and payable from a tenant (the immediate tenant).

(2) The landlord may serve a notice on any sub-tenant.

(3) The notice must state the amount of rent that the landlord has the right to recover from the immediate tenant by CRAR (the "notified amount").

(4) When it takes effect the notice transfers to the landlord the right to recover, receive and give a discharge for any rent payable by the sub-tenant under the sub-lease, until—

(a) the notified amount has been paid (by payments under the notice or otherwise), or

(b) the notice is replaced or withdrawn.

(5) A notice under this section takes effect at the end of a period to be determined by regulations.

(6) Regulations may state—

(a) the form of a notice under this section;

(b) what it must contain;

(c) how it must be served;

(d) what must be done to withdraw it.

(7) In determining for the purposes of this section whether CRAR is exercisable, section 59 applies with these modifications—

(a) if notice of enforcement has not been given, references to that notice are to be read as references to the notice under this section;

(b) if goods have not been taken control of, section 59(3)(b) does not apply.

(8) In this section and sections 64 to 66—

(a) "sub-tenant" means a tenant (below the immediate tenant) of any of the premises comprised in the headlease (and "sub-lease" is to be read accordingly);

(b) "headlease" means the lease between the landlord and the immediate tenant.

64 Off-setting payments under a notice

(1) For any amount that a sub-tenant pays under a notice under section 63, he may deduct an equal amount from the rent that would be due to his immediate landlord under the sub-lease.

(2) If an amount is deducted under subsection (1) or this subsection from rent due to a superior sub-tenant, that sub-tenant may deduct an equal amount from any rent due from him under his sub-lease.

(3) Subsection (1) applies even if the sub-tenant's payment or part of it is not due under the notice, if it is not due because—

(a) the notified amount has already been paid (wholly or partly otherwise than under the notice), or

(b) the notice has been replaced by a notice served on another sub-tenant.

(4) That is subject to the following.

(5) Subsection (1) does not apply if the landlord withdraws the notice before the payment is made.

(6) Where the notified amount has already been paid (or will be exceeded by the payment), subsection (1) does not apply (or does not apply to the excess) if the sub-tenant has notice of that when making the payment.

(7) Subsection (1) does not apply if, before the payment is made, payments under the notice at least equal the notified amount.

(8) Subsection (1) does not apply to a part of the payment if, with the rest of the payment, payments under the notice at least equal the notified amount.

(9) Where the notice has been replaced by one served on another sub-tenant, subsection (1) does not apply if the sub-tenant has notice of that when making the payment.

65 Withdrawal and replacement of notices

(1) A notice is replaced if the landlord serves on the same or another sub-tenant a notice under section 63 for a notified amount covering the same rent or any of that rent.

(2) The landlord must withdraw a notice under section 63 if any of these happens—

(a) the notice is replaced;

(b) the notified amount is paid, unless it is paid wholly by the sub-tenant.

66 Recovery of sums due and overpayments

(1) For the purposes of the recovery of sums payable by a sub-tenant under a notice under section 63 (including recovery by CRAR), the sub-tenant is to be treated as the immediate tenant of the landlord, and the sums are to be treated as rent accordingly.

(2) But those sums (as opposed to rent due from the immediate tenant) are not recoverable by notice under section 63 served on an inferior sub-tenant.

(3) Any payment received by the landlord that the sub-tenant purports to make under a notice under section 63, and that is not due under the notice for any reason, is to be treated as a payment of rent by the immediate tenant, for the purposes of the retention of the payment by the landlord and (if no rent is due) for the purposes of any claim by the immediate tenant to recover the payment.

(4) But subsection (3) does not affect any claim by the sub-tenant against the immediate tenant.

Supplementary

67 Contracts for similar rights to be void

(1) A provision of a contract is void to the extent that it would do any of these—
  (a) confer a right to seize or otherwise take control of goods to recover amounts within subsection (2);
  (b) confer a right to sell goods to recover amounts within subsection (2);
  (c) modify the effect of section 54(1), except in accordance with subsection (3).

(2) The amounts are any amounts payable—
  (a) as rent;
  (b) under a lease (other than as rent);
  (c) under an agreement collateral to a lease;
  (d) under an instrument creating a rentcharge;
  (e) in respect of breach of a covenant or condition in a lease, in an agreement collateral to a lease or in an instrument creating a rentcharge;
  (f) under an indemnity in respect of a payment within paragraphs (a) to (e).

(3) A provision of a contract is not void under subsection (1)(c) to the extent that it prevents or restricts the exercise of CRAR.

(4) In this section—
  "lease" also includes a licence to occupy land;
  "rent" and "rentcharge" have the meaning given by section 205(1) of the Law of Property Act 1925 (c. 20).

68 Amendments

Schedule 13 makes minor and consequential amendments (including amendments abolishing powers to distrain for rentcharges).

69 Interpretation of Chapter

In this Chapter—
  "landlord" has the meaning given by section 55;
  "lease" has the meaning given by section 56 (subject to section 67(4));
  "notice of enforcement" means notice under paragraph 7 of Schedule 11;
  "rent" (except in section 53) has the meaning given by section 58;
  "tenant", in relation to a lease, means the tenant for the time being under the lease.

CHAPTER 3

GENERAL

70 Abolition of Crown preference

Crown preference for the purposes of execution against goods is abolished.

71 Application to the Crown

(1) This Part binds the Crown.

(2) But the procedure in Schedule 11 may not be used—
  (a) to recover debts due from the Crown,
  (b) to take control of or sell goods of the Crown (including goods owned by the Crown jointly or in common with another person), or
  (c) to enter premises occupied by the Crown.

72 Regulations

(1) In this Part—
  "prescribed" means prescribed by regulations;
  "regulations" means regulations made by the Lord Chancellor.

(2) The following apply to regulations under this Part.

(3) Any power to make regulations is exercisable by statutory instrument.

(4) A statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Regulations may include any of these that the Lord Chancellor considers necessary or expedient—
  (a) supplementary, incidental or consequential provision;
  (b) transitory, transitional or saving provision.

(6) Regulations may make different provision for different cases.

PART 4

ENFORCEMENT OF JUDGMENTS AND ORDERS

Attachment of earnings orders

73 Attachment of earnings orders: deductions at fixed rates

(1) Schedule 14 makes amendments to the Attachment of Earnings Act 1971 (c. 32).

(2) Those amendments are about the basis on which periodical deductions are to be made under an attachment of earnings order.

(3) In particular, they provide that deductions under certain orders are to be made in accordance with a fixed deductions scheme made by the Lord Chancellor (rather than in accordance with Part I of Schedule 3 to the 1971 Act).

74 Attachment of earnings orders: finding the debtor's current employer

(1) After section 15 of the Attachment of Earnings Act 1971 insert—

"15A Finding the debtor's current employer

(1) If an attachment of earnings order lapses under section 9(4), the proper authority may request the Commissioners—

(a) to disclose whether it appears to the Commissioners that the debtor has a current employer, and

(b) if it appears to the Commissioners that the debtor has a current employer, to disclose the name and address of that employer.

(2) The proper authority may make a request under subsection (1) only for the purpose of enabling the lapsed order to be directed to the debtor's current employer.

(3) The proper authority may not make a request under subsection (1) unless regulations under section 15B(5) and (8) are in force.

(4) The proper authority may disclose such information (including information identifying the debtor) as it considers necessary to assist the Commissioners to comply with a request under subsection (1).

(5) The Commissioners may disclose to the proper authority any information (whether held by the Commissioners or on their behalf) that the Commissioners consider is necessary to comply with a request under subsection (1).

(6) A disclosure under subsection (4) or (5) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(7) Nothing in this section is to be taken to prejudice any power to request or disclose information that exists apart from this section.

(8) The reference in subsection (5) to information held on behalf of the Commissioners includes a reference to any information which—

(a) is held by a person who provides services to the Commissioners, and

(b) is held by that person in connection with the provision of those services.

15B Offence of unauthorised use or disclosure

(1) This section applies if the Commissioners make a disclosure of information ("debtor information") under section 15A(5).

(2) A person to whom the debtor information is disclosed commits an offence if—

(a) he uses or discloses the debtor information, and

(b) the use or disclosure is not authorised by subsection (3), (5), (6) or (7).

(3) The use or disclosure of the debtor information is authorised if it is—

(a) for a purpose connected with the enforcement of the lapsed order (including the direction of the order to the debtor's current employer), and

(b) with the consent of the Commissioners.

(4) Consent for the purposes of subsection (3) may be given—

(a) in relation to particular use or a particular disclosure, or

(b) in relation to use, or a disclosure made, in such circumstances as may be specified or described in the consent.

(5) The use or disclosure of the debtor information is authorised if it is—

(a) in accordance with an enactment or an order of court, or

(b) for the purposes of any proceedings before a court,

and it is in accordance with regulations.

(6) The use or disclosure of the debtor information is authorised if the information has previously been lawfully disclosed to the public.

(7) The use or disclosure of the debtor information is authorised if it is in accordance with rules of court that comply with regulations under subsection (8).

(8) Regulations may make provision about the circumstances, if any, in which rules of court may allow any of the following—

(a) access to, or the supply of, debtor information;

(b) access to, or the supply of copies of, any attachment of earnings order which has been directed to an employer using debtor information.

(9) It is a defence for a person charged with an offence under subsection (2) to prove that he reasonably believed that the disclosure was lawful.

(10) A person guilty of an offence under subsection (2) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum, or to both.

15C Regulations

(1) It is for the Lord Chancellor to make regulations under section 15B.

(2) But the Lord Chancellor may make regulations under section 15B only with the agreement of the Commissioners.

(3) Regulations under section 15B are to be made by statutory instrument.

(4) A statutory instrument containing regulations under section 15B may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

15D Interpretation

(1) For the purposes of sections 15A to 15C (and this section)—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"information" means information held in any form;

"the lapsed order" means the attachment of earnings order referred to in section 15A(1);

"the proper authority" is determined in accordance with subsections (2) to (5).

(2) If the lapsed order was made by the High Court, the proper authority is the High Court.

(3) If the lapsed order was made by a county court, the proper authority is a county court.

(4) If the lapsed order was made by a magistrates' court under this Act, the proper authority is—

(a) a magistrates' court, or
(b) the designated officer for a magistrates' court.

(5) If the lapsed order was made by a magistrates' court or a fines officer under Schedule 5 to the Courts Act 2003 (c. 39), the proper authority is—
(a) a magistrates' court, or
(b) a fines officer."

(2) This section applies in relation to any attachment of earnings order, whether made before or after the commencement of this section.

(3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in section 15B(10)(b) of the Attachment of Earnings Act 1971 (c. 32) to 12 months is to be read as a reference to 6 months.

Charging orders

75 Payment by instalments: making and enforcing charging orders

(1) Subsections (2), (3) and (4) make amendments to the Charging Orders Act 1979 (c. 53).

(2) In section 1 (charging orders), after subsection (5) insert—

"(6) Subsections (7) and (8) apply where, under a judgment or order of the High Court or a county court, a debtor is required to pay a sum of money by instalments.

(7) The fact that there has been no default in payment of the instalments does not prevent a charging order from being made in respect of that sum.

(8) But if there has been no default, the court must take that into account when considering the circumstances of the case under subsection (5)."

(3) In section 3 (provisions supplementing sections 1 and 2), after subsection (4) insert—

"(4A) Subsections (4C) to (4E) apply where—
(a) a debtor is required to pay a sum of money in instalments under a judgment or order of the High Court or a county court (an "instalments order"), and
(b) a charge has been imposed by a charging order in respect of that sum.

(4B) In subsections (4C) to (4E) references to the enforcement of a charge are to the making of an order for the enforcement of the charge.

(4C) The charge may not be enforced unless there has been default in payment of an instalment under the instalments order.

(4D) Rules of court may—
(a) provide that, if there has been default in payment of an instalment, the charge may be enforced only in prescribed cases, and

(b) limit the amounts for which, and the times at which, the charge may be enforced.

(4E) Except so far as otherwise provided by rules of court under subsection (4D)—

(a) the charge may be enforced, if there has been default in payment of an instalment, for the whole of the sum of money secured by the charge and the costs then remaining unpaid, or for such part as the court may order, but

(b) the charge may not be enforced unless, at the time of enforcement, the whole or part of an instalment which has become due under the instalments order remains unpaid."

(4) In section 6(2) (meaning of references to judgment or order of High Court or county court), for "section 1" substitute "sections 1 and 3".

(5) In section 313(4) of the Insolvency Act 1986 (c. 45) (charge on bankrupt's home: certain provisions of section 3 of Charging Orders Act 1979 to apply), for the words before "section 3" substitute "Subsection (1), (2), (4), (5) and (6) of".

(6) This section does not apply in a case where a judgment or order of the High Court or a county court under which a debtor is required to pay a sum of money by instalments was made, or applied for, before the coming into force of this section.

76 Charging orders: power to set financial thresholds

In the Charging Orders Act 1979 (c. 53), after section 3 there is inserted—

"3A Power to set financial thresholds

(1) The Lord Chancellor may by regulations provide that a charge may not be imposed by a charging order for securing the payment of money of an amount below that determined in accordance with the regulations.

(2) The Lord Chancellor may by regulations provide that a charge imposed by a charging order may not be enforced by way of order for sale to recover money of an amount below that determined in accordance with the regulations.

(3) Regulations under this section may—

(a) make different provision for different cases;

(b) include such transitional provision as the Lord Chancellor thinks fit.

(4) The power to make regulations under this section is exercisable by statutory instrument.

(5) The Lord Chancellor may not make the first regulations under subsection (1) or (2) unless (in each case) a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(6) A statutory instrument containing any subsequent regulations under those subsections is subject to annulment in pursuance of a resolution of either House of Parliament."

Information requests and orders

77 Application for information about action to recover judgment debt

(1) A person who is the creditor in relation to a judgment debt may apply to the High Court or a county court for information about what kind of action it would be appropriate to take in court to recover that particular debt.

(2) An application under subsection (1) must comply with any provision made in regulations about the making of such applications.

78 Action by the court

(1) This section applies if the creditor in relation to a judgment debt makes an application for information under section 77.

(2) The relevant court may make one or more of the following in relation to the debtor—

(a) a departmental information request;

(b) an information order.

(3) The relevant court may exercise its powers under subsection (2) only if it is satisfied that to do so will help it to deal with the creditor's application.

(4) Before exercising its powers under subsection (2), the relevant court must give notice to the debtor that the court intends to make a request or order.

(5) The relevant court may not make a departmental information request to the Commissioners unless regulations are in force that have been made under section 84(4) and (7) and relate to the use or disclosure of debtor information disclosed by the Commissioners.

(6) The relevant court may disclose such information (including information identifying the debtor) as it considers necessary to assist the recipient of a request or order to comply with the request or order.

(7) A disclosure under subsection (6) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(8) Nothing in this section is to be taken to prejudice any power that exists apart from this section to request or order the disclosure of information.

79 Departmental information requests

(1) A departmental information request is a request for the disclosure of information held by, or on behalf of, a government department.

(2) The request is to be made to the Minister of the Crown, or other person, who is in charge of the department.

(3) In the case of a request made to the designated Secretary of State, the disclosure of some or all of the following information may be requested—

(a) the full name of the debtor;

(b) the address of the debtor;

(c) the date of birth of the debtor;

(d) the national insurance number of the debtor;

(e) prescribed information.

(4) In the case of a request made to the Commissioners, the disclosure of some or all of the following information may be requested—

(a) whether or not the debtor is employed;

(b) the name and address of the employer (if the debtor is employed);

(c) the national insurance number of the debtor;

(d) prescribed information.

(5) In the case of any other request, the disclosure of prescribed information may be requested.

(6) In this section—

"designated Secretary of State" means the Secretary of State designated for the purpose of this section by regulations;

"government department" does not include the following—

(a) any part of the Scottish Administration;

(b) a Northern Ireland department;

(c) the National Assembly for Wales;

"prescribed information", in relation to a departmental information request, means information that falls within the category or categories of information (if any) prescribed by regulations in relation to the department to which the request relates.

80 Information orders

(1) An information order is an order of the relevant court which—

(a) specifies a prescribed person ("the information discloser"),

(b) specifies prescribed information relating to the debtor ("the required information"), and

(c) orders the information discloser to disclose the required information to the relevant court.

(2) In subsection (1) "prescribed" means prescribed in regulations.

(3) Regulations under this section may be made by reference to—

(a) particular persons or particular descriptions of person (or both);

(b) particular information or particular descriptions of information (or both).

(4) Regulations may, in particular, be made under this section so as ensure that—

(a) an information order made against a particular person, or a person of a particular description, may order that person to disclose only particular information, or information of a particular description;

(b) an information order that orders the disclosure of particular information, or information of a particular description, may only be made against a particular person, or a person of a particular description.

(5) Regulations under this section must not make provision that would allow the relevant court to order—

(a) the disclosure of information by the debtor, or

(b) the disclosure of information held by, or on behalf of, a government department.

81 Responding to a departmental information request

(1) This section applies if the relevant court makes a departmental information request.

(2) The recipient of the request may disclose to the relevant court any information (whether held by the department or on its behalf) that the recipient considers is necessary to comply with the request.

(3) A disclosure under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(4) Nothing in this section is to be taken to prejudice any power that exists apart from this section to disclose information.

82 Information order: required information not held etc

(1) An information discloser is not to be regarded as having breached an information order because of a failure to disclose some or all of the required information, if that failure is for one of the permitted reasons.

(2) These are the permitted reasons—
  (a) the information provider does not hold the information;
  (b) the information provider is unable to ascertain whether the information is held, because of the way in which the information order identifies the debtor;
  (c) the disclosure of the information would involve the information discloser in unreasonable effort or expense.

(3) It is to be presumed that a failure to disclose required information is for a permitted reason if—
  (a) the information discloser gives the relevant court a certificate that complies with subsection (4), and
  (b) there is no evidence that the failure is not for a permitted reason.

(4) The certificate must state—
  (a) which of the required information is not being disclosed;
  (b) what the permitted reason is, or permitted reasons are, for the failure to disclose that information.

(5) Any reference in this section to the information discloser holding, or not holding, information includes a reference to the information being held, or not being held, on the information discloser's behalf.

83 Using the information about the debtor

(1) This section applies if—
  (a) the creditor in relation to a judgment debt makes an application for information under section 77, and
  (b) information ("debtor information") is disclosed to the relevant court in compliance with a request or order made under section 78.

(2) The relevant court may use the debtor information for the purpose of making another request or order under section 78 in relation to the debtor.

(3) The relevant court may use the debtor information for the purpose of providing the creditor with information about what kind of action (if any) it

would be appropriate to take in court (whether the relevant court or another court) to recover the judgment debt.

(4) If the creditor takes any action in the relevant court to recover the judgment debt, the relevant court may use the debtor information in carrying out functions in relation to that action.

(5) If the creditor takes any action in another court to recover the judgment debt—
  (a) the relevant court may disclose the debtor information to the other court, and
  (b) the other court may use that information in carrying out functions in relation to that action.

(6) Debtor information may be used or disclosed under any of subsections (3) to (5) only if—
  (a) regulations about such use or disclosure of information are in force, and
  (b) the use or disclosure complies with those regulations.

(7) In addition, if the debtor information was disclosed by the Commissioners, the information may be used or disclosed under any of subsections (3) to (5) only with the consent of the Commissioners.

(8) Consent for the purposes of subsection (7) may be given—
  (a) in relation to particular use or a particular disclosure, or
  (b) in relation to use, or a disclosure made, in such circumstances as may be specified or described in the consent.

(9) The use or disclosure of information in accordance with this section is not to be taken to breach any restriction on the use or disclosure of information (however imposed).

(10) Nothing in this section is to be taken to prejudice any power that exists apart from this section to use or disclose information.

84 Offence of unauthorised use or disclosure

(1) This section applies if—
  (a) an application is made under section 77 in relation to recovery of a judgment debt ("the relevant judgment debt"),
  (b) a departmental information request or an information order is made in consequence of that application, and
  (c) information ("debtor information") is disclosed in accordance with the request or order.

(2) A person to whom the debtor information is disclosed commits an offence if he—
  (a) uses or discloses the debtor information, and
  (b) the use or disclosure is not authorised by any of subsections (3) to (6).

(3) The use or disclosure of the debtor information is authorised if it is in accordance with section 83.

(4) The use or disclosure of the debtor information is authorised if it is—
  (a) in accordance with an enactment or order of court, or
  (b) for the purposes of any proceedings before a court,

and it is in accordance with regulations.

(5) The use or disclosure of the debtor information is authorised if the information has previously been lawfully disclosed to the public.

(6) The use or disclosure of the debtor information is authorised if it is in accordance with rules of court that comply with regulations under subsection (7).

(7) Regulations may make provision about the circumstances, if any, in which rules of court may allow access to, or the supply of, information disclosed in accordance with a department information request or an information order.

(8) It is a defence for a person charged with an offence under subsection (2) to prove that he reasonably believed that the use or disclosure was lawful.

(9) A person guilty of an offence under subsection (2) is liable—
(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;
(b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum, or to both.

85 Regulations

(1) It is for the Lord Chancellor to make information regulations.

(2) But the Lord Chancellor may make the following regulations only with the agreement of the Commissioners—
(a) regulations under section 79(4)(d);
(b) regulations under section 84(4) or (7) so far as the regulations relate to the use or disclosure of debtor information disclosed by the Commissioners.

(3) Information regulations are to be made by statutory instrument.

(4) A statutory instrument containing information regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5) But subsection (4) does not apply in the case of a statutory instrument that contains only—
(a) regulations under section 77, or
(b) regulations under section 79 which designate a Secretary of State for the purpose of that section.

(6) In such a case, the statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section "information regulations" means regulations under any of sections 77 to 84.

86 Interpretation

(1) This section applies for the purposes of sections 77 to 85.

(2) In those provisions—

"Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"creditor", in relation to a judgment debt, means—

(a) the person to whom the debt is payable (whether directly or through an officer of any court or another person);

(b) where the debt is payable under an administration order (within the meaning of Part 6 of the County Courts Act 1984 (c. 28)), any one of the creditors scheduled to the order;

"debtor", in relation to a judgment debt, means the person by whom the debt is payable;

"departmental information request" has the meaning given by section 79;

"information" means information held in any form;

"information discloser", in relation to an information order, has the meaning given by section 80(1)(a);

"information order" has the meaning given by section 80;

"judgment debt" means either of the following—

(a) a sum which is payable under a judgment or order enforceable by the High Court or a county court;

(b) a sum which, by virtue of an enactment, is recoverable as if it were payable under a judgment or order of the High Court or of a county court (including a sum which is so recoverable because a court so orders);

"required information", in relation to an information order, has the meaning given by section 80(1)(b);

"relevant court", in relation to an application under section 77, means the court to which the application is made.

(3) Any reference to information held on behalf of a government department, or on behalf of an information discloser, includes a reference to any information which—

(a) is held by a person who provides services to the department or to the information discloser, and

(b) is held by that person in connection with the provision of those services.

87 Application and transitional provision

(1) Sections 77 to 86 apply in relation to any judgment debt, whether it became payable, or recoverable, before or after the commencement of those sections.

(2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in section 84(9)(b) to 12 months is to be read as a reference to 6 months.

PART 5

DEBT MANAGEMENT AND RELIEF

CHAPTER 1

ADMINISTRATION ORDERS

88 Administration orders

(1) For Part 6 of the County Courts Act 1984 (c. 28) (administration orders) substitute—

"PART 6

ADMINISTRATION ORDERS

Administration orders

112A Administration orders

An administration order is an order—

(a) to which certain debts are scheduled in accordance with section 112C, 112D or 112Y(3) or (4);

(b) which imposes the requirement specified in section 112E on the debtor; and

(c) which imposes the requirements specified in sections 112F to 112I on certain creditors.

112B Power to make order

(1) A county court may make an administration order if the conditions in subsections (2) to (7) are met.

(2) The order must be made in respect of an individual who is a debtor under two or more qualifying debts.

(3) That individual ("the debtor") must not be a debtor under any business debts.

(4) The debtor must not be excluded under any of the following—

(a) the AO exclusion;

(b) the voluntary arrangement exclusion;

(c) the bankruptcy exclusion.

(5) The debtor must be unable to pay one or more of his qualifying debts.

(6) The total amount of the debtor's qualifying debts must be less than, or the same as, the prescribed maximum.

(7) The debtor's surplus income must be more than the prescribed minimum.

(8) Before making an administration order, the county court must have regard to any representations made—

(a) by any person about why the order should not be made, or

(b) by a creditor under a debt about why the debt should not be taken into account in calculating the total amount of the debtor's qualifying debts.

Scheduling debts

112C Scheduling declared debts

(1) This section applies to a qualifying debt ("the declared debt") if—
(a) an administration order is made, and
(b) when the order is made, the debt is taken into account in calculating the total amount of the debtor's qualifying debts for the purposes of section 112B(6).

(2) If the declared debt is already due at the time the administration order is made, the proper county court must schedule the debt to the order when the order is made.

(3) If the declared debt becomes due after the administration order is made, the proper county court must schedule the debt to the order if the debtor, or the creditor under the debt, applies to the court for the debt to be scheduled.

(4) This section is subject to section 112AG(5).

112D Scheduling new debts

(1) This section applies to a qualifying debt ("the new debt") if the debt—
(a) arises after an administration order is made, and
(b) becomes due during the currency of the order.

(2) The proper county court may schedule the new debt to the administration order if these conditions are met—
(a) the debtor, or the creditor under the new debt, applies to the court for the debt to be scheduled;
(b) the total amount of the debtor's qualifying debts (including the new debt) is less than, or the same as, the prescribed maximum.

Requirements imposed by order

112E Repayment requirement

(1) An administration order must, during the currency of the order, impose a repayment requirement on the debtor.

(2) A repayment requirement is a requirement for the debtor to repay the scheduled debts.

(3) The repayment requirement may provide for the debtor to repay a particular scheduled debt in full or to some other extent.

(4) The repayment requirement may provide for the debtor to repay different scheduled debts to different extents.

(5) In the case of a new debt scheduled to the order in accordance with section 112D, the repayment requirement may provide that no due repayment in respect of the new debt is to be made until the debtor has made all due repayments in respect of declared debts.

(6) The repayment requirement must provide that the due repayments are to be made by instalments.

(7) It is for the proper county court to decide when the instalments are to be made.

(8) But the proper county court is to determine the amount of the instalments in accordance with repayment regulations.

(9) Repayment regulations are regulations which make provision for instalments to be determined by reference to the debtor's surplus income.

(10) The repayment requirement may provide that the due repayments are to be made by other means (including by one or more lump sums) in addition to the instalments required in accordance with subsection (6).

(11) The repayment requirement may include provision in addition to any that is required or permitted by this section.

(12) In this section—

"declared debt" has the same meaning as in section 112C (and for this purpose it does not matter whether a declared debt is scheduled to the administration order when it is made, or afterwards);

"due repayments" means repayments which the repayment requirement requires the debtor to make;

"new debt" has the same meaning as in section 112D.

112F Presentation of bankruptcy petition

(1) An administration order must, during the currency of the order, impose the following requirement.

(2) The requirement is that no qualifying creditor of the debtor is to present a bankruptcy petition against the debtor in respect of a qualifying debt, unless the creditor has the permission of the proper county court.

(3) The proper county court may give permission for the purposes of subsection (2) subject to such conditions as it thinks fit.

112G Remedies other than bankruptcy

(1) An administration order must, during the currency of the order, impose the following requirement.

(2) The requirement is that no qualifying creditor of the debtor is to pursue any remedy for the recovery of a qualifying debt unless—

(a) regulations under subsection (3) provide otherwise, or

(b) the creditor has the permission of the proper county court.

(3) Regulations may specify classes of debt which are exempted (or exempted for specified purposes) from the restriction imposed by subsection (2).

(4) The proper county court may give permission for the purposes of subsection (2)(b) subject to such conditions as it thinks fit.

(5) This section does not have any effect in relation to bankruptcy proceedings.

112H Charging of interest etc

(1) An administration order must, during the currency of the order, impose the following requirement.

(2) The requirement is that no creditor under a scheduled debt is to charge any sum by way of interest, fee or other charge in respect of that debt.

112I Stopping supplies of gas or electricity

(1) An administration order must, during the currency of the order, impose the requirement in subsection (3).

(2) In relation to that requirement, a domestic utility creditor is any person who—

(a) provides the debtor with a supply of mains gas or mains electricity for the debtor's own domestic purposes, and

(b) is a creditor under a qualifying debt that relates to the provision of that supply.

(3) The requirement is that no domestic utility creditor is to stop the supply of gas or electricity, or the supply of any associated services, except in the cases in subsections (4) to (6).

(4) The first case is where the reason for stopping a supply relates to the non-payment by the debtor of charges incurred in connection with that supply after the making of the administration order.

(5) The second case is where the reason for stopping a supply is unconnected with the non-payment by the debtor of any charges incurred in connection with—

(a) that supply, or

(b) any other supply of mains gas or mains electricity, or of associated services, that is provided by the domestic utility creditor.

(6) The third case is where the proper county court gives permission to stop a supply.

(7) The proper county court may give permission for the purposes of subsection (6) subject to such conditions as it thinks fit.

(8) A supply of mains gas is a supply of the kind mentioned in section 5(1)(b) of the Gas Act 1986 (c. 44).

(9) A supply of mains electricity is a supply of the kind mentioned in section 4(1)(c) of the Electricity Act 1989 (c. 29).

Making an order

112J Application for an order

(1) A county court may make an administration order only on the application of the debtor.

(2) The debtor may make an application for an administration order whether or not a judgment has been obtained against him in respect of any of his debts.

112K Duration

(1) A county court may, at the time it makes an administration order, specify a day on which the order will cease to have effect.

(2) The court may not specify a day which falls after the last day of the maximum permitted period.

(3) If the court specifies a day under this section, the order ceases to have effect on that day.

(4) If the court does not specify a day under this section, the order ceases to have effect at the end of the maximum permitted period.

(5) The maximum permitted period is the period of five years beginning with the day on which the order is made.

(6) This section is subject to—
  (a) section 112S (variation of duration);
  (b) section 112W (effect of revocation).

(7) This section is also subject to the following (effect of enforcement restriction order or debt repayment plan on administration order)—
  (a) section 117I of this Act;
  (b) any provision made in regulations by virtue of section 97(6) of the Tribunals, Courts and Enforcement Act 2006.

Effects of order

112L Effect on other debt management arrangements

(1) This section applies if—
  (a) an administration order is made, and
  (b) immediately before the order is made, other debt management arrangements are in force in respect of the debtor.

(2) The other debt management arrangements cease to be in force when the administration order is made.

(3) If the proper county court is aware of the other debt management arrangements, the court must give the relevant authority notice that the order has been made.

(4) In a case where the proper county court is aware of other debt management arrangements at the time it makes the order, it must give the notice as soon as practicable after making the order.

(5) In a case where the proper county court becomes aware of those arrangements after it makes the order, it must give the notice as soon as practicable after becoming aware of them.

(6) "Other debt management arrangements" means any of the following—
  (a) an enforcement restriction order under Part 6A of this Act;
  (b) a debt relief order under Part 7A of the Insolvency Act 1986;
  (c) a debt repayment plan arranged in accordance with a debt management scheme that is approved under Chapter 4 of Part 5 of the Tribunals, Courts and Enforcement Act 2006.

(7) "The relevant authority" means—

(a) in relation to an enforcement restriction order: the proper county court (within the meaning of Part 6A);

(b) in relation to a debt relief order: the official receiver;

(c) in relation to a debt repayment plan: the operator of the debt management scheme in accordance with which the plan is arranged.

(8) For the purposes of this section a debt relief order is "in force" if the moratorium applicable to the order under section 251G of the Insolvency Act 1986 has not yet ended.

112M Duty to provide information

(1) This section applies if, and for as long as, an administration order has effect in respect of a debtor.

(2) The debtor must, at the prescribed times, provide the proper county court with particulars of his—

(a) earnings,

(b) income,

(c) assets, and

(d) outgoings.

(3) The debtor must provide particulars of those matters—

(a) as the matters are at the time the particulars are provided, and

(b) as the debtor expects the matters to be at such times in the future as are prescribed.

(4) If the debtor intends to dispose of any of his property he must, within the prescribed period, provide the proper county court with particulars of the following matters—

(a) the property he intends to dispose of;

(b) the consideration (if any) he expects will be given for the disposal;

(c) such other matters as may be prescribed;

(d) such other matters as the court may specify.

(5) But subsection (4) does not apply if the disposal is of—

(a) goods that are exempt goods for the purposes of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006, or

(b) prescribed property.

(6) The duty under subsection (4) to provide the proper county court with particulars of a proposed disposal of property applies whether the debtor is the sole owner, or one of several owners, of the property.

(7) In any provision of this section "prescribed" means prescribed in regulations for the purposes of that provision.

112N Offence if information not provided

(1) A person commits an offence if he fails to comply with—

(a) section 112M(2) and (3), or

(b) section 112M(4).

(2) A person who commits an offence under subsection (1) may be ordered by a judge of the proper county court to pay a fine of not more than £250 or to be imprisoned for not more than 14 days.

(3) Where under subsection (2) a person is ordered to be imprisoned by a judge of the proper county court, the judge may at any time—
(a) revoke the order, and
(b) if the person is already in custody, order his discharge.

(4) Section 129 of the County Courts Act 1984 (c. 28) (enforcement of fines) applies to payment of a fine imposed under subsection (2).

(5) For the purposes of section 13 of the Administration of Justice Act 1960 (c. 65) (appeal in cases of contempt of court), subsection (2) is to be treated as an enactment enabling a county court to deal with an offence under subsection (1) as if it were a contempt of court.

(6) A district judge, assistant district judge or deputy district judge shall have the same powers under this section as a judge of a county court.

112O Existing county court proceedings to be stayed

(1) This section applies if these conditions are met—
(a) an administration order is made;
(b) proceedings in a county court (other than bankruptcy proceedings) are pending against the debtor in respect of a qualifying debt;
(c) by virtue of a requirement included in the order by virtue of section 112G, the creditor under the qualifying debt is not entitled to continue the proceedings in respect of the debt;
(d) the county court receives notice of the administration order.

(2) The county court must stay the proceedings.

(3) The court may allow costs already incurred by the creditor.

(4) If the court allows such costs, it may on application or of its motion add them—
(a) to the debt, or
(b) if the debt is a scheduled debt, to the amount scheduled to the order in respect of the debt.

(5) But the court may not add the costs under subsection (4)(b) if the court is under a duty under section 112U(6)(b) to revoke the order because the total amount of the debtor's qualifying debts (including the costs) is more than the prescribed maximum.

112P Appropriation of money paid

Money paid into court under an administration order is to be appropriated—
(a) first in satisfaction of the costs of administration (which must not exceed 10 pence in the pound on the total amounts of the scheduled debts); and
(b) then in liquidation of debts.

112Q Discharge from debts

(1) If the debtor repays a scheduled debt to the extent provided for by the administration order, the proper county court must—
  (a) order that the debtor is discharged from the debt, and
  (b) de-schedule the debt.

(2) If the debtor repays all of the scheduled debts to the extent provided for by the administration order, the proper county court must revoke the order.

(3) Subsections (1) and (2) apply to all scheduled debts, including any which, under the administration order, are to be repaid other than to their full extent.

Variation

112R Variation

(1) The proper county court may vary an administration order.

(2) The power under this section is exercisable—
  (a) on the application of the debtor;
  (b) on the application of a qualifying creditor;
  (c) of the court's own motion.

112S Variation of duration

(1) The power under section 112R includes power to vary an administration order so as to specify a day, or (if a day has already been specified under section 112K or this subsection) a different day, on which the order will cease to have effect.

(2) But the new termination day must fall on or before the last day of the maximum permitted period.

(3) If the proper county court varies an administration under subsection (1), the order ceases to have effect on the new termination day.

(4) In this section—
  (a) "new termination day" means the day on which the order will cease to have effect in accordance with the variation under subsection (1);
  (b) "maximum permitted period" means the period of five years beginning with the day on which the order was originally made.

(5) This section is subject to section 112W (effect of revocation).

112T De-scheduling debts

(1) The power under section 112R includes power to vary an administration order by de-scheduling a debt.

(2) But the debt may be de-scheduled only if it appears to the proper county court that it is just and equitable to do so.

Revocation

112U Duty to revoke order

(1) The proper county court must revoke an administration order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in subsection 112B(2) was not met (debtor in fact did not have two or more qualifying debts);

(b) where the debtor is no longer a debtor under any qualifying debts.

(2) The proper county court must revoke an administration order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in subsection 112B(3) was not met (debtor in fact had business debt), and he is still a debtor under the business debt, or any of the business debts, in question;

(b) where the debtor subsequently becomes a debtor under a business debt, and he is still a debtor under that debt.

(3) The proper county court must revoke an administration order where it becomes apparent that, at the time the order was made, the condition in section 112B(4) was not met (debtor in fact excluded under AO, voluntary arrangement or bankruptcy exclusion).

(4) The proper county court must revoke an administration order where, after the order is made—

(a) the debtor becomes excluded under the voluntary arrangement exclusion, or

(b) a bankruptcy order is made against the debtor, and is still in force.

(5) The proper county court must revoke an administration order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in section 112B(5) was not met (debtor in fact able to pay qualifying debts);

(b) where the debtor is now able to pay all of his qualifying debts.

(6) The proper county court must revoke an administration order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in section 112B(6) was not met (debtor's qualifying debts in fact more than prescribed maximum);

(b) where the total amount of the debtor's qualifying debts is now more than the prescribed maximum.

(7) The proper county court must revoke an administration order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in section 112B(7) was not met (debtor's surplus income in fact less than, or the same as, the prescribed minimum);

(b) where the debtor's surplus income is now less than, or the same as, the prescribed minimum.

112V Power to revoke order

(1) The proper county court may revoke an administration order in any case where there is no duty under this Part to revoke it.

(2) The power of revocation under this section may, in particular, be exercised in any of the following cases—

(a) where the debtor has failed to make two payments (whether consecutive or not) required by the order;

(b) where the debtor has failed to provide the proper county court with the particulars required by—

(i) section 112M(2) and (3), or

(ii) section 112M(4).

(3) The power of revocation under this section is exercisable—

(a) on the application of the debtor;

(b) on the application of a qualifying creditor;

(c) of the court's own motion.

112W Effect of revocation

(1) This section applies if, under any duty or power in this Part, the proper county court revokes an administration order.

(2) The order ceases to have effect in accordance with the terms of the revocation.

Notification of certain events

112X Notice when order made, varied, revoked etc

(1) If a notifiable event occurs in relation to an administration order, the proper county court must send notice of the event to the creditor under every scheduled debt.

(2) There is a notifiable event in any of the following cases—

(a) when the administration order is made;

(b) when a debt is scheduled to the administration order at any time after the making of the order;

(c) when the administration order is varied;

(d) when the administration order is revoked;

(e) when the proper county court is given notice under any of the provisions listed in section 112K(7) (effect of enforcement restriction order or debt repayment plan on administration order).

Total amount of qualifying debts not properly calculated

112Y Failure to take account of all qualifying debts

(1) This section applies if—

(a) an administration order has been made, but

(b) it becomes apparent that the total amount of the debtor's qualifying debts was not properly calculated for the purposes of section 112B(6), because of an undeclared debt.

(2) A debt is undeclared if it ought to have been, but was not, taken into account in the calculation for the purposes of section 112B(6).

(3) If these conditions are met—

(a) the undeclared debt is due (whether it became due before or after the making of the order);

(b) the total debt is less than, or the same as, the prescribed maximum;

the proper county court must schedule the undeclared debt to the order.

(4) If these conditions are met—

(a) the undeclared debt is not due;

(b) the total debt is less than, or the same as, the prescribed maximum;

the proper county court must schedule the undeclared debt to the order when the debt becomes due.

(5) If the total debt is more than the prescribed maximum, the proper county court must revoke the administration order (whether or not the undeclared debt is due).

(6) In this section "total debt" means the total amount of the debtor's qualifying debts (including the undeclared debt).

(7) Subsections (3) and (4) are subject to section 112AG(5).

Interpretation

112Z Introduction

Sections 112AA to 112AH apply for the purposes of this Part.

112AAMain definitions

(1) In this Part—

"administration order" has the meaning given by section 112A;

"debtor" has the meaning given by section 112B;

"prescribed maximum" means the amount prescribed in regulations for the purposes of section 112B(6);

"prescribed minimum" means the amount prescribed in regulations for the purposes of section 112B(7);

"qualifying creditor" means a creditor under a qualifying debt.

(2) References to the currency of an administration order are references to the period which—

(a) begins when the order first has effect, and

(b) ends when the order ceases to have effect.

(3) In relation to an administration order, references to the proper county court are references to the county court that made the order.

(4) But that is subject to rules of court as to the venue for, and transfer of, proceedings in county courts.

112ABExpressions relating to debts

(1) All debts are qualifying debts, except for the following—
  (a) any debt secured against an asset;
  (b) any debt of a description specified in regulations.

(2) A business debt is any debt (whether or not a qualifying debt) which is incurred by a person in the course of a business.

(3) Only debts that have already arisen are included in references to debts; and accordingly such references do not include any debt that will arise only on the happening of some future contingency.

112AC Inability to pay debts

(1) In a case where an individual is the debtor under a debt that is repayable by a single payment, the debtor is to be regarded as unable to pay the debt only if—
  (a) the debt has become due;
  (b) the debtor has failed to make the single payment; and
  (c) the debtor is unable to make that payment.

(2) In a case where an individual is the debtor under a debt that is repayable by a number of payments, the debtor is to be regarded as unable to pay the debt only if—
  (a) the debt has become due;
  (b) the debtor has failed to make one or more of the payments; and
  (c) the debtor is unable to make all of the missed payments.

112AD Calculating the debtor's qualifying debts

(1) The total amount of a debtor's qualifying debts is to be calculated in accordance with subsections (2) and (3).

(2) All of the debtor's qualifying debts which have arisen before the calculation must be taken into account (whether or not the debts are already due at the time of the calculation).

(3) Regulations must make further provision about how the total amount of a debtor's qualifying debts is to be calculated.

(4) Regulations may make provision about how the amount of any particular qualifying debt is to be calculated.

(5) That includes the calculation of the amount of a debt for these purposes—
  (a) calculating the total amount of the debtor's qualifying debts;
  (b) scheduling the debt to an administration order.

112AE Calculating the debtor's surplus income

(1) The debtor's surplus income is to be calculated in accordance with regulations.

(2) Regulations under this section must, in particular, make the following provision—
  (a) provision about what is surplus income;

(b) provision about the period by reference to which the debtor's surplus income is to be calculated.

(3) Regulations under this section may, in particular, provide for the debtor's assets to be taken account of when calculating his surplus income.

112AF Debts becoming due

(1) A debt that is repayable by a single payment becomes due when the time for making that payment is reached.

(2) A debt that is repayable by a number of payments becomes due when the time for making the first of the payments is reached.

112AG Scheduling and de-scheduling debts

(1) A debt is scheduled to an administration order if the relevant information is included in a schedule to the order.

(2) A debt is de-scheduled if the relevant information is removed from a schedule in which it was included as mentioned in subsection (1).

(3) In relation to a debt, the relevant information is—
(a) the amount of the debt, and
(b) the name of the creditor under the debt.

(4) A scheduled debt is a debt that is scheduled to an administration order.

(5) The proper county court must not schedule a debt to an administration order unless the court has had regard to any representations made by any person about why the debt should not be scheduled.

(6) But subsection (5) does not apply to any representations which are made by the debtor in relation to the scheduling of a debt under section 112Y.

(7) The proper county court must not de-schedule a debt unless the court has had regard to any representations made by any person about why the debt should not be de-scheduled.

(8) But subsection (7) does not apply in relation to the de-scheduling of a debt under section 112Q.

(9) A court must not schedule a debt to an administration order, or de-schedule a debt, except in accordance with the provisions of this Part.

112AH The AO, voluntary arrangement and bankruptcy exclusions

(1) The debtor is excluded under the AO exclusion if—
(a) an administration order currently has effect in respect of him, or
(b) an administration order has previously had effect in respect of him, and the period of 12 months — beginning with the day when that order ceased to have effect — has yet to finish.

(2) But in a case that falls within subsection (1)(b), the debtor is not excluded under the AO exclusion if the previous administration order—

(a) ceased to have effect in accordance with any of the provisions listed in section 112K(7) (effect of enforcement restriction order or debt repayment plan on administration order), or

(b) was revoked in accordance with section 112U(1)(b) (debtor no longer has any qualifying debts).

(3) The debtor is excluded under the voluntary arrangement exclusion if—

(a) an interim order under section 252 of the Insolvency Act 1986 has effect in respect of him (interim order where debtor intends to make proposal for voluntary arrangement), or

(b) he is bound by a voluntary arrangement approved under Part 8 of the Insolvency Act 1986.

(4) The debtor is excluded under the bankruptcy exclusion if—

(a) a petition for a bankruptcy order to be made against him has been presented but not decided, or

(b) he is an undischarged bankrupt.

Regulations

112AI Regulations under this Part

(1) It is for the Lord Chancellor to make regulations under this Part.

(2) Any power to make regulations under this Part is exercisable by statutory instrument.

(3) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament."

(2) Schedule 15 makes amendments consequential on the substitution of the new Part 6 in the 1984 Act.

(3) This section does not apply to any case in which an administration order was made, or an application for such an order was made, before the day on which this section comes into force.

CHAPTER 2

ENFORCEMENT RESTRICTION ORDERS

89 Enforcement restriction orders

(1) After Part 6 of the County Courts Act 1984 (c. 28) (administration orders)

insert—

"PART 6A

ENFORCEMENT RESTRICTION ORDERS

Enforcement restriction orders

117A Enforcement restriction orders

(1) An enforcement restriction order is an order that imposes the requirements specified in sections 117C to 112I on certain creditors.

(2) An enforcement restriction order may also impose a requirement in accordance with section 117F on the debtor.

117B Power to make order

(1) A county court may make an enforcement restriction order if the conditions in subsections (2) to (8) are met.

(2) The order must be made in respect of an individual who is a debtor under two or more qualifying debts.

(3) That individual ("the debtor") must not be a debtor under any business debts.

(4) The debtor must not be excluded under any of the following—
(a) the ERO exclusion;
(b) the voluntary arrangement exclusion;
(c) the bankruptcy exclusion.

(5) The debtor must be unable to pay one or more of his qualifying debts.

(6) The debtor must be suffering from a sudden and unforeseen deterioration in his financial circumstances.

(7) There must be a realistic prospect that the debtor's financial circumstances will improve within the period of six months beginning when the order is made.

(8) It must be fair and equitable to make the order.

(9) Before making an enforcement restriction order, the county court must have regard to any representations made by any person about why the order should not be made.

(10) Subsection (9) is subject to Civil Procedure Rules.

Requirements imposed by order

117C Presentation of bankruptcy petition

(1) An enforcement restriction order must, during the currency of the order, impose the following requirement.

(2) The requirement is that no qualifying creditor of the debtor is to present a bankruptcy petition against the debtor in respect of a qualifying debt, unless the creditor has the permission of the proper county court.

(3) The proper county court may give permission for the purposes of subsection (2) subject to such conditions as it thinks fit.

117D Remedies other than bankruptcy

(1) An enforcement restriction order must, during the currency of the order, impose the following requirement.

(2) The requirement is that no qualifying creditor of the debtor is to pursue any remedy for the recovery of a qualifying debt unless—

(a) regulations under subsection (3) provide otherwise, or

(b) the creditor has the permission of the proper county court.

(3) Regulations may specify classes of debt which are exempted (or exempted for specified purposes) from any requirement imposed by subsection (2).

(4) The proper county court may give permission for the purposes of subsection (2)(b) subject to such conditions as it thinks fit.

(5) This section does not have any effect in relation to bankruptcy proceedings.

117E Stopping supplies of gas or electricity

(1) An enforcement restriction order must, during the currency of the order, impose the requirement in subsection (3).

(2) In relation to that requirement, a domestic utility creditor is any person who—

(a) provides the debtor with a supply of mains gas or mains electricity for the debtor's own domestic purposes, and

(b) is a creditor under a qualifying debt that relates to the provision of that supply.

(3) The requirement is that no domestic utility creditor is to stop the supply of gas or electricity, or the supply of any associated services, except in the cases in subsections (4) to (6).

(4) The first case is where the reason for stopping a supply relates to the non-payment by the debtor of charges incurred in connection with that supply after the making of the enforcement restriction order.

(5) The second case is where the reason for stopping a supply is unconnected with the non-payment by the debtor of any charges incurred in connection with—

(a) that supply, or

(b) any other supply of mains gas or mains electricity, or of associated services, that is provided by the domestic utility creditor.

(6) The third case is where the proper county court gives permission to stop a supply.

(7) The proper county court may give permission for the purposes of subsection (6) subject to such conditions as it thinks fit.

(8) A supply of mains gas is a supply of the kind mentioned in section 5(1)(b) of the Gas Act 1986 (c. 44).

(9) A supply of mains electricity is a supply of the kind mentioned in section 4(1)(c) of the Electricity Act 1989 (c. 29).

117F Repayment requirement

(1) An enforcement restriction order may impose a repayment requirement on the debtor.

(2) The county court may include the requirement in the order at the time it makes the order.

(3) The proper county court may, at any time after an enforcement restriction order has been made, vary the order so as to include a repayment requirement.

(4) The proper county court may, at any time when an enforcement restriction order includes a repayment requirement, vary the order so as to—
(a) remove the repayment requirement, or
(b) include a different repayment requirement.

(5) A repayment requirement is a requirement that the debtor make payments, in respect of one or more of his qualifying debts, to the person or persons to whom he owes the debt or debts.

(6) A county court may include a repayment requirement in an order only if—
(a) the debtor has surplus income at the time of the inclusion of the requirement, and
(b) the inclusion of the requirement would be fair and equitable.

(7) The debtor's surplus income is to be calculated in accordance with regulations.

(8) Regulations under subsection (7) must make the following provision—
(a) provision about what is surplus income;
(b) provision about the period by reference to which the debtor's surplus income is to be calculated.

(9) Regulations under subsection (7) may, in particular, provide for the debtor's assets to be taken account of for the purpose of calculating his surplus income.

(10) The proper county court may vary an enforcement restriction order under this section—
(a) of its own motion;
(b) on the application of the debtor;
(c) on the application of a qualifying creditor.

Making an order

117G Application for order

(1) A county court may make an enforcement restriction order only on the application of the debtor.

(2) The debtor may make an application for an enforcement restriction order whether or not a judgment has been obtained against him in respect of any of his debts.

117H Duration

(1) A county court may, at the time it makes an enforcement restriction order, specify a day on which the order will cease to have effect.

(2) The court may not specify a day which falls after the last day of the maximum permitted period.

(3) If the court specifies a day under this section, the order ceases to have effect on that day.

(4) If the court does not specify a day under this section, the order ceases to have effect at the end of the maximum permitted period.

(5) The maximum permitted period is the period of 12 months beginning with the day on which the order is made.

(6) This section is subject to—
(a) section 112S (variation of duration);
(b) section 112W (effect of revocation);

(7) This section is also subject to the following (effect of administration order or debt repayment plan on enforcement restriction order)—
(a) section 112L of this Act;
(b) any provision made in regulations by virtue of section 97(6) of the Tribunals, Courts and Enforcement Act 2006.

Effects of order

117I Effect on other debt management arrangements

(1) This section applies if—
(a) an enforcement restriction order is made, and
(b) immediately before the order is made, other debt management arrangements are in force in respect of the debtor.

(2) The other debt management arrangements cease to be in force when the enforcement restriction order is made.

(3) If the proper county court is aware of the other debt management arrangements, the court must give the relevant authority notice that the order has been made.

(4) In a case where the proper county court is aware of those arrangements at the time it makes the order, it must give the notice as soon as practicable after making the order.

(5) In a case where the proper county court only becomes aware of those arrangements after it makes the order, it must give the notice as soon as practicable after becoming aware of them.

(6) "Other debt management arrangements" means any of the following—
(a) an administration order under Part 6 of this Act;
(b) a debt relief order under Part 7A of the Insolvency Act 1986;

(c) a debt repayment plan arranged in accordance with a debt management scheme that is approved under Chapter 4 of Part 5 of the Tribunals, Courts and Enforcement Act 2006.

(7) "The relevant authority" means—

(a) in relation to an administration order: the proper county court (within the meaning of Part 6);

(b) in relation to a debt relief order: the official receiver;

(c) in relation to a debt repayment plan: the operator of the debt management scheme in accordance with which the plan is arranged.

(8) For the purposes of this section a debt relief order is "in force" if the moratorium applicable to the order under section 251G of the Insolvency Act 1986 has not yet ended.

117J Duty to provide information

(1) This section applies if, and for as long as, an enforcement restriction order has effect in respect of a debtor.

(2) The debtor must, at the prescribed times, provide the proper county court with particulars of his—

(a) earnings,

(b) income,

(c) assets, and

(d) outgoings.

(3) The debtor must provide particulars of those matters—

(a) as the matters are at the time the particulars are provided, and

(b) as the debtor expects the matters to be at such times in the future as may be prescribed.

(4) If the debtor intends to dispose of any of his property he must, within the prescribed period, provide the proper county court with particulars of the following matters—

(a) the property he intends to dispose of;

(b) the consideration (if any) he expects will be given for the disposal;

(c) such other matters as may be prescribed;

(d) such other matters as the court may specify.

(5) But subsection (4) does not apply if the disposal is of—

(a) goods that are exempt goods for the purposes of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006, or

(b) prescribed property.

(6) The duty under subsection (4) to provide the proper county court with particulars of a proposed disposal of property applies whether the debtor is the sole owner, or one of several owners, of the property.

(7) In any provision of this section "prescribed" means prescribed in regulations for the purposes of that provision.

117K Offence if information not provided

(1) A person commits an offence if he fails to comply with—

(a) section 117J(2) and (3), or
(b) section 117J(4).

(2) A person who commits an offence under subsection (1) may be ordered by a judge of the proper county court to pay a fine of not more than £250 or to be imprisoned for not more than 14 days.

(3) Where under subsection (2) a person is ordered to be imprisoned by a judge of the proper county court, the judge may at any time—
(a) revoke the order, and
(b) if the person is already in custody, order his discharge.

(4) Section 129 of the County Courts Act 1984 (c. 28) (enforcement of fines) applies to payment of a fine imposed under subsection (2).

(5) For the purposes of section 13 of the Administration of Justice Act 1960 (c. 65) (appeal in cases of contempt of court), subsection (2) is to be treated as an enactment enabling a county court to deal with an offence under subsection (1) as if it were a contempt of court.

(6) A district judge, assistant district judge or deputy district judge shall have the same powers under this section as a judge of a county court.

117L Existing county court proceedings to be stayed

(1) This section applies if these conditions are met—
(a) an enforcement restriction order is made;
(b) proceedings in a county court (other than bankruptcy proceedings) are pending against the debtor in respect of a qualifying debt;
(c) by virtue of a requirement included in the order by virtue of section 117D, the creditor under the qualifying debt is not entitled to continue the proceedings in respect of the debt;
(d) the county court receives notice of the enforcement restriction order.

(2) The county court must stay the proceedings.

(3) The county court—
(a) may allow costs already incurred by the creditor, and
(b) if the court allows such costs, may on application or of its own motion add them to the debt owed to the creditor.

117M Charges

(1) This section applies during, and after, the currency of an enforcement restriction order.

(2) A qualifying creditor may not make any charge in respect of a protected qualifying debt, unless the charge—
(a) is interest, or
(b) is not interest but relates to a time before or after the currency of the order.

(3) A charge made in breach of subsection (2) is not recoverable.

(4) In subsection (2) "protected qualifying debt" means any qualifying debt under which the debtor was a debtor at some time during the currency of the enforcement restriction order.

Variation of duration

117N Variation of duration

(1) The proper county court may vary an enforcement restriction order so as to specify a day, or (if a day has already been specified under section 117H or this section) a different day, on which the order will cease to have effect.

(2) But the new termination day must fall on or before the last day of the maximum permitted period.

(3) If the proper county court varies an enforcement restriction order under subsection (1), the order ceases to have effect on the new termination day.

(4) The power under this section is exercisable—
(a) on the application of the debtor;
(b) on the application of a qualifying creditor;
(c) of the court's own motion.

(5) In this section—
(a) "new termination day" means the day on which the order will cease to have effect in accordance with the variation under subsection (1);
(b) "maximum permitted period" means the period of 12 months beginning with the day on which the order was originally made.

(6) This section is subject to section 112W (effect of revocation).

Revocation of order

117O Duty to revoke order

(1) The proper county court must revoke an enforcement restriction order in either of these cases—
(a) where it becomes apparent that, at the time the order was made, the condition in subsection 117B(2) was not met (debtor in fact did not have two or more qualifying debts);
(b) where the debtor is no longer a debtor under any qualifying debts.

(2) The proper county court must revoke an enforcement restriction order in either of these cases—
(a) where it becomes apparent that, at the time the order was made, the condition in subsection 117B(3) was not met (debtor in fact had business debt), and he is still a debtor under the business debt, or any of the business debts, in question;
(b) where the debtor subsequently becomes a debtor under a business debt, and he is still a debtor under that debt.

(3) The proper county court must revoke an enforcement restriction order where it becomes apparent that, at the time the order was made, the condition in section 117B(4) was not met (debtor in fact excluded under ERO, voluntary arrangement or bankruptcy exclusion).

(4) The proper county court must revoke an enforcement restriction order where, after the order is made—

(a) the debtor becomes excluded under the voluntary arrangement exclusion, or

(b) a bankruptcy order is made against the debtor, and is still in force.

(5) The proper county court must revoke an enforcement restriction order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in section 117B(5) was not met (debtor in fact able to pay qualifying debts);

(b) where the debtor is now able to pay all of his qualifying debts.

(6) The proper county court must revoke an enforcement restriction order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in section 117B(6) was not met (debtor in fact not suffering from sudden and unforeseen deterioration in financial circumstances);

(b) where the debtor is no longer suffering from the deterioration in financial circumstances which was taken into account for the purposes of section 117B(6) (even if he is suffering from some other sudden and unforeseen deterioration in his financial circumstances).

(7) The proper county court must revoke an enforcement restriction order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in section 117B(7) was not met (in fact no realistic prospect of improvement in debtor's financial circumstances);

(b) where there is no longer a realistic prospect that the debtor's financial circumstances will improve during the period within which the order would continue to have effect (if not revoked).

(8) The proper county court must revoke an enforcement restriction order in either of these cases—

(a) where it becomes apparent that, at the time the order was made, the condition in section 117B(8) was not met (not in fact fair and equitable to make order);

(b) where it is not fair and equitable for the order to continue to have effect.

117P Power to revoke order

(1) The proper county court may revoke an enforcement restriction order in any case where there is no duty under this Part to revoke it.

(2) The power of revocation under this section may, in particular, be exercised in any of the following cases—

(a) where the order includes, or has previously included, a repayment requirement, and the debtor has failed to comply with that requirement;

(b) where the debtor has failed to provide the proper county court with the particulars required by—

(i) section 117J(2) and (3), or

(ii) section 117J(4).

(3) The power of revocation under this section is exercisable—

(a) on the application of the debtor;

(b) on the application of a qualifying creditor;

(c) of the court's own motion.

117Q Effect of revocation

(1) This section applies if, under any duty or power in this Part, the proper county court revokes an enforcement restriction order.

(2) The order ceases to have effect in accordance with the terms of the revocation.

Notification of certain events

117R Notice when order made, varied, revoked etc

(1) If a notifiable event occurs in relation to an enforcement restriction order, the proper county court must give notice of the event to every identified qualifying creditor of the debtor.

(2) There is a notifiable event in any of the following cases—

(a) when the enforcement restriction order is made;

(b) when the enforcement restriction order is varied;

(c) when the enforcement restriction order is revoked;

(d) when the proper county court is given notice under any of the provisions listed in section 117H(7) (effect of administration order or debt repayment plan on enforcement restriction order).

(3) A person is an identified qualifying creditor of the debtor if—

(a) the debtor has notified the proper county court, or another court whilst it was previously the proper county court, that the person is a qualifying creditor, or

(b) the proper county court is satisfied that the person is a qualifying creditor.

Interpretation

117S Introduction

Sections 117T to 117W apply for the purposes of this Part.

117T Main definitions

(1) In this Part—

"enforcement restriction order" has the meaning given by section 117A;

"debtor" has the meaning given by section 117B;

"qualifying creditor" means a creditor under a qualifying debt.

(2) References to the currency of an enforcement restriction order are references to the period which—

(a) begins when the order first has effect, and

(b) ends when the order ceases to have effect.

(3) In relation to an enforcement restriction order, references to the proper county court are references to the county court that made the order.

(4) But that is subject to rules of court as to the venue for, and transfer of, proceedings in county courts.

117U Expressions relating to debts

(1) All debts are qualifying debts, except for the following—

(a) any debt secured against an asset;

(b) any debt of a description specified in regulations.

(2) A business debt is any debt (whether or not a qualifying debt) which is incurred by a person in the course of a business.

(3) Only debts that have already arisen are included in references to debts; and accordingly such references do not include any debt that will arise only on the happening of some future contingency.

117V Inability to pay debts

(1) In a case where an individual is the debtor under a debt that is repayable by a single payment, the debtor is to be regarded as unable to pay the debt only if—

(a) the time for making the payment has been reached;

(b) the debtor has failed to make the single payment; and

(c) the debtor is unable to make that payment.

(2) In a case where an individual is the debtor under a debt that is repayable by a number of payments, the debtor is to be regarded as unable to pay the debt only if—

(a) the time for making the first of the payments has been reached;

(b) the debtor has failed to make one or more of the payments; and

(c) the debtor is unable to make all of the missed payments.

117W The ERO, voluntary arrangement and bankruptcy exclusions

(1) The debtor is excluded under the ERO exclusion if—

(a) an enforcement restriction order currently has effect in respect of him, or

(b) an enforcement restriction order has previously had effect in respect of him, and the period of 12 months — beginning with the day when that order ceased to have effect — has yet to finish.

(2) But in a case that falls within subsection (1)(b), the debtor is not excluded under the ERO exclusion if the previous enforcement restriction order—

(a) ceased to have effect in accordance with any of the provisions listed in section 117H(7) (effect of administration order or debt repayment plan on enforcement restriction order), or

(b) was revoked in accordance with section 117O(1)(b) (debtor no longer has any qualifying debts).

(3) The debtor is excluded under the voluntary arrangement exclusion if—

(a) an interim order under section 252 of the Insolvency Act 1986 has effect in respect of him (interim order where debtor intends to make proposal for voluntary arrangement), or

(b) he is bound by a voluntary arrangement approved under Part 8 of the Insolvency Act 1986.

(4) The debtor is excluded under the bankruptcy exclusion if—

(a) a petition for a bankruptcy order to be made against him has been presented but not decided, or

(b) he is an undischarged bankrupt.

Regulations

117X Power to make regulations

(1) It is for the Lord Chancellor to make regulations under this Part.

(2) Any power to make regulations under this Part is exercisable by statutory instrument.

(3) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament."

(2) In Schedule 6A to the Magistrates' Courts Act 1980 (c. 43) (fines that may be altered under section 143 of the 1980 Act) insert the following entry at the appropriate place in the entries relating to the County Courts Act 1984 (c. 28)—

"Section 117K(1) (enforcement restriction orders: failure to provide information)	£250"

(3) In section 98 of the Courts Act 2003 (c. 39) (register of judgments and orders etc.), in subsection (1), for paragraph (d) substitute—

"(d) enforcement restriction orders under Part 6A of that Act (power of county courts to make enforcement restriction orders);".

CHAPTER 3

DEBT RELIEF ORDERS

90 Debt relief orders and debt relief restrictions orders etc

(1) In the Second Group of Parts of the Insolvency Act 1986 (c. 45) (insolvency of individuals), before Part 8 there is inserted, as Part 7A, the Part set out in Schedule 16.

(2) After Schedule 4 to that Act there is inserted, as Schedules 4ZA and 4ZB, the Schedules set out in Schedules 17 and 18.

(3) Schedule 19 (which makes amendments consequential on provisions contained in Schedule 16) has effect.

CHAPTER 4

DEBT MANAGEMENT SCHEMES

Introductory

91 Debt management schemes

(1) A debt management scheme is a scheme that meets the conditions in this section.

(2) The scheme must be open to some or all non-business debtors.

(3) A scheme is open to a non-business debtor if it allows him to make a request to the scheme operator for a debt repayment plan to be arranged for him.

(4) The scheme must provide that, if such a request is made—
  (a) a decision must be made about whether a debt repayment plan is to be arranged for the non-business debtor, and
  (b) such a plan must be arranged (if that is the decision made).

(5) The scheme must be operated by a body of persons (whether a body corporate or not).

92 Debt repayment plans

(1) A debt repayment plan is a plan that meets the conditions in this section.

(2) The plan must specify some or all of the debtor's debts.

(3) The plan must require the debtor to make payments in respect of each of the specified debts.

(4) It does not matter if—
  (a) the plan requires payments of different amounts to be made in respect of a specified debt at different times;
  (b) the payments that the plan requires to be made in respect of a specified debt would, if all made, repay the debt only in part.

Approval of schemes

93 Approval by supervising authority

(1) The supervising authority may approve one or more debt management schemes.

(2) Regulations may make provision about any or all of the following—
  (a) conditions that must be met before the supervising authority may approve a debt management scheme;

(b) considerations that the supervising authority must, or must not, take into account in deciding whether to approve a debt management scheme.

(3) Regulations under this section may, in particular, make provision about conditions or considerations that relate to any matter listed in Schedule 20.

(4) The supervising authority may approve a debt management scheme whether a body is—
(a) operating the scheme at the time of the approval, or
(b) proposing to operate the scheme from a time in the future.

94 Applications for approval

(1) Regulations may specify a procedure for making an application for approval of a debt management scheme.

(2) Regulations under this section may, in particular, specify a procedure that requires any or all of the following—
(a) an application to be made in a particular form;
(b) information to be supplied in support of an application;
(c) a fee to be paid in respect of an application.

95 Terms of approval

(1) The approval of a debt management scheme has effect subject to any relevant terms.

(2) Relevant terms are—
(a) the terms (if any) specified in regulations that relate to the approval, and
(b) the terms (if any) that the supervising authority includes in the approval.

(3) Relevant terms may, in particular, deal with all or any of the following—
(a) the start of the approval;
(b) the expiry of the approval;
(c) the termination of the approval, including termination because of the breach of some other term.

(4) Relevant terms may, in particular, impose requirements on the scheme operator.

(5) Relevant terms may, in particular, relate to any matter listed in Schedule 20.

(6) Regulations may make provision about terms that the supervising authority must, or must not, include in an approval.

Plans arranged

96 Discharge from specified debts

(1) This section applies if a debt repayment plan is arranged for a non-business debtor in accordance with an approved scheme.

(2) The debtor is discharged from the debts that are specified in the plan.

(3) The discharge from a particular specified debt takes effect at the time when all the required payments have been made.

(4) The required payments are the payments in respect of the debt that are required by the provision included in the plan in accordance with section 92(3).

97 Other effects

(1) Regulations may make provision about the effects of either or both of the following—

(a) a non-business debtor making a relevant request;

(b) a debt repayment plan being arranged in consequence of a relevant request.

(2) Regulations under subsection (1) may, in particular, provide for the variation or removal of any or all of the following obligations during the relevant period—

(a) obligations to repay debts, so far as the obligations arose before the start of the relevant period;

(b) obligations to pay interest, fees or other charges in respect of debts.

(3) Regulations under subsection (1) may, in particular, provide for the variation or removal of any or all of the following rights during the relevant period—

(a) rights to present bankruptcy petitions against the debtor;

(b) rights to join in bankruptcy proceedings brought against the debtor;

(c) rights to pursue remedies (other than bankruptcy) for the recovery of debts;

(d) rights to charge sums by way of interest, fee or other charge in respect of debts;

(e) rights of suppliers of gas or electricity (or particular classes of such suppliers) to stop supplies of gas or electricity, or supplies of any associated services.

(4) Regulations under subsection (1) may, in particular, provide for the stay of court proceedings which are pending against the debtor in respect of debts.

(5) Regulations under subsection (1) may, in particular, provide for the variation or removal, after the end of the relevant period, of rights to charge sums by way of interest, fee or other charge in respect of debts owed by the debtor during the relevant period.

(6) Regulations under subsection (1) may, in particular, make provision about the effects on any existing arrangements that relate to the management of the debtor's debts (including these kinds of arrangements: an administration order under Part 6 of the County Courts Act 1984, an enforcement restriction order under Part 6A of that Act or a debt relief order under Part 7A of the Insolvency Act 1986).

(7) That includes provision for the existing arrangements to cease to have effect.

(8) Regulations under subsection (1) may not make provision to discharge the debtor from any debt.

(9) In this section—

"relevant request" means a request to the operator of an approved scheme for a debt repayment plan to be arranged in accordance with the scheme;

"relevant period" means—

(a) in relation to a case falling within subsection (1)(a): the period prescribed in, or determined in accordance with, regulations made for the purposes of that subsection;

(b) in relation to a case falling within subsection (1)(b): the period prescribed in, or determined in accordance with, regulations made for the purposes of that subsection.

98 Registration of plans

(1) Regulations may make provision about the registration of debt repayment plans arranged for non-business debtors in accordance with approved schemes.

(2) In subsection (1) "registration" means registration in the register maintained under section 98 of the Courts Act 2003 (c. 39) (the register of judgments and orders etc).

(3) Regulations under this section may amend section 98 of the 2003 Act.

Appeals

99 Right of appeal

(1) This section applies if a debt repayment plan is arranged for a debtor in accordance with an approved scheme.

(2) An affected creditor may appeal to a county court against any of the following—

(a) the fact that the plan has been arranged;

(b) the fact that a debt owed to the affected creditor has been specified in the plan;

(c) the terms of the plan (including any provision included in the plan in accordance with section 92(3)).

(3) Subsection (2)(c) does not allow an affected creditor to appeal against the fact that a debt owed to any other creditor has been specified in the plan.

(4) In this section "affected creditor" means the creditor under any debt which is specified in the plan.

100 Dealing with appeals

(1) This section applies if an appeal is made to a county court under section 99.

(2) The proper county court may determine the appeal in any way that it thinks fit.

(3) The proper county court may make such orders as may be necessary to give effect to the determination of the appeal.

(4) The proper county court may, in particular, order the scheme operator to do any of the following—

(a) to reconsider the decision to arrange the plan;

(b) to reconsider any decision about the terms of the plan;
(c) to modify the debt repayment plan;
(d) to revoke the debt repayment plan.

(5) The proper county court may make such interim provision as it thinks fit in relation to the period before the appeal is determined.

(6) The proper county court is the county court to which the appeal is made.

(7) But that is subject to rules of court as to the venue for, and transfer of, proceedings in county courts.

Approved schemes: fees

101 Fees under approved scheme

(1) Regulations may make provision about the fees that the operator of an approved scheme may charge in connection with the operation of the scheme.

(2) Regulations under this section may, in particular, make provision about any or all of the following—
(a) the matters in relation to which fees may be charged;
(b) the descriptions of persons who may be charged fees;
(c) the levels of fees that may be charged.

(3) That includes provision that specifies—
(a) the precise fees that the scheme operator may charge, or
(b) requirements (including limits) with which the scheme operator must comply when determining the level of fees that it will charge.

(4) The Lord Chancellor must make regulations under this section to secure that the operator of an approved scheme may charge only reasonable fees in connection with the operation of the scheme.

(5) Fees are reasonable if they do not exceed the costs incurred by the operator, taking one year with another, in connection with the operation of the scheme.

Termination of approval

102 Procedure for termination

(1) Regulations may specify a procedure for terminating the approval of a debt management scheme.

(2) Regulations under this section may, in particular, specify a procedure that requires any or all of the following—
(a) notice of, or the reasons for, an intended termination to be given (whether to the supervising authority, the scheme operator, the Lord Chancellor or any other person);
(b) conditions to be met before a termination takes effect;
(c) a particular period of time to elapse before a termination takes effect.

103 Terminating an approval

The approval of a debt management scheme may be terminated only if the termination is in accordance with all of the following (so far as they are relevant)—

(a) any terms to which the approval is subject by virtue of section 95;

(b) any provision made in regulations under section 102;

(c) any other provision made in other regulations under this Chapter.

104 Alternatives to termination

(1) Regulations may make provision to allow the supervising authority to deal with a termination case other than by terminating the approval.

(2) A termination case is a case in which the supervising authority would be entitled to terminate the approval of a debt management scheme.

(3) Regulations under this section may, in particular, make provision to allow the supervising authority to transfer the operation of the scheme—

(a) to itself, or

(b) to any other body.

Effects of end of approval

105 Effects of end of approval

(1) Regulations may make provision about the effects if the approval of a debt management scheme comes to an end.

(2) Regulations under this section may, in particular, make provision about the treatment of debt repayment plans arranged for non-business debtors before the scheme came to an end.

(3) That includes provision to treat a plan—

(a) as though the approval had not come to an end, or

(b) as though the plan had been made in accordance with a different approved scheme.

(4) Regulations under this section may, in particular, make provision about cases where, at the time the scheme comes to an end, the scheme operator is in breach of a relevant obligation.

(5) That includes provision to ensure that the operator is not released from the relevant obligation by virtue of the termination.

(6) In subsections (4) and (5) "relevant obligation" means any obligation (including a requirement or condition) however arising, that relates to—

(a) the scheme in question (including its operation),

(b) the approval of that scheme, or

(c) the termination of that approval.

The supervising authority

106 The supervising authority

(1) The supervising authority is—
  (a) the Lord Chancellor, or
  (b) any person that the Lord Chancellor has authorised to approve debt management schemes under section 93.

(2) Subsections (3) and (4) apply in any case where an authorisation under subsection (1)(b) starts or ends.

(3) The start or end of the authorisation does not affect the validity of an approval that is in force at the relevant time.

(4) The new supervising authority may exercise all of its functions in relation to an approval that is in force at the relevant time as though it had given the approval itself.

(5) In this section—
  "approval" means an approval of a debt management scheme given under section 93;
  "relevant time" means the time when an authorisation starts or ends.

107 Financial support

(1) This section applies if the Lord Chancellor is not the supervising authority.

(2) The Lord Chancellor may make payments to the supervising authority in respect of costs that it has incurred in exercising its functions in connection with this Chapter.

(3) The payments may be made out of money provided by Parliament.

Various

108 Regulations

(1) It is for the Lord Chancellor to make regulations.

(2) The power to make regulations is exercisable by statutory instrument.

(3) A statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) But subsection (3) does not apply in the case of a statutory instrument that contains either or both of the following—
  (a) the first regulations under a particular section of this Chapter;
  (b) any regulations under section 98 that amend section 98 of the Courts Act 2003 (c. 39).

(5) In such a case the statutory instrument may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) Regulations may make different provision in relation to different cases.

(7) Regulations may make any or all of the following provision if the Lord Chancellor thinks it is necessary or expedient—

(a) supplementary, incidental or consequential provision;

(b) transitory, transitional or saving provision.

(8) Provision under subsection (7) may, in particular, amend section 99 or 100 (including by making provision for further grounds of appeal).

(9) In this section (except in subsection (4)) "regulations" means regulations under any provision of this Chapter.

109 Interpretation

In this Chapter—

"affected creditor" has the meaning given by section 99;

"approved scheme" means a debt management scheme that is approved under section 93;

"business debt" means a debt incurred in the course of a business;

"debt management scheme" has the meaning given by section 91;

"debt repayment plan" has the meaning given by section 92;

"non-business debtor" means any individual who—

(a) is a debtor under one or more debts, but

(b) is not a debtor under any business debts;

"scheme operator" means the body that operates a debt management scheme;

"specified debt" means a debt specified in a debt repayment plan;

"supervising authority" has the meaning given by section 106.

PART 6

MISCELLANEOUS

Compulsory purchase

110 Enforcement by enforcement officers

(1) In section 3 of the Lands Clauses Consolidation Act 1845 (c. 18) (interpretations in this and the special Act), at the end there is inserted—

"Where any matter in relation to any lands is required to be done by an enforcement officer, the expression "the enforcement officer" means the officer or officers identified for that purpose in paragraph 3A of Schedule 7 to the Courts Act 2003."

(2) In section 91 of that Act (proceedings in case of refusal to deliver possession of lands)—

(a) after "the sheriff", where it first occurs, there is inserted "or the enforcement officer",

(b) for "the sheriff", where it next occurs, there is substituted "the person to whom it is issued",

(c) for "the sheriff", where it last occurs, there is substituted "the person executing the warrant", and

(d) the provisions of section 91 become subsection (1) and, after that

subsection, there is inserted—

"(2) If, by virtue of paragraph 3A of Schedule 7 to the Courts Act 2003, the warrant is issued to two or more persons collectively, the duty in subsection (1) to deliver possession of lands shall apply to the person to whom the warrant is allocated in accordance with the approved arrangements mentioned in that Schedule."

(3) Section 13 of the Compulsory Purchase Act 1965 (c. 56) (refusal to give possession to acquiring authority) is amended as follows.

(4) In subsection (1), for the words from "the sheriff" to the end there is substituted—

"(a) the sheriff, or

(b) the enforcement officer,

to deliver possession of it to the person appointed in the warrant to receive it."

(5) In subsection (2), for "the sheriff" there is substituted "the person to whom it is issued".

(6) After subsection (2) there is inserted—

"(2A) If, by virtue of paragraph 3A of Schedule 7 to the Courts Act 2003, the warrant is issued to two or more persons collectively, the duty in subsection (2) of this section shall apply to the person to whom the warrant is allocated in accordance with the approved arrangements mentioned in that Schedule."

(7) In subsection (3), for "the sheriff" there is substituted "the person executing the warrant".

(8) In subsection (6), for "In this section" there is substituted—

"In this section—

"the enforcement officer", in relation to a warrant to deliver possession of land under this section, means the officer or officers identified for that purpose in paragraph 3A of Schedule 7 to the Courts Act 2003, and".

111 Supplementary

(1) Schedule 7 to the Courts Act 2003 (c. 39) (High Court writs of execution) is amended as follows.

(2) After paragraph 3 there is inserted—

"Issue of certain warrants to enforcement officers

3A (1) Sub-paragraph (2) applies for the purpose of identifying the enforcement officer to whom a warrant may be issued under—

(a) section 91(1) of the Lands Clauses Consolidation Act 1845 (proceedings in case of refusal to deliver possession of lands), or

(b) section 13(1) of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority).

(2) The enforcement officer, in relation to such a warrant, is—

(a) the enforcement officer assigned to a relevant district or, if two or more enforcement officers are assigned to that district, those officers collectively, or

(b) a named enforcement officer who, whether or not assigned to a relevant district, has undertaken to execute the warrant.

(3) In sub-paragraph (2), "a relevant district", in relation to a warrant, means—

(a) the district where the land in respect of which the warrant was issued is situated, or

(b) if that land (being land in one ownership) is not situated wholly in one district, a district where any part of that land is situated."

(3) Paragraph 4 is amended as set out in subsections (4) to (7).

(4) In sub-paragraph (1), at the end there is inserted "and warrants issued to one or more enforcement officers under an enactment mentioned in paragraph 3A(1)(a) or (b)".

(5) After sub-paragraph (2) there is inserted—

"(2A) The relevant officer has, in relation to the warrant, the duties, powers, rights, privileges and liabilities that a sheriff of a county would have had at common law if—

(a) the warrant had been issued to him, and

(b) the district in which it is to be executed had been within his county."

(6) For sub-paragraph (3) there is substituted—

"(3) "The relevant officer" means—

(a) in relation to a writ—

(i) if the writ is directed to a single enforcement officer under paragraph 3(1)(a) or (c), that officer;

(ii) if the writ is directed to two or more enforcement officers collectively under paragraph 3(1)(b), the officer to whom, in accordance with approved arrangements, the execution of the writ is allocated,

(b) in relation to a warrant—

(i) if the warrant is issued to a single enforcement officer in accordance with paragraph 3A(2)(a) or (b), that officer;

(ii) if the warrant is issued to two or more enforcement officers collectively in accordance with paragraph 3A(2)(a), the officer to whom, in accordance with approved arrangements, the execution of the warrant is allocated."

(7) For sub-paragraph (4) there is substituted—

"(4) Sub-paragraphs (2) and (2A) apply to a person acting under the authority of the relevant officer as they apply to the relevant officer."

(8) In paragraph 5, after "writ" there is inserted "or warrant".

(9) In paragraph 12, in sub-paragraph (2)(d)(ii), after "officers" there is inserted ", or warrants issued to enforcement officers under an enactment mentioned in paragraph 3A(1)(a) or (b),".

(10) Accordingly—

(a) in section 99 of that Act (High Court writs of execution), in subsection (1), at the end there is inserted "and about warrants issued in connection with the compulsory acquisition of land", and

(b) in Schedule 7 to that Act—

(i) for the heading "High Court Writs of Execution" there is substituted "Enforcement of Certain Writs and Warrants", and

(ii) in the heading immediately preceding paragraph 1, for "of execution" there is substituted "and warrants".

Judicial review

112 Judicial review: power to substitute decision

In section 31 of the Supreme Court Act 1981 (c. 54) (application for judicial review), for subsection (5) there is substituted—

"(5) If, on an application for judicial review, the High Court quashes the decision to which the application relates, it may in addition—

(a) remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or

(b) substitute its own decision for the decision in question.

(5A) But the power conferred by subsection (5)(b) is exercisable only if—

(a) the decision in question was made by a court or tribunal,

(b) the decision is quashed on the ground that there has been an error of law, and

(c) without the error, there would have been only one decision which the court or tribunal could have reached.

(5B) Unless the High Court otherwise directs, a decision substituted by it under subsection (5)(b) has effect as if it were a decision of the relevant court or tribunal."

PART 7

GENERAL

113 Repeals and protected functions of the Lord Chancellor

(1) Schedule 22 contains repeals.

(2) In Schedule 7 to the Constitutional Reform Act 2005 (protected functions of the Lord Chancellor) in Part A of the list in paragraph 4 insert in the appropriate place—

"Tribunals, Courts and Enforcement Act 2006

Part 1

Section 72
Part 4
In Part 5, Chapters 1 and 2".

114 Extent

(1) Parts 1 and 2 and this Part extend to England and Wales, Scotland and Northern Ireland.

(2) The other provisions of this Act extend to England and Wales only.

(3) Subsections (1) and (2) are subject to the following.

(4) These have the same extent as the provisions amended or repealed—
  (a) amendments in section 16(1) and (2);
  (b) amendments and repeals in Schedules 8, 10 and 15;
  (c) repeals in Parts 1 and 2 of Schedule 22.

(5) These are subject to provision in Schedules 12 and 13 about extent—
  (a) amendments and repeals in those Schedules;
  (b) repeals in Parts 3 and 4 of Schedule 22.

115 Commencement and transitional provision

(1) The provisions of this Act, except sections 114, 116 and this section, come into force in accordance with provision made by the Lord Chancellor by order.

(2) The Lord Chancellor may by order make transitional provision or savings in connection with the coming into force of any provision of this Act.

(3) An order under this section may make different provision for different purposes.

(4) Any power to make an order under this section is exercisable by statutory instrument.

116 Short title

This Act may be cited as the Tribunals, Courts and Enforcement Act 2006.

SCHEDULES

SCHEDULE 1

Section 2

SENIOR PRESIDENT OF TRIBUNALS

PART 1

RECOMMENDATIONS FOR APPOINTMENT

Duty to fill vacancies

1 (1) If there is a vacancy in the office of Senior President of Tribunals, the Lord Chancellor must recommend a person for appointment to that office.

(2) Sub-paragraph (1) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled.

The two routes to a recommendation: agreement under this paragraph or selection under Part 2

2 (1) Before the Lord Chancellor may recommend a person for appointment to the office of Senior President of Tribunals, the Lord Chancellor must consult—

(a) the Lord Chief Justice of England and Wales,

(b) the Lord President of the Court of Session, and

(c) the Lord Chief Justice of Northern Ireland.

(2) Sub-paragraphs (3) and (4) apply if—

(a) the outcome of consultation under sub-paragraph (1) is agreement between—

(i) the Lord Chancellor,

(ii) the Lord Chief Justice of England and Wales,

(iii) the Lord President of the Court of Session, and

(iv) the Lord Chief Justice of Northern Ireland,

as to the person to be recommended, and

(b) the person is—

(i) an ordinary judge of the Court of Appeal in England and Wales,

(ii) a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court, or

(iii) a Lord Justice of Appeal in Northern Ireland.

(3) The Lord Chancellor must recommend the person for appointment to the office of Senior President of Tribunals, subject to sub-paragraph (4).

(4) Where the person—

(a) declines to be recommended, or does not agree within a time specified to him for that purpose, or

(b) is otherwise not available within a reasonable time to be recommended,

the Lord Chancellor must, instead of recommending the person for appointment, consult afresh under sub-paragraph (1).

(5) If the Lord Chancellor has consulted under sub-paragraph (1) but sub-paragraphs (3) and (4) do not apply following that consultation, the Lord Chancellor must make a request to the Judicial Appointments Commission for a person to be selected for recommendation for appointment to the office of Senior President of Tribunals.

PART 2

SELECTION BY THE JUDICIAL APPOINTMENTS COMMISSION

Eligibility for selection

3 A person is eligible for selection in pursuance of a request under paragraph 2(5) only if—

(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis,

(b) he is an advocate or solicitor in Scotland of at least seven years' standing, or

(c) he is a barrister or solicitor in Northern Ireland of at least seven years' standing.

The selection process

4 In Chapter 2 of Part 4 of the Constitutional Reform Act 2005 (c. 4) (appointments), after section 75 insert—

"Senior President of Tribunals

75A Sections 75B to 75G apply where request made for selection

(1) Sections 75B to 75G apply where the Lord Chancellor makes a request to the Commission under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2006 (request for person to be selected for recommendation for appointment to the office of Senior President of Tribunals).

(2) Those sections are subject to section 95 (withdrawal and modification of requests).

75B Selection process

(1) On receiving a request the Commission must appoint a selection panel.

(2) The panel must —

(a) determine the selection process to be applied,

(b) apply the selection process, and

(c) make a selection accordingly.

(3) As part of the selection process the panel must consult—
  (a) the Lord Chief Justice, if not a member of the panel,
  (b) the Lord President of the Court of Session, if not a member of the panel, and
  (c) the Lord Chief Justice of Northern Ireland, if not a member of the panel.

(4) One person only must be selected for the recommendation to which a request relates.

(5) Subsection (4) applies to selection under this section and to selection under section 75G.

(6) A selection panel is a committee of the Commission.

75C Selection panel

(1) The selection panel must consist of four members.

(2) The first member is the Lord Chief Justice, or his nominee.

(3) The second member is a person designated by the Lord Chief Justice.

(4) Unless subsection (7) applies, the third member is the chairman of the Commission or his nominee.

(5) The fourth member is a lay member of the Commission designated by the third member.

(6) Subsection (7) applies if—
  (a) there is no chairman of the Commission, or
  (b) the chairman of the Commission is unavailable and has not nominated a person under subsection (4).

(7) In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman.

(8) A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal.

(9) The person designated under subsection (3) must be—
  (a) a person who holds, or has held, the office of Senior President of Tribunals,
  (b) a person who holds, or has held, office as a Chamber President of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal, or
  (c) a person who holds, or has held, an office that, in the opinion of the Lord Chief Justice, is such that a holder of it would acquire knowledge or experience of tribunals broadly similar to that which would be acquired by—
    (i) a person who holds the office of Senior President of Tribunals, or
    (ii) a person who holds office as a Chamber President of a chamber of the First-tier Tribunal, or
    (iii) a person who holds office as a Chamber President of a chamber of the Upper Tribunal.

(10) Before designating a person under subsection (3), the Lord Chief Justice must consult—
(a) the Lord President of the Court of Session, and
(b) the Lord Chief Justice of Northern Ireland.

(11) A person may not be appointed to the panel if he is willing to be considered for selection.

(12) A person may not be appointed to the panel as the nominee of more than one person.

(13) A person appointed to the panel otherwise than as a nominee may not be a nominee.

(14) The first member is the chairman of the panel.

(15) On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie.

75D Report

(1) After complying with section 75B(2) the selection panel must submit a report to the Lord Chancellor.

(2) The report must—
(a) state who has been selected;
(b) contain any other information required by the Lord Chancellor.

(3) The report must be in a form approved by the Lord Chancellor.

(4) After submitting the report the panel must provide any further information the Lord Chancellor may require.

75E The Lord Chancellor's options

(1) This section refers to the following stages—

Stage 1:	where a person has been selected under section 75B
Stage 2:	where a person has been selected following a rejection or reconsideration at stage 1
Stage 3:	where a person has been selected following a rejection or reconsideration at stage 2

(2) At stage 1 the Lord Chancellor must do one of the following—
(a) accept the selection;
(b) reject the selection;
(c) require the selection panel to reconsider the selection.

(3) At stage 2 the Lord Chancellor must do one of the following—
(a) accept the selection;
(b) reject the selection, but only if it was made following a reconsideration at stage 1;

(c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1.

(4) At stage 3 the Lord Chancellor must accept the selection, unless subsection (5) applies and he accepts a selection under it.

(5) If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage.

75F Exercise of powers to reject or require reconsideration

(1) The power of the Lord Chancellor under section 75E to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office of Senior President of Tribunals.

(2) The power of the Lord Chancellor under section 75E to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion—

(a) there is not enough evidence that the person is suitable for the office of Senior President of Tribunals, or

(b) there is evidence that the person is not the best candidate on merit.

(3) The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection.

75G Selection following rejection or requirement to reconsider

(1) If under section 75F the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with this section.

(2) If the Lord Chancellor rejects a selection, the selection panel—

(a) may not select the person rejected, and

(b) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered.

(3) If the Lord Chancellor requires a selection to be reconsidered, the selection panel—

(a) may select the same person or a different person, but

(b) where the requirement is following a rejection, may not select the person rejected.

(4) The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider.

(5) Subsections (2) and (3) do not prevent a person being selected on a subsequent request under paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2006."

Withdrawal and modification of requests under paragraph 2(5)

5 (1) Section 95 of the Constitutional Reform Act 2005 (c. 4) (withdrawal and modification of requests) is amended as follows.

(2) In subsection (1) (application of section), after "87" insert "or paragraph 2(5) of Schedule 1 to the Tribunals, Courts and Enforcement Act 2006".

(3) In subsection (4) (limitation on withdrawal of request under subsection (2)(c)), after "73(2)," insert "75E(2),"

PART 3

TERMS OF OFFICE

Tenure, removal, resignation etc.

6 (1) If—

(a) a person appointed to the office of Senior President of Tribunals is appointed on terms that provide for him to retire from the office at a particular time specified in those terms ("the end of the fixed-term"), and

(b) the end of the fixed-term is earlier than the time at which the person is required by the 1993 Act to retire from the office,

the person shall, if still holding the office at the end of the fixed-term, vacate the office at the end of the fixed-term.

(2) Subject to sub-paragraph (1) (and to the 1993 Act), a person appointed to the office of Senior President of Tribunals shall hold that office during good behaviour, subject to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament.

(3) It is for the Lord Chancellor to recommend to Her Majesty the exercise of the power of removal under sub-paragraph (2).

(4) In this paragraph "the 1993 Act" means the Judicial Pensions and Retirement Act 1993 (c. 8).

7 (1) Sub-paragraph (2) applies to a person appointed to the office of Senior President of Tribunals on a recommendation made under paragraph 2(3).

(2) The person ceases to be Senior President of Tribunals if he ceases to fall within paragraph 2(2)(b).

8 A person who holds the office of Senior President of Tribunals may at any time resign that office by giving the Lord Chancellor notice in writing to that effect.

9 (1) The Lord Chancellor, if satisfied by means of a medical certificate that a person holding the office of Senior President of Tribunals—

(a) is disabled by permanent infirmity from the performance of the duties of the office, and

(b) is for the time being incapacitated from resigning the office,

may, subject to sub-paragraph (2), by instrument under his hand declare the person to have vacated the office; and the instrument shall have the like effect for all purposes as if the person had on the date of the instrument resigned the office.

(2) A declaration under sub-paragraph (1) with respect to a person shall be of no effect unless it is made with the concurrence of—

(a) the Lord Chief Justice of England and Wales,

(b) the Lord President of the Court of Session, and

(c) the Lord Chief Justice of Northern Ireland.

Remuneration, allowances and expenses

10 The Lord Chancellor may pay to the Senior President of Tribunals such amounts (if any) as the Lord Chancellor may determine by way of—
(a) remuneration;
(b) allowances;
(c) expenses.

SCHEDULE 2

Section 3

JUDGES AND OTHER MEMBERS OF THE FIRST-TIER TRIBUNAL

Power to appoint judges of First-tier Tribunal

1 (1) The Lord Chancellor may appoint a person to be one of the judges of the First-tier Tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if he—
(a) satisfies the judicial-appointment eligibility condition on a 5-year basis,
(b) is an advocate or solicitor in Scotland of at least five years' standing,
(c) is a barrister or solicitor in Northern Ireland of at least five years' standing, or
(d) in the Lord Chancellor's opinion, has gained experience in law which makes him as suitable for appointment as if he satisfied any of paragraphs (a) to (c).

(3) Section 43(2) and (4) (meaning of "gain experience in law") apply for the purposes of sub-paragraph (2)(d).

Power to appoint other members of First-tier Tribunal

2 (1) The Lord Chancellor may appoint a person to be one of the members of the First-tier Tribunal who are not judges of the tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if he has qualifications prescribed in an order made by the Lord Chancellor with the concurrence of the Senior President of Tribunals.

Judges appointed under paragraph 1(1): removal from office

3 (1) This paragraph applies to any power by which a person appointed under paragraph 1(1) may be removed from office.

(2) If the person was eligible for appointment by virtue of paragraph 1(2)(a) or (d), the power may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

(3) If the person was eligible for appointment by virtue of paragraph 1(2)(b), the power may be exercised only with the concurrence of the Lord President of the Court of Session.

(4) If the person was eligible for appointment by virtue of paragraph 1(2)(c), the power may be exercised only with the concurrence of the Lord Chief Justice of Northern Ireland.

(5) If, apart from this sub-paragraph, the effect of sub-paragraphs (2) to (4) would be that the power could be exercised only with the concurrence of two, or all three, of the senior judges mentioned in those sub-paragraphs, the power may be exercised with the concurrence of either of them or (as the case may be) any one of the three.

(6) If the person is to be taken to have been appointed under paragraph 1(1) by virtue of provision made under section 27(2)—
(a) sub-paragraphs (2) to (5) do not apply, but
(b) the power may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

Terms of appointment

4 (1) This paragraph applies to a person appointed under paragraph 1(1) or 2(1).

(2) If the terms of the person's appointment provide that he is appointed on a salaried (as opposed to fee-paid) basis, the person may be removed from office—
(a) only by the Lord Chancellor (and in accordance with paragraph 3 in the case of a person appointed under paragraph 1(1)), and
(b) only on the ground of inability or misbehaviour.

(3) Subject to sub-paragraph (2) (and to the Judicial Pensions and Retirement Act 1993 (c. 8)), the person is to hold and vacate office in accordance with the terms of his appointment.

Remuneration, allowances and expenses

5 The Lord Chancellor may pay to a person appointed under paragraph 1(1) or 2(1) such amounts (if any) as the Lord Chancellor may determine by way of—
(a) remuneration;
(b) allowances;
(c) expenses.

Ex officio judges

6 (1) In this paragraph "*ex officio* judge of the First-tier Tribunal" means a person who is a judge of the First-tier Tribunal but who—
(a) is not a judge of the First-tier Tribunal appointed under paragraph 1(1),
(b) is not a Chamber President, or Acting Chamber President or Deputy Chamber President, of a chamber of the First-tier Tribunal, and
(c) is not a judge of the First-tier tribunal by virtue of section 3(6) (criminal injuries compensation adjudicator appointed by the Scottish Ministers).

(2) An *ex officio* judge of the First-tier Tribunal may act as a judge of the First-tier Tribunal only if requested to do so by the Senior President of Tribunals.

(3) Such a request made to a person who is a judge of the First-tier Tribunal by virtue of section 3(2)(c) or (d) may be made only with—

(a) the concurrence of the Lord Chief Justice of England and Wales where the person is—

(i) a district judge in England and Wales, or

(ii) a District Judge (Magistrates' Courts);

(b) the concurrence of the Lord Chief Justice of Northern Ireland where the person is a district judge in Northern Ireland.

(4) The Lord Chancellor may pay to an *ex officio* judge of the First-tier Tribunal such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Ex officio other members

7 (1) In this paragraph "*ex officio* member of the First-tier Tribunal" means a person who is a member of the First-tier Tribunal by virtue of—

(a) section 3(3)(b) (members of employment tribunals who are not chairmen), or

(b) section 3(3)(c) (members of Asylum and Immigration Tribunal who are not legally qualified members).

(2) An *ex officio* member of the First-tier Tribunal may act as a member of the First-tier Tribunal only if requested to do so by the Senior President of Tribunals.

(3) Sub-paragraph (2) is not to be read as meaning that an *ex officio* member of the First-tier Tribunal may act as a judge of the First-tier Tribunal.

(4) The Lord Chancellor may pay to an *ex officio* member of the First-tier Tribunal such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Training etc.

8 The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training and guidance of judges and other members of the First-tier Tribunal (in their capacities as such judges and other members).

SCHEDULE 3

Section 3

JUDGES AND OTHER MEMBERS OF THE UPPER TRIBUNAL

Power to appoint judges of Upper Tribunal

1 (1) Her Majesty, on the recommendation of the Lord Chancellor, may appoint a person to be one of the judges of the Upper Tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if he—

(a) satisfies the judicial-appointment eligibility condition on a 7-year basis,

(b) is an advocate or solicitor in Scotland of at least seven years' standing,

(c) is a barrister or solicitor in Northern Ireland of at least seven years' standing, or

(d) in the Lord Chancellor's opinion, has gained experience in law which makes him as suitable for appointment as if he satisfied any of paragraphs (a) to (c).

(3) Section 43(2) and (4) (meaning of "gain experience in law") apply for the purposes of sub-paragraph (2)(d).

Power to appoint other members of Upper Tribunal

2 (1) The Lord Chancellor may appoint a person to be one of the members of the Upper Tribunal who are not judges of the tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if he has qualifications prescribed in an order made by the Lord Chancellor with the concurrence of the Senior President of Tribunals.

Judges appointed under paragraph 1(1): removal from office

3 (1) This paragraph applies to any power by which a person appointed under paragraph 1(1) may be removed from office.

(2) If the person was eligible for appointment by virtue of paragraph 1(2)(a) or (d), the power may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

(3) If the person was eligible for appointment by virtue of paragraph 1(2)(b), the power may be exercised only with the concurrence of the Lord President of the Court of Session.

(4) If the person was eligible for appointment by virtue of paragraph 1(2)(c), the power may be exercised only with the concurrence of the Lord Chief Justice of Northern Ireland.

(5) If, apart from this sub-paragraph, the effect of sub-paragraphs (2) to (4) would be that the power could be exercised only with the concurrence of two, or all three, of the senior judges mentioned in those sub-paragraphs, the power may be exercised with the concurrence of either of them or (as the case may be) any one of the three.

(6) If the person is to be taken to have been appointed under paragraph 1(1) by virtue of provision made under section 27(2)—

(a) sub-paragraphs (2) to (5) do not apply, but
(b) the power may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

Terms of appointment

4 (1) This paragraph applies to a person appointed under paragraph 1(1) or 2(1).

(2) If the terms of the person's appointment provide that he is appointed on a salaried (as opposed to fee-paid) basis, the person may be removed from office—
(a) only by the Lord Chancellor (and in accordance with paragraph 3 in the case of a person appointed under paragraph 1(1)), and
(b) only on the ground of inability or misbehaviour.

(3) Subject to sub-paragraph (2) (and to the Judicial Pensions and Retirement Act 1993 (c. 8)), the person is to hold and vacate office in accordance with the terms of his appointment.

Remuneration, allowances and expenses

5 The Lord Chancellor may pay to a person appointed under paragraph 1(1) or 2(1) such amounts (if any) as the Lord Chancellor may determine by way of—
(a) remuneration;
(b) allowances;
(c) expenses.

Ex officio judges

6 (1) In this paragraph "*ex officio* judge of the Upper Tribunal" means a person who is a judge of the Upper Tribunal but is none of the following—
(a) Senior President of Tribunals,
(b) judge of the Upper Tribunal appointed under paragraph 1(1),
(c) deputy judge of the Upper Tribunal, and
(d) Chamber President, or Acting Chamber President or Deputy Chamber President, of a chamber of the Upper Tribunal.

(2) An *ex officio* judge of the Upper Tribunal may act as a judge of the Upper Tribunal only if requested to do so by the Senior President of Tribunals.

(3) Such a request made to a person who is a judge of the Upper Tribunal by virtue of section 3(4)(c), (e) or (g) may be made only with—
(a) the concurrence of the Lord Chief Justice of England and Wales where the person is—
(i) a puisne judge of the High Court in England and Wales, or
(ii) a circuit judge;
(b) the concurrence of the Lord Chief Justice of Northern Ireland where the person is—
(i) a puisne judge of the High Court in Northern Ireland, or
(ii) a county court judge in Northern Ireland.

(4) Such a request made to a person who is a judge of the Upper Tribunal by virtue of section 3(4)(d) or (f) (judge of the Court of Session, or sheriff) may

be made only with the concurrence of the Lord President of the Court of Session.

(5) The Lord Chancellor may pay to an *ex officio* judge of the Upper Tribunal such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Deputy judges of the Upper Tribunal

7 (1) The Lord Chancellor may appoint a person to be a deputy judge of the Upper Tribunal for such period as the Lord Chancellor considers appropriate.

(2) A person is eligible for appointment under sub-paragraph (1) only if he is eligible to be appointed under paragraph 1(1) (see paragraph 1(2)).

(3) A person appointed under sub-paragraph (1) is to hold and vacate office as a deputy judge of the Upper Tribunal in accordance with the terms of his appointment (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)).

(4) The Lord Chancellor may pay to a person appointed under sub-paragraph (1) such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Ex officio other members

8 (1) In this paragraph "*ex officio* member of the Upper Tribunal" means a person who is a member of the Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996 (c. 17).

(2) An *ex officio* member of the Upper Tribunal may act as a member of the Upper Tribunal only if requested to do so by the Senior President of Tribunals.

(3) Sub-paragraph (2) is not to be read as meaning that an *ex officio* member of the Upper Tribunal may act as a judge of the Upper Tribunal.

(4) The Lord Chancellor may pay to an *ex officio* member of the Upper Tribunal such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Training etc.

9 The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training and guidance of judges and other members of the Upper Tribunal (in their capacities as such judges and other members).

SCHEDULE 4

Section 4

CHAMBERS AND CHAMBER PRESIDENTS: FURTHER PROVISION

PART 1

CHAMBER PRESIDENTS: APPOINTMENT, DELEGATION, DEPUTIES AND FURTHER PROVISION

Eligibility for appointment

1 A person is eligible for appointment as a Chamber President only if—

(a) he is a judge of the Upper Tribunal, or

(b) he does not fall within paragraph (a) but is eligible to be appointed under paragraph 1(1) of Schedule 3 as a judge of the Upper Tribunal (see paragraph 1(2) of that Schedule).

Appointment: consultation and nomination

2 (1) The Lord Chancellor must consult the Senior President of Tribunals before the Lord Chancellor appoints as a Chamber President a person who is a judge of the Upper Tribunal by virtue of—

section 3(4)(c) (puisne judges of the High Court), or

section 3(4)(d) (judges of the Court of Session).

(2) If the Lord Chancellor, in exercise of his power to appoint the Chamber President of a chamber, wishes that the person appointed should be drawn from among the puisne judges of the High Court in England and Wales, the Lord Chancellor must first ask the Lord Chief Justice of England and Wales to nominate one of those judges for the purpose.

(3) If the Lord Chancellor, in exercise of his power to appoint the Chamber President of a chamber, wishes that the person appointed should be drawn from among the judges of the Court of Session, the Lord Chancellor must first ask the Lord President of the Court of Session to nominate one of those judges for the purpose.

(4) If the Lord Chancellor, in exercise of his power to appoint the Chamber President of a chamber, wishes that the person appointed should be drawn from among the puisne judges of the High Court in Northern Ireland, the Lord Chancellor must first ask the Lord Chief Justice of Northern Ireland to nominate one of those judges for the purpose.

(5) If a judge is nominated under sub-paragraph (2), (3) or (4) in response to a request under that sub-paragraph, the Lord Chancellor must appoint the nominated judge as Chamber President of the chamber concerned.

Duration of appointment, remuneration etc.

3 (1) A Chamber President is to hold and vacate office as Chamber President in accordance with the terms of his appointment as Chamber President (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)).

(2) The Lord Chancellor may pay to a Chamber President such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Delegation of functions

4 (1) The Chamber President of a chamber of the First-tier Tribunal or Upper Tribunal may delegate any function he has in his capacity as Chamber President of the chamber to any judge or other member of that tribunal who is assigned to the chamber.

(2) A delegation under sub-paragraph (1) is not revoked by the delegator's becoming incapacitated.

(3) Any delegation under sub-paragraph (1) that is in force immediately before a person ceases to be Chamber President of a chamber continues in force until varied or revoked by a subsequent holder of the office of Chamber President of that chamber.

(4) The delegation under sub-paragraph (1) of a function shall not prevent the exercise of the function by the Chamber President by whom the delegation is made.

(5) In this paragraph "delegate" includes further delegate.

Deputy Chamber Presidents

5 (1) The Lord Chancellor may appoint a person to be a Deputy Chamber President of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal.

(2) A person is eligible for appointment under sub-paragraph (1) only if—

(a) he is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3,

(b) he is a judge of the Upper Tribunal by virtue of—

section 3(4)(c) (puisne judges of the High Court),

section 3(4)(d) (judges of the Court of Session),

section 3(4)(e) (circuit judges),

section 3(4)(f) (sheriffs),

section 3(4)(g) (county court judges in Northern Ireland),

section 3(4)(h) (Social Security Commissioners for Northern Ireland),

section 3(4)(j) (Senior Immigration Judges etc.), or

section 3(4)(k) (deputy judges of the Upper Tribunal), or

(c) he falls within neither of paragraphs (a) and (b) but is eligible to be appointed under paragraph 1(1) of Schedule 3 as a judge of the Upper Tribunal (see paragraph 1(2) of that Schedule).

(3) A Deputy Chamber President is to hold and vacate office as a Deputy Chamber President in accordance with the terms of his appointment (subject to the Judicial Pensions and Retirement Act 1993 (c. 8)).

(4) The Lord Chancellor may pay to a Deputy Chamber President such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Acting Chamber Presidents

6 (1) If the office of Chamber President of a chamber of the First-tier Tribunal or Upper Tribunal is vacant, the Lord Chief Justice of England and Wales may appoint a person to preside over the chamber during the vacancy.

(2) A person appointed under sub-paragraph (1) is to be known as an Acting Chamber President.

(3) A person who is the Acting Chamber President of a chamber is to be treated as the Chamber President of the chamber for all purposes other than—

(a) the purposes of this paragraph of this Schedule, and

(b) the purposes of the Judicial Pensions and Retirement Act 1993 (c. 8).

(4) A person is eligible for appointment under sub-paragraph (1) only if he is eligible for appointment as a Chamber President.

(5) An Acting Chamber President is to hold and vacate office as an Acting Chamber President in accordance with the terms of his appointment.

(6) The Lord Chancellor may pay to an Acting Chamber President such amounts (if any) as the Lord Chancellor may determine by way of—

(a) remuneration;

(b) allowances;

(c) expenses.

Guidance

7 A Chamber President is to make arrangements for the issuing of guidance on changes in the law and practice as they relate to the functions allocated to his chamber.

PART 2

JUDGES AND OTHER MEMBERS OF CHAMBERS: ASSIGNMENT AND JURISDICTION

Assignment is function of Senior President of Tribunals

8 (1) The Senior President of Tribunals has—

(a) the function of assigning judges and other members of the First-tier Tribunal to chambers of the First-tier Tribunal, and

(b) the function of assigning judges and other members of the Upper Tribunal (including himself) to chambers of the Upper Tribunal.

(2) The functions under sub-paragraph (1) are to be exercised in accordance with the following provisions of this Part of this Schedule.

Deemed assignment of Chamber Presidents and Deputy Chamber Presidents

9 (1) The Chamber President, or a Deputy Chamber President, of a chamber—

(a) is to be taken to be assigned to that chamber;

(b) may be assigned additionally to one or more of the other chambers;

(c) may be assigned under paragraph (b) to different chambers at different times.

(2) Paragraphs 10(1) and (2) and 11(2) and (3) do not apply to assignment of a person who is a Chamber President or a Deputy Chamber President.

(3) In sub-paragraph (1) "chamber" means chamber of the First-tier Tribunal or the Upper Tribunal.

Assigning members of First-tier Tribunal to its chambers

10 (1) Each person who is a judge or other member of the First-tier Tribunal by virtue of appointment under paragraph 1(1) or 2(1) of Schedule 2—

(a) is to be assigned to at least one of the chambers of the First-tier Tribunal, and

(b) may be assigned to different chambers of the First-tier Tribunal at different times.

(2) A judge or other member of the First-tier Tribunal to whom sub-paragraph (1) does not apply—

(a) may be assigned to one or more of the chambers of the First-tier Tribunal, and

(b) may be assigned to different chambers of the First-tier Tribunal at different times.

(3) The Senior President of Tribunals may assign a judge or other member of the First-tier Tribunal to a particular chamber of the First-tier Tribunal only with the concurrence—

(a) of the Chamber President of the chamber, and

(b) of the judge or other member.

(4) The Senior President of Tribunals may end the assignment of a judge or other member of the First-tier Tribunal to a particular chamber of the First-tier Tribunal only with the concurrence of the Chamber President of the chamber.

Assigning members of Upper Tribunal to its chambers

11 (1) Sub-paragraph (2) applies to a person if—

(a) he is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3, or

(b) he is a deputy judge of the Upper Tribunal, or

(c) he is a member of the Upper Tribunal by virtue of appointment under paragraph 2(1) of Schedule 3.

(2) Each person to whom this sub-paragraph applies—

(a) is to be assigned to at least one of the chambers of the Upper Tribunal, and

(b) may be assigned to different chambers of the Upper Tribunal at different times.

(3) A judge or other member of the Upper Tribunal to whom sub-paragraph (2) does not apply—

(a) may be assigned to one or more of the chambers of the Upper Tribunal, and

(b) may be assigned to different chambers of the Upper Tribunal at different times.

(4) The Senior President of Tribunals may assign a judge or other member of the Upper Tribunal to a particular chamber of the Upper Tribunal only with the concurrence—

(a) of the Chamber President of the chamber, and

(b) of the judge or other member.

(5) The Senior President of Tribunals may end the assignment of a judge or other member of the Upper Tribunal to a particular chamber of the Upper Tribunal only with the concurrence of the Chamber President of the chamber.

(6) Sub-paragraphs (4) and (5) do not apply where the judge concerned is the Senior President of Tribunals himself.

Policy of Senior President of Tribunals as respects assigning members to chambers

12 (1) The Senior President of Tribunals must publish a document recording the policy adopted by him in relation to the assigning of persons to chambers in exercise of his functions under paragraph 8.

(2) That policy must be such as to secure—

(a) that appropriate use is made of the knowledge and experience of the judges and other members of the First-tier Tribunal and Upper Tribunal, and

(b) that, in the case of a chamber whose business consists of, or includes, cases likely to involve the application of the law of Scotland or Northern Ireland, sufficient knowledge and experience of that law is to be found among persons assigned to the chamber.

(3) No policy may be adopted by the Senior President of Tribunals for the purposes of sub-paragraph (1) unless the Lord Chancellor concurs in the policy.

(4) The Senior President of Tribunals must keep any policy adopted for the purposes of sub-paragraph (1) under review.

Choosing members to decide cases

13 (1) The First-tier Tribunal's function, or the Upper Tribunal's function, of deciding any matter in a case before the tribunal is to be exercised by a member or members of the chamber of the tribunal to which the case is allocated.

(2) The member or members must be chosen by the Chamber President of the chamber.

(3) A person choosing under sub-paragraph (2)—

(a) must act in accordance with any provision under paragraph 14;

(b) may choose himself.

(4) In this paragraph "member", in relation to a chamber of a tribunal, means a judge or other member of the tribunal who is assigned to the chamber.

Composition of tribunals

14 (1) The Lord Chancellor must by order make provision, in relation to every matter that may fall to be decided by the First-tier Tribunal or the Upper

Tribunal, for determining the number of members of the tribunal who are to decide the matter.

(2) Where an order under sub-paragraph (1) provides for a matter to be decided by a single member of a tribunal, the order must make provision for determining whether the matter is to be decided by one of the judges, or by one of the other members, of the tribunal.

(3) Where an order under sub-paragraph (1) provides for a matter to be decided by two or more members of a tribunal, the order must make provision for determining how many (if any) of those members are to be judges of the tribunal and how many (if any) are to be other members of the tribunal.

(4) A duty under sub-paragraph (1), (2) or (3) to provide for the determination of anything may be discharged by providing for the thing to be determined by the Senior President of Tribunals, or a Chamber President, in accordance with any provision made under that sub-paragraph.

(5) Where under sub-paragraphs (1) to (4) a matter is to be decided by two or more members of a tribunal, the matter may, if the parties to the case agree, be decided in the absence of one or more (but not all) of the members chosen to decide the matter.

(6) Before making an order under this paragraph, the Lord Chancellor must consult the Senior President of Tribunals.

SCHEDULE 5

Section 17

PROCEDURE IN FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL

PART 1

TRIBUNAL PROCEDURE RULES

Introductory

1 (1) This Part of this Schedule makes further provision about the content of Tribunal Procedure Rules.

(2) The generality of section 17(1) is not to be taken to be prejudiced by—
(a) the following paragraphs of this Part of this Schedule, or
(b) any other provision (including future provision) authorising or requiring the making of provision by Tribunal Procedure Rules.

(3) In the following paragraphs of this Part of this Schedule "Rules" means Tribunal Procedure Rules.

Concurrent functions

2 Rules may make provision as to who is to decide, or as to how to decide, which of the First-tier Tribunal and Upper Tribunal is to exercise, in relation to any particular matter, a function that is exercisable concurrently by the two tribunals.

Delegation of functions to staff

3 (1) Rules may provide for functions—
(a) of the First-tier Tribunal, or
(b) of the Upper Tribunal,
to be exercised by staff of either tribunal.

(2) In making provision of the kind mentioned in sub-paragraph (1) in relation to a function, Rules may (in particular)—
(a) provide for the function to be exercisable by a member of staff only if the member of staff is, or is of a description, specified in exercise of a discretion conferred by Rules;
(b) provide for the function to be exercisable by a member of staff only if the member of staff is approved, or is of a description approved, for the purpose by a person specified in Rules.

Time limits

4 Rules may make provision for time limits as respects initiating, or taking any step in, proceedings before the First-tier Tribunal or the Upper Tribunal.

Repeat applications

5 Rules may make provision restricting the making of fresh applications where a previous application in relation to the same matter has been made.

Tribunal acting of its own initiative

6 Rules may make provision about the circumstances in which the First-tier Tribunal, or the Upper Tribunal, may exercise its powers of its own initiative.

Hearings

7 Rules may—
(a) make provision for dealing with matters without a hearing;
(b) make provision as respects allowing or requiring a hearing to be in private or as respects allowing or requiring a hearing to be in public.

Proceedings without notice

8 Rules may make provision for proceedings to take place, in circumstances described in Rules, at the request of one party even though the other, or another, party has had no notice.

Representation

9 Rules may make provision conferring additional rights of audience before the First-tier Tribunal or the Upper Tribunal.

Evidence and witnesses

10 (1) Rules may make provision about evidence (including evidence on oath and administration of oaths).

(2) Rules may modify any rules of evidence provided for elsewhere, so far as they would apply to proceedings before the First-tier Tribunal or Upper Tribunal.

(3) Rules may make provision, where the First-tier Tribunal has required a person—

(a) to attend at any place for the purpose of giving evidence,
(b) otherwise to make himself available to give evidence,
(c) to swear an oath in connection with the giving of evidence,
(d) to give evidence as a witness,
(e) to produce a document, or
(f) to facilitate the inspection of a document or any other thing (including any premises),

for the Upper Tribunal to deal with non-compliance with the requirement as though the requirement had been imposed by the Upper Tribunal.

(4) Rules may make provision for the payment of expenses and allowances to persons giving evidence, attending to give evidence (whether or not they actually give evidence) or producing documents.

Use of information

11 (1) Rules may make provision for the disclosure or non-disclosure of information received during the course of proceedings before the First-tier Tribunal or Upper Tribunal.

(2) Rules may make provision for imposing reporting restrictions in circumstances described in Rules.

Costs and expenses

12 (1) Rules may make provision for regulating matters relating to costs, or (in Scotland) expenses, of proceedings before the First-tier Tribunal or Upper Tribunal.

(2) The provision mentioned in sub-paragraph (1) includes (in particular)—

(a) provision prescribing scales of costs or expenses;
(b) provision for enabling costs to undergo detailed assessment in England and Wales by a county court or the High Court;
(c) provision for taxation in Scotland of accounts of expenses by an Auditor of Court;
(d) provision for enabling costs to be taxed in Northern Ireland in a county court or the High Court.

Set-off and interest

13 (1) Rules may make provision for a party to proceedings to deduct, from amounts payable by him, amounts payable to him.

(2) Rules may make provision for interest on sums awarded (including provision conferring a discretion or provision in accordance with which interest is to be calculated).

Arbitration

14 Rules may provide for Part 1 of the Arbitration Act 1996 (c. 23) (which extends to England and Wales, and Northern Ireland, but not Scotland) not to apply, or not to apply except so far as is specified in Rules, where the First-tier Tribunal, or Upper Tribunal, acts as arbitrator.

Correction of errors and setting-aside of decisions on procedural grounds

15 (1) Rules may make provision for the correction of accidental errors in a decision or record of a decision.

(2) Rules may make provision for the setting aside of a decision in proceedings before the First-tier Tribunal or Upper Tribunal—

(a) where a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative,

(b) where a document relating to the proceedings was not sent to the First-tier Tribunal or Upper Tribunal at an appropriate time,

(c) where a party to the proceedings, or a party's representative, was not present at a hearing related to the proceedings, or

(d) where there has been any other procedural irregularity in the proceedings.

(3) Sub-paragraphs (1) and (2) shall not be taken to prejudice any power to correct errors or set aside decisions that is exercisable apart from rules made by virtue of those paragraphs.

Ancillary powers

16 Rules may confer on the First-tier Tribunal, or the Upper Tribunal, such ancillary powers as are necessary for the proper discharge of its functions.

Rules may refer to practice directions

17 Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions under section 18.

Presumptions

18 Rules may make provision in the form of presumptions (including, in particular, presumptions as to service or notification).

Differential provision

19 Rules may make different provision for different purposes or different areas.

PART 2

TRIBUNAL PROCEDURE COMMITTEE

Membership

20 The Tribunal Procedure Committee is to consist of—

(a) the Senior President of Tribunals or a person nominated by him,

(b) the persons currently appointed by the Lord Chancellor under paragraph 21,
(c) the persons currently appointed by the Lord Chief Justice of England and Wales under paragraph 22,
(d) the person currently appointed by the Lord President of the Court of Session under paragraph 23, and
(e) any person currently appointed under paragraph 24 at the request of the Senior President of Tribunals.

Lord Chancellor's appointees

21 (1) The Lord Chancellor must appoint—
(a) three persons each of whom must be a person with experience of—
(i) practice in tribunals, or
(ii) advising persons involved in tribunal proceedings, and
(b) one person nominated by the Administrative Justice and Tribunals Council.

(2) Before making an appointment under sub-paragraph (1), the Lord Chancellor must consult the Lord Chief Justice of England and Wales.

(3) Until the Administrative Justice and Tribunals Council first has ten members appointed under paragraph 1(2) of Schedule 7, the reference to that council in sub-paragraph (1)(b) is to be read as a reference to the Council on Tribunals; and if when the Administrative Justice and Tribunals Council first has ten members so appointed, the person appointed under sub-paragraph (1)(b) is a nominee of the Council on Tribunals, that person ceases to be a member of the Tribunal Procedure Committee at that time.

Lord Chief Justice's appointees

22 (1) The Lord Chief Justice of England and Wales must appoint—
(a) one of the judges of the First-tier Tribunal,
(b) one of the judges of the Upper Tribunal, and
(c) one person who is a member of the First-tier Tribunal, or is a member of the Upper Tribunal, but is not a judge of the First-tier Tribunal and is not a judge of the Upper Tribunal.

(2) Before making an appointment under sub-paragraph (1), the Lord Chief Justice of England and Wales must consult the Lord Chancellor.

Lord President's appointee

23 (1) The Lord President of the Court of Session must appoint one person with experience in and knowledge of the Scottish legal system.

(2) Before making an appointment under sub-paragraph (1), the Lord President of the Court of Session must consult the Lord Chancellor.

Persons appointed at request of Senior President of Tribunals

24 (1) At the request of the Senior President of Tribunals, an appropriate senior judge may appoint a person or persons with experience in and knowledge of—
(a) a particular issue, or

(b) a particular subject area in relation to which the First-tier Tribunal or the Upper Tribunal has, or is likely to have, jurisdiction,

for the purpose of assisting the Committee with regard to that issue or subject area.

(2) In sub-paragraph (1) "an appropriate senior judge" means any of—

(a) the Lord Chief Justice of England and Wales,

(b) the Lord President of the Court of Session, and

(c) the Lord Chief Justice of Northern Ireland.

(3) The total number of persons appointed at any time under sub-paragraph (1) must not exceed four.

(4) Before making an appointment under sub-paragraph (1), the person making the appointment must consult the Lord Chancellor.

(5) The terms of appointment of a person appointed under sub-paragraph (1) may (in particular) authorise him to act as a member of the Committee only in relation to matters specified by those terms.

Power to amend paragraphs 20 to 24

25 (1) The Lord Chancellor may by order—

(a) amend any of paragraphs 20, 21(1), 22(1), 23(1) and 24(1), and

(b) make consequential amendments in any other provision of paragraphs 21 to 24 or in paragraph 28(7).

(2) The making of an order under this paragraph—

(a) requires the concurrence of the Lord Chief Justice of England and Wales,

(b) if the order amends paragraph 23(1), requires also the concurrence of the Lord President of the Court of Session, and

(c) if the order amends paragraph 24(1), requires also the concurrence of the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland.

Committee members' expenses

26 The Lord Chancellor may reimburse members of the Tribunal Procedure Committee their travelling and out-of-pocket expenses.

PART 3

MAKING OF TRIBUNAL PROCEDURE RULES BY TRIBUNAL PROCEDURE COMMITTEE

Meaning of "Rules" and "the Committee"

27 In the following provisions of this Part of this Schedule—

"the Committee" means the Tribunal Procedure Committee;

"Rules" means Tribunal Procedure Rules.

Process for making Rules

28 (1) Before the Committee makes Rules, the Committee must—

(a) consult such persons (including such of the Chamber Presidents) as it considers appropriate,
(b) consult the Lord President of the Court of Session if the Rules contain provision relating to proceedings in Scotland, and
(c) meet (unless it is inexpedient to do so).

(2) Rules made by the Committee must be—
(a) signed by a majority of the members of the Committee, and
(b) submitted to the Lord Chancellor.

(3) The Lord Chancellor may allow or disallow Rules so made.

(4) If the Lord Chancellor disallows Rules so made, he must give the Committee written reasons for doing so.

(5) Rules so made and allowed—
(a) come into force on such day as the Lord Chancellor directs, and
(b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the instrument contained rules made by a Minister of the Crown.

(6) A statutory instrument containing Rules made by the Committee is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In the case of a member of the Committee appointed under paragraph 24, the terms of his appointment may (in particular) provide that, for the purposes of sub-paragraph (2)(a), he is to count as a member of the Committee only in relation to matters specified in those terms.

Power of Lord Chancellor to require Rules to be made

29 (1) This paragraph applies if the Lord Chancellor gives the Committee written notice that he thinks it is expedient for Rules to include provision that would achieve a purpose specified in the notice.

(2) The Committee must make such Rules, in accordance with paragraph 28, as it considers necessary to achieve the specified purpose.

(3) Those Rules must be made—
(a) within such period as may be specified by the Lord Chancellor in the notice, or
(b) if no period is so specified, within a reasonable period after the Lord Chancellor gives the notice to the Committee.

PART 4

POWER TO AMEND LEGISLATION IN CONNECTION WITH TRIBUNAL PROCEDURE RULES

Lord Chancellor's power

30 (1) The Lord Chancellor may by order amend, repeal or revoke any enactment to the extent he considers necessary or desirable—
(a) in order to facilitate the making of Tribunal Procedure Rules, or
(b) in consequence of—
(i) section 17,

(ii) Part 1 or 3 of this Schedule, or
(iii) Tribunal Procedure Rules.

(2) In this paragraph "enactment" means any enactment whenever passed or made, including an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

SCHEDULE 6

Sections 26 to 31

TRIBUNALS FOR THE PURPOSES OF SECTIONS 26 TO 30

PART 1

TRIBUNALS FOR THE PURPOSES OF SECTIONS 26, 29 AND 30

Tribunal	*Enactment*
Appeal tribunal	Chapter 1 of Part 1 of the Social Security Act 1998 (c. 14)
Child Support Commissioner	Section 22 of the Child Support Act 1991 (c. 48)
Foreign Compensation Commission	Section 1 of the Foreign Compensation Act 1950 (c. 12)
Commissioner for the general purposes of the income tax	Section 2 of the Taxes Management Act 1970 (c. 9)
Information Tribunal	Section 6 of the Data Protection Act 1998 (c. 29)
Meat Hygiene Appeals Tribunal	Regulation 6 of the Fresh Meat (Hygiene and Inspection) Regulations 1995 (S.I. 1995/539)
Meat Hygiene Appeals Tribunal	Regulation 6 of the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995 (S.I. 1995/540)
Meat Hygiene Appeals Tribunal	Regulation 5 of the Wild Game Meat (Hygiene and Inspection) Regulations 1995 (S.I. 1995/2148)
Mental Health Review Tribunal for a region of England	Section 65(1) and (1A)(a) of the Mental Health Act 1983 (c. 20)

Tribunal	*Enactment*
Reinstatement Committee	Paragraph 1 of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985 (c. 17)
Reserve forces appeal tribunal	Section 88 of the Reserve Forces Act 1996 (c. 14)
Social Security Commissioner	Schedule 4 to the Social Security Act 1998 (c. 14)
Special Educational Needs and Disability Tribunal	Section 333 of the Education Act 1996 (c. 56)
Transport Tribunal	Schedule 4 to the Transport Act 1985 (c. 67)
Umpire or deputy umpire	Paragraph 5 of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985
VAT and duties tribunal	Schedule 12 to the Value Added Tax Act 1994 (c. 23)

PART 2

TRIBUNALS FOR THE PURPOSES OF SECTIONS 26 AND 29

Tribunal	*Enactment*
Adjudicator	Section 5 of the Criminal Injuries Compensation Act 1995 (c. 53)

PART 3

TRIBUNALS FOR THE PURPOSES OF SECTIONS 26 AND 30

Tribunal	*Enactment*
Adjudicator to Her Majesty's Land Registry	Section 107 of the Land Registration Act 2002 (c. 9)
Financial Services and Markets Tribunal	Section 132 of the Financial Services and Markets Act 2000 (c. 8)
Gambling Appeals Tribunal	Section 140 of the Gambling Act 2005 (c. 19)

Tribunal	*Enactment*
Immigration Services Tribunal	Section 87 of the Immigration and Asylum Act 1999 (c. 33)
Lands Tribunal	Section 1(1)(b) of the Lands Tribunal Act 1949 (c. 42)
Pensions Appeal Tribunal in England and Wales	Paragraph 1(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39)
Pensions Regulator Tribunal	Section 102 of the Pensions Act 2004 (c. 35)
Commissioner for the special purposes of the Income Tax Acts	Section 4 of the Taxes Management Act 1970 (c. 9)

PART 4

TRIBUNALS FOR THE PURPOSES OF SECTION 26

Tribunal	*Enactment*
Agricultural Land Tribunal	Section 73 of the Agriculture Act 1947 (c. 48)
Aircraft and Shipbuilding Industries Arbitration Tribunal	Section 42 of the Aircraft and Shipbuilding Industries Act 1977 (c. 3)
Antarctic Act Tribunal	Regulation 11 of the Antarctic Regulations 1995 (S.I. 1995/490)
Appeal tribunal	Part 2 of Schedule 9 to the Scheme set out in Schedule 2 to the Firefighters' Pension Scheme Order 1992 (S.I. 1992/129)
Asylum Support Adjudicator	Section 102 of the Immigration and Asylum Act 1999
Case tribunal, or interim case tribunal, drawn from the Adjudication Panel for England	Section 76 of the Local Government Act 2000 (c. 22)
Consumer Credit Appeals Tribunal	Section 40A of the Consumer Credit Act 1974 (c. 39)

Tribunal	*Enactment*
The Secretary of State as respects his function of deciding appeals under:	Section 41 of the Consumer Credit Act 1974 (c. 39)
The Secretary of State as respects his function of deciding appeals under:	Section 7(1) of the Estate Agents Act 1979 (c. 38)
Family Health Services Appeal Authority	Section 49S of the National Health Service Act 1977 (c. 49)
Insolvency Practitioners Tribunal	Section 396(1) of the Insolvency Act 1986 (c. 45)
Plant Varieties and Seeds Tribunal	Section 42 of the Plant Varieties Act 1997 (c. 66)
Tribunal	Rule 6 of the model provisions with respect to appeals as applied with modifications by the Chemical Weapons (Licence Appeal Provisions) Order 1996 (S.I. 1996/3030)
Tribunal	Health Service Medicines (Price Control Appeals) Regulations 2000 (S.I. 2000/124)
Tribunal	Section 706 of the Income and Corporation Taxes Act 1988 (c. 1)
Tribunal	Section 150 of the Mines and Quarries Act 1954 (c. 70)
Tribunal	Part 1 of Schedule 3 to the Misuse of Drugs Act 1971 (c. 38)
Tribunal	Regulation H6(3) of the Police Pensions Regulations 1987 (S.I. 1987/257)
Tribunal	Section 9 of the Protection of Children Act 1999 (c. 14)

PART 5

TRIBUNALS FOR THE PURPOSES OF SECTIONS 29 AND 30

Tribunal	*Enactment*
Employment Appeal Tribunal	Section 20 of the Employment Tribunals Act 1996 (c. 17)

PART 6

TRIBUNALS FOR THE PURPOSES OF SECTION 29

Tribunal	*Enactment*
Employment tribunal	Section 1 of the Employment Tribunals Act 1996

PART 7

TRIBUNALS FOR THE PURPOSES OF SECTION 28(3)

Tribunal	*Enactment*
Case tribunal, or interim case tribunal, drawn from the Adjudication Panel for Wales	Section 76 of the Local Government Act 2000 (c. 22)
Mental Health Review Tribunal for Wales	Section 65(1) and (1A)(b) of the Mental Health Act 1983 (c. 20)
Special Educational Needs Tribunal for Wales	Section 336ZA of the Education Act 1996 (c. 56)
Tribunal	Section 27 of, and Schedule 3 to, the Education Act 2005 (c. 18)

SCHEDULE 7

Section 36

ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

PART 1

MEMBERS AND COMMITTEES

Membership

1 (1) The Council is to consist of—
(a) the Parliamentary Commissioner for Administration, and
(b) not more than fifteen nor fewer than ten appointed members.

(2) Of the appointed members—
(a) either two or three are to be appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the National Assembly for Wales,
(b) either one or two are to be appointed by the Assembly with the concurrence of the Lord Chancellor and the Scottish Ministers, and
(c) the others are to be appointed by the Lord Chancellor with the concurrence of the Scottish Ministers and the Assembly.

Chairman of the Council

2 (1) After consultation with the Scottish Ministers and the National Assembly for Wales, the Lord Chancellor must nominate one of the appointed members to be chairman of the Council.

(2) The chairman of the Council is to hold and vacate that office in accordance with the terms of his nomination, but—
(a) may resign that office by giving written notice to the Lord Chancellor, and
(b) ceases to be chairman if he ceases to be a person who is a member of the Council by virtue of appointment under paragraph 1(2).

Term of office of appointed members of Council

3 (1) Subject to the following provisions of this paragraph, a person appointed under paragraph 1(2) is to hold and vacate office in accordance with the terms of his appointment.

(2) A person appointed under paragraph 1(2)(a) may resign by giving written notice to the Scottish Ministers.

(3) A person appointed under paragraph 1(2)(b) may resign by giving written notice to the National Assembly for Wales.

(4) A person appointed under paragraph 1(2)(c) may resign by giving written notice to the Lord Chancellor.

(5) The Lord Chancellor may remove a person appointed under paragraph 1(2) on the ground of inability or misbehaviour, or without cause.

(6) The power of the Lord Chancellor under sub-paragraph (5) to remove a person who was appointed under paragraph 1(2)(a) may be exercised only with the concurrence of the Scottish Ministers.

(7) The power of the Lord Chancellor under sub-paragraph (5) to remove a person who was appointed under paragraph 1(2)(b) may be exercised only with the concurrence of the National Assembly for Wales.

Scottish Committee

4 (1) There is to be a Scottish Committee of the Council (referred to in this Schedule as "the Scottish Committee") for the purpose of exercising the functions conferred on it by any statutory provision.

(2) The Scottish Committee is to consist of—

(a) the Parliamentary Commissioner for Administration,

(b) the Scottish Public Services Ombudsman,

(c) the members of the Council appointed under paragraph 1(2)(a), and

(d) either three or four other persons, not being members of the Council, appointed by the Scottish Ministers.

Chairman of the Scottish Committee

5 (1) The Scottish Ministers must nominate one of the members mentioned in paragraph 4(2)(c) to be chairman of the Scottish Committee.

(2) The chairman of the Scottish Committee is to hold and vacate that office in accordance with the terms of his nomination, but—

(a) may resign that office by giving written notice to the Scottish Ministers, and

(b) ceases to be chairman if he ceases to be a person who is a member of the Council by virtue of appointment under paragraph 1(2)(a).

Term of office of appointed members of Scottish Committee

6 (1) Subject to the following provisions of this paragraph, a person appointed under paragraph 4(2)(d) is to hold and vacate office in accordance with the terms of his appointment.

(2) The person may resign by giving written notice to the Scottish Ministers.

(3) The Scottish Ministers may remove the person on the ground of inability or misbehaviour, or without cause.

Welsh Committee

7 (1) There is to be a Welsh Committee of the Council (referred to in this Schedule as "the Welsh Committee") for the purpose of exercising the functions conferred on it by any statutory provision.

(2) The Welsh Committee is to consist of—

(a) the Parliamentary Commissioner for Administration,

(b) the Public Services Ombudsman for Wales,

(c) the members of the Council appointed under paragraph 1(2)(b), and

(d) either two or three other persons, not being members of the Council, appointed by the National Assembly for Wales.

Chairman of Welsh Committee

8 (1) The Assembly must nominate one of the members mentioned in paragraph 7(2)(c) to be chairman of the Welsh Committee.

(2) The chairman of the Welsh Committee is to hold and vacate that office in accordance with the terms of his nomination, but—

(a) may resign that office by giving written notice to the National Assembly for Wales, and

(b) ceases to be chairman if he ceases to be a person who is a member of the Council by virtue of appointment under paragraph 1(2)(b).

Term of office of Committee members

9 (1) Subject to the following provisions of this paragraph, a person appointed under paragraph 7(2)(d) is to hold and vacate office in accordance with the terms of his appointment.

(2) The person may resign by giving written notice to the National Assembly for Wales.

(3) The National Assembly for Wales may remove the person on the ground of inability or misbehaviour, or without cause.

Remuneration of Council and Committee members

10 (1) The Lord Chancellor must pay such remuneration as he may determine to each of the following—

(a) the chairman of the Council;

(b) the chairman of the Scottish Committee;

(c) the chairman of the Welsh Committee.

(2) The Lord Chancellor may pay such fees as he may determine to—

(a) members of the Council other than the chairman;

(b) members of the Scottish Committee other than the chairman;

(c) members of the Welsh Committee other than the chairman.

(3) The Lord Chancellor may pay such expenses as he may determine to—

(a) members of the Council;

(b) members of the Scottish Committee;

(c) members of the Welsh Committee.

(4) In sub-paragraph (3) "expenses" includes (in particular) subsistence allowances and travelling expenses.

Compensation for members removed from office without cause

11 If—

(a) a person is removed under paragraph 3(5), 6(3) or 9(3) without cause, and

(b) it appears to the Lord Chancellor that there are special circumstances which make it appropriate for the person to receive compensation,

the Lord Chancellor may pay the person such compensation (if any) as the Lord Chancellor thinks fit.

Status of Council and Committees

12 The Council, the Scottish Committee and the Welsh Committee are not to be regarded—

(a) as agents or servants of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

PART 2

FUNCTIONS

Introductory

13 The Council has the functions conferred on it by this Schedule or any other statutory provision.

Functions with respect to the administrative justice system

14 (1) The Council is to—

(a) keep the administrative justice system under review,

(b) consider ways to make the system accessible, fair and efficient,

(c) advise the persons mentioned in sub-paragraph (2) on the development of the system,

(d) refer proposals for changes in the system to those persons, and

(e) make proposals for research into the system.

(2) Those persons are—

(a) the Lord Chancellor,

(b) the Scottish Ministers,

(c) the National Assembly for Wales, and

(d) the Senior President of Tribunals.

(3) The Council may make such reports as it considers appropriate on any of the matters mentioned in sub-paragraph (1).

(4) In this paragraph "the administrative justice system" means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including—

(a) the procedures for making such decisions,

(b) the law under which such decisions are made, and

(c) the systems for resolving disputes and airing grievances in relation to such decisions.

General functions with respect to tribunals

15 (1) The Council is to—

(a) keep under review, and report on, the constitution and working—

(i) of listed tribunals in general, and

(ii) of each listed tribunal,

(b) consider, and report on, any other matter—

(i) that relates to listed tribunals in general or to a particular listed tribunal, and

(ii) that the Council determines to be of special importance, and

(c) consider, and report on, any particular matter referred to the Council—

(i) that relates to tribunals in general or to any particular tribunal, and

(ii) whose referral to the Council falls within paragraph 17.

(2) The Council may scrutinise and comment on legislation, existing or proposed, relating to tribunals or to any particular tribunal.

(3) The Council must—

(a) consult the Scottish Committee before exercising the power conferred by sub-paragraph (2) with respect to legislation, existing or proposed, that relates to at least one tribunal with jurisdiction in cases arising in Scotland;

(b) consult the Welsh Committee before exercising that power with respect to legislation, existing or proposed, that relates to at least one tribunal with jurisdiction in cases arising in Wales.

(4) In sub-paragraphs (1)(c), (2) and (3)—

"legislation" includes procedural rules;

"tribunal" includes a proposed tribunal.

General functions with respect to statutory inquiries

16 The Council is to—

(a) keep under review, and report on, the constitution and working of statutory inquiries, both in general and by reference to statutory provisions under which statutory inquiries of different descriptions may be held,

(b) consider, and report on, any other matter—

(i) that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and

(ii) that the Council determines to be of special importance, and

(c) consider, and report on, any particular matter referred to the Council—

(i) that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and

(ii) whose referral to the Council falls within paragraph 17.

Referral of matters to the Council under paragraphs 15 and 16

17 (1) This paragraph has effect for the purposes of paragraphs 15(1)(c) and 16(c).

(2) The referral of any matter falls within this paragraph if it is referred to the Council jointly by—

(a) the Lord Chancellor,

(b) the National Assembly for Wales, and

(c) the Scottish Ministers.

(3) In addition—

(a) the referral of a matter that relates only to Wales falls within this paragraph if it is referred to the Council by the National Assembly for Wales,

(b) the referral of a matter that relates only to Scotland falls within this paragraph if it is referred to the Council by the Scottish Ministers, and

(c) the referral of a matter that—

(i) does not relate to Scotland, and

(ii) if it relates to Wales, does not relate only to Wales,

falls within this paragraph if it is referred to the Council by the Lord Chancellor.

Reports by the Council under paragraphs 15 and 16

18 (1) A report by the Council on a matter referred to it under paragraph 15(1)(c) or 16(c) must be made to the authority or authorities who referred the matter.

(2) Any other report by the Council under paragraph 15 or 16—

(a) must be made to the Lord Chancellor,

(b) if it relates to Wales, must be made also to the National Assembly for Wales, and

(c) if it relates to Scotland, must be made also to the Scottish Ministers.

(3) The Lord Chancellor must lay before each House of Parliament every report made by the Council to him under this paragraph, other than a report that relates only to matters within sub-paragraph (4).

(4) Matters are within this sub-paragraph if legislation providing for them would be within the legislative competence of the Scottish Parliament if the legislation were included in an Act of that Parliament.

(5) The Scottish Ministers must lay before the Scottish Parliament every report made by the Council to them under this paragraph.

(6) Where—

(a) a report is required by this paragraph to be made to one or more, but not all, of—

(i) the Lord Chancellor,

(ii) the National Assembly for Wales, and

(iii) the Scottish Ministers, and

(b) the Council considers that the report could be relevant to matters that are the responsibility of another of those authorities,

the Council must send a copy of the report to the other authority.

Referral of matters to, and reports by, the Scottish Committee

19 (1) The Council may not make a report on any matter relating only to Scotland until the Council—

(a) has referred the matter of the report for consideration, and report to the Council, by the Scottish Committee, and

(b) has considered the report of the Committee.

(2) Where the Council proposes to make a report on a matter that relates to Scotland but not only to Scotland, the Council must give the Scottish Committee details of the matter.

(3) The Scottish Committee may of its own motion make a report to the Council on any of the following matters so far as relating to Scotland—

(a) any matter relating to the administrative justice system,

(b) the constitution or working—

(i) of listed tribunals in general or of a particular listed tribunal, or

(ii) of statutory inquiries in general or of statutory inquiries of a particular description,

(c) any other matter—

(i) that relates to listed tribunals in general, to a particular listed tribunal, to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and

(ii) that the Scottish Committee determines to be of special importance, and

(d) any matter referred to the Council under paragraph 15(1)(c) or 16(c).

(4) If—

(a) the Council does not make a report on matters dealt with in a report made by the Scottish Committee under sub-paragraph (1) or (3), or

(b) in making a report on those matters, the Council does not adopt the report made by the Scottish Committee without modification,

the Scottish Committee may submit its report to the Scottish Ministers.

(5) Where the Scottish Committee—

(a) submits a report to the Scottish Ministers under sub-paragraph (4), and

(b) considers that the report could be relevant to matters that are the responsibility of the Lord Chancellor or the National Assembly for Wales,

the Council must send a copy of the report to the Lord Chancellor or (as the case may be) the Assembly.

(6) The Scottish Ministers must lay before the Scottish Parliament any report submitted to them under sub-paragraph (4).

(7) In sub-paragraph (3)(a) "the administrative justice system" has the meaning given by paragraph 14(4).

Referral of matters to, and reports by, the Welsh Committee

20 (1) The Council may not make a report on any matter relating only to Wales until the Council—

(a) has referred the matter of the report for consideration, and report to the Council, by the Welsh Committee, and

(b) has considered the report of the Committee.

(2) Where the Council proposes to make a report on a matter that relates to Wales but not only to Wales, the Council must give the Welsh Committee details of the matter.

(3) The Welsh Committee may of its own motion make a report to the Council on any of the following matters so far as relating to Wales—

(a) any matter relating to the administrative justice system,

(b) the constitution or working—

(i) of listed tribunals in general or of a particular listed tribunal, or

(ii) of statutory inquiries in general or of statutory inquiries of a particular description,

(c) any other matter—

(i) that relates to listed tribunals in general, to a particular listed tribunal, to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and

(ii) that the Welsh Committee determines to be of special importance, and

(d) any matter referred to the Council under paragraph 15(1)(c) or 16(c).

(4) If—

(a) the Council does not make a report on matters dealt with in a report made by the Welsh Committee under sub-paragraph (1) or (3), or

(b) in making a report on those matters, the Council does not adopt the report made by the Welsh Committee without modification,

the Welsh Committee may submit its report to the National Assembly for Wales.

(5) Where the Welsh Committee—

(a) submits a report to the National Assembly for Wales under sub-paragraph (4), and

(b) considers that the report could be relevant to matters that are the responsibility of the Lord Chancellor or the Scottish Ministers,

the Council must send a copy of the report to the Lord Chancellor or (as the case may be) the Scottish Ministers.

(6) The National Assembly for Wales must publish any report submitted to the Assembly under sub-paragraph (4).

(7) In sub-paragraph (3)(a) "the administrative justice system" has the meaning given by paragraph 14(4).

The Council's programme of work

21 (1) The Council must formulate, in general terms, a programme of the work that the Council plans to undertake in carrying out its functions.

(2) The Council must—

(a) keep the programme under review, and

(b) revise it when appropriate.

(3) In discharging its duties under sub-paragraphs (1) and (2), the Council must have regard to—

(a) the work of the Civil Justice Council,

(b) the work of the Social Security Advisory Committee, and
(c) the work of the Industrial Injuries Advisory Council.

(4) The Council must send a copy of the programme, and a copy of any significant revisions to the programme, to—
(a) the Lord Chancellor,
(b) the National Assembly for Wales, and
(c) the Scottish Ministers.

Annual reports

22 (1) The Council must make an annual report on the proceedings of the Council to—
(a) the Lord Chancellor,
(b) the Scottish Ministers, and
(c) the National Assembly for Wales.

(2) The Scottish Committee must make an annual report to the Scottish Ministers on the proceedings of the Scottish Committee.

(3) The Welsh Committee must make an annual report to the National Assembly for Wales on the proceedings of the Welsh Committee.

(4) The Lord Chancellor must lay before each House of Parliament a copy of any report made under sub-paragraph (1).

(5) The Scottish Ministers must lay before the Scottish Parliament a copy of any report made under sub-paragraph (1) or (2).

(6) The National Assembly for Wales must publish any report made under sub-paragraph (3).

Right to attend proceedings

23 (1) A member of any of—
(a) the Council,
(b) the Scottish Committee, and
(c) the Welsh Committee,
may attend (as observer) proceedings of a listed tribunal or of a statutory inquiry.

(2) The right under sub-paragraph (1) applies even in respect of proceedings—
(a) taking the form of a hearing held in private, or
(b) not taking the form of a hearing.

(3) The right under sub-paragraph (1) is subject to any statutory provision by which members of the Council, members of the Scottish Committee or members of the Welsh Committee are expressly excluded from proceedings.

Application to Northern Ireland

24 Nothing in paragraphs 14 to 16 authorises or requires the Council to deal with a matter if legislation providing for the matter would be within the legislative competence of the Northern Ireland Assembly.

PART 3

COUNCIL TO BE CONSULTED ON RULES FOR LISTED TRIBUNALS

25 (1) The power of a Minister of the Crown, the National Assembly for Wales or the Scottish Ministers to make, approve, confirm or concur in procedural rules for any listed tribunal is exercisable only after consultation with the Council.

(2) Sub-paragraph (1) does not apply with respect to any procedural rules made or to be made for a listed tribunal by the Tribunal Procedure Committee.

(3) The Council must consult the Scottish Committee in relation to the exercise of its function under sub-paragraph (1) with respect to any tribunal having jurisdiction in relation to Scotland.

(4) The Council must consult the Welsh Committee in relation to the exercise of its function under sub-paragraph (1) with respect to any tribunal having jurisdiction in relation to Wales.

PART 4

INTERPRETATION

Meaning of "listed tribunal"

26 (1) The following are listed tribunals for the purposes of this Schedule—
(a) the First-tier Tribunal, and
(b) the Upper Tribunal.

(2) In addition, an authority may by order provide for a tribunal to be a listed tribunal for the purposes of this Schedule if, or to the extent that, the tribunal is one for which the authority is responsible.

(3) For the purposes of sub-paragraph (2)—
(a) each of the following is an authority—
(i) the Lord Chancellor,
(ii) the Scottish Ministers, and
(iii) the National Assembly for Wales, and
(b) the Lord Chancellor is the authority responsible for a tribunal unless, or except to the extent that, paragraph 27 or 28 provides for the Scottish Ministers or the National Assembly for Wales to be the authority responsible for the tribunal.

(4) An order under sub-paragraph (2) may include—
(a) provision for a tribunal to be a listed tribunal only for the purposes of provisions of this Schedule specified in the order;
(b) provision for a tribunal to be a listed tribunal for the purposes of this Schedule, or for the purposes of provisions of this Schedule specified in the order, only in so far as it exercises functions so specified.

(5) The power under sub-paragraph (2) may not be exercised so as to cause a tribunal to be a listed tribunal for any purpose of this Schedule so far as it exercises functions with respect to relevant Northern Ireland matters; and for this purpose a matter is a "relevant Northern Ireland matter" if

legislation providing for the matter would be within the legislative competence of the Northern Ireland Assembly.

(6) The power under sub-paragraph (2) may not be exercised so as to cause a tribunal to be a listed tribunal for any purpose of this Schedule if the tribunal is established otherwise than by or under a statutory provision.

(7) Sub-paragraph (4) is not to be taken to prejudice the generality of section 40(3).

Responsible authorities for purposes of paragraph 26: Scotland

27 (1) This paragraph applies for the purposes of paragraph 26.

(2) The Scottish Ministers are the authority responsible for a tribunal if—

(a) all of the tribunal's functions are exercisable only in relation to Scotland, and

(b) at least one of the powers referred to in sub-paragraph (3) is exercisable as mentioned in sub-paragraph (6).

(3) Those powers are—

(a) power to appoint the members of the tribunal;

(b) power to make procedural rules for the tribunal.

(4) In the case of a tribunal that exercises functions in relation to Scotland and also exercises those or other functions in relation to somewhere other than Scotland, the Scottish Ministers are the authority responsible for the tribunal to the extent that it exercises functions in relation to Scotland if at least one of the powers referred to in sub-paragraph (5) is exercisable as mentioned in sub-paragraph (6).

(5) Those powers are—

(a) power to appoint the members of tribunal who exercise the tribunal's functions in relation to Scotland;

(b) power to make procedural rules for the exercise of the tribunal's functions in relation to Scotland.

(6) Power is exercisable as mentioned in this sub-paragraph if it is exercisable—

(a) by the Scottish Ministers, or

(b) by the Lord President of the Court of Session,

and is not exercisable by them or him jointly or concurrently with a Minister of the Crown.

Responsible authorities for purposes of paragraph 26: Wales

28 (1) This paragraph applies for the purposes of paragraph 26.

(2) The National Assembly for Wales is the authority responsible for a tribunal if—

(a) all of the tribunal's functions are exercisable only in relation to Wales, and

(b) at least one of the powers referred to in sub-paragraph (3) is exercisable as mentioned in sub-paragraph (6).

(3) Those powers are—

(a) power to appoint the members of the tribunal;

(b) power to make procedural rules for the tribunal.

(4) In the case of a tribunal that exercises functions in relation to Wales and also exercises those or other functions in relation to somewhere other than Wales, the Assembly is the authority responsible for the tribunal to the extent that it exercises functions in relation to Wales if at least one of the powers referred to in sub-paragraph (5) is exercisable as mentioned in sub-paragraph (6).

(5) Those powers are—

(a) power to appoint the members of the tribunal who exercise the tribunal's functions in relation to Wales;

(b) power to make procedural rules for the exercise of the tribunal's functions in relation to Wales.

(6) Power is exercisable as mentioned in this sub-paragraph if it is exercisable by the Assembly and is not exercisable by the Assembly jointly or concurrently with a Minister of the Crown.

Other definitions

29 (1) In this Schedule—

"enactment" includes an Act of the Scottish Parliament;

"the Council" means the Administrative Justice and Tribunals Council;

"Minister of the Crown" has the meaning given in the Ministers of the Crown Act 1975 (c. 26);

"procedural rules", in relation to a tribunal, includes any statutory provision relating to the practice or procedure of the tribunal;

"the Scottish Committee" means the Scottish Committee of the Council;

"statutory inquiry" means a 1992 Act inquiry held, or to be held, by or on behalf of—

(a) a Minister of the Crown,

(b) the Scottish Ministers, or

(c) the National Assembly for Wales;

"statutory provision" means a provision contained in, or having effect under, any enactment;

"tribunal" does not include an ordinary court of law;

"the Welsh Committee" means the Welsh Committee of the Council;

(2) References in this Schedule to members of tribunals include references to the person constituting a tribunal consisting of one person.

(3) In sub-paragraph (1) "1992 Act inquiry" means—

(a) an inquiry or hearing within paragraph (a) of the definition of "statutory inquiry" in section 16(1) of the Tribunals and Inquiries Act 1992 (c. 53), or

(b) an inquiry or hearing that is a statutory inquiry for the purposes of that Act by virtue of an order under section 16(2) of that Act (including such an order made after the coming into force of this Schedule).

SCHEDULE 8

Section 39(1)

TRIBUNALS AND INQUIRIES: CONSEQUENTIAL AND OTHER AMENDMENTS

Taxes Management Act 1970 (c. 9)

1 (1) The following offices are abolished—

General Commissioner;

clerk to the General Commissioners for a division;

assistant clerk to the General Commissioners for a division.

(2) In consequence of sub-paragraph (1), sections 2 and 3 of the Taxes Management Act 1970 cease to have effect.

(3) In this paragraph—

"division" has the meaning given by section 2(1) and (6) of that Act;

"General Commissioner" means a Commissioner for the general purposes of the income tax.

Chronically Sick and Disabled Persons Act 1970 (c. 44)

2 In section 21(7E) of the Chronically Sick and Disabled Persons Act 1970 (procedural regulations in connection with appeals against refusal of application for disabled person's badge), for "Council on Tribunals" substitute "Administrative Justice and Tribunals Council".

Health and Safety at Work etc. Act 1974 (c. 37)

3 In section 44 of the Health and Safety at Work etc. Act 1974 (appeals in connection with licensing provisions), after subsection (4) insert—

"(4A) A hearing held by a person appointed in pursuance of subsection (2) above shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council)."

House of Commons Disqualification Act 1975 (c. 24)

4 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies whose members are disqualified), in the appropriate places insert—

"The Administrative Justice and Tribunals Council."

"The First-tier Tribunal."

"The Scottish Committee of the Administrative Justice and Tribunals Council."

"The Upper Tribunal."

"The Welsh Committee of the Administrative Justice and Tribunals Council."

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

5 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies whose members are disqualified), in the appropriate places insert—

"The Administrative Justice and Tribunals Council."

"The First-tier Tribunal."

"The Scottish Committee of the Administrative Justice and Tribunals Council."

"The Upper Tribunal."

"The Welsh Committee of the Administrative Justice and Tribunals Council."

Litigants in Person (Costs and Expenses) Act 1975 (c. 47)

6 (1) The Litigants in Person (Costs and Expenses) Act 1975 is amended as follows.

(2) In section 1(1) and (2) (expenses and losses of litigant in person to be recoverable), before the word "or" at the end of paragraph (b) insert—

"(ba) before the First-tier Tribunal or the Upper Tribunal,".

(3) In section 1(4) (meaning of "rules of court"), before the word "and" at the end of paragraph (b) insert—

"(ba) in relation to the First-tier Tribunal or the Upper Tribunal, means Tribunal Procedure Rules,".

Race Relations Act 1976 (c. 74)

7 In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty), under the heading "*Other bodies, etc.*" insert the following entries in the appropriate places—

"The Administrative Justice and Tribunals Council."

"The Scottish Committee of the Administrative Justice and Tribunals Council."

"The Welsh Committee of the Administrative Justice and Tribunals Council."

Estate Agents Act 1979 (c. 38)

8 Omit section 24(2) of the Estate Agents Act 1979 (Council on Tribunals' right to attend hearings etc.).

Town and Country Planning Act 1990 (c. 8)

9 The Town and Country Planning Act 1990 is amended as follows.

10 In paragraph 8 of Schedule 6 (appeals determined by appointed persons: supplementary provision), after sub-paragraph (1) insert—

"(1A) A local inquiry or hearing held in pursuance of this Schedule shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council)."

11 In paragraph 8 of Schedule 7 (objections to simplified planning zone schemes), after sub-paragraph (6) insert—

"(7) A local inquiry or other hearing held under this paragraph shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council)."

12 In paragraph 5 of Schedule 8 (local inquiries held by Planning Inquiry Commission), after sub-paragraph (3) insert—

"(3A) An inquiry held by a commission under this paragraph shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council)."

Food Safety Act 1990 (c. 16)

13 (1) The Food Safety Act 1990 is amended as follows.

(2) In section 26(2)(e) (regulations may provide for appeals, including appeals to a tribunal set up by the regulations)—

(a) after "to the sheriff," insert "or to the First-tier Tribunal or the Upper Tribunal," and

(b) omit "or to a tribunal constituted in accordance with the regulations,".

(3) In section 37(2) (subsection (1) does not apply where appeal may be made to a tribunal set up by regulations under Part 2), for the words from "provide for an appeal" onwards substitute "provide for an appeal—

(a) to a tribunal constituted in accordance with the regulations, or

(b) to the First-tier Tribunal or the Upper Tribunal."

Courts and Legal Services Act 1990 (c. 41)

14 The Courts and Legal Services Act 1990 is amended as follows.

15 In section 119(1) (interpretation), in the definition of "court", for paragraph (a) (any tribunal kept under review by the Council on Tribunals) substitute—

"(a) a tribunal that is (to any extent) a listed tribunal for, or for any of, the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council);".

16 In Schedule 11 (full-time judges etc barred from legal practice), at the end insert—

"Judge or other member of the First-tier Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2006

Judge or other member of the Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2006

Senior President of Tribunals

Chamber President, or Acting Chamber President or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal".

Social Security Administration Act 1992 (c. 5)

17 The Social Security Administration Act 1992 is amended as follows.

18 In Schedule 4 (persons employed in social security administration or adjudication), in paragraph 3(b) of Part 2, for "Council on Tribunals or the" substitute "Administrative Justice and Tribunals Council or the Welsh or".

19 In Schedule 7 (regulations not requiring prior submission), in paragraphs 9 and 14, for the words from "Council on Tribunals" onwards substitute "Administrative Justice and Tribunals Council is required by paragraph 25 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006."

Transport and Works Act 1992 (c. 42)

20 The Transport and Works Act 1992 is amended as follows.

21 In section 22 (validity of orders authorising works), in subsections (1)(b) and (2)(b), for "1971" substitute "1992".

22 (1) Section 23 (inquiries etc. held by person appointed to determine application) is amended as follows.

(2) In subsection (9)—

(a) for "1971" substitute "1992", and

(b) for "section 12(1)" substitute "section 10(1)".

(3) After that subsection insert—

"(9A) A local inquiry or other hearing held by a person appointed under this section shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council)."

Tribunals and Inquiries Act 1992 (c. 53)

23 The Tribunals and Inquiries Act 1992 is amended as follows.

24 Omit section 5 (recommendations of Council as to appointment of members of tribunals).

25 In section 6, subsections (1) to (3) (chairman of a tribunal presided over by a Child Support Commissioner, and chairman of a reserve forces reinstatement committee, to be selected from panels appointed by Lord Chancellor or Lord President of the Court of Session) cease to have effect.

26 In section 8 (procedural rules for tribunals), after subsection (1) insert—

"(1A) Subsection (1) does not apply with respect to any procedural rules made or to be made by the Tribunal Procedure Committee."

27 Omit section 8 (procedural rules for tribunals).

28 In section 9 (power of Lord Chancellor, after consulting the Council, to make rules of procedure for statutory inquiries), after subsection (3) insert—

"(3A) The Council, in exercising their functions under this section in relation to inquiries to be held in Wales, shall consult with the Welsh Committee."

29 In section 14(1) (restricted application of Act in relation to certain tribunals)—

(a) for "the working or a decision of, or procedural rules for," substitute "a decision of", and

(b) for "working, decisions or procedure" substitute "decisions".

30 In section 16(1) (interpretation)—

(a) for the definition of "Council" substitute—

""Council" means the Administrative Justice and Tribunals Council,",

(b) after the definition of "Council" insert—

""enactment" includes an Act of the Scottish Parliament;",

(c) for the definition of "Scottish Committee" substitute—

""Scottish Committee" means the Scottish Committee of the Administrative Justice and Tribunals Council,", and

(d) after the definition of "statutory provision" insert—

""Welsh Committee" means the Welsh Committee of the Administrative Justice and Tribunals Council,".

Judicial Pensions and Retirement Act 1993 (c. 8)

31 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.

(2) In Part 2 of Schedule 1 (offices which may be qualifying judicial offices for purposes of the pensions provisions), at the end of the part dealing with the members of tribunals insert—

"Judge or other member of the First-tier Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2006

Judge or other member of the Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2006

Senior President of Tribunals

Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal".

(3) In Schedule 5 (retirement provisions: the relevant offices), at the end insert—

"Judge or other member of the First-tier Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2006

Judge or other member of the Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2006

Senior President of Tribunals

Deputy judge of the Upper Tribunal

Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal".

Pension Schemes Act 1993 (c. 48)

32 In section 185(8) of the Pension Schemes Act 1993 (consultation about regulations), for "Council on Tribunals" substitute "Administrative Justice and Tribunals Council".

Law of Property (Miscellaneous Provisions) Act 1994 (c. 36)

33 (1) Section 17(3) of the Law of Property (Miscellaneous Provisions) Act 1994 (notices affecting land where recipient has died: exceptions where relating to court or tribunal etc. proceedings) is amended as follows.

(2) For paragraph (b) substitute—

"(b) any tribunal that is (to any extent) a listed tribunal for, or for any of, the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council), or".

(3) For "within the meaning of section 8 of the Tribunals and Inquiries Act 1992" substitute "within the meaning given by paragraph 29 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006".

Employment Tribunals Act 1996 (c. 17)

34 The Employment Tribunals Act 1996 is amended as follows.

35 Before section 4 insert—

"3A Meaning of "Employment Judge"

A person who is a member of a panel of chairmen of employment tribunals which is appointed in accordance with regulations under section 1(1) may be referred to as an Employment Judge."

36 In section 4 (composition of employment tribunals), in each of subsections (2), (6), (6A) and (6B)(a) (which refer to the person who is the chairman of an employment tribunal), after "the person mentioned in subsection (1)(a) alone" insert "or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal".

37 In sections 4(4), 18(8) and 40(1), after "The Secretary of State" insert "and the Lord Chancellor, acting jointly,".

38 In section 5(1) (pay), for paragraph (c) substitute—

"(c) any person who is an Employment Judge on a full-time basis".

39 After section 5 insert—

"5A Training etc. of Employment Judges

The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training and guidance of Employment Judges (in their capacities as chairmen of employment tribunals)."

40 (1) Section 7A (practice directions) is amended as follows.

(2) Before subsection (1) insert—

"(A1) The Senior President of Tribunals may make directions about the procedure of employment tribunals."

(3) In subsection (1)—

(a) in paragraph (a), before "President" insert "territorial", and

(b) in paragraphs (b) and (c), for "such directions" substitute "directions under subsection (A1) or paragraph (a)".

(4) In subsection (2), for "by the President" substitute "under subsection (A1) or (1)(a)".

(5) After subsection (2) insert—

"(2A) The power under subsection (A1) includes—

(a) power to vary or revoke directions made in exercise of the power, and

(b) power to make different provision for different purposes (including different provision for different areas).

(2B) Directions under subsection (A1) may not be made without the approval of the Lord Chancellor.

(2C) Directions under subsection (1)(a) may not be made without the approval of—

(a) the Senior President of Tribunals, and

(b) the Lord Chancellor.

(2D) Subsections (2B) and (2C)(b) do not apply to directions to the extent that they consist of guidance about any of the following—

(a) the application or interpretation of the law;

(b) the making of decisions by members of an employment tribunal.

(2E) Subsections (2B) and (2C)(b) do not apply to directions to the extent that they consist of criteria for determining which members of employment tribunals may be selected to decide particular categories of matter; but the directions may, to that extent, be made only after consulting the Lord Chancellor."

(6) In subsection (3), after "references to the" insert "territorial".

41 After section 7A insert—

"7B Mediation

(1) A person exercising power to make employment tribunal procedure regulations or to make practice directions must, when making provision in relation to mediation, have regard to the following principles—

(a) mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties;

(b) where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings.

(2) Employment tribunal procedure regulations may include provision enabling practice directions to provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings.

(3) The provision that may be included in employment tribunal procedural regulations by virtue of subsection (2) includes provision for enabling directions to provide for a member to act as mediator in relation to disputed matters in a case even though the member has been selected to decide matters in the case.

(4) Once a member has begun to act as mediator in relation to a disputed matter in a case that is the subject of proceedings, the member may decide matters in the case only with the consent of the parties.

(5) Staff provided for employment tribunals may, subject to their terms of appointment, act as mediators in relation to disputed matters in a case that is the subject of proceedings.

(6) Before making a practice direction that makes provision in relation to mediation, the person making the direction must consult the Advisory, Conciliation and Arbitration Service.

(7) The Lord Chancellor may by order prescribe fees payable in respect of mediation conducted by staff provided for employment tribunals.

(8) Fees payable under subsection (7) are recoverable summarily as a civil debt.

(9) Subsection (8) does not apply to the recovery in Scotland of fees payable under subsection (7).

(10) In this section—

"member" means a member of an employment tribunal;

"practice direction" means a direction under section 7A;

"proceedings" means proceedings before an employment tribunal."

42 In section 15(1) (enforcement in England and Wales as an order of a county court), for the words from "shall, if a county court so orders," to the end substitute "shall be recoverable by execution issued from a county court or otherwise as if it were payable under an order of a county court."

43 After section 24 insert—

"24A Training etc. of judicial members of Appeal Tribunal

The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training and guidance of—

(a) judges nominated under section 22(1)(a) or (b) or 23(2) (in their capacities as members of the Appeal Tribunal), and

(b) temporary additional judges of the Appeal Tribunal (in their capacities as such judges)."

44 In section 27(1)(a) (payment of appointed members of Employment Appeal Tribunal), after "members," insert "and".

45 (1) Section 28 (composition of Employment Appeal Tribunal) is amended as follows.

(2) In subsection (4) (appeals from employment tribunal consisting of chairman alone), for the words from "question" to "section 4(1)(a) alone" substitute "chairman-alone question".

(3) After subsection (4) insert—

"(4A) In subsection (4) "chairman-alone question" means—

(a) a question arising from any decision of an employment tribunal that is a decision of—

(i) the person mentioned in section 4(1)(a) acting alone, or

(ii) any Employment Judge acting alone, or

(b) a question arising in any proceedings before an employment tribunal that are proceedings before—

(i) the person mentioned in section 4(1)(a) alone, or

(ii) any Employment Judge alone."

46 After section 29 insert—

"29A Practice directions

(1) Directions about the procedure of the Appeal Tribunal may be given—

(a) by the Senior President of Tribunals, or

(b) by the President of the Appeal Tribunal.

(2) A power under subsection (1) includes—

(a) power to vary or revoke directions given in exercise of the power, and

(b) power to make different provision for different purposes.

(3) Directions under subsection (1)(a) may not be given without the approval of the Lord Chancellor.

(4) Directions under subsection (1)(b) may not be given without the approval of—

(a) the Senior President of Tribunals, and

(b) the Lord Chancellor.

(5) Subsection (1) does not prejudice any power apart from that subsection to give directions about the procedure of the Appeal Tribunal.

(6) Directions may not be given in exercise of any such power as is mentioned in subsection (5) without the approval of—

(a) the Senior President of Tribunals, and

(b) the Lord Chancellor.

(7) Subsections (3), (4)(b) and (6)(b) do not apply to directions to the extent that they consist of guidance about any of the following—

(a) the application or interpretation of the law;

(b) the making of decisions by members of the Appeal Tribunal.

(8) Subsections (3), (4)(b) and (6)(b) do not apply to directions to the extent that they consist of criteria for determining which members of the Appeal Tribunal may be chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Lord Chancellor.

(9) Subsections (4) and (6) do not apply to directions given in a particular case for the purposes of that case only.

(10) Subsection (6) does not apply to directions under section 28(1)."

47 In section 30(3) (Employment Appeal Tribunal to regulate its own procedure, subject to procedure rules), after the words "Appeal Tribunal procedure rules" insert "and directions under section 28(1) or 29A(1)".

48 (1) Section 41 (orders, regulations and rules) is amended as follows.

(2) In subsection (3)(a) (orders subject to annulment), after "except" insert "section 7B(7) or".

(3) After subsection (3) insert—

"(3A) A statutory instrument containing an order under section 7B(7) shall be laid before Parliament after being made."

Town and Country Planning (Scotland) Act 1997 (c. 8)

49 The Town and Country Planning (Scotland) Act 1997 is amended as follows.

50 In paragraph 5 of Schedule 6 (local inquiries held by Planning Inquiry Commission), after sub-paragraph (4) insert—

"(4A) An inquiry held by a commission under this paragraph shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council)."

51 In paragraph 8 of Schedule 6 (local inquiries held by Joint Planning Inquiry Commission), after sub-paragraph (4) insert—

"(4A) A local inquiry held by a joint commission shall be a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (functions etc. of Administrative Justice and Tribunals Council)."

Greater London Authority Act 1999 (c. 29)

52 In section 338 of the Greater London Authority Act 1999 (spatial development strategy: examination in public), for subsection (10) substitute—

"(10) An examination in public shall constitute a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (Administrative Justice and Tribunals Council)."

Freedom of Information Act 2000 (c. 36)

53 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public bodies

and offices), insert in the appropriate places—

"The Administrative Justice and Tribunals Council."

"The Scottish Committee of the Administrative Justice and Tribunals Council."

"The Welsh Committee of the Administrative Justice and Tribunals Council."

Nationality, Immigration and Asylum Act 2002 (c. 41)

54 (1) The Nationality, Immigration and Asylum Act 2002 is amended as follows.

(2) In section 107 (power for President of the Asylum and Immigration Tribunal to give practice directions), after subsection (1) insert—

"(1A) The Senior President of Tribunals may give directions as to the practice to be followed by the Tribunal."

(3) In section 107, after subsection (3) insert—

"(4) Directions under subsection (1) may not be given without the approval of—

(a) the Senior President of Tribunals, and

(b) the Lord Chancellor.

(5) Directions under subsection (1A) may not be given without the approval of the Lord Chancellor.

(6) Subsections (4)(b) and (5) do not apply to directions to the extent that they consist of guidance about any of the following—

(a) the application or interpretation of the law;

(b) the making of decisions by members of the Tribunal.

(7) Subsections (4)(b) and (5) do not apply to directions to the extent that they consist of criteria for determining which members of the Tribunal may be chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Lord Chancellor."

(4) In Schedule 4 (membership etc. of the Asylum and Immigration Tribunal), after paragraph 11 insert—

"Training etc.

12 The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training and guidance of legally qualified members of the Tribunal (in their capacities as such members)."

Courts Act 2003 (c. 39)

55 (1) Section 98 of the Courts Act 2003 (register of judgments and orders etc.) is amended as follows.

(2) In subsection (1) (registrable orders etc.), after paragraph (e) insert—

"(f) a decision or award of—

(i) the First-tier Tribunal,

(ii) the Upper Tribunal,
(iii) an employment tribunal, or
(iv) the Employment Appeal Tribunal,
in pursuance of which any sum is payable."

(3) In subsection (3) (regulations)—
(a) in each of paragraphs (a) and (b) (exemption), after "orders" insert ", decisions, awards", and
(b) in paragraph (d) (power to provide for certain sums only to be registered), after "magistrates' court" insert "or in the case of sums payable in pursuance of decisions or awards of a tribunal mentioned in subsection (1)(f)".

Title Conditions (Scotland) Act 2003 (asp 9)

56 The Title Conditions (Scotland) Act 2003 is amended as follows.

57 In section 104(1) (rules as to when certain orders of Lands Tribunal take effect), for "Council on Tribunals" substitute "Administrative Justice and Tribunals Council".

58 In section 126 (rules as to fees chargeable by Lands Tribunal in relation to functions under Act), for "Council on Tribunals" substitute "Administrative Justice and Tribunals Council".

Planning and Compulsory Purchase Act 2004 (c. 5)

59 In section 8 of the Planning and Compulsory Purchase Act 2004 (regional spatial strategy: examination in public), for subsection (7) substitute—

"(7) An examination in public—
(a) is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2006 (Administrative Justice and Tribunals Council), but
(b) is not a statutory inquiry for the purposes of the Tribunals and Inquiries Act 1992."

Gender Recognition Act 2004 (c. 7)

60 In paragraph 6(5) of Schedule 1 to the Gender Recognition Act 2004 (directions about practice and procedure of Gender Recognition Panels), for "Council on Tribunals" substitute "Administrative Justice and Tribunals Council".

Civil Contingencies Act 2004 (c. 36)

61 In section 25 of the Civil Contingencies Act 2004 (consultation in connection with establishment of tribunal), in each of subsections (1), (2)(b), (3) and (6), for "Council on Tribunals" substitute "Administrative Justice and Tribunals Council".

Constitutional Reform Act 2005 (c. 4)

62 The Constitutional Reform Act 2005 is amended as follows.

63 In section 3 (guarantee of continued judicial independence) after subsection

(7) insert—

"(7A) In this section "the judiciary" also includes every person who—

(a) holds an office listed in Schedule 14 or holds the office of Senior President of Tribunals, and

(b) but for this subsection would not be a member of the judiciary for the purposes of this section."

64 In section 109(5) (disciplinary powers: meaning of "senior judge"), after paragraph (d) insert—

"(da) Senior President of Tribunals;".

65 (1) Schedule 7 (protected functions of Lord Chancellor) is amended as follows.

(2) In paragraph 2 (all functions of Lord Chancellor under the 2005 Act are protected), after "under this Act" insert ", including any function that the Lord Chancellor has under this Act by virtue of amendments to this Act made by Schedule 1 to the Tribunals, Courts and Enforcement Act 2006".

(3) In Part A (general) of the list in paragraph 4—

(a) omit the entry for section 6(2), (8) and (9) of the Tribunals and Inquiries Act 1992 (c. 53),

(b) omit the entry for paragraph 7(4) of Schedule 5 to that Act,

(c) in the entries for the Employment Tribunals Act 1996 (c. 17) insert in the appropriate places—

"Section 7A

Section 7B(7)"

and—

"Section 29A", and

(d) in the entries for the Nationality, Immigration and Asylum Act 2002 (c. 41) insert in the appropriate place—

"Section 107".

66 In Schedule 12 (the Judicial Appointments Commission), in paragraph 2(2)(d) (one Commissioner must hold an office listed in Part 3 of Schedule 14), after "Schedule 14," insert "the Senior President of Tribunals, a judge of the Upper Tribunal appointed under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2006 or a member of the Employment Appeal Tribunal appointed under section 22(1)(c) of the Employment Tribunals Act 1996,".

67 (1) Schedule 14 (Judicial Appointments Commission: relevant offices and enactments) is amended as follows.

(2) In Part 1 (appointments by Her Majesty), at the end insert—

"Judge of the Upper Tribunal by appointment under:	Paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2006"

(3) In Part 3 (appointments by Lord Chancellor to offices to which paragraph 2(2)(d) of Schedule 12 applies), at the end insert—

"Chamber President of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal, but not where appointment is in accordance with paragraph 2(2) to (5) of Schedule 4 to the Tribunals, Courts and Enforcement Act 2006	Section 4(2) of the Tribunals, Courts and Enforcement Act 2006
Judge of the First-tier Tribunal by appointment under:	Paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2006
Member of the First-tier Tribunal by appointment under:	Paragraph 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2006
Member of the Upper Tribunal by appointment under:	Paragraph 2(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2006
Deputy judge of the Upper Tribunal	Paragraph 6(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2006
Deputy Chamber President of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal	Paragraph 5(1) of Schedule 4 to the Tribunals, Courts and Enforcement Act 2006"

SCHEDULE 9

Section 39(2)

TRIBUNALS: TRANSITIONAL PROVISION

PART 1

GENERAL AND MISCELLANEOUS

Introductory

1 The following provisions of this Schedule are to be taken not to prejudice the generality of sections 27(7) and 115(2).

Membership of Tribunal Procedure Committee

2 (1) The Lord Chancellor may by order make provision for a person—
(a) who is a scheduled tribunal, or
(b) who is a member of a scheduled tribunal,
to be treated for the purposes of sub-paragraph (1) of paragraph 22 of Schedule 5 as falling within paragraph (a), (b) or (c) of that sub-paragraph.

(2) In sub-paragraph (1) "scheduled tribunal" means a tribunal in a list in Schedule 6 that has effect for the purposes of section 26.

(3) The power under sub-paragraph (1) may not be exercised so as to provide for the Secretary of State to be treated as mentioned in that sub-paragraph.

PART 2

JUDGES AND OTHER MEMBERS OF FIRST-TIER AND UPPER TRIBUNALS: RETIREMENT DATES

Interpretation of Part 2 of Schedule

3 (1) For the purposes of this Part of this Schedule—

(a) "relevant judicial office" means—

(i) an office to which a person is appointed under paragraph 1(1) or 2(1) of Schedule 2 or 3 (judge, or other member, of the First-tier Tribunal or of the Upper Tribunal),

(ii) the office of deputy judge of the Upper Tribunal,

(iii) the office of Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of the Upper Tribunal, or

(iv) the office of Senior President of Tribunals;

(b) "relevant day", in relation to a person who holds a relevant judicial office, means the day when he was appointed to that office or, if he holds that office as the latest in an unbroken succession of different relevant judicial offices, the day when he was appointed to the first of the offices in that succession;

(c) an office is a "qualifying office" at any particular time (but see sub-paragraph (2)) if—

(i) the office is that of member of a tribunal which at that time is in a list in Schedule 6, or

(ii) the office itself is at that time in a list in Schedule 6,

and (in either case) the list has effect at that time for the purposes of section 26;

(d) "the 1993 Act" means the Judicial Pensions and Retirement Act 1993 (c. 8).

(2) Where—

(a) a person held two or more qualifying offices ("the actual offices") immediately before the relevant day, and

(b) at that time the person held at least one of the actual offices on a salaried basis and held at least one of the actual offices on a non-salaried basis,

the person shall be treated for the purposes of paragraphs 6 and 7 as not having held immediately before the relevant day any of the actual offices that the person held on a non-salaried basis at that time.

(3) For the purposes of sub-paragraph (2)—

(a) a person holds an office on a salaried basis at any particular time if, at that time, the person's service in the office is remunerated by payment of a salary, and

(b) a person holds an office on a non-salaried basis at any particular time if, at that time, the person's service in the office—

(i) is remunerated by the payment of fees,
(ii) is remunerated by the payment of a supplement to the salary payable to him in respect of his service in another office, or
(iii) is unremunerated.

Retirement from First-tier and Upper Tribunals: application of paragraphs 5 to 8

4 Paragraphs 5 to 8 apply where a person holds a relevant judicial office.

Retirement later than age 70 in certain cases where office previously held in another tribunal

5 (1) Subject to paragraph 8(1) (persons who held certain judicial offices on 30th March 1995), sub-paragraphs (3) and (4) apply where the person has a personal retirement date under either or both of paragraphs 6 and 7.

(2) In sub-paragraphs (3) and (4) and paragraph 8(1) and (2)—
(a) if the person has a personal retirement date under just one of paragraphs 6 and 7 or has the same personal retirement date under each of those paragraphs, "the special date" means that date;
(b) if the person has a personal retirement date under each of those paragraphs and those dates are different, "the special date" means the later of those dates.

(3) Subsection (1) of section 26 of the 1993 Act shall have effect (subject to the following provisions of that section) as if it provided for the person to vacate the relevant judicial office on the special date.

(4) The special date is to be taken for the purposes of that section to be the compulsory retirement date for the relevant judicial office in the person's case.

Cases where retirement from existing office would be after age 70

6 (1) Sub-paragraphs (2) and (3) apply where, immediately before the relevant day, the person—
(a) held a qualifying office, and
(b) was required to vacate the qualifying office on a day later than the day on which he attains the age of 70.

(2) The person's personal retirement date under this paragraph is the later day mentioned in sub-paragraph (1)(b), subject to sub-paragraph (3).

(3) If—
(a) there are two or more qualifying offices each of which is one that, immediately before the relevant day, the person—
(i) held, and
(ii) was required to vacate on a day later than the day on which he attains the age of 70, and
(b) the later day mentioned in paragraph (a)(ii) is not the same for each of those offices,

the person's personal retirement date under this paragraph is the latest (or later) of those later days.

Cases where no requirement to retire from existing office

7 (1) Sub-paragraph (2) applies where—

(a) immediately before the relevant day, the person held, on an unlimited basis, a qualifying office or two or more qualifying offices, and

(b) the relevant day falls after the day on which the person attains the age of 69.

(2) The person's personal retirement date under this paragraph is the last day of the 12 months beginning with the day after the relevant day.

(3) For the purposes of this paragraph, a person holds an office on an unlimited basis at a particular time if at that time he is not required to vacate the office at any particular later time.

Interaction between rules under paragraph 5, and rules under Schedule 7 to the 1993 Act, in cases where office held on 30th March 1995

8 (1) If—

(a) sub-paragraph (2) of paragraph 2 of Schedule 7 to the 1993 Act (transitional provision where person held salaried relevant office on 30th March 1995) has effect in relation to retirement from the relevant judicial office in the person's case, and

(b) the date that, for the purposes of that paragraph, is the person's potential retirement date by reference to his pre-commencement office ("the retirement date preserved in 1995") is the same as, or later than, the special date,

paragraph 5(3) and (4) do not apply.

(2) If the special date is later than the retirement date preserved in 1995, paragraph 2(2)(b) of Schedule 7 to the 1993 Act does not have effect in relation to the relevant judicial office in the person's case.

(3) Accordingly, in paragraph 1 of Schedule 7 to the 1993 Act, after sub-paragraph (5) insert—

"(6) Paragraph 2(2) has effect subject to paragraph 8(2) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2006 (certain cases where the post-commencement office is that of judge, or other member, of the First-tier Tribunal or the Upper Tribunal)."

Eligibility for appointment after having attained age of 70

9 (1) Sub-paragraph (3) applies in respect of a person on each day that—

(a) is, or is later than, the day on which the person attains the age of 70,

(b) is a day on which the person holds a qualifying office, and

(c) is earlier than the day on which the person is required to vacate the qualifying office.

(2) Sub-paragraph (3) also applies in respect of a person on each day that—

(a) is, or is later than, the day on which the person attains the age of 70, and

(b) is a day on which the person holds, on an unlimited basis, a qualifying office.

(3) Where this sub-paragraph applies in respect of a person on a day, the fact that the person has attained the age of 70 shall not (by itself) render him ineligible for appointment (or re-appointment) on that day to a relevant judicial office.

(4) For the purposes of this paragraph, a person holds an office on an unlimited basis at a particular time if at that time he is not required to vacate the office at any particular later time.

PART 3

JUDGES AND OTHER MEMBERS OF FIRST-TIER AND UPPER TRIBUNALS: PENSIONS WHERE OFFICE ACQUIRED UNDER SECTION 27(2)

Interpretation of Part 3 of Schedule

10 For the purposes of this Part of this Schedule—

(a) "new office" means the office of judge or other member of the First-tier Tribunal or Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 or 3;

(b) a person holds an office "on a salaried basis" if and so long as, and to the extent that—

(i) the person's service in the office is remunerated by payment of a salary, and

(ii) the salary is not subject to terms which preclude rights to pensions and other benefits accruing by reference to it;

(c) a person shall be regarded as holding "qualifying judicial office" at any time when he holds, on a salaried basis, any one or more of the offices specified in Schedule 1 to the 1993 Act, and any reference to a "qualifying judicial office" is a reference to any office specified in that Schedule if it is held on a salaried basis;

(d) "the 1993 Act" means the Judicial Pensions and Retirement Act 1993 (c. 8).

Right to opt in to Part 1 of the 1993 Act where qualifying judicial office not previously held

11 (1) Sub-paragraphs (2) and (3) apply where—

(a) a person becomes, as a result of provision under section 27(2), the holder of a new office,

(b) before that, the person has never held qualifying judicial office, and

(c) the person, on becoming the holder of the new office, holds the new office on a salaried basis.

(2) Section 1(1)(a) of the 1993 Act (Part 1 of the 1993 Act applies to a person who first holds qualifying judicial office on or after 31st March 1995) does not have effect in relation to the person.

(3) The person is entitled, subject to paragraph 12, to elect for Part 1 of the 1993 Act (judicial pensions) to apply to him.

(4) Part 1 of the 1993 Act applies to a person who makes an election under sub-paragraph (3).

(5) Sub-paragraph (4) is subject to sections 1(5) and 13 of the 1993 Act (where person has opted out of Part 1 of the 1993 Act then, except as provided by section 13 of that Act, that Part does not apply to the person).

Election under paragraph 11(3) for pension under Part 1 of the 1993 Act

12 (1) In this paragraph "opt-in election" means an election under paragraph 11(3).

(2) An opt-in election may be made only in such circumstances, within such time and in such manner as the Lord Chancellor may by regulations prescribe.

(3) An opt-in election is irrevocable.

(4) Regulations under sub-paragraph (2) may permit the making of an opt-in election even though the person in respect of whom the opt-in election is made—

(a) has ceased (whether by virtue of dying or otherwise) to hold the office mentioned in paragraph 11(1)(a), or

(b) has ceased to hold that office on a salaried basis without having ceased to hold that office.

(5) Where regulations under sub-paragraph (2) permit the making of an opt-in election in respect of a person who has died, the right to make that election is exercisable by the person's personal representatives.

(6) The Lord Chancellor may by regulations provide for a person in respect of whom an opt-in election is made to be treated for such purposes as may be prescribed by the regulations as if the person had, at such times as may be prescribed by the regulations, been a person to whom Part 1 of the 1993 Act applies.

(7) An opt-in election may not be made in respect of a person at any time when an election made under section 13 of the 1993 Act (election to opt out of Part 1 of the 1993 Act) is in force in respect of the person.

Continuation of existing public service pension arrangements in certain cases

13 (1) Sub-paragraph (2) applies if—

(a) a person, as a result of provision under section 27(2), becomes the holder of a new office,

(b) either—

(i) the person held qualifying judicial office immediately before 31st March 1995, or

(ii) before becoming the holder of the new office, the person has never held qualifying judicial office,

(c) immediately before the person becomes the holder of the new office—

(i) the person holds an office within paragraph (a), (b) or (c) of section 27(2) (the "old office"), and

(ii) the person's service in the old office is subject to a public service pension scheme,

(d) the person, on becoming the holder of the new office, holds the new office on a salaried basis, and

(e) immediately after the person becomes the holder of the new office, the person—

(i) is not a person to whom Part 1 of the 1993 Act applies, and

(ii) is not a person to whom that Part would apply but for section 13 of that Act.

(2) The person's service in the new office, so far as it is service during the continuity period—

(a) shall be subject to that public service pension scheme, and

(b) shall be subject to that scheme in a way that corresponds to the way in which the person's service in the old office was subject to that scheme.

(3) In sub-paragraph (2) "the continuity period" means the period—

(a) that begins when the person becomes the holder of the new office on a salaried basis, and

(b) that ends with whichever of the following first happens after that—

(i) the person's ceasing to hold the new office,

(ii) the person's ceasing to hold the new office on a salaried basis without ceasing to hold the new office,

(iii) the person's becoming a person to whom Part 1 of the 1993 Act applies, and

(iv) the person's becoming a person to whom Part 1 of the 1993 Act would apply but for section 13 of that Act.

(4) For the purposes of sub-paragraph (1)(c)(ii), the person's service in the old office is not to be treated as subject to a public service pension scheme at a time when the scheme does not apply to him as a result of his having exercised a right to elect for the scheme not to apply to him.

(5) A public service pension scheme which, apart from sub-paragraph (2), would not be a judicial pension scheme for the purposes of the 1993 Act does not become a judicial pension scheme for those purposes if it is only as a result of sub-paragraph (2) that pensions and other benefits are payable under the scheme in respect of service in qualifying judicial office.

(6) In this paragraph "public service pension scheme" means any public service pension scheme, as defined in—

(a) section 1 of the Pension Schemes Act 1993 (c. 48), or

(b) section 1 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49).

PART 4

AMENDMENTS TO THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993

14 The Judicial Pensions and Retirement Act 1993 (c. 8) is amended as follows.

15 (1) Section 1 (application of Part 1: judicial pensions) is amended as follows.

(2) In subsection (1) (persons to whom Part 1 of the 1993 Act applies), after paragraph (d) insert "and

(e) to any person appointed to a qualifying judicial office in circumstances falling within subsection (4A) below;".

(3) In subsection (1), after "but this subsection is subject to the following provisions of this Act" insert "and to Part 3 of Schedule 9 of the Tribunals,

Courts and Enforcement Act 2006 (transitional arrangements for pensions of certain judges and other members of the First-tier Tribunal and Upper Tribunal)".

(4) After subsection (4) insert—

"(4A) The circumstances of a person's appointment to a qualifying judicial office ("the subsequent office") fall within this subsection if—

(a) the person, immediately before being appointed to the subsequent office, holds an office within subsection (4B) below ("the replacement tribunal office");

(b) the person became the holder of the replacement tribunal office as a result of provision under section 27(2) of the Tribunals, Courts and Enforcement Act 2006;

(c) the person held the replacement tribunal office on a salaried basis from when he became its holder until immediately before being appointed to the subsequent office; and

(d) the person, before becoming the holder of the replacement tribunal office, had never held qualifying judicial office.

(4B) The offices within this subsection are—

(a) the office of judge or other member of the First-tier Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2006; and

(b) the office of judge or other member of the Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 3 to that Act."

16 In section 9(4) (contribution towards cost of surviving spouse's, surviving civil partner's and surviving children's pension), for "or (d) above," substitute ", (d) or (e) above or in the case of persons to whom this Part applies by virtue of paragraph 11(4) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2006,".

17 (1) In section 12(1) (transfer of accrued benefits under judicial pension schemes in certain cases where person held qualifying judicial office before 31st March 1995)—

(a) for "or (d)" substitute ", (d) or (e)",

(b) after "of section 1(1) above" insert "or by virtue of paragraph 11(4) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2006", and

(c) omit paragraph (b) (which is superseded by the new section 12B inserted by this Part of this Schedule).

(2) In the sidenote to section 12, for the words after "Transfer of rights" substitute "under judicial pension schemes".

18 After section 12 insert—

"12A Transfer of rights under other public service pension schemes

(1) Where this Part—

(a) begins, on or after the day on which this section comes into force, to apply to a person by virtue of section 1(1)(d) above, or

(b) begins to apply to a person—

(i) by virtue of section 1(1)(e) above, or

(ii) by virtue of paragraph 11(4) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2006,

any relevant public service pension rights of his shall be transferred to the scheme constituted by this Part.

(2) Where a person's rights under a public service pension scheme are transferred under subsection (1) above—

(a) that scheme shall no longer have effect in relation to him, and

(b) no pension or lump sum under the scheme shall be paid to or in respect of him.

(3) Regulations may make provision—

(a) for calculating, whether by actuarial assessment or otherwise, the amount or value of the rights transferred under subsection (1) above, and

(b) prescribing the manner in which those rights are to be given effect under this Part.

(4) Without prejudice to the generality of paragraph (b) of subsection (3) above, regulations under that paragraph may provide for rights transferred under subsection (1) above to be given effect by crediting the person in question with such service, on or after the day on which this Part first applies to the person, as may be prescribed.

(5) For the purposes of this section, a persons's "relevant public service pension rights" are the person's accrued rights to benefit under any public service pension scheme, but this is subject to subsections (6) to (8) below.

(6) A person's rights under a public service pension scheme are not "relevant public service pension rights" if the scheme is a judicial pension scheme other than—

(a) the principal civil service pension scheme, or

(b) the principal civil service pension scheme for the civil service of Northern Ireland.

(7) A person's rights—

(a) under the principal civil service pension scheme, or

(b) under the principal civil service pension scheme for the civil service of Northern Ireland,

are not "relevant public service pension rights" if they are transferred under section 12 above.

(8) A person's rights under a public service pension scheme are not "relevant public service pension rights" unless at least some of his service which was subject to the scheme was qualifying tribunal service and, in that event, all of his rights under the scheme shall be regarded as relevant public service pension rights.

(9) In this section—

"prescribe" means prescribe in regulations;

"public service pension scheme" means any public service pension scheme, as defined in—

(a) section 1 of the Pension Schemes Act 1993, or

(b) section 1 of the Pension Schemes (Northern Ireland) Act 1993;

"qualifying tribunal service" means—

(a) service as, or as a member of, a tribunal specified in a list in Schedule 6 to the Tribunals, Courts and Enforcement Act 2006 that has effect for the purposes of section 26 of that Act, or

(b) service as an authorised decision-maker for a tribunal, within the meaning given by section 27(4) of that Act;

"regulations" means regulations made by the Lord Chancellor with the concurrence of the Treasury.

12B Rate of pension etc. where rights transferred under section 12 or 12A

Entitlement to, and the rate or amount of, any judicial pension or derivative benefit payable under this Part to or in respect of a person whose rights are transferred under section 12 or 12A above shall be determined by reference to—

(a) any rights of his that are transferred under section 12 above,

(b) any rights of his that are transferred under section 12A above, and

(c) his service in qualifying judicial office on or after the day on which this Part first applies to him."

19 In section 23 (which provides that Schedule 2 does not apply to transfers under section 12), after "section 12" insert "or 12A".

SCHEDULE 10

Section 41

AMENDMENTS RELATING TO JUDICIAL APPOINTMENTS

PART 1

AMENDMENTS

1 (1) Paragraph 2A of the Schedule to the War Pensions (Administrative Provisions) Act 1919 (c. 53) (legally qualified member of Pensions Appeal Tribunals) is amended as follows.

(2) For paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In paragraphs (b) and (c), for "7" substitute "5".

2 (1) Section 109 of the London Building Acts (Amendment) Act 1939 (c. xcvii) is amended as follows.

(2) In subsection (1)(b) (tribunal of appeal: Lord Chancellor's nominee), for the words from "a person who has" to the end substitute "person who—

(i) is a solicitor of the Senior Courts of England and Wales,

(ii) is a barrister in England and Wales, or

(iii) has a qualification that is specified under subsection (4) of this section;".

(3) After subsection (3) insert—

"(4) The Lord Chancellor may by order specify a qualification for the purposes of paragraph (b) of subsection (1) of this section.

(5) Subsections (2) to (6), (12) and (13) of section 42 of the Tribunals, Courts and Enforcement Act 2006 (contents of and procedure for orders under subsection (1) of that section, and cessation of effect of such orders) shall apply for the purposes of subsection (4) of this section as they apply for the purposes of subsection (1) of that section.

(6) For the purposes of paragraph (b) of subsection (1) of this section, a person shall be taken not to be a solicitor or a barrister, or not to have a qualification specified under subsection (4) of this section, if as a result of disciplinary proceedings he is prevented from practising as a solicitor or (as the case may be) as a barrister or as a holder of the specified qualification."

3 (1) Paragraph 2A(2) of the Schedule to the Pensions Appeal Tribunals Act 1943 (c. 39) (legally qualified members of Pensions Appeal Tribunals) is amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In paragraphs (b) and (c), for "seven" substitute "five".

4 In paragraph 13(1) of Schedule 9 to the Agriculture Act 1947 (chairman of agricultural land tribunal), for the words from "person" to the end substitute "person who satisfies the judicial-appointment eligibility condition on a 5-year basis."

5 (1) Section 2(2) of the Lands Tribunal Act 1949 (c. 42) (President and members of Lands Tribunal) is amended as follows.

(2) For paragraph (b) substitute—

"(b) satisfies the judicial-appointment eligibility condition on a 5-year basis; or".

(3) In paragraph (c) and in the words after that paragraph, for "7" substitute "5".

6 (1) The Courts-Martial (Appeals) Act 1951 (c. 46) is amended as follows.

(2) In section 28(2) (Judge Advocate of Her Majesty's Fleet)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis;", and

(b) in paragraphs (b) and (c), for "10" (in each place where it occurs) substitute "7".

(3) In section 31(1) (Judge Advocate General)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis;", and

(b) in paragraphs (b) and (c), for "10" (in each place where it occurs) substitute "7".

(4) In section 31(2) (Vice Judge Advocate General and assistants)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;", and

(b) in paragraphs (b) and (c), for "7" (in each place where it occurs) substitute "5".

7 (1) The Army Act 1955 (3 & 4 Eliz. 2 c. 18) is amended as follows.

(2) In section 84B(2) (judge advocates), for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In section 103B(5) (qualified officers in field general courts-martial), for paragraph (a) substitute—

"(a) a person who is a barrister or solicitor in England and Wales;".

8 (1) The Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) is amended as follows.

(2) In section 84B(2) (judge advocates), for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In section 103B(5) (qualified officers in field general courts-martial), for paragraph (a) substitute—

"(a) a person who is a barrister or solicitor in England and Wales;".

9 In section 53B(2) of the Naval Discipline Act 1957 (c. 53) (judge advocates), for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;".

10 In section 12(2) of the City of London (Courts) Act 1964 (c. iv) (Common Serjeant), for the words from "he has a 10 year" to the end substitute "he satisfies the judicial-appointment eligibility condition on a 7-year basis."

11 In section 17(1)(a) of the Commons Registration Act 1965 (c. 64) (Commons Commissioners), for the words from "persons" to "1990," substitute "persons who satisfy the judicial-appointment eligibility condition on a 5-year basis".

12 (1) Section 4(2) of the Taxes Management Act 1970 (c. 9) (Special Commissioners) is amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis;".

(3) In paragraphs (b) and (c), for "10" substitute "7".

13 (1) The Courts Act 1971 (c. 23) is amended as follows.

(2) In section 16(3) (Circuit judges), for paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis;".

(3) In section 21(2) (recorders), for the words from "he has a 10 year" to the end substitute "he satisfies the judicial-appointment eligibility condition on a 7-year basis."

(4) In section 24(1)(b) (assistant recorders), for the words from "any person who has a 10 year" to the end substitute "any person who satisfies the judicial-appointment eligibility condition on a 7-year basis."

14 (1) Paragraph 1(1)(a) of Schedule 3 to the Misuse of Drugs Act 1971 (c. 38) (tribunal chairmen) is amended as follows.

(2) For sub-paragraph (i) substitute—

"(i) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In sub-paragraphs (ii) and (iii), for "7" substitute "5".

15 (1) Paragraph 4(1)(a) of Schedule 3 to the Industry Act 1975 (c. 68) (presidents of arbitration tribunals) is amended as follows.

(2) For sub-paragraph (i) substitute—

"(i) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis; or".

(3) In sub-paragraph (ii), for "7" substitute "5".

16 (1) Section 42 of the Aircraft and Shipbuilding Industries Act 1977 (c. 3) (Aircraft and Shipbuilding Industries Arbitration Tribunal) is amended as follows.

(2) For subsection (3)(a)(i) substitute—

"(i) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis; or".

(3) In subsection (3)(a)(ii), and in the subsection (3)(a) which is substituted by subsection (4), for "7" substitute "5".

17 (1) Schedule 9A to the National Health Service Act 1977 (c. 49) is amended as follows.

(2) For paragraph 3 (President and Deputy President of Family Health Services Appeal Authority) substitute—

"3 (1) A person is eligible to be appointed as the President only if he satisfies the judicial-appointment eligibility condition on a 7-year basis.

(2) A person is eligible to be appointed as a Deputy President only if he satisfies the judicial-appointment eligibility condition on a 5-year basis."

(3) In paragraph 6 (other members), for "with a 7 year general qualification (construed as in paragraph 3)" substitute "who satisfy the judicial-appointment eligibility condition on a 5-year basis".

(4) In paragraph 9 (composition of panels), for "must" to the end substitute "must satisfy the judicial-appointment eligibility condition on a 5-year basis."

18 (1) The Supreme Court Act 1981 (c. 54) is amended as follows.

(2) In section 10(3) (Lord Justice of Appeal and puisne judge of High Court), in paragraphs (b) and (c), for sub-paragraph (i) substitute—

"(i) he satisfies the judicial-appointment eligibility condition on a 7-year basis; or".

(3) For Schedule 2 (eligibility for appointment to certain offices) substitute—

"SCHEDULE 2

Sections 88 to 95

LIST OF OFFICES IN SENIOR COURTS FOR PURPOSES OF PART 4

PART 1

Office	*Persons qualified*
Official Solicitor	A person who has a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990).

PART 2

Office	*Persons qualified*
Master, Queen's Bench Division	A person who satisfies the judicial-appointment eligibility condition on a 5-year basis.
Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals	A person who satisfies the judicial-appointment eligibility condition on a 7-year basis.
Admiralty Registrar	A person who satisfies the judicial-appointment eligibility condition on a 5-year basis.
Master, Chancery Division	A person who satisfies the judicial-appointment eligibility condition on a 5-year basis.
Registrar in Bankruptcy of the High Court	A person who satisfies the judicial-appointment eligibility condition on a 5-year basis.

Office	*Persons qualified*
Taxing Master of the Senior Courts	A person who satisfies the judicial-appointment eligibility condition on a 5-year basis.
District judge of the principal registry of the Family Division	1. A person who satisfies the judicial-appointment eligibility condition on a 5-year basis. 2. A district probate registrar who either— (a) is of at least 5 years' standing, or (b) has, during so much of the 5 years immediately preceding his appointment as he has not been a district probate registrar, served as a civil servant in the principal registry or a district probate registry. 3. A civil servant who has served at least 7 years in the principal registry or a district probate registry.

PART 3

Office	*Persons qualified*
District probate registrar	1. A person who satisfies the judicial-appointment eligibility condition on a 5-year basis. 2. A civil servant who has served at least 5 years in the principal registry of the Family Division or a district probate registry."

(4) Part 2 of the Schedule substituted by sub-paragraph (3) of this paragraph shall have effect until the coming into force of section 45(6) of the Mental Capacity Act 2005 (c. 9) as if it also contained the following entry—

"Master of the Court of Protection	A person who satisfies the judicial-appointment eligibility condition on a 5-year basis."

19 In section 130(2) of the Representation of the People Act 1983 (c. 2) (election court), for paragraph (a) substitute—

"(a) unless he satisfies the judicial-appointment eligibility condition on a 7-year basis; or".

20 In section 9 of the County Courts Act 1984 (c. 28) (district judges and deputy district judges), for the words from "he has" to the end substitute "he satisfies the judicial-appointment eligibility condition on a 5-year basis."

21 (1) Paragraph 5 of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985 (c. 17) (umpires and deputy umpires) is amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis;".

(3) In paragraphs (b) and (c), for "10" substitute "7".

22 (1) Paragraph 2 of Schedule 4 to the Transport Act 1985 (c. 67) is amended as follows.

(2) In sub-paragraph (2) (president of Transport Tribunal)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis; or", and

(b) in paragraph (b), for "10" substitute "7".

(3) In sub-paragraph (2A) (chairmen)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis; or", and

(b) in paragraph (b), for "7" substitute "5".

23 (1) Section 12(5) of the Animals (Scientific Procedures) Act 1986 (c. 14) (person appointed to receive representations) is amended as follows.

(2) For paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In paragraphs (b) and (c), for "7" substitute "5".

24 (1) Paragraph 1(1)(a) of Schedule 7 to the Insolvency Act 1986 (c. 45) (members of Insolvency Practitioners Tribunal) is amended as follows.

(2) For sub-paragraph (i) substitute—

"(i) satisfy the judicial-appointment eligibility condition on a 5-year basis;".

(3) In sub-paragraph (ii), for "7" substitute "5"".

25 (1) Section 145(3) of the Copyright, Designs and Patents Act 1988 (c. 48) (chairman and deputy chairman of Copyright tribunal) is amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In paragraphs (b) and (c), for "7" substitute "5".

26 In section 41 of the Courts and Legal Services Act 1990 (c. 41) (Conveyancing Appeal Tribunals), for subsection (7) substitute—

"(7) A person is eligible for appointment as Chairman of a Tribunal only if he satisfies the judicial-appointment eligibility condition on a 5-year basis."

27 (1) The Child Support Act 1991 (c. 48) is amended as follows.

(2) In section 22(2) (Child Support Commissioners)—

(a) for paragraph (a) substitute—

"(a) satisfy the judicial-appointment eligibility condition on a 7-year basis; or", and

(b) in paragraph (b), for "10" substitute "7".

(3) In section 23(2) (Child Support Commissioners for Northern Ireland), for "10" substitute "7".

(4) In paragraph 4(2)(a) of Schedule 4 (Deputy Child Support Commissioners)—

(a) for "have a 10 year general qualification" substitute "satisfy the judicial-appointment eligibility condition on a 7-year basis", and

(b) for "10" in the second place where it occurs substitute "7".

(5) In paragraph 8(d)(i) of Schedule 4 (Deputy Child Support Commissioners for Northern Ireland), in the substituted paragraph 4(2)(a), for "10" substitute "7".

28 (1) Section 84(2) of the Friendly Societies Act 1992 (c. 40) (adjudicators) is amended as follows.

(2) For paragraph (a) substitute—

"(a) satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In paragraphs (b) and (c), for "seven" substitute "5".

29 (1) Schedule 12 to the Value Added Tax Act 1994 (c. 23) is amended as follows.

(2) In paragraph 2(2) (President of VAT and duties tribunals)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis;", and

(b) in paragraphs (b) and (c), for "10" substitute "7".

(3) In paragraph 7(4) (panel of chairmen)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;", and

(b) in paragraph (b) and in the words after that paragraph, for "7" substitute "5".

30 (1) Section 77(2) of the Trade Marks Act 1994 (c. 26) (persons appointed to decide appeals from registrar) is amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In paragraphs (b) and (c), for "7" substitute "5".

31 (1) Sections 96(7) and 264(6) of the Merchant Shipping Act 1995 (c. 21) (arbitrators) are amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis;".

(3) In paragraphs (b) and (c), for "10" substitute "7".

32 In paragraph 1(1)(a) of Schedule 6 to the Police Act 1996 (c. 16) (legally qualified member of Police Appeals Tribunals), for the words from "have a seven" to "1990" substitute "satisfy the judicial-appointment eligibility condition on a 5-year basis".

33 In section 334(1) of the Education Act 1996 (c. 56) (President and members of chairmen's panel of Special Educational Needs and Disability Tribunal), for the words from "has" to the end substitute "satisfies the judicial-appointment eligibility condition on a 5-year basis."

34 (1) Schedule 3 to the Plant Varieties Act 1997 (c. 66) (Plant Varieties and Seeds Tribunal) is amended as follows.

(2) In paragraph 2(2) (Chairman for proceedings in England and Wales), for the words from "has" to the end substitute "satisfies the judicial-appointment eligibility condition on a 5-year basis."

(3) In paragraph 3(2) (Chairman for proceedings in Scotland), for "7" substitute "5".

(4) In paragraph 4(2) (Chairman for proceedings in Northern Ireland), for "7" substitute "5".

35 (1) The Social Security Act 1998 (c. 14) is amended as follows.

(2) In section 5(2) (President of appeal tribunals)—

(a) for paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis; or", and

(b) in paragraph (b), for "10" substitute "7".

(3) In section 7(2) (constitution of appeal tribunals), for paragraph (a) substitute—

"(a) be a solicitor of the Senior Courts of England and Wales, a barrister in England and Wales or have a qualification that is specified under subsection (6A); or".

(4) In section 7, after subsection (6) insert—

"(6A) The Lord Chancellor may by order specify a qualification for the purposes of subsection (2)(a) above.

(6B) Subsections (2) to (6) of section 42 of the Tribunals, Courts and Enforcement Act 2006 (contents of orders under subsection (1) of that

section, and cessation of effect of such orders) shall apply for the purposes of subsection (6A) above as they apply for the purposes of subsection (1) of that section.

(6C) For the purposes of subsection (2)(a) above, a person shall be taken not to be a solicitor or a barrister, or not to have a qualification specified under subsection (6A) above, if as a result of disciplinary proceedings he is prevented from practising as a solicitor or (as the case may be) as a barrister or as a holder of the specified qualification."

(5) In section 80 (parliamentary control of regulations), after subsection (3) insert—

"(4) No order shall be made by the Lord Chancellor under section 7(6A) above unless a draft of the statutory instrument containing the order has been laid before Parliament and been approved by a resolution of each House of Parliament."

(6) In paragraph 1(1) of Schedule 4 (Social Security Commissioners), for the words from "have" to "standing" substitute "satisfy the judicial-appointment eligibility condition on a 7-year basis or advocates or solicitors in Scotland of at least 7 years' standing".

(7) In paragraph 1(2) of that Schedule (deputy Commissioners)—

(a) for paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis; or", and

(b) in paragraphs (b) and (c), for "10" substitute"7".

36 (1) Section 6(5) of the Data Protection Act 1998 (c. 29) (chairman and deputy chairmen of Information Tribunal) is amended as follows.

(2) For paragraph (a) substitute—

"(a) persons who satisfy the judicial-appointment eligibility condition on a 5-year basis,".

(3) In paragraphs (b) and (c), for "7" substitute "5".

37 In paragraph 2(2) of the Schedule to the Protection of Children Act 1999 (c. 14) (President and members of chairmen's panel of Tribunal), for the words from "has" to the end substitute "satisfies the judicial-appointment eligibility condition on a 5-year basis."

38 (1) Paragraph 11 of Schedule 7 to the Immigration and Asylum Act 1999 (c. 33) (President and other members of Immigration Services Tribunal) is amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;".

(3) In paragraphs (b) and (c), for "7" substitute "5".

39 (1) Paragraph 1(1) of Schedule 3 to the Regulation of Investigatory Powers Act 2000 (c. 23) (members of tribunal) is amended as follows.

(2) For paragraph (b) substitute—

"(b) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis;".

(3) In paragraphs (c) and (d), for "ten" substitute "seven".

40 (1) Schedule 13 to the Financial Services and Markets Act 2000 (c. 8) is amended as follows.

(2) In paragraph 2(5) (President of Financial Services and Markets Tribunal)—

(a) for paragraph (a) substitute—

"(a) satisfies the judicial-appointment eligibility condition on a 7-year basis;", and

(b) in paragraphs (b) and (c)(i) and (ii), for "ten" substitute "7".

(3) In paragraph 3(2) (panel of chairmen)—

(a) for paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;", and

(b) in paragraphs (b) and (c)(i) and (ii), for "seven" substitute "5".

41 (1) The Land Registration Act 2002 (c. 9) is amended as follows.

(2) In section 107(2) (Adjudicator to Her Majesty's Land Registry), for the words from "have" to the end substitute "satisfy the judicial-appointment eligibility condition on a 7-year basis."

(3) In paragraph 4(2) of Schedule 9 (delegation by adjudicator of non-administrative functions to staff), for the words from "has" to the end substitute "satisfies the judicial-appointment eligibility condition on a 7-year basis."

42 (1) Paragraph 1 of Schedule 2 to the Enterprise Act 2002 (c. 40) is amended as follows.

(2) In sub-paragraph (1) (President of Competition Appeal Tribunal)—

(a) for paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis;", and

(b) in paragraphs (b) and (c), for "10" substitute "7".

(3) In sub-paragraph (2) (chairmen)—

(a) for paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis;", and

(b) in paragraphs (b) and (c), for "7" substitute "5".

43 (1) Paragraph 2(1) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (c. 41) (members of Asylum and Immigration Tribunal) is amended as follows.

(2) For paragraph (a) substitute—

"(a) satisfies the judicial-appointment eligibility condition on a 5-year basis,".

(3) In paragraphs (b) and (c), for "seven" substitute "5".

44 (1) The Courts Act 2003 (c. 39) is amended as follows.

(2) In section 22(1) (District Judges (Magistrates' Courts)), for "has a 7 year general qualification" substitute "satisfies the judicial-appointment eligibility condition on a 5-year basis".

(3) In section 24(1) (Deputy District Judges (Magistrates' Courts)), for "has a 7 year general qualification" substitute "satisfies the judicial-appointment eligibility condition on a 5-year basis".

45 (1) Paragraph 1(3) of Schedule 1 to the Gender Recognition Act 2004 (c. 7) (legal members of Gender Recognition Panels) is amended as follows.

(2) For paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis,".

(3) In paragraphs (b) and (c), for "seven" substitute "5".

46 In section 81(2)(a) of the Traffic Management Act 2004 (c. 18) (adjudicators), for the words from "have" to the end substitute "satisfy the judicial-appointment eligibility condition on a 5-year basis;".

47 (1) Schedule 4 to the Pensions Act 2004 (c. 35) is amended as follows.

(2) In paragraph 1(2) (panel of chairmen of Pensions Regulator Tribunal)—

(a) for paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis," and

(b) in paragraphs (b), (c) and (d), for "7" substitute "5".

(3) In paragraph 2(5) (President or Deputy President)—

(a) for paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 7-year basis," and

(b) in paragraphs (b), (c) and (d), for "10" substitute "7".

48 (1) Section 25 of the Constitutional Reform Act 2005 (c. 4) (judges of the Supreme Court) is amended as follows.

(2) In subsection (1), for paragraph (b) and the word "or" immediately preceding it substitute—

"(b) satisfied the judicial-appointment eligibility condition on a 15-year basis, or

(c) been a qualifying practitioner for a period of at least 15 years."

(3) In subsection (2), omit paragraph (a).

49 (1) Paragraph 2 of Schedule 8 to the Gambling Act 2005 (c. 18) (President and members of Gambling Appeals Tribunal) is amended as follows.

(2) For paragraph (a) substitute—

"(a) he satisfies the judicial-appointment eligibility condition on a 5-year basis,".

(3) In paragraphs (b) and (c), for "seven" substitute "5".

PART 2

AMENDMENTS RELATING TO ENACTMENTS ALREADY REPEALED

50 (1) This Part of this Schedule contains amendments of enactments that have already been repealed by provisions of other Acts.

(2) In each case—

(a) the repealing provision is specified in relation to the enactment being amended, and

(b) the amendment has effect only until the repealing provision is fully commenced in relation to the enactment amended.

51 (1) In section 6 of the Appellate Jurisdiction Act 1876 (c. 59) (Lords of Appeal in Ordinary)—

(a) for the words from "for not less than fifteen" to the end of paragraph (a) substitute—

"(a) a person who satisfies the judicial-appointment eligibility condition on a 15-year basis;", and

(b) at the beginning of each of paragraphs (b) and (c) insert "for not less than fifteen years,".

(2) In relation to the enactment referred to in sub-paragraph (1), the repealing provision is paragraph 9 of Schedule 17 to the Constitutional Reform Act 2005 (c. 4).

52 (1) In section 29(2)(a) of the Betting, Gaming and Lotteries Act 1963 (c. 2) (chairman of Levy Appeal Tribunal)—

(a) for sub-paragraph (i) substitute—

"(i) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis; or", and

(b) in sub-paragraph (ii), for "7" substitute "5".

(2) In relation to the enactment referred to in sub-paragraph (1), the repealing provision is section 356(3)(f) of the Gambling Act 2005 (c. 19).

53 (1) In section 73(4) of the Road Traffic Act 1991 (c. 40) (parking adjudicator), for the words from "have" to the end substitute "satisfy the judicial-appointment eligibility condition on a 5-year basis."

(2) In relation to the enactment referred to in sub-paragraph (1), the repealing provision is Part 1 of Schedule 12 to the Traffic Management Act 2004 (c. 18).

54 (1) In paragraph 1(2) of Schedule 2 to the School Inspections Act 1996 (c. 57) (chairmen of tribunals), for the words from "have" to the end substitute "satisfy the judicial-appointment eligibility condition on a 5-year basis."

(2) In relation to the enactment referred to in sub-paragraph (1), the repealing provision is section 60 of the Education Act 2005 (c. 18).

SCHEDULE 11

Section 44(1)

TAKING CONTROL OF GOODS

PART 1

INTRODUCTORY

The procedure

1 (1) Using the procedure in this Schedule to recover a sum means taking control of goods and selling them to recover that sum in accordance with this Schedule and regulations under it.

(2) In this Schedule a power to use the procedure to recover a particular sum is called an "enforcement power".

(3) The following apply in relation to an enforcement power.

(4) "Debt" means the sum recoverable.

(5) "Debtor" means the person liable to pay the debt or, if two or more persons are jointly or jointly and severally liable, any one or more of them.

(6) "Creditor" means the person for whom the debt is recoverable.

Enforcement agents

2 (1) In this Schedule "enforcement agent" means an individual authorised by section 45(2) to act as an enforcement agent.

(2) Only an enforcement agent may take control of goods and sell them under an enforcement power.

(3) An enforcement agent, if he is not the person on whom an enforcement power is conferred, may act under the power only if authorised by that person.

(4) In relation to goods taken control of by an enforcement agent under an enforcement power, references to the enforcement agent are references to any person for the time being acting as an enforcement agent under the power.

General interpretation

3 (1) In this Schedule—

"amount outstanding" is defined in paragraph 50(3);

"co-owner" means a person known by the enforcement agent to have an interest in goods of the debtor;

"control" (except in paragraph 5(4)(a)) means control under an enforcement power;

"controlled goods" means goods taken control of that—

(a) have not been sold or abandoned,

(b) if they have been removed, have not been returned to the debtor (unless subject to a controlled goods agreement), and

(c) if they are goods of another person, have not been returned to that person;

"controlled goods agreement" has the meaning given by paragraph 13(4);

"the court", unless otherwise stated, and subject to rules of court, means—

(a) the High Court, in relation to an enforcement power under a writ of the High Court;

(b) a county court, in relation to an enforcement power under a warrant issued by a county court;

(c) in any other case, a magistrates' court.

"disposal" and related expressions, in relation to securities, are to be read in accordance with paragraph 48(2);

"exempt goods" means goods that regulations exempt by description or circumstances or both;

"goods" (without limiting that expression) includes in particular—

(a) animals;

(b) money and securities;

"interest" means a beneficial interest;

"money" means money in sterling or another currency;

"premises" means any place, and in particular includes—

(a) a vehicle, vessel, aircraft or hovercraft;

(b) a tent or movable structure;

"securities" means bills of exchange, promissory notes, bonds, specialties and securities for money.

(2) References in this Schedule to goods of the debtor or another person are references to goods in which the debtor or that person has an interest.

PART 2

THE PROCEDURE

Binding property in the debtor's goods

4 (1) For the purposes of any enforcement power, the property in all goods of the debtor, except exempt goods, becomes bound in accordance with this paragraph.

(2) Where the power is conferred by a writ issued from the High Court the writ binds the property in the goods from the time when it is received by the person who is under a duty to endorse it.

(3) Where the power is conferred by a warrant to which section 99 of the County Courts Act 1984 (c. 28) or section 125ZA of the Magistrates' Courts Act 1980 applies, the warrant binds the property in the goods from the time when it is received by the person who is under a duty to endorse it under that section.

(4) Where sub-paragraphs (2) and (3) do not apply but notice is given to the debtor under paragraph 7(1), the notice binds the property in the goods from the time when the notice is given.

Effect of property in goods being bound

5 (1) An assignment or transfer of any interest of the debtor's in goods while the property in them is bound for the purposes of an enforcement power—

(a) is subject to that power, and

(b) does not affect the operation of this Schedule in relation to the goods, except as provided by paragraph 61 (application to assignee or transferee).

(2) Sub-paragraph (1) does not prejudice the title to any of the debtor's goods that a person acquires—

(a) in good faith,

(b) for valuable consideration, and

(c) without notice.

(3) For the purposes of sub-paragraph (2)(a), a thing is to be treated as done in good faith if it is in fact done honestly (whether it is done negligently or not).

(4) In sub-paragraph (2)(c) "notice" means—

(a) where the property in the goods is bound by a writ or warrant, notice that the writ or warrant, or any other writ or warrant by virtue of which the goods of the debtor might be seized or otherwise taken control of, had been received by the person who was under a duty to endorse it and that goods remained liable to be taken control of under it;

(b) where the property in the goods is bound by notice under paragraph 7(1), notice that that notice had been given and that goods remained liable to be taken control of under it.

(5) In sub-paragraph (4)(a) "endorse" in relation to a warrant to which section 99 of the County Courts Act 1984 (c. 28) or section 125ZA of the Magistrates' Courts Act 1980 applies, means endorse under that section.

Time when property ceases to be bound

6 (1) For the purposes of any enforcement power the property in goods of the debtor ceases to be bound in accordance with this paragraph.

(2) The property in any goods ceases to be bound—

(a) when the goods are sold;

(b) in the case of money used to pay any of the amount outstanding, when it is used.

(3) The property in all goods ceases to be bound when any of these happens—

(a) the amount outstanding is paid, out of the proceeds of sale or otherwise;

(b) the instrument under which the power is exercisable ceases to have effect;

(c) the power ceases to be exercisable for any other reason.

Notice of enforcement

7 (1) An enforcement agent may not take control of goods unless the debtor has been given notice.

(2) Regulations must state—
(a) the minimum period of notice,
(b) the form of the notice,
(c) what it must contain,
(d) how it must be given,
(e) who must give it.

(3) The enforcement agent must keep a record of the time when the notice is given.

(4) If regulations authorise it, the court may order in prescribed circumstances that the notice given may be less than the minimum period.

(5) The order may be subject to conditions.

Time limit for taking control

8 (1) An enforcement agent may not take control of goods after the prescribed period.

(2) The period may be prescribed by reference to the date of notice of enforcement or of any writ or warrant conferring the enforcement power or any other date.

(3) Regulations may provide for the period to be extended or further extended by the court in accordance with the regulations.

Goods which may be taken

9 An enforcement agent may take control of goods only if they are—
(a) on premises that he has power to enter under this Schedule, or
(b) on a highway.

10 An enforcement agent may take control of goods only if they are goods of the debtor.

11 (1) Subject to paragraphs 9 and 10 an enforcement agent—
(a) may take control of goods anywhere in England and Wales;
(b) may take control of any goods that are not exempt.

(2) Regulations may authorise him to take control of exempt goods in prescribed circumstances, if he provides the debtor with replacements in accordance with the regulations.

Value of goods taken

12 (1) Unless sub-paragraph (2) applies, an enforcement agent may not take control of goods whose aggregate value is more than—
(a) the amount outstanding, and
(b) an amount in respect of future costs, calculated in accordance with regulations.

(2) An enforcement agent may take control of goods of higher value on premises or on a highway, only to the extent necessary, if there are not enough goods of a lower value within a reasonable distance—
(a) on a highway, or

(b) on premises that he has power to enter under this Schedule, either under paragraph 14 or under an existing warrant.

(3) For the purposes of this paragraph goods are above a given value only if it is or ought to be clear to the enforcement agent that they are.

(4) Sub-paragraph (1) does not affect the power to keep control of goods if they rise in value once they have been taken.

Ways of taking control

13 (1) To take control of goods an enforcement agent must do one of the following—

(a) secure the goods on the premises on which he finds them;

(b) if he finds them on a highway, secure them on a highway, where he finds them or within a reasonable distance;

(c) remove them and secure them elsewhere;

(d) enter into a controlled goods agreement with the debtor.

(2) Any liability of an enforcement agent (including criminal liability) arising out of his securing goods on a highway under this paragraph is excluded to the extent that he acted with reasonable care.

(3) Regulations may make further provision about taking control in any of those ways, including provision—

(a) determining the time when control is taken;

(b) prohibiting use of any of those ways for goods by description or circumstances or both.

(4) A controlled goods agreement is an agreement under which the debtor—

(a) is permitted to retain custody of the goods,

(b) acknowledges that the enforcement agent is taking control of them, and

(c) agrees not to remove or dispose of them, nor to permit anyone else to, before the debt is paid.

Entry without warrant

14 (1) An enforcement agent may enter relevant premises to search for and take control of goods.

(2) Where there are different relevant premises this paragraph authorises entry to each of them.

(3) This paragraph authorises repeated entry to the same premises, subject to any restriction in regulations.

(4) If the enforcement agent is acting under section 54(1) (CRAR), the only relevant premises are the demised premises.

(5) If he is acting under section 121A of the Social Security Act 1992, premises are relevant if they are the place, or one of the places, where the debtor carries on a trade or business.

(6) Otherwise premises are relevant if the enforcement agent reasonably believes that they are the place, or one of the places, where the debtor—

(a) usually lives, or

(b) carries on a trade or business.

Entry under warrant

15 (1) If an enforcement agent applies to the court it may issue a warrant authorising him to enter specified premises to search for and take control of goods.

(2) Before issuing the warrant the court must be satisfied that all these conditions are met—

(a) an enforcement power has become exercisable;

(b) there is reason to believe that there are goods on the premises that the enforcement power will be exercisable to take control of if the warrant is issued;

(c) it is reasonable in all the circumstances to issue the warrant.

(3) The warrant authorises repeated entry to the same premises, subject to any restriction in regulations.

Re-entry

16 (1) This paragraph applies where goods on any premises have been taken control of and have not been removed by the enforcement agent.

(2) The enforcement agent may enter the premises to inspect the goods or to remove them for storage or sale.

(3) This paragraph authorises repeated entry to the same premises.

General powers to use reasonable force

17 Where paragraph 18 or 19 applies, an enforcement agent may if necessary use reasonable force to enter premises or to do anything for which the entry is authorised.

18 This paragraph applies if these conditions are met—

(a) the enforcement agent has power to enter the premises under paragraph 14 or 16 or under a warrant under paragraph 15;

(b) he is acting under an enforcement power conferred by a warrant of control under section 76(1) of the Magistrates' Courts Act 1980 (c. 43) for the recovery of a sum adjudged to be paid by a conviction;

(c) he is entitled to execute the warrant by virtue of section 125A (civilian enforcement officers) or 125B (approved enforcement agencies) of that Act.

19 (1) This paragraph applies if these conditions are met—

(a) the enforcement agent has power to enter the premises under paragraph 16;

(b) he reasonably believes that the debtor carries on a trade or business on the premises;

(c) he is acting under an enforcement power within sub-paragraph (2).

(2) The enforcement powers are those under any of the following—

(a) a writ or warrant of control issued for the purpose of recovering a sum payable under a High Court or county court judgment;

(b) section 61(1) of the Taxes Management Act 1970 (c. 9);

(c) section 121A(1) of the Social Security Administration Act 1992 (c. 5);
(d) section 51(A1) of the Finance Act 1997 (c. 16);
(e) paragraph 1A of Schedule 12 to the Finance Act 2003 (c. 14).

Application for power to use reasonable force

20 (1) This paragraph applies if an enforcement agent has power to enter premises under paragraph 14 or 16 or under a warrant under paragraph 15.

(2) If the enforcement agent applies to the court it may issue a warrant which authorises him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.

21 (1) This paragraph applies if an enforcement agent is applying for power to enter premises under a warrant under paragraph 15.

(2) If the enforcement agent applies to the court it may include in the warrant provision authorising him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.

22 (1) The court may not issue a warrant under paragraph 20 or include provision under paragraph 21 unless it is satisfied that prescribed conditions are met.

(2) A warrant under paragraph 20 or provision included under paragraph 21 may require any constable to assist the enforcement agent to execute the warrant.

Other provisions about powers of entry

23 Paragraphs 24 to 30 apply where an enforcement agent has power to enter premises under paragraph 14 or 16 or under a warrant under paragraph 15.

24 (1) The power to enter and any power to use force are subject to any restriction imposed by or under regulations.

(2) Regulations may in particular make provision about the extent to which a power to use force includes power to use force against persons.

25 (1) The enforcement agent may enter and remain on the premises only within prescribed times of day.

(2) Regulations may give the court power in prescribed circumstances to authorise him to enter or remain on the premises at other times.

(3) The authorisation—
(a) may be by order or in a warrant under paragraph 15;
(b) may be subject to conditions.

26 (1) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of—
(a) his identity, and
(b) his authority to enter the premises.

(2) The request may be made before the enforcement agent enters the premises or while he is there.

27 (1) The enforcement agent may take other people onto the premises.

(2) They may assist him in exercising any power, including a power to use force.

(3) They must not remain on the premises without the enforcement agent.

(4) The enforcement agent may take any equipment onto the premises.

(5) He may leave equipment on the premises if he leaves controlled goods there.

28 (1) After entering the premises the enforcement agent must provide a notice for the debtor giving information about what the enforcement agent is doing.

(2) Regulations must state—

(a) the form of the notice;

(b) what information it must give.

(3) Regulations may prescribe circumstances in which a notice need not be provided after re-entry to premises.

(4) If the debtor is on the premises when the enforcement agent is there, the enforcement agent must give him the notice then.

(5) If the debtor is not there, the enforcement agent must leave the notice in a conspicuous place on the premises.

(6) If the enforcement agent knows that there is someone else there or that there are other occupiers, a notice he leaves under sub-paragraph (5) must be in a sealed envelope addressed to the debtor.

29 If the premises are occupied by anyone other than the debtor, the enforcement agent must leave at the premises a list of any goods he takes away.

30 The enforcement agent must leave the premises as effectively secured as he finds them.

Goods on a highway

31 (1) If the enforcement agent applies to the court it may issue a warrant which authorises him to use, if necessary, reasonable force to take control of goods on a highway.

(2) The court may not issue a warrant unless it is satisfied that prescribed conditions are met.

(3) The warrant may require any constable to assist the enforcement agent to execute it.

(4) The power to use force is subject to any restriction imposed by or under regulations.

(5) Regulations may in particular make provision about the extent to which that power includes power to use force against persons.

32 (1) The enforcement agent may not exercise any power under this Schedule on a highway except within prescribed times of day.

(2) Regulations may give the court power in prescribed circumstances to authorise him to exercise a power at other times.

(3) The authorisation may be subject to conditions.

33 (1) If the enforcement agent takes control of goods on a highway or enters a vehicle on a highway with the intention of taking control of goods, he must provide a notice for the debtor giving information about what he is doing.

(2) Regulations must state—

(a) the form of the notice;

(b) what information it must give.

(3) If the debtor is present when the enforcement agent is there, the enforcement agent must give him the notice then.

(4) Otherwise the enforcement agent must deliver the notice to any relevant premises (as defined by paragraph 14) in a sealed envelope addressed to the debtor.

Inventory

34 (1) If an enforcement agent takes control of goods he must provide the debtor with an inventory of them as soon as reasonably practicable.

(2) But if there are co-owners of any of the goods, the enforcement agent must instead provide the debtor as soon as reasonably practicable with separate inventories of goods owned by the debtor and each co-owner and an inventory of the goods without a co-owner.

(3) The enforcement agent must as soon as reasonably practicable provide the co-owner of any of the goods with—

(a) the inventory of those goods, and

(b) a copy of the notice under paragraph 28.

(4) Regulations must state—

(a) the form of an inventory, and

(b) what it must contain.

Care of goods removed

35 (1) An enforcement agent must take reasonable care of controlled goods that he removes from the premises or highway where he finds them.

(2) He must comply with any provision of regulations about their care while they remain controlled goods.

Valuation

36 (1) Before the end of the minimum period, the enforcement agent must—

(a) make or obtain a valuation of the controlled goods in accordance with regulations;

(b) give the debtor, and separately any co-owner, an opportunity to obtain an independent valuation of the goods.

(2) In this paragraph "minimum period" means the period specified by regulations under—

(a) paragraph 48, in the case of securities;

(b) paragraph 39, in any other case.

Best price

37 (1) An enforcement agent must sell or dispose of controlled goods for the best price that can reasonably be obtained in accordance with this Schedule.

(2) That does not apply to money that can be used for paying any of the outstanding amount, unless the best price is more than its value if used in that way.

Sale

38 Paragraphs 39 to 42 apply to the sale of controlled goods, except where—

(a) the controlled goods are securities, or

(b) the sale is by exchange of one currency for another.

39 (1) The sale must not be before the end of the minimum period except with the agreement of the debtor and any co-owner.

(2) Regulations must specify the minimum period.

40 (1) Before the sale, the enforcement agent must give notice of the date, time and place of the sale to the debtor and any co-owner.

(2) Regulations must state—

(a) the minimum period of notice;

(b) the form of the notice;

(c) what it must contain (besides the date, time and place of sale);

(d) how it must be given.

(3) The enforcement agent may replace a notice with a new notice, subject to any restriction in regulations.

(4) Any notice must be given within the permitted period.

(5) Unless extended the permitted period is 12 months beginning with the day on which the enforcement agent takes control of the goods.

(6) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.

(7) They may extend the period more than once.

41 (1) The sale must be by public auction unless the court orders otherwise.

(2) The court may make an order only on an application by the enforcement agent.

(3) Regulations may make provision about the types of sale the court may order.

(4) In an application for an order under sub-paragraph (2) the enforcement agent must state whether he has reason to believe that an enforcement power has become exercisable by another creditor against the debtor or a co-owner.

(5) If the enforcement agent states that he does, the court may not consider the application until notice of it has been given to the other creditor in accordance with regulations (or until the court is satisfied that an enforcement power is not exercisable by the other creditor against the debtor or a co-owner).

42 Regulations may make further provision about the sale of controlled goods, including in particular—

(a) requirements for advertising;

(b) provision about the conduct of a sale;

(c) procedures for the sale of goods left unsold after a sale.

Place of sale

43 (1) Regulations may make provision about the place of sale of controlled goods.

(2) They may prescribe circumstances in which the sale may be held on premises where goods were found by the enforcement agent.

(3) Except where the regulations provide otherwise, the sale may not be held on those premises without the consent of the occupier.

(4) Paragraphs 44 to 46 apply if the sale may be held on those premises.

44 (1) The enforcement agent and any person permitted by him—

(a) may enter the premises to conduct or attend the sale;

(b) may bring equipment onto the premises for the purposes of the sale.

(2) This paragraph authorises repeated entry to the premises.

(3) If necessary the enforcement agent may use reasonable force to enable the sale to be conducted and any person to enter under this paragraph.

45 (1) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of—

(a) his identity, and

(b) his authority to enter and hold the sale on the premises.

(2) The request may be made before the enforcement agent enters the premises or while he is there.

46 The enforcement agent must leave the premises as effectively secured as he finds them.

Holding and disposal of securities

47 Paragraphs 48 and 49 apply to securities as controlled goods.

48 (1) Regulations may make provision about how securities are to be held and disposed of.

(2) In this Schedule, references to disposal include, in relation to securities, realising the sums secured or made payable by them, suing for the recovery of those sums or assigning the right to sue for their recovery.

(3) Regulations may in particular make provision for purposes corresponding to those for which provision is made in this Schedule in relation to the disposal of other controlled goods.

(4) The power to make regulations under this paragraph is subject to paragraph 49.

49 (1) The creditor may sue in the name of the debtor, or in the name of any person in whose name the debtor might have sued, for the recovery of any sum secured or made payable by securities, when the time of payment arrives.

(2) Before any proceedings under sub-paragraph (1) are commenced or the securities are otherwise disposed of, the enforcement agent must give notice of the disposal to the debtor and any co-owner.

(3) Regulations must state—
(a) the minimum period of notice;
(b) the form of the notice;
(c) what it must contain;
(d) how it must be given.

(4) The enforcement agent may replace a notice with a new notice, subject to any restriction in regulations.

(5) Any notice must be given within the permitted period.

(6) Unless extended the permitted period is 12 months beginning with the time of payment.

(7) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.

(8) They may extend the period more than once.

Application of proceeds

50 (1) Proceeds from the exercise of an enforcement power must be used to pay the amount outstanding.

(2) Proceeds are any of these—
(a) proceeds of sale or disposal of controlled goods;
(b) money taken in exercise of the power, if paragraph 37(1) does not apply to it.

(3) The amount outstanding is the sum of these—
(a) the amount of the debt which remains unpaid (or an amount that the creditor agrees to accept in full satisfaction of the debt);
(b) any amounts recoverable out of proceeds in accordance with regulations under paragraph 62 (costs).

(4) If the proceeds are less than the amount outstanding, which amounts in sub-paragraph (3)(a) and (b) must be paid, and how much of any amount, is to be determined in accordance with regulations.

(5) If the proceeds are more than the amount outstanding, the surplus must be paid to the debtor.

(6) If there is a co-owner of any of the goods, the enforcement agent must—
(a) first pay the co-owner a share of the proceeds of those goods proportionate to his interest;
(b) then deal with the rest of the proceeds under sub-paragraphs (1) to (5).

(7) Regulations may make provision for resolving disputes about what share is due under sub-paragraph (6)(a).

Passing of legal title

51 (1) A purchaser of controlled goods acquires good title, with two exceptions.

(2) The exceptions apply only if the goods are not the debtor's at the time of sale.

(3) The first exception is where the purchaser, the creditor, the enforcement agent or a related party has notice that the goods are not the debtor's.

(4) The second exception is where a lawful claimant has already made an application to the court claiming an interest in the goods.

(5) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.

(6) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.

(7) "The court" has the same meaning as in paragraph 60.

Abandonment of goods other than securities

52 Paragraphs 53 and 54 apply to controlled goods other than—
(a) securities;
(b) money to which paragraph 37(1) does not apply.

53 (1) Controlled goods are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 40 (notice of sale) within the permitted period.

(2) Controlled goods are abandoned if they are unsold after—
(a) a sale of which notice has been given in accordance with that paragraph, and
(b) any further time allowed for sale under paragraph 42(c).

(3) Regulations may prescribe other circumstances in which controlled goods are abandoned.

54 (1) If controlled goods are abandoned then, in relation to the enforcement power concerned, the following apply—
(a) the enforcement power ceases to be exercisable;
(b) as soon as reasonably practicable the enforcement agent must make the goods available for collection by the debtor, if he removed them from where he found them.

(2) Where the enforcement power was under a writ or warrant, sub-paragraph (1) does not affect any power to issue another writ or warrant.

Abandonment of securities

55 Paragraphs 56 and 57 apply to securities as controlled goods.

56 (1) Securities are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 49 (notice of disposal) within the permitted period.

(2) Securities are abandoned if they are not disposed of in accordance with a notice of disposal under that paragraph.

(3) Regulations may prescribe other circumstances in which securities are abandoned.

57 (1) If securities are abandoned then, in relation to the enforcement power concerned, the following apply—

(a) the enforcement power ceases to be exercisable;

(b) as soon as reasonably practicable the enforcement agent must make the securities available for collection by the debtor, if he removed them from where he found them.

(2) Where the enforcement power was under a writ or warrant, sub-paragraph (1) does not affect any power to issue another writ or warrant.

Payment of amount outstanding

58 (1) This paragraph applies where the debtor pays the amount outstanding in full—

(a) after the enforcement agent has taken control of goods, and

(b) before they are sold or abandoned.

(2) If the enforcement agent has removed the goods he must as soon as reasonably practicable make them available for collection by the debtor.

(3) No further step may be taken under the enforcement power concerned.

(4) For the purposes of this paragraph the amount outstanding is reduced by the value of any controlled goods consisting of money required to be used to pay that amount, and sub-paragraph (2) does not apply to that money.

59 (1) This paragraph applies if a further step is taken despite paragraph 58(3).

(2) The enforcement agent is not liable unless he had notice, when the step was taken, that the amount outstanding had been paid in full.

(3) Sub-paragraph (2) applies to a related party as to the enforcement agent.

(4) If the step taken is sale of any of the goods the purchaser acquires good title unless, at the time of sale, he or the enforcement agent had notice that the amount outstanding had been paid in full.

(5) A person has notice that the amount outstanding has been paid in full if he would have found it out if he had made reasonable enquiries.

(6) Sub-paragraphs (2) to (4) do not affect any right of the debtor or a co-owner to a remedy against any person other than the enforcement agent or a related party.

(7) In this paragraph, "related party" has the meaning given by paragraph 65(4).

Third party claiming goods

60 (1) This paragraph applies where a person makes an application to the court claiming that goods taken control of are his and not the debtor's.

(2) After receiving notice of the application the enforcement agent must not sell the goods, or dispose of them (in the case of securities), unless directed by the court under this paragraph.

(3) The court may direct the enforcement agent to sell or dispose of the goods if the applicant fails to make, or to continue to make, the required payments into court.

(4) The required payments are—

(a) payment on making the application (subject to sub-paragraph (5)) of an amount equal to the value of the goods, or to a proportion of it directed by the court;

(b) payment, at prescribed times (on making the application or later), of any amounts prescribed in respect of the enforcement agent's costs of retaining the goods.

(5) If the applicant makes a payment under sub-paragraph (4)(a) but the enforcement agent disputes the value of the goods, any underpayment is to be—

(a) determined by reference to an independent valuation carried out in accordance with regulations, and

(b) paid at the prescribed time.

(6) If sub-paragraph (3) does not apply the court may still direct the enforcement agent to sell or dispose of the goods before the court determines the applicant's claim, if it considers it appropriate.

(7) If the court makes a direction under sub-paragraph (3) or (6)—

(a) paragraphs 38 to 49, and regulations under them, apply subject to any modification directed by the court;

(b) the enforcement agent must pay the proceeds of sale or disposal into court.

(8) In this paragraph "the court", subject to rules of court, means—

(a) the High Court, in relation to an enforcement power under a writ of the High Court;

(b) a county court, in relation to an enforcement power under a warrant issued by a county court;

(c) in any other case, the High Court or a county court.

Application to assignee or transferee

61 (1) This Schedule applies as follows where—

(a) an interest of the debtor's in goods is assigned or transferred while the property in the goods is bound for the purposes of an enforcement power, and

(b) the enforcement agent knows that the assignee or transferee has an interest in the goods.

(2) These apply as if the assignee or transferee were a co-owner of the goods with the debtor—

(a) paragraph 34 (inventory);

(b) paragraph 36 (valuation);

(c) paragraphs 39 to 41 (sale);

(d) paragraph 59(6) (remedies after payment of amount outstanding).

(3) If the interest of the assignee or transferee was acquired in good faith, for valuable consideration and without notice, paragraph 50(6) applies as if "co-owner" included the assignee or transferee.

(4) If the interest of the assignee or transferee was not acquired in good faith, for valuable consideration and without notice, the enforcement agent must pay any surplus under paragraph 50(5) to the assignee or transferee and to the debtor (if he retains an interest)

(5) If the surplus is payable to two or more persons it must be paid in shares proportionate to their interests.

(6) Paragraph 5(3) to (5) ("good faith" and "notice") apply for the purposes of this paragraph.

Costs

62 (1) Regulations may make provision for the recovery by any person from the debtor of amounts in respect of costs of enforcement-related services.

(2) The regulations may provide for recovery to be out of proceeds or otherwise.

(3) The amount recoverable under the regulations in any case is to be determined by or under the regulations.

(4) The regulations may in particular provide for the amount, if disputed, to be assessed in accordance with rules of court.

(5) "Enforcement-related services" means anything done under or in connection with an enforcement power, or in connection with obtaining an enforcement power, or any services used for the purposes of a provision of this Schedule or regulations under it.

Limitation of liability for sale or payment of proceeds

63 (1) Any liability of an enforcement agent or related party to a lawful claimant for the sale of controlled goods is excluded except in two cases.

(2) The first exception is where at the time of the sale the enforcement agent had notice that the goods were not the debtor's, or not his alone.

(3) The second exception is where before sale the lawful claimant had made an application to the court claiming an interest in the goods.

(4) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.

64 (1) Any liability of an enforcement agent or related party to a lawful claimant for paying over proceeds is excluded except in two cases.

(2) The first exception is where at the time of the payment he had notice that the goods were not the debtor's, or not his alone.

(3) The second exception is where before that time the lawful claimant had made an application to the court claiming an interest in the goods.

(4) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale.

65 (1) Paragraphs 63 and 64—

(a) do not affect the liability of a person other than the enforcement agent or a related party;

(b) do not apply to the creditor if he is the enforcement agent.

(2) The following apply for the purposes of those paragraphs.

(3) The enforcement agent or a related party has notice of something if he would have found it out if he had made reasonable enquiries.

(4) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.

(5) "The court" has the same meaning as in paragraph 60.

Remedies available to the debtor

66 (1) This paragraph applies where an enforcement agent—

(a) breaches a provision of this Schedule, or

(b) acts under an enforcement power under a writ, warrant, liability order or other instrument that is defective.

(2) The breach or defect does not make the enforcement agent, or a person he is acting for, a trespasser.

(3) But the debtor may bring proceedings under this paragraph.

(4) Subject to rules of court, the proceedings may be brought—

(a) in the High Court, in relation to an enforcement power under a writ of the High Court;

(b) in a county court, in relation to an enforcement power under a warrant issued by a county court;

(c) in any other case, in the High Court or a county court.

(5) In the proceedings the court may—

(a) order goods to be returned to the debtor;

(b) order the enforcement agent or a related party to pay damages in respect of loss suffered by the debtor as a result of the breach or of anything done under the defective instrument.

(6) A related party is either of the following (if different from the enforcement agent)—

(a) the person on whom the enforcement power is conferred,

(b) the creditor.

(7) Sub-paragraph (5) is without prejudice to any other powers of the court.

(8) Sub-paragraph (5)(b) does not apply where the enforcement agent acted in the reasonable belief—

(a) that he was not breaching a provision of this Schedule, or

(b) (as the case may be) that the instrument was not defective.

(9) This paragraph is subject to paragraph 59 in the case of a breach of paragraph 58(3).

Remedies available to the creditor

67 If a debtor wrongfully interferes with controlled goods and the creditor suffers loss as a result, the creditor may bring a claim against the debtor in respect of the loss.

Offences

68 (1) A person is guilty of an offence if he intentionally obstructs a person lawfully acting as an enforcement agent.

(2) A person is guilty of an offence if he intentionally interferes with controlled goods without lawful excuse.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to—

(a) imprisonment for a term not exceeding 51 weeks, or

(b) a fine not exceeding level 4 on the standard scale, or

(c) both.

(4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in sub-paragraph (2)(a) to 51 weeks is to be read as a reference to 6 months.

Relation to insolvency provisions

69 This Schedule is subject to sections 183, 184 and 346 of the Insolvency Act 1986 (c. 45).

SCHEDULE 12

Section 44(3)

TAKING CONTROL OF GOODS: AMENDMENTS

Inclosure Act 1773 (c. 81)

1 The Inclosure Act 1773 is amended as follows.

2 (1) Section 4 (expenses how to be defrayed) is amended as follows.

(2) The words before "and the said assessment" become subsection (1).

(3) For the words from "and the said assessment" to the end substitute—

"(2) Where—

(a) an assessment under this section has been demanded, and

(b) the person assessed has not paid it within ten days after the day the demand was made,

a justice of the peace may issue a warrant of control to recover the assessment."

3 (1) Section 16 (assessments to be levied for the improving of wastes where there are stinted commons) is amended as follows.

(2) The words before "and the said assessments" become subsection (1).

(3) For the words from "and the said assessments" to the end substitute—

"(2) Where—

(a) an assessment under this section has been demanded, and

(b) the person assessed has not paid it within ten days after the day the demand was made,

a justice of the peace may issue a warrant of control to recover the assessment."

Sale of Farming Stock Act 1816 (c. 50)

4 The Sale of Farming Stock Act 1816 ceases to have effect.

Judgments Act 1838 (c. 110)

5 In the Judgments Act 1838 omit section 12 (sheriff may seize money, banknotes, etc.).

Lands Clauses Consolidation Act 1845 (c. 18)

6 In section 91 of the Lands Clauses Consolidation Act 1845 (proceedings in case of refusal to deliver possession of lands) for the words from "levied by distress" to the end substitute "recoverable under a warrant of control issued by a justice of the peace."

Inclosure Act 1845 (c. 118)

7 The Inclosure Act 1845 is amended as follows.

8 In section 151 (recovery of share of expenses) for the words from "by warrant" to the end substitute "to issue a warrant of control to recover the amount certified."

9 In section 159 (recovery of penalties and forfeitures) for the words from "to levy" to the end substitute "to issue a warrant of control to recover the penalties and forfeitures."

Railways Clauses Act 1863 (c. 92)

10 The Railways Clauses Act 1863 is amended as follows.

11 In section 33 (recovery of money by distress) at the end insert—

"In this section as it applies in England and Wales—

(a) for "levied by distress" substitute "recovered using the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006";

(b) for "warrant of distress" substitute "warrant of control"."

12 In section 34 (several names in one warrant) at the end insert—

"In this section as it applies in England and Wales for "warrant of distress" substitute "warrant of control"."

13 The amendments in paragraphs 11 and 12 have the same extent as the provisions to which they relate.

Summary Jurisdiction (Process) Act 1881 (c. 24)

14 The Summary Jurisdiction (Process) Act 1881 is amended as follows.

15 In section 5 (provision as to execution of process) for "warrant of distress" in both places substitute "warrant of control".

16 In section 8 (definitions) for "warrant of distress" substitute "warrant of control".

17 The amendments in paragraphs 15 and 16 have the same extent as the provision to which they relate.

Bills of Sale Act (1878) Amendment Act 1882 (c. 43)

18 The Bills of Sale Act (1878) Amendment Act 1882 is amended as follows.

19 In section 7 (bill of sale with power to seize except in certain events to be void), in paragraph (2) after "distrained" insert ", or taken control of using the power in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006,".

20 In section 14 (bill of sale not to protect chattels against poor and parochial rates), after "warrant" insert ", or subject to a warrant of control,".

Sheriffs Act 1887 (c. 55)

21 In section 20 of the Sheriffs Act 1887 (fees and poundage), after subsection (2) insert—

"(2A) Subsection (2) does not apply to the execution of process under a power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods)."

Deeds of Arrangement Act 1914 (c. 47)

22 In section 17 of the Deeds of Arrangement Act 1914 (preferential payment to creditor an offence), after "by distress" insert "or by using the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods),".

Maintenance Orders (Facilities for Enforcement) Act 1920 (c. 33)

23 (1) In section 6 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (mode of enforcing orders), in subsection (3) for "warrant of distress" substitute "warrant of control".

(2) The amendment in this paragraph has the same extent as the provision to which it relates.

Agricultural Credits Act 1928 (c. 43)

24 In section 8 of the Agricultural Credits Act 1928 (supplemental provisions about agricultural charges), in subsection (7) after "distress for" insert ", or the exercise of a power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover,".

Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65)

25 The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 is amended as follows.

26 In section 2 (general restrictions on execution and other remedies), in subsection (2)(a) after "the levying of distress;" insert—

"using the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods);".

Criminal Justice Act 1961 (c. 39)

27 In section 39 of the Criminal Justice Act 1961 (interpretation) after subsection (1) insert—

"(1ZA) In the definition of "default" in subsection (1) the reference to want of sufficient distress to satisfy a fine or other sum includes a reference to circumstances where—

(a) there is power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 to recover the fine or other sum from a person, but

(b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule)."

Compulsory Purchase Act 1965 (c. 56)

28 The Compulsory Purchase Act 1965 is amended as follows.

29 (1) Section 13 (refusal to give possession to acquiring authority) is amended as follows.

(2) In subsection (4) for the words from "levied by distress" to the end substitute "recoverable under a warrant of control issued by a justice of the peace."

(3) Omit subsection (5).

30 Omit section 29 (irregularities in proceedings under the Act).

Criminal Justice Act 1967 (c. 80)

31 In section 104 of the Criminal Justice Act 1967 (general provisions as to interpretation) after subsection (1) insert—

"(1A) In the definition of "sentence of imprisonment" in subsection (1) the reference to want of sufficient distress to satisfy a fine or other sum includes a reference to circumstances where—

(a) there is power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 to recover the fine or other sum from a person, but

(b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule)."

Taxes Management Act 1970 (c. 9)

32 The Taxes Management Act 1970 is amended as follows.

33 (1) Section 61 (distraint by collectors) is amended as follows.

(2) In subsection (1), for the words from "the collector may" to the end substitute "the collector may use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover that sum."

(3) Omit subsections (2) to (6).

34 Omit section 62 (priority of claim for tax).

Administration of Justice Act 1970 (c. 31)

35 In section 41 of the Administration of Justice Act 1970 (recovery of costs and compensation awarded by magistrates etc.) in subsection (3) for "writ of fieri facias" substitute "writ of control".

Attachment of Earnings Act 1971 (c. 32)

36 In section 3 of the Attachment of Earnings Act 1971 (application for order and conditions of court's power to make it), in subsection (4)(b), for "distress" substitute "taking control of goods".

Criminal Justice Act 1972 (c. 71)

37 In section 66 of the Criminal Justice Act 1972 (interpretation etc.), in subsection (2) omit the words from ""sentence of imprisonment"" to the end.

Rehabilitation of Offenders Act 1974 (c. 53)

38 In section 1 of the Rehabilitation of Offenders Act 1974 (rehabilitated persons and spent convictions) after subsection (3) insert—

"(3A) In subsection (3)(a), the reference to want of sufficient distress to satisfy a fine or other sum includes a reference to circumstances where—

(a) there is power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 to recover the fine or other sum from a person, but

(b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule)."

Customs and Excise Management Act 1979 (c. 2)

39 (1) In section 149 of the Customs and Excise Management Act 1979 (non-payment of penalties etc: maximum terms of imprisonment) after subsection (1) insert—

"(1A) In subsection (1)(b) as it applies to a magistrates' court in England or Wales the reference to default of sufficient distress to satisfy the amount of the penalty is a reference to want of sufficient goods to

satisfy the amount, within the meaning given by section 79(4) of the Magistrates' Courts Act 1980."

(2) The amendment in this paragraph has the same extent as the provision to which it relates.

Magistrates' Courts Act 1980 (c. 43)

40 The Magistrates' Courts Act 1980 is amended as follows.

41 (1) Section 76 (enforcement of sums adjudged to be paid) is amended as follows.

(2) In subsection (1) for "issue a warrant of distress for the purpose of levying the sum" substitute "issue a warrant of control for the purpose of recovering the sum".

(3) In subsection (2)(a)—

(a) for "warrant of distress" substitute "warrant of control";

(b) for "satisfy the sum with the costs and charges of levying the sum" substitute "pay the amount outstanding, as defined by paragraph 50(3) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006".

(4) In subsection (2)(b) for "warrant of distress" substitute "warrant of control".

42 In section 77 (postponement of issue of warrant), in subsection (1) for "warrant of distress" substitute "warrant of control".

43 (1) Section 79 (release from custody and reduction of detention on payment) is amended as follows.

(2) In subsection (1)—

(a) for "distress" in the first place substitute "goods";

(b) for "and distress" substitute ",or (as the case may be) on the payment of the amount outstanding,".

(3) In subsection (2)—

(a) for "distress" in the first place substitute "goods";

(b) for the words from "to so much of the said sum" to the end substitute "—

(a) to the amount outstanding at the time the period of detention was imposed, if the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) had been used for recovering the sum;

(b) otherwise, to so much of the sum as was due at that time."

(4) After subsection (3) insert—

"(4) In this Act, references to want of sufficient goods to satisfy a sum of money are references to circumstances where—

(a) a warrant of control has been issued for the sum to be recovered from a person, but

(b) it appears on the return to the warrant that the person's money and goods are insufficient to pay the amount outstanding.

(5) In this section, "the amount outstanding" has the meaning given by paragraph 50(3) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006."

44 In section 80 (application of money found on defaulter to satisfy sum adjudged), in subsection (2) for "distress" substitute "goods".

45 In section 81 (enforcement of fines imposed on young offenders) in subsections (1) and (3) for "distress" substitute "goods".

46 (1) Section 82 (restriction on power to impose imprisonment for default) is amended as follows.

(2) In subsection (3), for "distress" substitute "goods".

(3) in subsection (4A)(a), for "warrant of distress" substitute "warrant of control".

47 In section 87 (enforcement of payment of fines by High Court and county court) in subsection (1) for "writ of fieri facias" substitute "writ of control".

48 (1) Section 87A (fines imposed on companies) is amended as follows.

(2) In subsection (1)(b), for "warrant of distress" substitute "warrant of control".

(3) For subsection (1)(c) substitute—

"(c) it appears on the return to the warrant that the company's money and goods are insufficient to pay the amount outstanding,"

(4) At the end insert—

"(3) In this section, "the amount outstanding" has the meaning given by paragraph 50(3) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006."

49 In section 88 (supervision pending payment) in subsections (4) and (6) for "distress" substitute "goods".

50 In section 96 (civil debt: complaint for non-payment), in subsection (1) for "distress" substitute "goods".

51 In section 120 (forfeiture of recognizance), in subsection (4) for "warrant of distress" substitute "warrant of control".

52 (1) In section 125 (warrants) subsection (2) is amended as follows.

(2) For "warrant of distress", in the first place, substitute "warrant of control".

(3) Omit the words from "This subsection" to the end.

53 (1) Section 125A (civilian enforcement officers) is amended as follows.

(2) In subsection (3), for "distress" substitute "control".

(3) In subsection (4), for "against whom distress is levied" substitute ", in the case of a warrant of control, against whom the warrant is issued".

54 In section 125B (execution by approved enforcement agency), in subsection (4) for "against whom distress is levied" substitute ", in the case of a warrant of control, against whom the warrant is issued".

55 In section 125CA (power to make disclosure order), in subsection (2) for "distress" substitute "control".

56 (1) Section 125D (execution by person not in possession of warrant) is amended as follows.

(2) Omit subsection (3)(c).

(3) In subsection (4), for "against whom distress is levied" substitute ", in the case of a warrant of control, against whom the warrant is issued".

57 In section 133 (consecutive terms of imprisonment) in subsections (4) and (5) for "distress" substitute "goods".

58 (1) Section 150 (interpretation) is amended as follows.

(2) In subsection (1) in the definitions of "impose imprisonment" and "sentence", for "distress" substitute "goods".

(3) After subsection (3) insert—

"(3A) References in this Act to want of sufficient goods to satisfy a fine or other sum of money have the meaning given by section 79(4)."

59 Omit section 151.

60 In Schedule 4A (powers of authorised officers executing warrants), omit paragraph 3.

Supreme Court Act 1981 (c. 54)

61 (1) Section 43ZA of the Supreme Court Act 1981 (power of High Court to vary committal in default) is amended as follows.

(2) In subsection (1) for "distress" in both places substitute "goods".

(3) After subsection (2) insert—

"(3) In subsection (1) references to want of sufficient goods to satisfy a sum are references to circumstances where—

(a) there is power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 to recover the sum from a person, but

(b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule)."

County Courts Act 1984 (c. 28)

62 The County Courts Act 1984 is amended as follows.

63 (1) Section 85 (execution of judgments or orders for payment of money) is amended as follows.

(2) In subsection (1), for the words from "by execution" to the end substitute "under a warrant under subsection (2)."

(3) In subsection (2)—

(a) for "warrant of execution in the nature of a writ of fieri facias" substitute "warrant of control";

(b) for the words from "levy" to the end substitute "use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover the money payable under the judgment or order."

(4) After that subsection insert—

"(2A) The person to whom a warrant under subsection (2) must be directed is to be determined in accordance with arrangements made by the Lord Chancellor or by a person acting on his behalf."

(5) Omit subsection (3).

64 (1) Section 86 (execution of orders for payment by instalments) is amended as follows.

(2) In subsection for "execution on the order" substitute "a warrant of control to recover any of that sum".

(3) In subsection (2)—

(a) for "execution is to issue" substitute "a warrant of control is to be issued";

(b) for "execution may issue" substitute "a warrant of control may be issued".

(4) In subsection (3)—

(a) for "execution or successive executions may issue" substitute "a warrant or successive warrants of control may be issued";

(b) for the words from "no execution" to "it issues" substitute "no warrant of control may be issued unless when it is issued".

65 (1) Section 87 (execution to be superseded on payment) is amended as follows.

(2) In subsection (1)—

(a) for "warrant of execution" substitute "warrant of control";

(b) for "levied" substitute "recovered".

(3) Omit subsection (2).

(4) For the heading "Execution to be superseded on payment" substitute "Indorsement of amount on warrant".

66 Omit sections 89 to 91.

67 In section 92 (penalty for rescuing goods seized), after subsection (2) insert—

"(3) This section does not apply in the case of goods seized under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006."

68 Omit sections 93 to 100.

69 In section 101 (interpleader by district judge), after subsection (3) insert—

"(4) This section does not apply in the case of goods seized under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006."

70 Omit sections 102 and 103.

71 Omit section 123.

72 In section 125 (irregularity in executing warrants) in subsection (1) after "but" insert ", except in the case of a warrant of control (to which Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 applies),".

73 Omit section 126.

Gas Act 1986 (c. 44)

74 (1) In paragraph 29 of Schedule 2B to the Gas Act 1986 (gas meters and fittings not to be subject to distress) in sub-paragraph (1) after "liable" insert "to be taken control of under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006, or".

(2) The amendment in this paragraph has the same extent as the provision to which it relates.

Insolvency Act 1986 (c. 45)

75 (1) In section 436 of the Insolvency Act 1986 (expressions used generally) insert in the appropriate place—

> ""distress" includes use of the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006, and references to levying distress, seizing goods and related expressions shall be construed accordingly;".

(2) The amendment in this paragraph) has the same extent as the provision to which it relates.

Dartford-Thurrock Crossing Act 1988 (c. 20)

76 (1) Section 15 of the Dartford-Thurrock Crossing Act 1988 (termination: supplementary provisions) is amended as follows.

(2) In subsection (2)—

(a) after "distress" in the first place insert "or any power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods)";

(b) after "levied" insert "or that power was exercised".

(3) In subsection (3) after "levied" insert "or the power there mentioned was exercisable".

Income and Corporation Taxes Act 1988 (c. 1)

77 In Schedule 16 to the Income and Corporation Taxes Act 1988 (collection of income tax on company payments which are not distributions), in paragraph 6(5) at the end insert "or under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods)".

Local Government Finance Act 1988 (c. 41)

78 The Local Government Finance Act 1988 is amended as follows.

79 After section 62 insert—

"62A Recovery by taking control of goods

Where a liability order has been made against a person under regulations under Schedule 9, the Secretary of State may use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover the amount in respect of which the order was made, to the extent that it remains unpaid.

80 (1) Schedule 9 (non-domestic rating: administration) is amended as follows.

(2) In paragraph 1 for "recovery" substitute "the recovery, otherwise than under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods),".

(3) In paragraph 3—

(a) omit sub-paragraph (2)(b);

(b) in sub-paragraph (4)(b), after "method" in the second place insert "provided for in section 62A above or".

Electricity Act 1989 (c. 29)

81 In paragraph 11 of Schedule 6 to the Electricity Act 1989 (electrical plant etc not to be liable to be taken in execution), in sub-paragraph (2)(b) after "liable" insert "to be taken control of under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006, or".

Companies Act 1989 (c. 40)

82 (1) In section 180 of the Companies Act 1989 (proceedings against market property by unsecured creditors) in subsection (1) after "levied," insert "and no power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) may be exercised,".

(2) The amendment in this paragraph has the same extent as the provision to which it relates.

New Roads and Street Works Act 1991 (c. 22)

83 (1) Paragraph 1 of Schedule 1 to the New Roads and Street Works Act 1991 (recovery of property taken in distress etc.) is amended as follows.

(2) In sub-paragraph (1)—

(a) after "distress" in the first place insert "or under any power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods)";

(b) after "levied" insert "or that power was exercised".

(3) In sub-paragraph (2) after "levied" insert "or the power there mentioned was exercisable".

Child Support Act 1991 (c. 48)

84 The Child Support Act 1991 is amended as follows.

85 (1) Section 35 (enforcement of liability orders by distress) is amended as follows.

(2) In subsection (1) for the words from "levy" to the end substitute "use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover the amount in respect of which the order was made, to the extent that it remains unpaid."

(3) Omit subsections (2) to (8).

86 In section 39A (commitment to prison and disqualification from driving), in subsection (1)(a), for "levy an amount by distress under this Act" substitute "recover an amount by virtue of section 35(1)".

87 In section 40 (commitment to prison) for subsection (4)(a)(i) substitute—

"(i) the amount outstanding, as defined by paragraph 50(3) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods); and".

88 (1) In section 40B (disqualification from driving: further provision) for subsection (3)(a) substitute—

"(a) the amount outstanding, as defined by paragraph 50(3) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods); and".

(2) The amendment in this paragraph has the same extent as the provision to which it relates.

Water Industry Act 1991 (c. 56)

89 In section 179 of the Water Industry Act 1991 (vesting of works in undertaker), in subsection (4) after "liable" insert "to be taken control of under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006, or".

Water Resources Act 1991 (c. 57)

90 In Schedule 15 to the Water Resources Act 1991 (supplemental provisions with respect to drainage charges), in paragraph 12(2)(b) for "warrant of distress" substitute "warrant of control".

Land Drainage Act 1991 (c. 59)

91 In section 54 of the Land Drainage Act 1991 (powers for enforcing payment of drainage rates), in subsection (2)(b) for "warrant of distress" substitute "warrant of control".

Social Security Administration Act 1992 (c. 5)

92 (1) Section 121A of the Social Security Administration Act 1992 (recovery of contributions etc in England and Wales) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b) after "relates" insert "("the sums due")";

(b) for the words from "distrain" to the end substitute "use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover the sums due".

(3) Omit subsections (2) to (8) and (10).

Local Government Finance Act 1992 (c. 14)

93 The Local Government Finance Act 1992 is amended as follows.

94 In section 14 (administration, penalties and enforcement), after subsection (3) insert—

"(4) Where a liability order has been made against a person under regulations under Schedule 4, the Secretary of State may use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover the amount in respect of which the order was made, to the extent that it remains unpaid.

95 (1) Schedule 4 (enforcement: England and Wales) is amended as follows.

(2) In paragraph 1(1) and (2) after "recovery" insert ", otherwise than under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods),".

(3) In paragraph 5 (attachment of earnings etc) in sub-paragraph (1A)—

(a) in paragraph (a) for "; and" substitute "(unless paragraph (b) applies);";

(b) in paragraph (b) for sub-paragraph (i) and the words before it substitute—

"(b) where a person authorised to act under the power conferred by section 14(4) (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has reported to the Secretary of State that he was unable (for whatever reason) to find sufficient goods of the debtor for that purpose—

(i) the amount outstanding, as defined by paragraph 50(3) of that Schedule, and".

(c) in paragraph (b)(ii) after "authority" insert "concerned".

(4) Omit paragraph 7 (distress).

(5) In paragraph 8 (commitment to prison)—

(a) in sub-paragraph (1)(a)—

(i) omit the words from "an authority" to "paragraph 7 above";

(ii) for the words from "the person" to "levy the amount" substitute "there are insufficient goods to satisfy an amount under section 14(4)".

(b) after sub-paragraph (1) insert—

"(1A) In sub-paragraph (1) the reference to insufficient goods to satisfy an amount under section 14(4) is a reference to circumstances where a person authorised to act under the power conferred by section 14(4) (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has reported to the Secretary of State that he was unable (for whatever reason) to find sufficient goods of the debtor to pay the amount

outstanding (as defined by paragraph 50(3) of that Schedule)."

(c) for sub-paragraph (2)(a) substitute—

"(a) the amount outstanding (as defined by paragraph 50(3) of Schedule 11 to the Tribunals, Courts and Enforcement Act 2006); and".

(6) In paragraph 12 (relationship between remedies) in sub-paragraph (1)—

(a) omit paragraph (c);

(b) in paragraph (d), for "distress" substitute "the power conferred by section 14(4)";

(c) in paragraph (e), for "distress" substitute "exercise of the power conferred by section 14(4)";

(d) in paragraph (f), for "distress" substitute "exercise of the power conferred by section 14(4)".

(7) Omit paragraph 19 (3).

Railways Act 1993 (c. 43)

96 (1) In section 27 of the Railways Act 1993 (transfer of franchise assets and shares), in subsection (6) after "levied" insert "and no power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 may be exercised".

(2) The amendment in this paragraph has the same extent as the provision to which it relates.

Finance Act 1994 (c. 9)

97 (1) The Finance Act 1994 is amended as follows.

98 (1) Section 11 (breaches of walking possession agreements) is amended as follows.

(2) For subsections (1) to (3) substitute—

"(1) This section applies where an enforcement agent acting under the power conferred by section 51(A1) of the Finance Act 1997 (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has entered into a controlled goods agreement with the person against whom the power is exercisable ("the person in default").

(2) In this section, "controlled goods agreement" has the meaning given by paragraph 13(4) of that Schedule.

(3) Subject to subsection (4) below, if the person in default removes or disposes of property (or permits its removal or disposal) in breach of the controlled goods agreement, he is liable to a penalty equal to half of the unpaid duty or other amount recoverable under section 51(A1) of the Finance Act 1997."

(3) For the heading "Breaches of walking possession agreements" substitute "Breaches of controlled goods agreements".

99 In paragraph 19 of Schedule 7 (insurance premium tax) for sub-paragraphs

(1) to (3) substitute—

"(1) This paragraph applies where an enforcement agent acting under the power conferred by section 51(A1) of the Finance Act 1997 (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has entered into a controlled goods agreement with the person against whom the power is exercisable ("the person in default").

(2) In this paragraph, "controlled goods agreement" has the meaning given by paragraph 13(4) of that Schedule.

(3) Subject to sub-paragraph (4) below, if the person in default removes or disposes of property (or permits its removal or disposal) in breach of the controlled goods agreement, he is liable to a penalty equal to half of the tax or other amount recoverable under section 51(A1) of the Finance Act 1997."

Value Added Tax Act 1994 (c. 23)

100 The Value Added Tax Act 1994 is amended as follows.

101 In section 48 (VAT representatives), in subsection (7A), for the words from "distress" to the end substitute "taking legal control of goods), and".

102 (1) Section 68 (breach of walking possession agreements) is amended as follows.

(2) For subsections (1) to (3) substitute—

"(1) This section applies where an enforcement agent acting under the power conferred by section 51(A1) of the Finance Act 1997 (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has entered into a controlled goods agreement with the person against whom the power is exercisable ("the person in default").

(2) In this section, "controlled goods agreement" has the meaning given by paragraph 13(4) of that Schedule.

(3) Subject to subsection (4) below, if the person in default removes or disposes of goods (or permits its removal or disposal) in breach of the controlled goods agreement, he is liable to a penalty equal to half of the VAT or other amount recoverable under section 51(A1) of the Finance Act 1997."

(3) For the heading "Breaches of walking possession agreements" substitute "Breaches of controlled goods agreements".

Finance Act 1996 (c. 8)

103 Schedule 5 to the Finance Act 1996 (landfill tax) is amended as follows.

104 In paragraph 24 for sub-paragraphs (1) to (3) substitute—

"(1) This paragraph applies where an enforcement agent acting under the power conferred by section 51(A1) of the Finance Act 1997 (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has entered into a controlled

goods agreement with the person against whom the power is exercisable ("the person in default").

(2) In this paragraph, "controlled goods agreement" has the meaning given by paragraph 13(4) of that Schedule.

(3) If the person in default removes or disposes of property (or permits its removal or disposal) in breach of the controlled goods agreement, he is liable to a penalty equal to half of the tax or other amount recoverable under section 51(A1) of the Finance Act 1997."

105 For the heading "*Walking Possession Agreements*" before paragraph 24 substitute "*Controlled Goods Agreements*".

Finance Act 1997 (c. 16)

106 (1) Section 51 of the Finance Act 1997 (enforcement by distress) is amended as follows.

(2) Before subsection (1) insert—

"(A1) The Commissioners may, in England and Wales, use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover any of these that a person refuses or neglects to pay—

(a) any amount of relevant tax due from him;

(b) any amount recoverable as if it were relevant tax due from him."

(3) In subsection (1) after "by regulations" insert "not having effect in England and Wales or Scotland".

(4) Omit subsection (7).

(5) The amendments in this paragraph have the same extent as the provision to which they relate.

Finance (No 2) Act 1997 (c. 58)

107 In Schedule 2 to the Finance (No 2) Act 1997 (administration and collection of windfall tax), in paragraph 15(2)(a), for "(distraint)" substitute "(taking control of goods)".

Greater London Authority Act 1999 (c. 29)

108 In section 216 of the Greater London Authority Act 1999 (protection of key system assets), in subsection (4) after "levied" insert "and no power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) may be exercised".

Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)

109 (1) In section 163 of the Powers of Criminal Courts (Sentencing) Act 2000 (general definition) is amended as follows.

(2) The existing words become subsection (1).

(3) After that subsection insert—

"(2) In the definition of "sentence of imprisonment" in subsection (1) the reference to want of sufficient distress to satisfy a sum includes a reference to circumstances where—

(a) there is power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 to recover the sum from a person, but

(b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule)."

Finance Act 2000 (c. 17)

110 Schedule 6 to the Finance Act 2000 (climate change levy) is amended as follows.

111 In paragraph 90 for sub-paragraphs (1) to (3) substitute—

"(1) This paragraph applies where an enforcement agent acting under the power conferred by section 51(A1) of the Finance Act 1997 (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has entered into a controlled goods agreement with the person against whom the power is exercisable ("the person in default").

(2) In this paragraph, "controlled goods agreement" has the meaning given by paragraph 13(4) of that Schedule.

(3) Subject to sub-paragraph (4), if the person in default removes or disposes of goods (or permits their removal or disposal) in breach of the controlled goods agreement, he is liable to a penalty equal to half of the levy or other amount recoverable under section 51(A1) of the Finance Act 1997."

112 For the heading "*Walking possession agreements*" before paragraph 90 substitute "*Controlled goods agreements*".

Postal Services Act 2000 (c. 26)

113 (1) In section 104 of the Postal Services Act 2000 (inviolability of mails), in subsection (2) after paragraph (b) insert—

"(ba) in England and Wales, being taken control of under Schedule 11 to the Tribunals, Courts and Enforcement Act 2006,".

(2) The amendment in this paragraph has the same extent as the provision to which it relates.

Finance Act 2001 (c. 9)

114 Schedule 5 to the Finance Act 2001 (aggregates levy: recovery and interest) is amended as follows.

115 In paragraph 15 for sub-paragraphs (1) to (3) substitute—

"(1) This paragraph applies where an enforcement agent acting under the power conferred, by virtue of paragraph 14 above, by section

51(A1) of the Finance Act 1997 (power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006) has entered into a controlled goods agreement with the person against whom the power is exercisable ("the person in default").

(2) In this paragraph, "controlled goods agreement" has the meaning given by paragraph 13(4) of that Schedule.

(3) Subject to sub-paragraph (4), if the person in default removes or disposes of goods (or permits their removal or disposal) in breach of the controlled goods agreement, he is liable to a penalty equal to half of the levy or other amount recoverable under section 51(A1) of the Finance Act 1997."

116 For the heading "*Walking possession agreements*" before paragraph 15 substitute "*Controlled goods agreements*".

Proceeds of Crime Act 2002 (c. 29)

117 The Proceeds of Crime Act 2002 is amended as follows.

118 In section 58 (restraint orders: restrictions), in subsection (2) after "levied" insert ", and no power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) may be exercised,".

119 In section 59 (enforcement receivers: restrictions), in subsection (2) after "levied" insert ", and no power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) may be exercised,".

120 In section 60 (Director's receivers: restrictions), in subsection (2) after "levied" insert ", and no power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) may be exercised,".

121 In section 253 (interim receiving orders: restriction on proceedings and remedies) in subsection (1)(b) after "levied" insert ", and no power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) may be exercised,".

Finance Act 2003 (c. 14)

122 (1) Schedule 12 to the Finance Act 2003 (stamp duty land tax: collection and recovery of tax) is amended as follows.

(2) After paragraph 1 insert—

"Recovery of tax by taking control of goods

1A In England and Wales, if a person neglects or refuses to pay the sum charged, the collector may use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 (taking control of goods) to recover the sum."

(3) In paragraph 2(1) omit "England and Wales or".

(4) The amendments in this paragraph have the same extent as the provision to which they relate.

Courts Act 2003 (c. 39)

123 The Courts Act 2003 is amended as follows.

124 In Part 9 of Schedule 5 (operation of collection orders after increase imposed), in paragraph 38(1)(a), for "warrant of distress" substitute "warrant of control".

125 In Schedule 6 (discharge of fines by unpaid work), in paragraph 2(1)(a)(i), for "warrant of distress" substitute "warrant of control".

126 (1) Schedule 7 (High Court writs of execution) is amended as follows.

(2) In paragraph 4, after sub-paragraph (1) insert—

"(1A) But it is subject to Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 in the case of a writ conferring power to use the procedure in that Schedule."

(3) For paragraph 6 substitute—

"6 (1) Paragraph 7 applies to any writ of execution against goods which is issued from the High Court.

(2) Paragraphs 8 to 11—

(a) do not apply to any writ that confers power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006, but

(b) apply to any other writ of execution against goods which is issued from the High Court."

(4) Omit paragraph 8(5).

Criminal Justice Act 2003 (c. 44)

127 The Criminal Justice Act 2003 is amended as follows.

128 (1) Section 154 (general limit on magistrates' power to impose imprisonment) is amended as follows.

(2) In subsections (4) and (6) for "distress" substitute "goods".

(3) After subsection (7) insert—

"(8) In this section references to want of sufficient goods to satisfy a fine or other sum of money have the meaning given by section 79(4) of the Magistrates' Courts Act 1980."

129 In section 305 (interpretation of Part 12) after subsection (1) insert—

"(1A) In the definition of "sentence of imprisonment" in subsection (1) the reference to want of sufficient distress to satisfy a sum includes a reference to circumstances where—

(a) there is power to use the procedure in Schedule 11 to the Tribunals, Courts and Enforcement Act 2006 to recover the sum from a person, but

(b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule)."

SCHEDULE 13

Section 68

RENT ARREARS RECOVERY: AMENDMENTS

Distress for Rent Act 1689 (c. 5)

1 The Distress for Rent Act 1689 ceases to have effect.

Landlord and Tenant Act 1709 (c. 18)

2 In the Landlord and Tenant Act 1709, sections 6 to 8 cease to have effect.

Landlord and Tenant Act 1730 (c. 28)

3 In the Landlord and Tenant Act 1730 section 5 ceases to have effect.

Distress for Rent Act 1737 (c. 19)

4 In the Distress for Rent Act 1737 the following cease to have effect—

(a) sections 1 to 10;
(b) sections 16 and 17;
(c) section 19.

Deserted Tenements Act 1817 (c. 52)

5 The Deserted Tenements Act 1817 ceases to have effect.

Fines and Recoveries Act 1833 (c. 74)

6 In section 67 of the Fines and Recoveries Act 1833 (assignees to recover rent of the lands of a bankrupt), for the words from "or may distrain" to "recovering of rent in arrear;" substitute "or, so far as the power under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery) is exercisable to recover any of those rents and profits, may exercise that power, as if they were the landlord, on behalf of the creditors;".

Metropolitan Police Courts Act 1840 (c. 84)

7 The Metropolitan Police Courts Act 1840 ceases to have effect.

Execution Act 1844 (c. 96)

8 The Execution Act 1844 ceases to have effect.

Lands Clauses Consolidation Act 1845 (c. 18)

9 In section 11 of the Lands Clauses Consolidation Act 1845 (payment of rents to be charged on tolls) omit the words from "or it shall be lawful" to the end.

Inclosure Act 1845 (c. 118)

10 In section 112 of the Inclosure Act 1845 (recovery of rents of allotment) for "by distress" substitute "under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery)".

Markets and Fairs Clauses Act 1847 (c. 14)

11 (1) Section 38 of the Markets and Fairs Clauses Act 1847 (recovery of stallage, rents or tolls) is amended as follows.

(2) The existing words become subsection (1).

(3) After "England" insert "(subject to subsection (2))".

(4) After subsection (1) insert—

"(2) Subsection (1) does not apply to the levying of rent in respect of premises in England and Wales to the extent that the power under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery) is exercisable to recover such rent.

(3) Where that power is exercisable to recover such rent, either the undertakers or their lessee, if not the landlord for the purposes of section 54(1) of that Act, may exercise that power as if they or he were the landlord.

Sequestration Act 1849 (c. 67)

12 (1) Section 1 of the Sequestration Act 1849 (sequestrator enabled to sue etc. in his own name) is amended as follows.

(2) For "levy any distress" substitute "exercise the power under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery)".

(3) Omit the words "levy" and "distress" in the second place where each occurs.

(4) Omit "levied".

Landlord and Tenant Act 1851 (c. 25)

13 The Landlord and Tenant Act 1851 ceases to have effect.

Common Law Procedure Act 1852 (c. 76)

14 The Common Law Procedure Act 1852 is amended as follows.

15 In section 210 (proceedings in ejectment by landlord for non-payment of rent), for "and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due" substitute "and that either of the conditions in section 210A was met in relation to the arrears".

16 After that section insert—

"210AConditions relating to commercial rent arrears recovery

(1) The first condition is that the power under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery) was not exercisable to recover the arrears.

(2) The second condition is that there were not sufficient goods on the premises to recover the arrears by that power."

Railway Rolling Stock Protection Act 1872 (c. 50)

17 The Railway Rolling Stock Protection Act 1872 ceases to have effect.

Law of Distress Amendment Act 1888 (c. 21)

18 The Law of Distress Amendment Act 1888 ceases to have effect.

Law of Property Act 1925 (c. 20)

19 The Law of Property Act 1925 is amended as follows.

20 In section 109 (powers etc. of receiver appointed by mortgagee), in subsection (3), for ", distress" substitute "or under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery)".

21 Section 120(2) ceases to have effect.

22 In section 150 (surrender of a lease, without prejudice to underleases with a view to the grant of a new lease), in subsection (5), for "by distress or" substitute "under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery) or by".

23 In section 162 (restrictions on the perpetuity rule) in subsection (1) omit paragraph (a).

24 In section 189 (indemnities against rents) omit subsection (1).

Administration of Estates Act 1925 (c. 23)

25 (1) Section 26 of the Administration of Estates Act 1925 (rights of action by and against person representative) is amended as follows.

(2) Omit subsection (3).

(3) For subsection (4) substitute—

"(4) To recover rent due or accruing to the deceased, a person representative may exercise any power under section 54(1) (commercial rent arrears recovery) or 63 (right to rent from sub-tenant) of the Tribunals, Courts and Enforcement Act 2006 that would have been exercisable by the decease if he had still been living."

Leasehold Reform Act 1967 (c. 88)

26 In section 15 of the Leasehold Reform Act 1967 (terms of tenancy to be granted on extension), in subsection (3) for "distress, re-entry or otherwise" substitute "re-entry or otherwise (subject to section 67 of the Tribunals, Courts and Enforcement Act 2006)".

Agriculture Act 1970 (c. 40)

27 (1) In section 85 of the Agriculture Act 1970 (exemption for certain sales), in paragraph (d) after "warrant of distress" insert "or warrant of control".

(2) This paragraph has the same extent as the enactment amended.

Rent (Agriculture) Act 1976 (c. 80)

28 Section 8 of the Rent (Agriculture) Act 1976 ceases to have effect.

Rent Act 1977 (c. 42)

29 The Rent Act 1977 is amended as follows

30 In section 141(5) (county court jurisdiction) (until its repeal by the Courts and Legal Services Act 1990 (c. 41) comes into force) for "sections 147 and" substitute "section".

31 Section 147 ceases to have effect.

County Courts Act 1984 (c. 28)

32 The County Courts Act 1984 is amended as follows.

33 Section 116 ceases to have effect.

34 In section 139, for subsection (1)(c) substitute—

"(c) the power under section 54(1) of the Tribunals, Courts and Enforcement Act 2006 (commercial rent arrears recovery) is exercisable to recover the arrears; and

(d) there are not sufficient goods on the premises to recover the arrears by that power,".

Agricultural Holdings Act 1986 (c. 5)

35 The Agricultural Holdings Act 1986 is amended as follows.

36 Omit sections 16 to 19.

37 In section 24 (restriction of landlord's remedies for breach of contract of tenancy) omit ", by distress or otherwise,".

Housing Act 1988 (c. 50)

38 Omit section 19 of the Housing Act 1988.

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

39 In section 57 of the Leasehold Reform Act 1967 (terms on which new lease is to be granted), in subsection (2)(b)(ii) for "distress, re-entry or otherwise" substitute "re-entry or otherwise (subject to section 67 of the Tribunals, Courts and Enforcement Act 2006)".

Constitutional Reform Act 2005 (c. 4)

40 In Schedule 7 to the Constitutional Reform Act 2005 (protected functions of the Lord Chancellor), in paragraph 4, omit the entry for the Law of Distress Amendment Act 1888.

SCHEDULE 14

Section 73

ATTACHMENT OF EARNINGS ORDERS: DEDUCTIONS AT FIXED RATES

PART 1

MAIN AMENDMENTS

Introduction

1 This Schedule amends the Attachment of Earnings Act 1971 (c. 32).

Amendment of section 6: Effect and contents of order

2 (1) For section 6(1)(a) (instruction to employer to make deductions from debtor's earnings) substitute—

"(a) to make periodical deductions from the debtor's earnings, as specified in the order; and".

(2) After section 6(1) insert—

"(1A) If a county court makes an attachment of earnings order to secure payment of a judgment debt, the order must specify that periodical deductions are to be made in accordance with the fixed deductions scheme.

(1B) If a court (whether a county court or another court) makes any other attachment of earnings order, the order must specify that periodical deductions are to be made in accordance with Part 1 of Schedule 3."

(3) In section 6(5) (order to specify normal deduction and protected earnings rates), for "the order" substitute "a Schedule 3 deductions order".

Insertion of new section 6A

3 After section 6 insert—

"6A The fixed deductions scheme

(1) In this Act "fixed deductions scheme" means any scheme that the Lord Chancellor makes which specifies the rates and frequencies at

which deductions are to be made under attachment of earnings orders so as to secure the repayment of judgment debts.

(2) The Lord Chancellor is to make the fixed deductions scheme by regulations.

(3) The power to make regulations under subsection (2) is exercisable by statutory instrument.

(4) The Lord Chancellor may not make a statutory instrument containing the first regulations under subsection (2) unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(5) A statutory instrument containing any subsequent regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament."

Amendment of section 9: Variation, lapse and discharge of orders

4 After section 9(1) (power of court to vary order) insert—

"(1A) Subsection (1) is subject to Schedule 3A (which deals with the variation of certain attachment of earnings orders by changing the basis of deductions)."

Insertion of new section 9A

5 After section 9 insert—

"9A Suspension of fixed deductions orders

(1) A county court must make an order suspending a fixed deductions order if the court is satisfied of either or both of the following—

(a) that the fixed deductions order requires periodical deductions to be made at a rate which is not appropriate;

(b) that the fixed deductions order requires periodical deductions to be made at times which are not appropriate.

(2) The county court is to make the suspension order on the following terms—

(a) if the condition in subsection (1)(a) is met: on terms specifying the rate at which the debtor must make repayments (whether higher or lower than the rate at which the order requires the deductions to be made);

(b) if the condition in subsection (1)(b) is met: on terms specifying the times at which the debtor must make repayments;

(c) if either or both conditions are met: on any additional terms that the court thinks appropriate.

(3) If the employer is given notice of the suspension order, the employer must cease to make the deductions required by the fixed deductions order; but the employer is under no liability for non-compliance before seven days have elapsed since service of the notice.

(4) A county court—

(a) must revoke the suspension order if any of the terms of the suspension order are broken;

(b) may revoke the suspension order in any other circumstances if the court thinks that it is appropriate to do so.

(5) Rules of court may make provision as to the circumstances in which a county court may of its own motion—

(a) make a suspension order; or

(b) revoke a suspension order.

(6) The suspension of a fixed deductions order under this section does not prevent the order from being treated as remaining in force subject to the provisions of this section.

(7) This section is without prejudice to any other powers of a court to suspend attachment of earnings orders or to revoke the suspension of such orders.

(8) In this section, in relation to a fixed deductions order, "repayments" means repayments of the judgment debt to which the order relates."

Amendment of section 25: General interpretation

6 In section 25(1) (meaning of particular words and phrases) insert the following entries at the appropriate place—

""fixed deductions order" means an attachment of earnings order under which periodical deductions are to be made in accordance with the fixed deductions scheme;";

""fixed deductions scheme" has the meaning given by section 6A(1);";

""Schedule 3 deductions order" means an attachment of earnings order under which periodical deductions are to be made in accordance with Part 1 of Schedule 3;";

""suspension order" means an order under section 9A suspending a fixed deductions order;".

Insertion of new Schedule 3A

7 After Schedule 3 insert—

"SCHEDULE 3A

CHANGING THE BASIS OF DEDUCTIONS

PART 1

CHANGING TO THE FIXED DEDUCTIONS SCHEME

Introduction

1 This Part of this Schedule deals with the variation of a certain kind of attachment of earnings order — referred to as a Schedule 3 judgment debt order — by changing the basis of deductions.

2 A Schedule 3 judgment debt order is a Schedule 3 deductions order made by a county court to secure payment of a judgment debt.

3 References to variation of a Schedule 3 judgment debt order by changing the basis of deductions are references to the variation of the order so that it specifies that periodical deductions are to be made in accordance with the fixed deductions scheme.

Variation at discretion of court

4 (1) A county court may vary a Schedule 3 judgment debt order by changing the basis of deductions.

(2) The county court may make the variation—
(a) in consequence of an application made to the court, or
(b) of its own motion.

(3) The variation takes effect on the date that it is made.

Variation by court upon redirection

5 (1) A county court must vary a Schedule 3 judgment debt order by changing the basis of deductions if—
(a) the order lapses, and
(b) the county court directs the order to a person in accordance with section 9(4).

(2) The variation must be made at the same time as the county court directs the order in accordance with section 9(4).

(3) The variation takes effect on the date that it is made.

Automatic variation on changeover date

6 (1) On the changeover date, all Schedule 3 judgment debt orders are to be treated as if a county court had varied them by changing the basis of deductions.

(2) The variation takes effect on the changeover date.

(3) The changeover date is the date which the Lord Chancellor specifies for the purposes of this paragraph.

(4) The Lord Chancellor is to specify the changeover date in an order made by statutory instrument.

(5) A statutory instrument containing an order under sub-paragraph (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

Notice of variation still required

7 Section 9(2) (service by court of notice of variation) applies to the variation of an order under this Part of this Schedule (including variation in accordance with paragraph 6) as it applies to any other variation of an attachment of earnings order.

PART 2

CHANGING FROM THE FIXED DEDUCTIONS SCHEME

Introduction

8 This Part of this Schedule deals with the variation of fixed deductions orders by changing the basis of deductions.

9 References to variation of a fixed deductions order by changing the basis of deductions are references to the variation of the order so that it specifies that periodical deductions are to be made in accordance with Part 1 of Schedule 3.

General prohibition on changing from the fixed deductions basis

10 A court may not vary a fixed deductions order by changing the basis of deductions unless the variation is in accordance with this Part of this Schedule.

Fixed deductions order directed to secure payments under an administration order

11 (1) A county court must vary a fixed deductions order by changing the basis of deductions if, under section 5, the county court directs the order to take effect as an order to secure payments required by an administration order.

(2) The variation must be made at the same time as the county court gives that direction under section 5.

(3) The variation takes effect on the date that it is made.

(4) Section 9(2) (service by court of notice of variation) applies to the variation of an order under this paragraph as it applies to any other variation of an attachment of earnings order."

PART 2

CONSEQUENTIAL AMENDMENTS

Amendment of section 5: Securing payments under administration order

8 In section 5(3) (power of county court to direct existing attachment of earnings order to secure administration order), for the words in brackets substitute "(with the variation required by paragraph 11 of Schedule 3A and such other variations, if any, as the court thinks appropriate)".

Amendment of section 14: Power of court to obtain information

9 In section 14(1) (power of court to order debtor and employer to provide specified information), for "an attachment of earnings order" substitute "a Schedule 3 deductions order".

10 After section 14(1) insert—

"(1A) Where in any proceedings a county court has power to make a fixed deductions order, the court may order the debtor to give to the court, within a specified period, a statement signed by him of—

(a) the name and address of any person by whom earnings are paid to him; and

(b) specified particulars for enabling the debtor to be identified by any employer of his."

11 In section 14(2) (powers of court after attachment of earnings order has been made), for the words from "Where" to "in force—" substitute "At any time when a Schedule 3 deductions order is in force, the court or the fines officer, as the case may be, may—".

12 After section 14(2) insert—

"(2A) At any time when a fixed deductions order is in force, the court may—

(a) make such an order as is described in subsection (1A) above; and

(b) order the debtor to attend before it on a day and at a time specified in the order to give the information described in subsection (1A) above."

13 In section 14(4) (rules of court about notice of application for attachment or earnings order), for the words from "give" to "the application." substitute ", within such period and in such manner as may be prescribed, give the court a statement in accordance with subsection (4A) or (4B).".

14 After section 14(4) insert—

"(4A) In a case where the attachment of earnings order would, if made, be a Schedule 3 deductions order, the debtor must give a statement in writing of—

(a) the matters specified in subsection (1)(a) above, and

(b) any other prescribed matters which are, or may be, relevant under section 6 of this Act to the determination of the normal deduction rate and the protected earnings rate to specified in any attachment of earnings order made on the application.

(4B) In a case where the attachment of earnings order would, if made, be a fixed deductions order, the debtor must give a statement in writing of the matters specified in subsection (1A) above."

15 In section 14(5) (certain statements in proceedings for making or varying etc attachment of earnings orders deemed to be evidence of facts stated), after "subsection (1)(a) or (b)" insert "or (1A)".

Amendment of section 15: Obligation of debtor and employer to notify changes

16 (1) Section 15(1) is amended as follows.

(2) In paragraph (b) (obligation to notify of court of earnings under new employment) at the beginning insert "if the order is a Schedule 3 deductions order,".

(3) In paragraph (c) (obligation of employer to notify court of debtor's new employment and earnings) for "and include" insert "and, if the order is a Schedule 3 deductions order, include".

Amendment of section 17: Consolidated attachment orders

17 (1) Section 17(3) (rules of court made in connection with consolidated attachment orders) is amended as follows.

(2) In paragraph (b) (rules relating to powers of court to which order etc transferred), after "vary" insert ", suspend".

(3) In paragraph (e) (rules modifying or excluding statutory provisions), after "provisions of this Act" insert ", the fixed deductions scheme".

18 After section 17(3) insert—

"(4) Section 6(1A) applies to a consolidated attachment order which a county court makes to secure the payment of two or more judgment debts even if, immediately before the order is made, one or more of those debts is secured by a Schedule 3 deductions order."

Amendment of section 23: Enforcement provisions

19 Section 23 is amended as follows.

20 In subsection (1) (failure of debtor to attend hearing)—

(a) for the words from "notice of an application" to "such an order" substitute "relevant notice,";

(b) for "for any hearing of the application" substitute "in the notice for any hearing,".

21 After subsection (1) insert—

"(1ZA) In subsection (1) "relevant notice" means any of the following—

(a) notice of an application to a county court to make, vary or suspend an attachment of earnings order;

(b) notice that a county court is, of its own motion, to consider making, varying or suspending an attachment of earnings order."

22 In subsection (2)(c) and (f) (offences related to attachment of earnings orders)—

(a) after "section 14(1)" insert "or (1A)".

(b) after "attachment of earnings order" insert "or suspension order".

SCHEDULE 15

Section 88

ADMINISTRATION ORDERS: CONSEQUENTIAL AMENDMENTS

Attachment of Earnings Act 1971 (c. 32)

1 (1) Section 4 of the Attachment of Earnings Act 1971 (extension of power to make administration order) is amended as follows.

(2) For subsections (2) and (2A) substitute—

"(2) The court may make an administration order in respect of the debtor's estate if, after receipt of the list referred to in subsection (1)(b) above, the court is satisfied that the conditions in sections 112B(2) to (7) of the County Courts Act 1984 (conditions to power to make administration orders) are met in relation to the debtor."

(3) In subsection (4) for "section 112" substitute "section 112J".

Magistrates' Courts Act 1980 (c. 43)

2 (1) Schedule 6A to the Magistrates' Courts Act 1980 (fines that may be altered under section 143 of the 1980 Act) is amended as follows.

(2) Insert the following entry at the appropriate place in the entries relating to the County Courts Act 1984 (c. 28)—

"Section 112N(1) (administration orders: failure to provide information)	£250"

Insolvency Act 1986 (c. 45)

3 (1) Section 429 of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual) is amended as follows.

(2) For subsections (1) and (2) substitute—

"(1) This section applies if a county court revokes an administration order made in respect of an individual ("the debtor") on one of the relevant grounds.

(2) The court may, at the time it revokes the administration order, make an order directing that this section and section 12 of the Company Directors Disqualification Act 1986 shall apply to the debtor for such period, not exceeding one year, as may be specified in the order.

(2A) Each of the following is a relevant ground—

(a) the debtor had failed to make two payments (whether consecutive or not) required by the order;

(b) at the time the order was made—

(i) the total amount of the debtor's qualifying debts was more than the prescribed maximum for the purposes of Part 6 of the 1984 Act, but

(ii) because of information provided, or not provided, by the debtor, that amount was thought to be less than, or the same as, the prescribed maximum."

(3) In subsection (3) for "a person" in the first place substitute "an individual".

(4) In subsection (4) for "a person" substitute "an individual".

(5) In subsection (5) for "person" substitute "individual".

4 (1) Section 440 (extent: Scotland) is amended as follows.

(2) In subsection (2)(a) (provisions in the third Group of Parts that do not extend to Scotland) for "section 429(1) and (2)" substitute "section 429(1) to (2A)".

Company Directors Disqualification Act 1986 (c. 46)

5 (1) Section 12 of the Company Directors Disqualification Act 1986 (failure to pay under county court administration order) is amended as follows.

(2) For the title of the section substitute "Disabilities on revocation of administration order".

(3) Omit subsection (1).

(4) In subsection (2), for the words from "that section" to "429(2)(b)" substitute "section 429 of the Insolvency Act applies by virtue of an order under subsection (2) of that section".

Courts and Legal Services Act 1990 (c. 41)

6 Omit section 13 of the Courts and Legal Services Act 1990.

Charities Act 1993 (c. 10)

7 (1) Section 72 of the Charities Act 1993 (persons disqualified for being trustees of a charity) is amended as follows.

(2) In subsection (1)(f), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).".

Pensions Act 1995 (c. 26)

8 (1) Section 29 of the Pensions Act 1995 (persons disqualified for being trustees of a trust scheme) is amended as follows.

(2) In subsection (1)(f), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).".

Police Act 1996 (c. 16)

9 (1) The Police Act 1996 is amended as follows.

(2) In paragraph 11 of Schedule 2 (disqualification for being appointed as or being member of a police authority), in sub-paragraph (1)(c), for "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order); or".

(3) In paragraph 7 of Schedule 2A (disqualification for being appointed as or being member of the Metropolitan Police Authority), in sub-paragraph (1)(c), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order); or".

Housing Act 1996 (c. 52)

10 (1) Paragraph 4 of Schedule 1 to the Housing Act 1996 (power to remove director, trustee etc. of registered social landlord) is amended as follows.

(2) In sub-paragraph (2)(c), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order);".

Police Act 1997 (c. 50)

11 (1) The Police Act 1997 is amended as follows.

(2) In section 91 (the Commissioners), in subsection (7)(b), for "section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)" substitute "section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order)".

(3) In paragraph 3 of Schedule 2 (disqualification for being appointed as or being member of a Service Authority), in sub-paragraph (1)(c), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order); or".

Criminal Justice and Police Act 2001 (c. 16)

12 (1) Paragraph 3 of Schedule 3 to the Criminal Justice and Police Act 2001 (persons disqualified for being appointed as or being member of the Central Police Training and Development Authority) is amended as follows.

(2) In sub-paragraph (1)(b), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (c. 45) (disabilities on revocation of county court administration order); or".

Police Reform Act 2002 (c. 30)

13 (1) Schedule 2 to the Police Reform Act 2002 (the Independent Police Complaints Commission) is amended as follows.

(2) In paragraph 1(5) (grounds for removal of chairman), in paragraph (e)(ii), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (c. 45) (disabilities on revocation of county court administration order);".

(3) In paragraph 2(6) (grounds for removal of ordinary members), in paragraph (e)(ii), for the words from "section 429(2)(b)" to the end substitute "section 429(2) of the Insolvency Act 1986 (c. 45) (disabilities on revocation of county court administration order);".

Railways and Transport Safety Act 2003 (c. 20)

14 (1) Paragraph 7 of Schedule 4 to the Railways and Transport Safety Act 2003, (eligibility for appointment as member of British Transport Police Authority) is amended as follows.

(2) In sub-paragraph (3)(c), for "section 429(2)(b)" substitute "section 429(2)".

Courts Act 2003 (c. 39)

15 (1) Section 98 of the Courts Act 2003 (register of judgments and orders) is amended as follows.

(2) In subsection (1)(b) (administration orders) for "section 112" substitute "Part 6".

SCHEDULE 16

Section 90(1)

PART 7A OF THE INSOLVENCY ACT 1986

"PART 7A

DEBT RELIEF ORDERS

Preliminary

251A Debt relief orders

(1) An individual who is unable to pay his debts may apply for an order under this Part ("a debt relief order") to be made in respect of his qualifying debts.

(2) In this Part "qualifying debt" means (subject to subsection (3)) a debt which—

(a) is for a liquidated sum payable either immediately or at some certain future time; and

(b) is not an excluded debt.

(3) A debt is not a qualifying debt to the extent that it is secured.

(4) In this Part "excluded debt" means a debt of any description prescribed for the purposes of this subsection.

Applications for a debt relief order

251B Making of application

(1) An application for a debt relief order must be made to the official receiver through an approved intermediary.

(2) The application must include—

(a) a list of the debts to which the debtor is subject at the date of the application, specifying the amount of each debt (including any interest, penalty or other sum that has become payable in relation to that debt on or before that date) and the creditor to whom it is owed;

(b) details of any security held in respect of any of those debts; and

(c) such other information about the debtor's affairs (including his creditors, debts and liabilities and his income and assets) as may be prescribed.

(3) The rules may make further provision as to—

(a) the form of an application for a debt relief order;
(b) the manner in which an application is to be made; and
(c) information and documents to be supplied in support of an application.

(4) For the purposes of this Part an application is not to be regarded as having been made until—
(a) the application has been submitted to the official receiver; and
(b) any fee required in connection with the application by an order under section 415 has been paid to such person as the order may specify.

251C Duty of official receiver to consider and determine application

(1) This section applies where an application for a debt relief order is made.

(2) The official receiver may stay consideration of the application until he has received answers to any queries raised with the debtor in relation to anything connected with the application.

(3) The official receiver must determine the application by—
(a) deciding whether to refuse the application;
(b) if he does not refuse it, by making a debt relief order in relation to the specified debts he is satisfied were qualifying debts of the debtor at the application date;
but he may only refuse the application if he is authorised or required to do so by any of the following provisions of this section.

(4) The official receiver may refuse the application if he considers that—
(a) the application does not meet all the requirements imposed by or under section 251B;
(b) any queries raised with the debtor have not been answered to the satisfaction of the official receiver within such time as he may specify when they are raised;
(c) the debtor has made any false representation or omission in making the application or on supplying any information or documents in support of it.

(5) The official receiver must refuse the application if he is not satisfied that—
(a) the debtor is an individual who is unable to pay his debts;
(b) at least one of the specified debts was a qualifying debt of the debtor at the application date;
(c) each of the conditions set out in Part 1 of Schedule 4ZA is met.

(6) The official receiver may refuse the application if he is not satisfied that each condition specified in Part 2 of Schedule 4ZA is met.

(7) If the official receiver refuses an application he must give reasons for his refusal to the debtor in the prescribed manner.

(8) In this section "specified debt" means a debt specified in the application.

251D Presumptions applicable to the determination of an application

(1) The following presumptions are to apply to the determination of an application for a debt relief order.

(2) The official receiver must presume that the debtor is an individual who is unable to pay his debts at the determination date if—

(a) that appears to the official receiver to be the case at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate; and

(b) he has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.

(3) The official receiver must presume that a specified debt (of the amount specified in the application and owed to the creditor so specified) is a qualifying debt at the application date if—

(a) that appears to him to be the case from the information supplied in the application; and

(b) he has no reason to believe that the information supplied is incomplete or inaccurate.

(4) The official receiver must presume that the condition specified in paragraph 1 of Schedule 4ZA is met if—

(a) that appears to him to be the case from the information supplied in the application;

(b) any prescribed verification checks relating to the condition have been made; and

(c) he has no reason to believe that the information supplied is incomplete or inaccurate.

(5) The official receiver must presume that any other condition specified in Part 1 or 2 of Schedule 4ZA is met if—

(a) that appears to him to have been the case as at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate;

(b) any prescribed verification checks relating to the condition have been made; and

(c) he has no reason to believe that, by virtue of a change in circumstances since the application date, the condition may no longer be met.

(6) References in this section to information supplied in the application include information supplied to the official receiver in support of the application.

(7) In this section "specified debt" means a debt specified in the application.

Making and effect of debt relief order

251E Making of debt relief orders

(1) This section applies where the official receiver makes a debt relief order on determining an application under section 251C.

(2) The order must be made in the prescribed form.

(3) The order must include a list of the debts which the official receiver is satisfied were qualifying debts of the debtor at the application date, specifying the amount of the debt at that time and the creditor to whom it was then owed.

(4) The official receiver must—
(a) give a copy of the order to the debtor; and
(b) make an entry for the order in the register containing the prescribed information about the order or the debtor.

(5) The rules may make provision as to other steps to be taken by the official receiver or the debtor on the making of the order.

(6) Those steps may include in particular notifying each creditor to whom a qualifying debt specified in the order is owed of—
(a) the making of the order and its effect,
(b) the grounds on which a creditor may object under section 251J, and
(c) any other prescribed information.

(7) In this Part the date on which an entry relating to the making of a debt relief order is first made in the register is referred to as "the effective date".

251F Moratorium from qualifying debts

(1) A moratorium commences on the effective date for a debt relief order in relation to each qualifying debt specified in the order ("a specified qualifying debt").

(2) During the moratorium, the creditor to whom a specified qualifying debt is owed—
(a) has no remedy in respect of the debt, and
(b) may not—
(i) commence a creditor's petition in respect of the debt, or
(ii) otherwise commence any action or other legal proceedings against the debtor for the debt,
except with the permission of the court and on such terms as the court may impose.

(3) If on the effective date a creditor to whom a specified qualifying debt is owed has any such petition, action or other proceeding as mentioned in subsection (2)(b) pending in any court, the court may—
(a) stay the proceedings on the petition, action or other proceedings (as the case may be), or
(b) allow them to continue on such terms as the court thinks fit.

(4) In subsection (2)(a) and (b) references to the debt include a reference to any interest, penalty or other sum that becomes payable in relation to that debt after the application date.

(5) Nothing in this section affects the right of a secured creditor of the debtor to enforce his security.

251G The moratorium period

(1) The moratorium relating to the qualifying debts specified in a debt relief order continues for the period of one year beginning with the effective date for the order, unless—

(a) the moratorium terminates early; or

(b) the moratorium period is extended by the official receiver under this section or by the court under section 251L.

(2) The official receiver may only extend the moratorium period for the purpose of—

(a) carrying out or completing an investigation under section 251J;

(b) taking any action he considers necessary (whether as a result of an investigation or otherwise) in relation to the order; or

(c) in a case where he has decided to revoke the order, providing the debtor with the opportunity to make arrangements for making payments towards his debts.

(3) The official receiver may not extend the moratorium period for the purpose mentioned in subsection (2)(a) without the permission of the court.

(4) The official receiver may not extend the moratorium period beyond the end of the period of three months beginning after the end of the initial period of one year mentioned in subsection (1).

(5) The moratorium period may be extended more than once, but any extension (whether by the official receiver or by the court) must be made before the moratorium would otherwise end.

(6) References in this Part to a moratorium terminating early are to its terminating before the end of what would otherwise be the moratorium period, whether on the revocation of the order or by virtue of any other enactment.

251H Discharge from qualifying debts

(1) Subject as follows, at the end of the moratorium applicable to a debt relief order the debtor is discharged from all the qualifying debts specified in the order (including all interest, penalties and other sums which may have become payable in relation to those debts since the application date).

(2) Subsection (1) does not apply if the moratorium terminates early.

(3) Subsection (1) does not apply in relation to any qualifying debt which the debtor incurred in respect of any fraud or fraudulent breach of trust to which the debtor was a party.

(4) The discharge of the debtor under subsection (1) does not release any other person from—

(a) any liability (whether as partner or co-trustee of the debtor or otherwise) from which the debtor is released by the discharge; or

(b) any liability as surety for the debtor or as a person in the nature of such a surety.

(5) If the order is revoked by the court under section 251L after the end of the moratorium period, the qualifying debts specified in the order shall (so far as practicable) be treated as though subsection (1) had never applied to them.

Duties of debtor

251I Providing assistance to official receiver etc

(1) The duties in this section apply to a debtor at any time after the making of an application by him for a debt relief order.

(2) The debtor must—

(a) give to the official receiver such information as to his affairs,

(b) attend on the official receiver at such times, and

(c) do all such other things,

as the official receiver may reasonably require for the purpose of carrying out his functions in relation to the application or, as the case may be, the debt relief order made as a result of the application.

(3) The debtor must notify the official receiver as soon as reasonably practicable if he becomes aware of—

(a) any error in, or omission from, the information supplied to the official receiver in, or in support of, the application;

(b) any change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.

(4) The duties under subsections (2) and (3) apply after (as well as before) the determination of the application, for as long as the official receiver may exercise functions of the kind mentioned in subsection (2).

(5) If a debt relief order is made as a result of the application, the debtor must notify the official receiver as soon as reasonably practicable if—

(a) there is an increase in his income during the moratorium period applicable to the order;

(b) he acquires any property or any property is devolved upon him during that period;

(c) he becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date.

(6) A notification under subsection (3) or (5) must give the prescribed particulars (if any) of the matter being notified.

Objections, investigations and revocation

251J Objections and investigations

(1) Any person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed may object to—

(a) the making of the order;

(b) the inclusion of the debt in the list of the debtor's qualifying debts; or

(c) the details of the debt specified in the order.

(2) An objection under subsection (1) must be—

(a) made during the moratorium period relating to the order and within the prescribed period for objections;

(b) made to the official receiver in the prescribed manner;

(c) based on a prescribed ground;

(d) supported by any information and documents as may be prescribed;

and the prescribed period mentioned in paragraph (a) must not be less than 28 days after the creditor in question has been notified of the making of the order.

(3) The official receiver must consider every objection made to him under this section.

(4) The official receiver may—

(a) as part of his consideration of an objection; or

(b) on his own initiative,

carry out an investigation of any matter that appears to the official receiver to be relevant to the making of any decision mentioned in subsection (5) in relation to a debt relief order or the debtor.

(5) The decisions to which an investigation may be directed are—

(a) whether the order should be revoked or amended under section 251K;

(b) whether an application should be made to the court under section 251L; or

(c) whether any other steps should be taken in relation to the debtor.

(6) The power to carry out an investigation under this section is exercisable after (as well as during) the moratorium relating to the order.

(7) The official receiver may require any person to give him such information and assistance as he may reasonably require in connection with an investigation under this section.

(8) Subject to anything prescribed in the rules as to the procedure to be followed in carrying out an investigation under this section, an investigation may be carried out by the official receiver in such manner as he thinks fit.

251K Power of official receiver to revoke or amend a debt relief order

(1) The official receiver may revoke or amend a debt relief order during the applicable moratorium period in the circumstances provided for by this section.

(2) The official receiver may revoke the order on the ground that—

(a) any information supplied to him by the debtor—

(i) in, or in support of, the application, or

(ii) after the determination date,

was incomplete, incorrect or otherwise misleading;

(b) the debtor has failed to comply with a duty under section 251I;

(c) a bankruptcy order has been made in relation to the debtor; or

(d) the debtor has made a proposal under Part 8 (or has notified the official receiver of his intention to do so).

(3) The official receiver may revoke the order on the ground that he should not have been satisfied—

(a) that the debts specified in the order were qualifying debts of the debtor as at the application date;

(b) that the conditions specified in Part 1 of Schedule 4ZA were met;

(c) that the conditions specified in Part 2 of that Schedule were met (or that any failure to meet such a condition did not prevent his making the order).

(4) The official receiver may revoke the order on the ground that either or both of the conditions in paragraphs 7 and 8 of Schedule 4ZA (monthly surplus income and property) are not met at any time after the order was made.

For this purpose those paragraphs are to be read as if references to the determination date were references to the time in question.

(5) Where the official receiver decides to revoke the order, he may revoke it either—

(a) with immediate effect, or

(b) with effect from such date (not more than three months after the date of the decision) as he may specify.

(6) In considering when the revocation should take effect the official receiver must consider (in the light of the grounds on which the decision to revoke was made and all the other circumstances of the case) whether the debtor ought to be given the opportunity to make arrangements for making payments towards his debts.

(7) If the order has been revoked with effect from a specified date the official receiver may, if he thinks it appropriate to do so at any time before that date, revoke the order with immediate effect.

(8) The official receiver may amend a debt relief order for the purpose of correcting an error in or omission from anything specified the order.

(9) But subsection (8) does not permit the official receiver to add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

(10) The rules may make further provision as to the procedure to be followed by the official receiver in the exercise of his powers under this section.

Role of the court

251L Powers of court in relation to debt relief orders

(1) Any person may make an application to the court if he is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for such an order.

(2) The official receiver may make an application to the court for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order.

(3) The matters referred to in subsection (2) include, among other things, matters relating to the debtor's compliance with any duty arising under section 251I.

(4) An application under this section may, subject to anything in the rules, be made at any time.

(5) The court may extend the moratorium period applicable to a debt relief order for the purposes of determining an application under this section.

(6) On an application under this section the court may dismiss the application or do one or more of the following—

(a) quash the whole or part of any act or decision of the official receiver;

(b) give the official receiver directions (including a direction that he reconsider any matter in relation to which his act or decision has been quashed under paragraph (a));

(c) make an order for the enforcement of any obligation on the debtor arising by virtue of a duty under section 251I;

(d) extend the moratorium period applicable to the debt relief order;

(e) make an order revoking or amending the debt relief order;

(f) make an order under section 251M; or

(g) make such other order as the court thinks fit.

(7) An order under subsection (6)(e) for the revocation of a debt relief order—

(a) may be made during the moratorium period applicable to the debt relief order or at any time after that period has ended;

(b) may be made on the court's own motion if the court has made a bankruptcy order in relation to the debtor during that period;

(c) may provide for the revocation of the order to take effect on such terms and at such a time as the court may specify.

(8) An order under subsection (6)(e) for the amendment of a debt relief order may not add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

251M Inquiry into debtor's dealings and property

(1) An order under this section may be made by the court on the application of the official receiver.

(2) An order under this section is an order summoning any of the following persons to appear before the court—

(a) the debtor;

(b) the debtor's spouse or former spouse or the debtor's civil partner or former civil partner;

(c) any person appearing to the court to be able to give information or assistance concerning the debtor or his dealings, affairs and property.

(3) The court may require a person falling within subsection (2)(c)—

(a) to provide a written account of his dealings with the debtor; or

(b) to produce any documents in his possession or under his control relating to the debtor or to the debtor's dealings, affairs or property.

(4) Subsection (5) applies where a person fails without reasonable excuse to appear before the court when he is summoned to do so by an order under this section.

(5) The court may cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of that person, and

(b) for the seizure of any records or other documents in that person's possession.

(6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

Offences

251N False representations and omissions

(1) A person who makes an application for a debt relief order is guilty of an offence if he knowingly or recklessly makes any false representation or omission in making the application or providing any information or documents to the official receiver in support of the application.

(2) A person who makes an application for a debt relief order is guilty of an offence if—

(a) he intentionally fails to comply with a duty under section 251I(2) or (3) in connection with the application; or

(b) he knowingly or recklessly makes any false representation or omission in providing any information to the official receiver in connection with such a duty or otherwise in connection with the application.

(3) It is immaterial for the purposes of an offence under subsection (1) or (2) whether or not a debt relief order is made as a result of the application.

(4) A person in respect of whom a debt relief order is made is guilty of an offence if—

(a) he intentionally fails to comply with a duty under section 251I(2) or (3) in connection with the order; or

(b) he knowingly or recklessly makes any false representation or omission in providing information to the official receiver in connection with such a duty or otherwise in connection with the performance by the official receiver of functions in relation to the order.

(5) It is immaterial for the purposes of an offence under subsection (4)—

(a) whether the offence is committed during or after the moratorium period; and

(b) whether or not the order is revoked after the conduct constituting the offence takes place.

251O Concealment or falsification of documents

(1) A person in respect of whom a debt relief order is made is guilty of an offence if, during the moratorium period in relation to that order—

(a) he does not provide, at the request of the official receiver, all his books, papers and other records of which he has possession or control and which relate to his affairs;

(b) he prevents the production to the official receiver of any books, papers or other records relating to his affairs;

(c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating his affairs;

(d) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his affairs; or

(e) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his affairs.

(2) A person in respect of whom a debt relief order is made is guilty of an offence if—

(a) he did anything falling within paragraphs (c) to (e) of subsection (1) during the period of 12 months ending with the application date; or

(b) he did anything falling within paragraphs (b) to (e) of subsection (1) after that date but before the effective date.

(3) A person is not guilty of an offence under this section if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) In its application to a trading record subsection (2)(a) has effect as if the reference to 12 months were a reference to two years.

(5) In subsection (4) "trading record" means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

(6) It is immaterial for the purposes of an offence under this section whether or not the debt relief order in question is revoked after the conduct constituting the offence takes place (but no offence is committed under this section by virtue of conduct occurring after the order is revoked).

251P Fraudulent disposal of property

(1) A person in respect of whom a debt relief order is made is guilty of an offence if he made or caused to be made any gift or transfer of his property during the period between—

(a) the start of the period of two years ending with the application date; and

(b) the end of the moratorium period.

(2) The reference in subsection (1) to making a transfer of any property includes causing or conniving at the levying of any execution against that property.

(3) A person is not guilty of an offence under this section if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) For the purposes of subsection (3) a person is to be taken to have proved that he had no such intent if—

(a) sufficient evidence is adduced to raise an issue as to whether he had such intent; and

(b) the contrary is not proved beyond reasonable doubt.

(5) It is immaterial for the purposes of this section whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

251Q Fraudulent dealing with property obtained on credit

(1) A person in respect of whom a debt relief order is made is guilty of an offence if during the relevant period he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for it.

(2) Any other person is guilty of an offence if during the relevant period he acquired or received property from a person in respect of whom a debt relief order was made (the "debtor") knowing or believing—

(a) that the debtor owed money in respect of the property, and

(b) that the debtor did not intend, or was unlikely to be able, to pay the money he so owed.

(3) In subsections (1) and (2) "relevant period" means the period between—

(a) the start of the period of two years ending with the application date; and

(b) the determination date.

(4) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the debtor at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of subsection (4) whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the debtor, regard may be had, in particular, to the price paid for the property.

(6) A person is not guilty of an offence under subsection (1) if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(7) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

(8) It is immaterial for the purposes of this section whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

251R Obtaining credit or engaging in business

(1) A person in respect of whom a debt relief order is made is guilty of an offence if, during the relevant period—

(a) he obtains credit (either alone or jointly with any other person) without giving the person from whom he obtains the credit the relevant information about his status; or

(b) he engages directly or indirectly in any business under a name other than that in which the order was made without disclosing to all persons with whom he enters into any business transaction the name in which the order was made.

(2) For the purposes of subsection (1)(a) the relevant information about a person's status is the information that—

(a) a moratorium is in force in relation to the debt relief order,

(b) a debt relief restrictions order is in force in respect of him, or

(c) both a moratorium and a debt relief restrictions order is in force,

as the case may be.

(3) In subsection (1) "relevant period" means—

(a) the moratorium period relating to the debt relief order; or
(b) the period for which a debt relief restrictions order is in force in respect of the person in respect of whom the debt relief order is made,

as the case may be.

(4) Subsection (1)(a) does not apply if the amount of the credit is less than the prescribed amount (if any).

(5) The reference in subsection (1)(a) to a person obtaining credit includes the following cases—
(a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement;
(b) where he is paid in advance (in money or otherwise) for the supply of goods or services.

251S Offences: supplementary

(1) Proceedings for an offence under this Part may only be instituted by the Secretary of State or by or with the consent of the Director of Public Prosecutions.

(2) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting the offence was done outside England and Wales.

(3) A person guilty of an offence under this Part is liable to imprisonment or a fine, or both (but see section 430).

Supplementary

251T Approved intermediaries

(1) In this Part "approved intermediary" means an individual for the time being approved by a competent authority to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver.

(2) In this section "competent authority" means a person or body for the time being designated by the Secretary of State for the purposes of granting approvals under this section.

(3) Designation as a competent authority may be limited so as to permit the authority only to approve persons of a particular description.

(4) The Secretary of State may by regulations make provision as to—
(a) the procedure for designating persons or bodies as competent authorities;
(b) descriptions of individuals who are ineligible to be approved under this section;
(c) the procedure for granting approvals under this section;
(d) the withdrawal of designations or approvals under this section;

and provision made under paragraph (a) or (c) may include provision requiring the payment of fees.

(5) The rules may make provision about the activities to be carried out by approved intermediaries, which may in particular include—

(a) assisting a debtor in making an application for a debt relief order;

(b) checking that the application has been properly completed;

(c) sending the application to the official receiver.

(6) An approved intermediary may not charge a debtor any fee in connection with an application for a debt relief order.

(7) An approved intermediary is not liable to any person in damages for anything done or omitted to be done in carrying out, or in purporting to carry out, his activities as an approved intermediary.

(8) Subsection (7) does not apply if the act or omission was in bad faith.

251U Debt relief restrictions orders and undertakings

Schedule 4ZB (which makes provision about debt relief restrictions orders and debt relief restrictions undertakings) has effect.

251V Register of debt relief orders etc

The Secretary of State must maintain a register of matters relating to—

(a) debt relief orders;

(b) debt relief restrictions orders; and

(c) debt relief restrictions undertakings.

251W Interpretation

(1) In this Part—

"the application date", in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is made to the official receiver;

"approved intermediary" has the meaning given in section 251T(1);

"debt relief order" means an order made by the official receiver under this Part;

"debtor" means—

(a) in relation to an application for a debt relief order, the applicant; and

(b) in relation to a debt relief order, the person in relation to whom the order is made;

"debt relief restrictions order" and "debt relief restrictions undertaking" means an order made, or an undertaking accepted, under Schedule 4ZB;

"the determination date", in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is determined by the official receiver;

"the effective date" has the meaning given in section 251E(7);

"excluded debt" is to be construed in accordance with section 251A;

"moratorium" and "moratorium period" are to be construed in accordance with sections 251F and 251G;

"qualifying debt", in relation to a debtor, has the meaning given in section 251A(2);

"the register" means the register maintained under section 251V;

"specified qualifying debt" has the meaning given in section 251F(1).

(2) In this Part references to a creditor specified in a debt relief order as the person to whom a qualifying debt is owed by the debtor include a reference to any person to whom the right to claim the whole or any part of the debt has passed, by assignment or operation of law, after the date of the application for the order."

SCHEDULE 17

Section 90(2)

SCHEDULE 4ZA TO THE INSOLVENCY ACT 1986

"SCHEDULE 4ZA

CONDITIONS FOR MAKING A DEBT RELIEF ORDER

PART 1

CONDITIONS WHICH MUST BE MET

Connection with England and Wales

1 (1) The debtor—

(a) is domiciled in England and Wales on the application date; or

(b) at any time during the period of three years ending with that date—

(i) was ordinarily resident, or had a place of residence, in England and Wales; or

(ii) carried on business in England and Wales.

(2) The reference in sub-paragraph (1)(b)(ii) to the debtor carrying on business includes—

(a) the carrying on of business by a firm or partnership of which he is a member;

(b) the carrying on of business by an agent or manager for him or for such a firm or partnership.

Debtor's previous insolvency history

2 The debtor is not, on the determination date—

(a) an undischarged bankrupt;

(b) subject to an interim order or voluntary arrangement under Part 8; or

(c) subject to a bankruptcy restrictions order or a debt relief restrictions order.

3 A debtor's petition for the debtor's bankruptcy under Part 9—

(a) has not been presented by the debtor before the determination date; or

(b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or

(c) has been so presented and proceedings in relation to the petition remain before the court at that date, but the court has referred the debtor under section 274A(2) for the purposes of making an application for a debt relief order.

4 A creditor's petition for the debtor's bankruptcy under Part 9—

(a) has not been presented against the debtor at any time before the determination date; or

(b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or

(c) has been so presented and proceedings in relation to the petition remain before the court at that date, but the person who presented the petition has consented to the making of an application for a debt relief order.

5 A debt relief order has not been made in relation to the debtor in the period of six years ending with the determination date.

Limit on debtor's overall indebtedness

6 (1) The total amount of the debtor's debts on the determination date, other than unliquidated debts and excluded debts, does not exceed the prescribed amount.

(2) For this purpose an unliquidated debt is a debt that is not for a liquidated sum payable to a creditor either immediately or at some future certain time.

Limit on debtor's monthly surplus income

7 (1) The debtor's monthly surplus income (if any) on the determination date does not exceed the prescribed amount.

(2) For this purpose "monthly surplus income" is the amount by which a person's monthly income exceeds the amount necessary for the reasonable domestic needs of himself and his family.

(3) The rules may—

(a) make provision as to how the debtor's monthly surplus income is to be determined;

(b) provide that particular descriptions of income are to be excluded for the purposes of this paragraph.

Limit on value of debtor's property

8 (1) The total value of the debtor's property on the determination date does not exceed the prescribed amount.

(2) The rules may—

(a) make provision as to how the value of a person's property is to be determined;

(b) provide that particular descriptions of property are to be excluded for the purposes of this paragraph.

PART 2

OTHER GROUNDS FOR REFUSING AN APPLICATION

9 (1) The debtor has not entered into a transaction with any person at an undervalue during the period between—

(a) the start of the period of two years ending with the application date; and

(b) the determination date.

(2) For this purpose a debtor enters into a transaction with a person at an undervalue if—

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;

(b) he enters into a transaction with that person in consideration of marriage or the formation of a civil partnership; or

(c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

10 (1) The debtor has not given a preference to any person during the period between—

(a) the start of the period of two years ending with the application date; and

(b) the determination date.

(2) For this purpose a debtor gives a preference to a person if—

(a) that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt, and

(b) the debtor does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event that a debt relief order is made in relation to the debtor, will be better than the position he would have been in if that thing had not been done."

SCHEDULE 18

Section 90(2)

SCHEDULE 4ZB TO THE INSOLVENCY ACT 1986

"SCHEDULE 4ZB

DEBT RELIEF RESTRICTIONS ORDERS AND UNDERTAKINGS

Debt relief restrictions order

1 (1) A debt relief restrictions order may be made by the court in relation to a person in respect of whom a debt relief order has been made.

(2) An order may be made only on the application of—

(a) the Secretary of State, or

(b) the official receiver acting on a direction of the Secretary of State.

Grounds for making order

2 (1) The court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).

(2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—

(a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning two years before the application date for the debt relief order and ending with the date of the application for the debt relief restrictions order;

(b) failing to produce records of that kind on demand by the official receiver;

(c) entering into a transaction at an undervalue in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;

(d) giving a preference in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;

(e) making an excessive pension contribution;

(f) a failure to supply goods or services that were wholly or partly paid for;

(g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was himself to be unable to pay his debts;

(h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;

(i) failing to account satisfactorily to the court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;

(j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;

(k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;

(l) fraud or fraudulent breach of trust;

(m) failing to co-operate with the official receiver.

(3) The court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of six years ending with the date of the application for the debt relief order.

(4) For the purposes of sub-paragraph (2)—

"excessive pension contribution" shall be construed in accordance with section 342A;

"preference" shall be construed in accordance with paragraph 10(2) of Schedule 4ZA;

"undervalue" shall be construed in accordance with paragraph 9(2) of that Schedule.

Timing of application for order

3 An application for a debt relief restrictions order in respect of a debtor may be made—

(a) at any time during the moratorium period relating to the debt relief order in question, or

(b) after the end of that period, but only with the permission of the court.

Duration of order

4 (1) A debt relief restrictions order—

(a) comes into force when it is made, and

(b) ceases to have effect at the end of a date specified in the order.

(2) The date specified in a debt relief restrictions order under sub-paragraph (1)(b) must not be—

(a) before the end of the period of two years beginning with the date on which the order is made, or

(b) after the end of the period of 15 years beginning with that date.

Interim debt relief restrictions order

5 (1) This paragraph applies at any time between—
(a) the institution of an application for a debt relief restrictions order, and
(b) the determination of the application.

(2) The court may make an interim debt relief restrictions order if the court thinks that—
(a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and
(b) it is in the public interest to make an interim debt relief restrictions order.

(3) An interim debt relief restrictions order may only be made on the application of—
(a) the Secretary of State, or
(b) the official receiver acting on a direction of the Secretary of State.

(4) An interim debt relief restrictions order—
(a) has the same effect as a debt relief restrictions order, and
(b) comes into force when it is made.

(5) An interim debt relief restrictions order ceases to have effect—
(a) on the determination of the application for the debt relief restrictions order,
(b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or
(c) if the court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.

6 (1) This paragraph applies to a case in which both an interim debt relief restrictions order and a debt relief restrictions order are made.

(2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

Debt relief restrictions undertaking

7 (1) A debtor may offer a debt relief restrictions undertaking to the Secretary of State.

(2) In determining whether to accept a debt relief restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).

8 A reference in an enactment to a person in respect of whom a debt relief restrictions order has effect (or who is "the subject of" a debt relief restrictions order) includes a reference to a person in respect of whom a debt relief restrictions undertaking has effect.

9 (1) A debt relief restrictions undertaking—

(a) comes into force on being accepted by the Secretary of State, and

(b) ceases to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

(a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or

(b) after the end of the period of 15 years beginning with that date.

(3) On an application by the debtor the court may—

(a) annul a debt relief restrictions undertaking;

(b) provide for a debt relief restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Effect of revocation of debt relief order

10 Unless the court directs otherwise, the revocation at any time of a debt relief order does not —

(a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;

(b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;

(c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or

(d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time."

SCHEDULE 19

Section 90(3)

DEBT RELIEF ORDERS: CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS TO THE INSOLVENCY ACT 1986

1 The Insolvency Act 1986 (c. 45) is amended as follows.

2 (1) In section 31 (disqualification of bankrupt) in subsection (1)—

(a) at the end of paragraph (a) (before "or") insert—

"(aa) a moratorium period under a debt relief order applies in relation to him,";

(b) in paragraph (b) after "order" insert "or a debt relief restrictions order".

(2) In the heading to that section after "**bankrupt**" insert "**or person in respect of whom a debt relief order is made**".

3 After section 274 insert—

"274A Debtor who meets conditions for a debt relief order

(1) This section applies where, on the hearing of a debtor's petition—

(a) it appears to the court that a debt relief order would be made in relation to the debtor if, instead of presenting the petition, he had made an application under Part 7A; and

(b) the court does not appoint an insolvency practitioner under section 273.

(2) If the court thinks it would be in the debtor's interests to apply for a debt relief order instead of proceeding on the petition, the court may refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purposes of making an application for a debt relief order.

(3) Where a reference is made under subsection (2) the court shall stay proceedings on the petition on such terms and conditions as it thinks fit; but if following the reference a debt relief order is made in relation to the debtor the court shall dismiss the petition."

4 In section 384(2) (meaning of prescribed amount)—

(a) at the beginning of the list of provisions insert "section 251R(4);";

(b) in the list omit "and" after "section 361(2);" and

(c) at the end of the list insert "paragraphs 6 to 8 of Schedule 4ZA,".

5 (1) Section 385(1) (definitions) is amended as follows.

(2) In the definition of "the debtor", before paragraph (a) insert—

"(za) in relation to a debt relief order or an application for such an order, has the same meaning as in Part 7A,".

(3) After the definition of "debtor's petition" insert—

""debt relief order" means an order made by the official receiver under Part 7A;".

6 (1) Section 390 (persons not qualified to act as insolvency practitioners) is amended as follows.

(2) In subsection (4) after paragraph (a) insert—

"(aa) a moratorium period under a debt relief order applies in relation of him,".

(3) In subsection (5) after "order" insert "or a debt relief restrictions order".

7 (1) Section 399 (appointment etc of official receivers) is amended as follows.

(2) In subsection (1) for "or individual voluntary arrangement" (in both places) substitute ", individual voluntary arrangement, debt relief order or application for such an order".

(3) In subsection (4) for "or individual voluntary arrangement" substitute ", individual voluntary arrangement, debt relief order or application for such an order".

8 In section 412(1) (individual insolvency rules) for "Parts VIII to XI" substitute "Parts 7A to 11".

9 (1) Section 415 (fees orders) is amended as follows.

(2) In subsection (1) before paragraph (a) insert—

"(za) the costs of persons acting as approved intermediaries under Part 7A,".

(3) In that subsection in paragraph (a) for "Parts VIII to XI" substitute "Parts 7A to 11".

10 In section 415A (fees orders: general), before subsection (1) insert—

"(A1) The Secretary of State—

(a) may by order require a person or body to pay a fee in connection with the grant or maintenance of a designation of that person or body as a competent authority under section 251T, and

(b) may refuse to grant, or may withdraw, any such designation where a fee is not paid."

11 In section 418(1) (monetary limits)—

(a) at the beginning of the list of provisions insert—

"section 251R(4) (maximum amount of credit which a person in respect of whom a debt relief order is made may obtain without disclosure of his status);";

(b) at the end of the list of provisions insert—

"paragraphs 6 to 8 of Schedule 4ZA (maximum amount of a person's debts, monthly surplus income and property for purposes of obtaining a debt relief order);".

12 (1) Section 426A (disqualification from Parliament) is amended as follows.

(2) In subsection (1) after "bankruptcy restrictions order" insert "or a debt relief restrictions order".

(3) In subsection (5) after "interim order" insert ", or a debt relief restrictions order or an interim debt relief restrictions order,".

(4) In subsection (6) after "bankruptcy restrictions undertaking" insert "or a debt relief restrictions undertaking".

13 (1) Section 426B (devolution) is amended as follows.

(2) In subsection (1) after "Wales," insert "or makes a debt relief restrictions order or interim debt relief restrictions order in respect of such a member,".

(3) In subsection (2) after "bankruptcy restrictions undertaking" insert "or a debt relief restrictions undertaking".

14 (1) Schedule 9 is amended as follows.

(2) In paragraph 1 for "Parts VIII to XI" substitute "Parts 7A to 11".

(3) In paragraph 5 for "Parts VIII to XI" substitute "Parts 7A to 11".

(4) In paragraph 6 for "Parts VIII to XI" substitute "Parts 7A to 11".

(5) After paragraph 7 insert—

"Debt relief orders

7A Provision as to the manner in which the official receiver is to carry out his functions under Part 7A.

7B Provision as to the manner in which any requirement that may be imposed by the official receiver on a person under Part 7A is to take effect.

7C Provision modifying the application of Part 7A in relation to an individual who has died at a time when a moratorium period under a debt relief order is applies in relation to him.

Debt relief restrictions orders and undertakings

7D Provision about debt relief restrictions orders, interim orders and undertakings, including provision about evidence.

Register of debt relief orders and debt relief restrictions orders etc

7E Provision about the register required to be maintained by section 251V and the information to be contained in it, including provision—

(a) enabling the amalgamation of the register with another register;

(b) enabling inspection of the register by the public."

15 (1) The Table in Schedule 10 (punishment of offences) is amended as follows.

(2) In the entry relating to section 31, in the column describing the general nature of the offence, after "bankrupt" insert "or person in respect of whom a debt relief order is made".

(3) Insert the following entries after the entry relating to section 235(5)—

"251N(1)	False representations or omissions in making an application for a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251N(2)(a)	Failing to comply with duty in connection with an application for a debt relief order.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.

251N(2)(b)	False representations or omissions in connection with duty in relation to an application for a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251N(4)(a)	Failing to comply with duty in connection with a debt relief order.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.
251N(4)(b)	False representations or omissions in connection with a duty in relation to a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251O	Failing to deliver books, records and papers to official receiver, concealing or destroying them or making false entries in them by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251P	Fraudulent disposal of property by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.
251Q(1)	Disposal of property that is not paid for by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251Q(2)	Obtaining property in respect of which money is owed by a person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.

251R	Person in respect of whom a debt relief order is made obtaining credit or engaging in business without disclosing his status or name.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both."

PART 2

AMENDMENTS TO OTHER LEGISLATION

16 (1) Section 11(1) of the Company Directors Disqualification Act 1986 (c. 46) (undischarged bankrupts) (as substituted in relation to England and Wales by the Enterprise Act 2002 (c. 40)) is amended as follows.

(2) At the end of paragraph (a) (before "or") insert—

"(aa) a moratorium period under a debt relief order applies in relation to him,".

(3) In paragraph (b) after "bankruptcy restrictions order" insert "or a debt relief restrictions order".

17 In section 183(2) of the Employment Rights Act 1996 (c. 18) (insolvency of an employer who is individual), in paragraph (a) before sub-paragraph (i) insert—

"(ai) a moratorium period under a debt relief order applies in relation to him,".

SCHEDULE 20

Sections 93 and 95

REGULATIONS UNDER SECTIONS 93 AND 95

1 The first column of this table lists the matters referred to in sections 93(3) and 95(5).

2 A matter listed in the first column includes the aspects set out in the appropriate part of the second column.

Matter about which particular provision may be made:	*Including these aspects:*
1. The scheme operator.	(a) The constitution of the scheme operator. (b) The governance of the scheme operator. (c) The size of the scheme operator's undertaking. (d) The financial standing of the scheme operator. (e) Whether or not a scheme operator is a profit-making organisation.

Matter about which particular provision may be made:	*Including these aspects:*
2. The terms of a debt management scheme.	(a) The non-business debtors to whom the scheme is open. (b) The kinds of debts which may be specified in a plan arranged in accordance with the scheme.
3. The operation of a debt management scheme.	(a) How decisions are made about whether debt repayment plans are to be arranged. (b) How debt repayment plans are arranged. (c) How decisions are made about the terms of debt repayment plans, including decisions about— (i) what payments will be required in relation to the specified debts; (ii) the amounts, times and recipients of payments; (iii) the duration of the plan. (d) The format of debt repayment plans. (e) When debt repayment plans begin to have effect. (f) How changes are to be made to debt repayment plans. (g) How decisions are made about whether debt repayment plans are to be terminated. (h) How debt repayment plans are terminated.
4. Changes that affect the scheme operator.	
5. Changes to— (i) the terms of a debt management scheme; (ii) the operation of a debt management scheme.	(a) Whether changes may be made. (b) How changes are made.
6. The transfer of the operation of a debt management scheme to another body.	(a) Whether the operation of the scheme may be transferred. (b) How the operation of the scheme is transferred.

SCHEDULE 21

Section 110

COMPULSORY PURCHASE: CONSEQUENTIAL AMENDMENTS

Local Government (Miscellaneous Provisions) Act 1976 (c. 57)

1 In Part 2 of Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1976 (compulsory purchase of rights: adaptation of 1965 Act), in paragraph 9, for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Local Government, Planning and Land Act 1980 (c. 65)

2 In Part 4 of Schedule 28 to the Local Government, Planning and Land Act 1980 (acquisition of rights), in paragraph 23(4), for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Highways Act 1980 (c. 66)

3 In Part 2 of Schedule 19 to the Highways Act 1980 (compulsory acquisition of rights: adaptation of 1965 Act), in paragraph 9, for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Gas Act 1986 (c. 44)

4 In Part 2 of Schedule 3 to the Gas Act 1986 (compulsory acquisition of land and rights: procedure etc), in paragraph 10, for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Channel Tunnel Act 1987 (c. 53)

5 In Part 3 of Schedule 5 to the Channel Tunnel Act 1987 (supplementary provisions as to acquisition of land), in paragraph 8(d), for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Housing Act 1988 (c. 50)

6 In Part 3 of Schedule 10 to the Housing Act 1988 (acquisition of rights), in paragraph 23(2), for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Electricity Act 1989 (c. 29)

7 In Part 2 of Schedule 3 to the Electricity Act 1989 (compulsory acquisition of land and rights: procedure etc), in paragraph 11, for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

8 In Part 3 of Schedule 20 to the Leasehold Reform, Housing and Urban Development Act 1993 (acquisition of rights), in paragraph 23(2), for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Channel Tunnel Rail Link Act 1996 (c. 61)

9 In Part 3 of Schedule 4 to the Channel Tunnel Rail Link Act 1996 (supplementary provisions as to acquisition of land), in paragraph 9(5), for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Regional Development Agencies Act 1998 (c. 45)

10 In Part 2 of Schedule 5 to the Regional Development Agencies Act 1998 (acquisition of rights), in paragraph 5(2), for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

Postal Services Act 2000 (c. 26)

11 In Part 2 of Schedule 5 to the Postal Services Act 2000 (acquisition of land and rights: procedure etc), in paragraph 10, for "sheriff's warrant" there is substituted "enforcement officer's or sheriff's warrant".

SCHEDULE 22

Section 113

REPEALS

PART 1

TRIBUNALS AND INQUIRIES

Reference	*Extent of repeal or revocation*
Taxes Management Act 1970 (c. 9)	Sections 2 to 3A. In section 5(1), the words "General Commissioner or". In section 6— (a) in subsection (1), the words "a General Commissioner or" and the words ", or before a General Commissioner", and (b) subsection (2). In section 56(3), the words "the clerk to". Section 115(4).
Superannuation Act 1972 (c. 11)	In Schedule 6, paragraph 77.
Finance Act 1972 (c. 41)	Section 130.
Consumer Credit Act 1974 (c. 39)	In Schedule A1, paragraph 11.
House of Commons Disqualification Act 1975 (c. 24)	In Schedule 1, in Part 2— (a) the entry relating to the Council on Tribunals, and (b) the entry relating to the Scottish Committee of the Council on Tribunals.

Reference	*Extent of repeal or revocation*
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Schedule 1, in Part 2— (a) the entry relating to the Council on Tribunals, and (b) the entry relating to the Scottish Committee of the Council on Tribunals.
Race Relations Act 1976 (c. 74)	In Schedule 1A, in Part 2, the entry relating to the Council on Tribunals.
Estate Agents Act 1979 (c. 38)	Section 24(2).
Finance Act 1988 (c. 39)	Section 134(1).
Food Safety Act 1990 (c. 16)	In section 26(2)— (a) in paragraph (e), the words "or to a tribunal constituted in accordance with the regulations," and (b) paragraph (f). Section 37(2)(a). Section 47.
Finance (No. 2) Act 1992 (c. 48)	In section 75(1), paragraph (a). In Schedule 16, paragraph 2.
Tribunals and Inquiries Act 1992 (c. 53)	Sections 1 to 5, 6(1) to (3), (6) and (7) and 8. In section 13— (a) subsection (2), and (b) in subsection (5)(c), the words "the reference in section 8(1) to the Foreign Compensation Commission and". Section 14(1A). In section 16(1), in the definition of "decision", "procedural rules" and "working", the words ", "procedural rules" and "working"". In Schedule 1, paragraph 19.
Judicial Pensions and Retirement Act 1993 (c. 8)	Section 12(1)(b).
Employment Tribunals Act 1996 (c. 17)	Section 26. In section 27(1)— (a) in paragraph (b), the word "and" at the end, (b) paragraph (c), and (c) the words after "persons within paragraph (a) or (b)".
Social Security Act 1998 (c. 14)	In Schedule 7, in paragraph 118(1), "subsection (3) of" and the words after "1992".
Social Security Contributions (Transfer of Functions, Etc.) Act 1999 (c. 2)	In Schedule 7, paragraph 1.
Access to Justice Act 1999 (c. 22)	Sections 101 to 103.

Reference	*Extent of repeal or revocation*
Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)	In Schedule 6, in paragraph 1, the words "section 2(1) (appointment of General Commissioners),".
Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999 (S.I. 1999/1747)	Schedule 9.
Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750)	In Schedule 1, the entry in respect of sections 2(3), 2(6) and 3(4) of the Taxes Management Act 1970.
Freedom of Information Act 2000 (c. 36)	In Schedule 1, in Part 6, the entry relating to the Council on Tribunals and the entry relating to the Scottish Committee of the Council on Tribunals.
Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649)	Article 335(3).
Justice (Northern Ireland) Act 2002 (c. 26)	In each of Schedules 1 and 6, the entry relating to the panel of persons appointed under section 6(1) of the Tribunals and Inquiries Act 1992 to act as chairmen of tribunals that sit in Northern Ireland.
Nationality, Immigration and Asylum Act 2002 (c. 41)	In Schedule 4, paragraphs 9 and 10(b) and (c).
Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823)	Article 14.
Constitutional Reform Act 2005 (c. 4)	In Schedule 4, paragraph 64. In Schedule 5, in the amendment made by paragraph 122(5), and in the amendment made by paragraph 126(5), the entry relating to the panel of persons appointed under section 6(1) of the Tribunals and Inquiries Act 1992 to act as chairmen of tribunals that sit in Northern Ireland. In Schedule 7, in Part A of the list in paragraph 4— (a) the entry for section 6(2), (8) and (9) of the Tribunals and Inquiries Act 1992, and (b) the entry for paragraph 7(4) of Schedule 5 to that Act. In Schedule 14, in Part 3, the entry relating to members of panels appointed under section 6(1) of the Tribunals and Inquiries Act 1992.

Reference	*Extent of repeal or revocation*
Tribunals, Courts and Enforcement Act 2006 (c. 00)	In Schedule 8, paragraph 26.

PART 2

JUDICIAL APPOINTMENTS

Reference	*Extent of repeal*
Courts and Legal Services Act 1990 (c. 41)	In Schedule 10— (a) paragraph 4, (b) in paragraph 6(1), the words "paragraph 13(1) of" and the words after "1947", and (c) paragraphs 24, 26, 32, 49, 50(2)(b) and 57.
Child Support Act 1991 (c. 48)	In section 54, the definition of "general qualification".
Social Security Act 1998 (c. 14)	In Schedule 4, paragraph 1(3).
Enterprise Act 2002 (c. 40)	In Schedule 2, paragraph 1(4).
Constitutional Reform Act 2005 (c. 4)	Section 25(2)(a).

PART 3

ENFORCEMENT BY TAKING CONTROL OF GOODS

Reference	*Extent of repeal*
Sale of Farming Stock Act 1816 (c. 50)	The whole Act.
Judgments Act 1838 (c. 110)	Section 12.
Compulsory Purchase Act 1965 (c. 56)	Section 13(5). Section 29.
Taxes Management Act 1970 (c. 9)	Section 61(2) to (6). Section 62.
Criminal Justice Act 1972 (c. 71)	In section 66(2), the words from ""sentence of imprisonment"" to the end.
Magistrates' Courts Act 1980 (c. 43)	In section 125(2), the words from "This subsection" to the end. Section 125D(3)(c). Section 151. In Schedule 4A, paragraph 3.
County Courts Act 1984 (c. 28)	Section 85(3). Section 87(2). Sections 89 to 91. Sections 93 to 100. Sections 102 and 103. Section 123. Section 126.

Reference	*Extent of repeal*
Local Government Finance Act 1988 (c. 41)	In Schedule 9, paragraph 3(2)(b).
Child Support Act 1991 (c. 48)	Section 35(2) to (8).
Social Security Administration Act 1992 (c. 5)	Section 121A(2) to (8) and (10).
Local Government Finance Act 1992 (c. 14)	In Schedule 4— (a) paragraph 7; (b) in paragraph 8(1)(a) the words from "an authority" to "paragraph 7 above"; (c) paragraph 12(1)(c); (d) paragraph 19(3).
Finance Act 1997 (c. 16)	Section 51(7).
Courts Act 2003 (c. 39)	In Schedule 7, paragraph 8(5).

PART 4

RENT ARREARS RECOVERY

Reference	*Extent of repeal*
Distress for Rent Act 1689 (c. 5)	The whole Act.
Landlord and Tenant Act 1709 (c. 18)	Sections 6 to 8.
Landlord and Tenant Act 1730 (c. 28)	Section 5.
Distress for Rent Act 1737 (c. 19)	Sections 1 to 10. Sections 16 and 17. Section 19.
Deserted Tenements Act 1817 (c. 52)	The whole Act.
Metropolitan Police Courts Act 1840 (c. 84)	The whole Act.
Execution Act 1844 (c. 96)	The whole Act.
Lands Clauses Consolidation Act 1845 (c. 18)	In section 11 the words from "or it shall be lawful" to the end.
Sequestration Act 1849 (c. 67)	In section 1 the words "levy" and "distress" in the second place where each occurs, and "levied".
Landlord and Tenant Act 1851 (c. 25)	The whole Act.
Railway Rolling Stock Protection Act 1872 (c. 50)	The whole Act.
Law of Distress Amendment Act 1888 (c. 21)	The whole Act.
Law of Distress Amendment Act 1908 (c. 53)	The whole Act.

Reference	*Extent of repeal*
Law of Property Act 1925 (c. 20)	Section 120(2). Section 162(1)(a). Section 189(1).
Administration of Estates Act 1925 (c. 23)	Section 26(3).
Rent (Agriculture) Act 1976 (c. 80)	Section 8.
Rent Act 1977 (c. 42)	Section 147.
County Courts Act 1984 (c. 28)	Section 116.
Agricultural Holdings Act 1986 (c. 5)	Sections 16 to 19. In section 24, ", by distress or otherwise,".
Housing Act 1988 (c. 50)	Section 19.
Constitutional Reform Act 2005 (c. 4)	In Schedule 7, in the table in paragraph 4, the entry for the Law of Distress Amendment Act 1888.

PART 5

ADMINISTRATION ORDERS

Reference	*Extent of repeal*
Company Directors Disqualification Act 1986 (c. 46)	Section 12(1).
Courts and Legal Services Act 1990 (c. 41)	Section 13.

Tribunals, Courts and Enforcement Bill

These notes refer to the draft Tribunals, Courts and Enforcement Bill as published on 25 July 2006

TRIBUNALS, COURTS AND ENFORCEMENT BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Tribunals, Courts and Enforcement Bill, which was published on 25 July 2006. They have been prepared by the Department for Constitutional Affairs in order to assist the reader of the draft Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

OVERVIEW

3. The Tribunals, Courts and Enforcement Bill will primarily implement the key recommendations contained in the following reports and papers:

- the White Paper, Transforming Public Services: Complaints, Redress and Tribunals,[1] published in July 2004 ("Transforming Public Services");
- the consultation paper Increasing Diversity in the Judiciary, published in October 2004;
- the Law Commission Report, Landlord and Tenant – Distress for Rent,[2] published in February 1991 ("the Law Commission's Report");
- a Report to the Lord Chancellor, Independent Review of Bailiff Law, by Professor J. Beatson QC published in July 2000;
- a White Paper, Effective Enforcement, published in March 2003 ("Effective Enforcement");
- a consultation paper, A Choice of Paths: better options to manage over-indebtedness and multiple debt, published on 20 July 2004 ("the Choice of Paths Consultation"); and
- a consultation paper, Relief for the indebted, an alternative to bankruptcy, published in March 2005.

1 Command paper 6243
2 February 1991, Report No. 194

4. The explanatory notes are divided into parts reflecting the structure of the Bill. For each part, there is a summary of the provisions and commentary on the background to the proposals. Commentary on particular clauses is then set out in number order, with the commentary on the various schedules included with the clause to which they relate.

5. The Bill is divided into 7 Parts:

Part 1: Tribunals and Inquiries
Part 1 creates a new, simplified statutory framework for tribunals to provide coherence and enable future reform, and brings the tribunal judiciary together under a Senior President. It also replaces the Council on Tribunals, the supervisory body for tribunals, with an Administrative Justice and Tribunals Council, and gives it a broader remit.

Part 2: Judicial Appointments
Part 2 provides for revised minimum eligibility requirements for appointment to judicial office, enabling eligibility to be extended, by order, beyond barristers and solicitors to the holders of other relevant qualifications, such as legal executives.

Part 3: Enforcement by Taking Control of Goods
Part 3 unifies the existing law relating to enforcement by seizure and sale of goods for most purposes. It also replaces the current law of rent distress with a modified regime for recovering rent arrears in the commercial property sector.

Part 4: Enforcement of Judgments and Orders
Part 4 contains measures to help creditors with claims in the civil court to enforce their judgments, including a new court-based mechanism to help the court gain access to information about the judgment debtor, on behalf of the creditor.

Part 5: Debt Management and Relief
Part 5 makes changes to two statutory debt-management schemes, administration orders and enforcement restriction orders. Part 5 also contains measures which provide debtors who are unable to pay their debts with relief from enforcement and discharge from their debts. In addition, Part 5 contains non-court based measures to help over-indebted persons and those with multiple debt situations manage their indebtedness.

Part 6: Miscellaneous
Part 6 makes changes to the ability of High Court enforcement officers and the obligation on High Sheriffs to execute writs of possession issued to enforce compulsory

purchase orders. Part 6 also amends section 31 of the Supreme Court Act 1981 ("SCA 1981") enabling the High Court to substitute its decision for that of a court or tribunal in certain circumstances.

Part 7: General
Part 7 contains technical provisions including about implementation.

PART 1: TRIBUNALS AND INQUIRIES

SUMMARY

6. The policy intention underlying Part 1 of the Bill is to create a new, simplified statutory framework for tribunals, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions and new appeal rights.

7. The Bill seeks to provide a new unified structure by creating two new tribunals, the First-tier Tribunal and the Upper Tribunal, and by giving the Lord Chancellor power to transfer the jurisdiction of existing tribunals to them. It gives the Lord Chancellor the power to transfer to himself certain statutory powers and duties in relation to the administration of tribunals and places him under a general duty to provide administrative support to the new tribunals, and the employment tribunals, Employment Appeal Tribunal and Asylum and Immigration Tribunal (AIT).

8. The Bill also creates a new judicial office, the Senior President of Tribunals, to oversee the tribunal judiciary. The Bill provides for the membership of the tribunals, rights of appeal from the tribunals and the making of new Tribunal Procedure Rules, and gives the Upper Tribunal the power to exercise a judicial review jurisdiction in certain circumstances. The Bill also replaces the Council on Tribunals with the Administrative Justice and Tribunals Council, which will have a broader view of the whole of the administrative justice system.

BACKGROUND

9. Tribunals constitute a substantial part of the justice system. They deal with a wide range of disputes including those between the individual and the state (including matters such as benefits, tax and immigration) and between individual parties (such as employment disputes).

10. Until now, most tribunals have been created by primary legislation when needed, without any form of overarching framework. And many have been administered by the government departments responsible for the policy area in which that tribunal has jurisdiction, and, sometimes, for the decisions which are appealable to the tribunal.

11. In the report of his Review of Tribunals, Tribunals for Users – One System, One Service, published in August 2001, Sir Andrew Leggatt recommended extensive reform to the tribunals system. He recommended that tribunals should be brought together in a single system and that they should become separate from their current sponsoring departments, to be administered instead by a single Tribunals Service in what was then the Lord Chancellor's Department.

12. The Government agreed and published its response to the report in the White Paper Transforming Public Services: Complaints, Redress and Tribunals in July 2004.

The new tribunals

13. The Government's response to Sir Andrew Leggatt's recommended single tribunal system is to create two new, generic tribunals, the First-tier Tribunal and the Upper Tribunal, into which existing tribunal jurisdictions can be transferred. The Upper Tribunal is primarily, but not exclusively, an appellate tribunal from the First-tier Tribunal.

14. The Bill also provides for the establishment of "chambers" within the two tribunals so that the many jurisdictions that will be transferred into the tribunals can be grouped together appropriately. Each chamber will be headed by a Chamber President and the tribunals judiciary will be headed by a Senior President of Tribunals.

Membership, deployment and composition

15. A distinctive feature of tribunals is their membership. Some tribunals consist of a lawyer sitting alone. Others comprise a lawyer sitting with one or more members who may be experts in their field (such as doctors or accountants), have experience relevant to the work of the tribunal, or have no relevant experience but have generic skills, while a few tribunals have no legal members at all.

16. There is no coherent system in place for deploying tribunal members. While some sit in more than one jurisdiction, this will be as a result of the member having gone through the whole appointments process for each additional jurisdiction.

17. The Bill creates new offices for the First-tier and Upper Tribunal, new titles (giving the legal members the title of judges) and a new system of deployment. Judges of the First-tier Tribunal or Upper Tribunal will be assigned to one or more of the chambers of that tribunal, having regard to their knowledge and experience. The fact that a member may be allocated to more than one chamber allows members to be deployed across the jurisdictions within the tribunal. It is expected that members of existing tribunals will become members of the new tribunals.

Reviews and appeals and the judicial review jurisdiction of the tribunals

18. At the moment there is no single mechanism for appealing against a tribunal decision. Appeal rights differ from tribunal to tribunal. In some cases there is a right of appeal to another tribunal. In other cases there is a right of appeal to the High Court. In some cases there is no right of appeal at all. The Bill provides a unified appeal structure. In most cases a decision of the First-tier Tribunal may be appealed to the Upper Tribunal and a decision of the Upper Tribunal may be appealed to a court. The grounds of appeal must relate to a point of law. The rights to appeal may only be exercised with permission.

19. It will also be possible for the Upper Tribunal to deal with some judicial review cases which would otherwise have to be dealt with by the High Court. The Upper Tribunal has this jurisdiction only where a case falls within a class specified in a direction given by the Lord Chief Justice or in certain other cases transferred by the High Court.

20. Instead of tribunal rules being made by the Lord Chancellor and other government Ministers under a multiplicity of different rule-making powers, a new Tribunals Procedure Committee, modelled on rule committees which make rules of court, will be responsible for tribunal rules.

Transfer of tribunal functions

21. It is intended that the new tribunals will exercise the jurisdictions currently exercised by the tribunals listed in Parts 1 to 4 of Schedule 6, which constitute most of the tribunal jurisdictions administered by central government. The Government's policy is that in the future, when a new tribunal jurisdiction is required to deal with a right of review or appeal, that right of appeal or review will be to these new tribunals.

22. Some tribunals have been excluded from the new structures because of their specialist nature, while tribunals run by local government have for now been excluded, as their funding and sponsorship arrangements are sufficiently different to merit a separate review.

23. There are also tribunals that will share a common administration, and the leadership of the Senior President of Tribunals, but whose jurisdictions will not be transferred to the new tribunals. They are the AIT, the employment tribunals and the Employment Appeal Tribunal. The AIT has a unique single-tier structure, in order to cut out abuse of the system, under the Nationality, Immigration and Asylum Act 2002, as amended by the Asylum and Immigration (Treatment of Claimants etc) Act 2004, which would not fit into the new structure envisaged by the Bill. The employment tribunals and the Employment Appeal Tribunal are excluded because of the nature of their cases, which involve one party against another, unlike most other tribunals which hear appeals from citizens against decisions of the state.

Administrative Support

24. In Transforming Public Services, the Government set out its plans to create a single Tribunals Service to provide common administrative support to the main central government tribunals. The new Service, an executive agency of the Department for Constitutional Affairs (DCA), was launched in April 2006. It provides support to a range of tribunals, including the Asylum and Immigration Tribunal, the Social Security and Child Support Tribunals, the employment tribunals and the Employment Appeal Tribunal, and the Mental Health Review Tribunals in England. Most tribunals which are the responsibility of central government are now administered by the Tribunals Service, or will join the Service over the next few years.

25. The Tribunals Service was created by machinery of government changes. Legislation was not required. The Bill does not, therefore, set out a blueprint for the

new agency. The Bill does, however, give the Lord Chancellor the power to transfer to himself certain statutory powers and duties that primarily relate to the provision of administrative support for tribunals. It entrenches these powers and duties with the Lord Chancellor so that they can be transferred to another minister only by primary legislation.

26. In developing these proposals the intention has been to follow the principles underlying the evolving constitutional settlement between the executive and the judiciary set out in the concordat agreed between the Lord Chancellor and the Lord Chief Justice for England and Wales in January 2004, and the Constitutional Reform Act 2005 ("CRA 2005").

Oversight of Tribunals and Inquiries

27. The Council on Tribunals operates under the Tribunals and Inquiries Act 1992 (the 1992 Act). Its statutory purpose is to keep under review and report on the constitution and working of tribunals under its supervision, to consider and report on particular matters that may be referred to it under the 1992 Act with respect to tribunals and, where necessary, to consider and report on the administrative procedures of statutory inquiries. The Council is also under a statutory duty to make an annual report about its work which is to be laid before Parliament. The Council seeks to ensure that tribunals and inquiries meet the needs of users through the provision of an open, fair, impartial, efficient, timely and accessible service.

28. Sir Andrew Leggatt recommended that the Council on Tribunals should play a central role in the new tribunals system (recommendations 168-182). Transforming Public Services built on these recommendations in the wider context of the Government's proposals for reforming the Administrative Justice System. Chapter 11 of the White Paper proposed that with the creation of the Tribunals Service in April 2006 it was also necessary for the Council to change. It proposed that the Council on Tribunals should take on a wider remit to become an Administrative Justice and Tribunals Council and in particular to focus on the needs of the public and users. Clauses 36 and 37 of, and Schedule 7 to, the Bill give effect to the new policy.

Administrative Justice and Tribunals Council

29. The Administrative Justice and Tribunals Council (AJTC) will adopt a similar role in relation to the supervision of tribunals as that currently exercised by the Council

on Tribunals. But in addition to taking on the Council on Tribunals' present remit, the Administrative Justice and Tribunals Council will be charged with keeping the administrative justice system as a whole under review, considering how to make the system more accessible, fair and efficient, and advising the Lord Chancellor, the Scottish Ministers, the National Assembly for Wales and the Senior President accordingly.

30. The Council's wider administrative justice role will be concerned with ensuring that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution routes satisfactorily reflect the needs of users.

31. The Administrative Justice and Tribunals Council will be of a comparable size to the present Council on Tribunals, with between 10 and 15 members appointed by the Lord Chancellor, and by Ministers from the devolved administrations, under an independent Chair. It will have Scottish and Welsh Committees.

Enforcement

32. Tribunals have no enforcement powers of their own and if a monetary award is not paid then, in England and Wales the claimant must register it in the county court and use the enforcement methods available there (e.g. Section 15 of the Employment Tribunals Act 1996). Un-represented claimants often find that this is a difficult process and that representatives other than solicitors are of little help. Transforming Public Services undertook to simplify the system.

33. The proposed measures will remove the need for registration of unpaid tribunal awards in the county court or High Court (depending on the amount of the debt) and provide that tribunal awards can be enforced as if they bear the right to a warrant of execution. Claimants will thus be able to go directly to the county court or High Court for enforcement.

34. Essentially, the legislative changes will (a) allow claimants to proceed immediately to enforcement (levelling the playing field between tribunal users and other civil claimants), and (b) ensure that those owed money as a result of a tribunal hearing can benefit from improvements to the wider civil enforcement system.

35. The Bill proposals will mean that the procedure in England and Wales (and Northern Ireland) will become similar to the Scottish process, in that the award will be

treated as enforceable without any intermediate steps being necessary. Part 1 of the Bill does not alter the methods of enforcement either in Scotland or in England and Wales (or Northern Ireland), but allows tribunals to benefit from them.

36. In addition, the Bill provides for unpaid awards to be entered on the Register of Judgments, Orders and Fines (which may be searched by banks, building societies, and credit companies when considering applications for credit).

37. The Bill also makes it easier for the courts to obtain information about the debtor, as claimants will be able to make information requests under clause 77. The purpose of this clause is to allow the claimant to identify what kind of court action it would be appropriate to take to recover the debt.

COMMENTARY ON CLAUSES: PART 1

Clause 1: The First-tier Tribunal and the Upper Tribunal

38. Clause 1 provides for the creation of a First-tier Tribunal and an Upper Tribunal. It is intended that the Upper Tribunal will primarily, but not exclusively, be an appellate tribunal from the First-tier Tribunal. They are intended to be adaptable institutions, able to take on any existing or new tribunal jurisdictions. So in the future, when Parliament decides to create a new appeal right or jurisdiction, it will not have to create a new tribunal to administer it. The Upper Tribunal is a superior court of record, like the High Court and the Employment Appeal Tribunal.

Clause 2 and Schedule 1: Senior President of Tribunals

39. Clause 2 creates a new statutory judicial post, that of Senior President of Tribunals. The post is intended to provide unified leadership to the tribunals judiciary. The creation of the post was recommended by Sir Andrew Leggatt in his review.

40. The Bill creates a number of specific powers and duties for the Senior President, including:

- The chambers structure for the First-tier Tribunal and the Upper Tribunal (and any change in it) requires his concurrence (Clause 4(1))
- He may, with the concurrence of the Lord Chancellor, make provision for the allocation of functions between chambers (Clause 4(5))

- Duty to report to the Lord Chancellor on matters which the Senior President wishes to bring to the attention of the Lord Chancellor and matters which the Lord Chancellor has asked the Senior President to cover (Clause 6)
- Power to make practice directions (Clause 18)
- Right to be consulted on the making of fees orders (Clause 25)
- Power to request an ex officio judge or other member of the First-tier Tribunal or the Upper Tribunal to act as members of those tribunals (Schedule 2 paragraphs 6 and 7; Schedule 3 paragraphs 6 and 8)
- Duty to maintain appropriate arrangements for training and guidance of judges and other members (Schedule 2 paragraph 8; Schedule 3 paragraph 9)
- Power to assign judges and other members to Chambers (Schedule 4 Part 2)
- Being or nominating a member of the Tribunal Procedure Committee. (It is expected that the Senior President or his nominee will chair the Committee.) (Schedule 5 paragraph 19)
- Power to request the appointment of additional members of the Tribunal Procedure Committee (Schedule 5 paragraph 23)

41. In exercising these powers the Senior President has to have regard to the principles set out in Clause 2(4), namely that tribunals need to be accessible, proceedings need to be fair and handled quickly and efficiently and members need to be expert. These criteria are based on the long-standing principles underlying the jurisdiction of tribunals, as originally articulated by the Report of the Committee on Administrative Tribunals and Inquiries in 1957 (the Franks Report).

42. Schedule 1 sets out the process for appointing a Senior President and the terms of office. This is a judicial appointment. If there is a vacancy, the Lord Chancellor must recommend a person for appointment to the office unless the Lord Chief Justice agrees that it may remain unfilled. (Paragraph 1)

43. The appointment is made by Her Majesty the Queen, following the practice for senior judicial appointments generally. Her Majesty acts on the recommendation of the Lord Chancellor and there are two routes to a recommendation by the Lord Chancellor. The first is where the Lord Chancellor, the Lord Chief Justice of England and Wales, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland agree on the nomination of a Lord Justice of Appeal or a member of the Inner House of Court of Session as a suitable candidate for appointment. If there is no agreement the Lord Chancellor must ask the Judicial Appointments Commission to select someone for recommendation for appointment. (Paragraph 2)

44. The process for selection by the Judicial Appointments Commission is set out in paragraphs 3 to 5. It follows as closely as is appropriate the criteria and process for appointment of Heads of Division under Sections 67 to 75 of the CRA 2005.

45. The eligibility requirement is the same as for a Lord Justice of Appeal or High Court Judge, as it would be amended by Schedule 10 paragraph 18 of the Bill, and the equivalents in Scotland and Northern Ireland.

46. Paragraph 4 of Schedule 1 inserts seven new clauses into the CRA 2005. These clauses create a process for the selection of the Senior President by the Judicial Appointments Commission which is the same as the process for appointment of a Head of Division, except that the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland are consulted, because of the Senior President's United Kingdom-wide responsibilities. The selection panel for the appointment of the Senior President consists of the Lord Chief Justice, or his nominee, a person designated by the Lord Chief Justice, the Chairman of the Commission or his nominee and a lay member of the Commission designated by the third member. The person designated by the Lord Chief Justice is intended to be a present or former office holder in tribunals. This provision is intended to bring to the selection panel direct knowledge or experience of the distinctive nature of tribunals in the justice system.

47. The terms of office for the Senior President are set out in paragraphs 6 to 10 of Schedule 1. The Senior President may be appointed either for a fixed term or for an indefinite period subject only to the retirement provisions of the Judicial Pensions and Retirement Act 1993. The Senior President may only be removed from office by Her Majesty on an address presented to Her by both Houses of Parliament. (Paragraph 6)

48. The Senior President may resign at any time. If the Lord Chancellor, the Lord Chief Justice of England and Wales, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland agree that the holder of the office is disabled by permanent infirmity and is incapacitated from resigning, the Lord Chancellor may instead require the holder of the office to vacate the office.

Clause 3 and Schedules 2 and 3: Judges and other members of the First-tier and Upper Tribunal

49. Clause 3 and Schedules 2 and 3 set out provisions relating to judges and other members of the First-tier Tribunal and Upper Tribunal.

50. At present most tribunals include legally qualified members and members without a legal qualification. The qualification requirements which apply to the lawyers, who often chair the tribunal hearing a case, are varied. The range of non-legal members is very wide and includes members such as medical practitioners, accountants, people with experience of disability issues, people with experience of the armed services and so-called "lay" members. This structure will continue in the new tribunals, with the legally qualified members being called judges of the First-tier Tribunal or Upper Tribunal.

51. Judges and other members of the new tribunals will either be appointed as such ("appointed judges/members") or hold their office in the First-tier Tribunal or Upper Tribunal by virtue of another office which they hold ("ex officio judges/members"). So, for example, a circuit judge will automatically be a member of the Upper Tribunal. This will enable judges who have the appropriate expertise and experience, from holding judicial office in courts or other tribunals, to be brought into the new tribunals to help to deal with the tribunals' work. Similarly, some members of other tribunals without legal qualifications will automatically be members of the new tribunals. The same principle will apply within the structure of the new tribunals, so that, for example, a judge of the Upper Tribunal will automatically be an appointed judge of the First-tier Tribunal.

52. The table below shows how this will work. There is power, in clause 3(10), for the Lord Chancellor to make an order adding to the list of offices whose holders become ex officio judges or members of the new tribunals.

Offices outside the new tribunals

Office	Office held in new tribunals
High Court judge	Judge of the Upper Tribunal
Circuit judge	
Judge of the Court of Session	
Sheriff (Scotland)	
County court judge (Northern Ireland)	
Social Security Commissioner or deputy Social Security Commissioner	
President or Deputy President of Asylum and Immigration Tribunal or Senior Immigration Judge	
Member of Employment Appeal Tribunal	Member of the Upper Tribunal
District judge	Judge of the First-tier Tribunal
District Judge (Magistrates' Courts)	
Chairman of employment tribunal	
Immigration Judge	
Member of Criminal Injuries Compensation Appeal Panel appointed by Scottish Ministers	Judge of the First-tier Tribunal (criminal injuries compensation appeals only)
Member of employment tribunal	Member of the First-tier Tribunal
Member of the AIT	Member of the First-tier Tribunal

Offices in the new tribunals

Office	**Other offices held in new tribunals**
Senior President of Tribunals	Judge of the Upper Tribunal
Chamber President	Judge of the Upper Tribunal and judge of the First-tier Tribunal
Appointed judge of the Upper Tribunal	Judge of the First-tier Tribunal

53. A person is eligible for appointment as a judge of the First-tier Tribunal if he has a legal qualification and 5 years' legal experience since qualifying (Schedule 2, paragraph 1(2)). The requirement for appointment as a judge of the Upper Tribunal is 7 years' post-qualification experience (Schedule 3, paragraph 1(2)). These are standard qualifications for judicial office.

54. But in addition, persons may be appointed if, in the Lord Chancellor's opinion, they have legal experience which would make them suitable for appointment if they had the relevant legal qualifications. This provision, which is based on current eligibility requirements in the Asylum and Immigration Tribunal and the Mental Health Review Tribunal, recognises that in the specialised fields in which tribunals operate, the necessary skills and knowledge may have been acquired by someone who does not have a professional qualification in the United Kingdom, such as a legal academic or someone qualified in a European or Commonwealth jurisdiction.

55. Appointed judges of the Upper Tribunal are appointed by the Queen, on the recommendation of the Lord Chancellor (Schedule 3, paragraph 1(1)). Appointed members of the Upper Tribunal, and appointed judges and members of the First-tier Tribunal, are appointed by the Lord Chancellor (Schedule 2, paragraphs 1(1) and 2(1); Schedule 3 paragraph 2(1)). Except where a member of an existing tribunal is transferred into the new tribunals under clause 27(2), appointment takes place after selection by the Judicial Appointments Commission.

56. Appointed judges of the First-tier Tribunal and the Upper Tribunal are protected by a prohibition on removal without the concurrence of the Lord Chief Justice of England and Wales, Lord President of the Court of Session or Lord Chief Justice of Northern Ireland (Schedule 2 paragraph 3, Schedule 3 paragraph 3). Judges

and other members of the First-tier Tribunal and the Upper Tribunal appointed on a salaried basis have the further protection of a provision that they may be removed by the Lord Chancellor only on the ground of inability or misbehaviour (Schedule 2 paragraph 4, Schedule 3 paragraph 4). These provisions safeguard the independence of the tribunals.

57. As mentioned above, the judges and members of both new tribunals will be made up partly of ex officio judges and members, i.e. those who hold office in the new tribunals by virtue of other offices they hold in the courts or tribunals. The deployment of those ex officio judges and members is to be under the control of the Senior President of Tribunals, in conjunction, in the case of judges from the courts, with the Lord Chief Justice of England and Wales, the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland. Paragraphs 6 and 7 of Schedule 2 and paragraphs 6 and 8 of Schedule 3 deal with the arrangements for deployment.

58. The Lord Chancellor has power to appoint deputy judges of the Upper Tribunal (Schedule 3, paragraph 7). A person must have the same legal qualifications for appointment as a deputy judge as for appointment as a judge of the Upper Tribunal.

59. The Senior President of Tribunals has responsibility for maintaining arrangements for the training and guidance of judges and other members of the First-tier Tribunal and Upper Tribunal (Schedule 2, paragraph 8; Schedule 3, paragraph 9).

Clause 4: Chambers: Jurisdiction and Presidents and Schedule 4: Chambers and Chamber Presidents: further provision

60. The current position is of many separate tribunals dealing with different jurisdictions. When these tribunals are replaced by just two tribunals, it will be necessary for the jurisdictions in the new tribunals to have an organisational structure. Clause 4 provides for the establishment of boundaries for the jurisdictions within the First-tier and Upper Tribunal through the creation of chambers. The tribunals will bring together a wide range of specialist jurisdictions. It would dilute expertise and damage the service provided to the public if they were organised on the basis that all judges and members can deal with all kinds of case. Instead, jurisdictions will be grouped so that similar work is dealt with by judges and members best able to deal with it. Initially the division into chambers is intended largely to follow the current jurisdictional boundaries but the chambers system is intended to be flexible so that

changes can be made easily as the workload of the tribunals changes. The Lord Chancellor and the Senior President will each have the power, with the concurrence of the other, to create chambers by order. Subsection (5) also provides for the Senior President and the Lord Chancellor to be able to vary by order the distribution of functions between the chambers in either the First-tier Tribunal or the Upper Tribunal.

61. Clause 4(2) requires the Lord Chancellor to appoint a President for each chamber and paragraph 5 of Schedule 4 gives him the option of appointing a deputy Chamber President. Schedule 4 paragraph 1 provides for the eligibility requirements to be a Chamber President or a Deputy Chamber President to be the same as that for appointment as a judge of the Upper Tribunal under Schedule 3. This is a judicial leadership role, involving skills and experience beyond that which is required of a judge, so is a separate appointment. Chamber Presidents are intended to provide judicial leadership within their chambers and to guarantee levels of expertise within their chambers. To that end, they will have the power to give practice directions (clause 18), and their concurrence in the assignment of a judge or member to their chamber is required (Schedule 4 paragraph 10(3)).

62. Chambers may be constructed on either a functional or a geographical basis, or a combination of the two.

63. Part 2 of Schedule 4 provides for the Senior President to establish a system for assignment of tribunal judges and members to chambers. This system will be designed by the Senior President to allow the flexible and efficient deployment of existing office holders across each of the two new tribunals. Each Chamber President and Deputy Chamber President must be assigned to their own chamber but can be assigned to other chambers as well. Every other judge or member must be assigned to at least one chamber.

64. The process of assignment is intended to be flexible, informal and transparent. It is intended to be based upon the principle of deploying judges and members who have, or are able to acquire, the necessary skills and experience to meet identified business needs of the tribunal.

65. To ensure openness and transparency the Senior President will, under paragraph 12 of Schedule 4, be required to publish his policy on assignments of tribunal judges and members to chambers. The policy must ensure that appropriate use is made of the knowledge and experience of the judges and other members of the new tribunals. The

policy must also ensure that a chamber which involves the application of the law of Scotland or Northern Ireland has enough members with knowledge and experience of that law.

66. To ensure appropriate executive accountability to Parliament for the process of assigning members, and to take into account any resource implications, the concurrence of the Lord Chancellor will be required before the policy can be adopted.

67. Under paragraph 13 of Schedule 4, allocation of members to individual hearings is a judicial leadership function and therefore a matter for the Chamber President. However, this is subject to the panel composition requirements set by the Lord Chancellor in an order under paragraph 14. These requirements will set, on a jurisdiction by jurisdiction basis, the number of members who should sit on particular appeals. This order is made by the Lord Chancellor in order to take account of resource implications, and to provide parliamentary scrutiny.

68. Paragraphs 2 and 3 of Schedule 4 deal with the appointment of Chamber Presidents. While some Chamber Presidents may be appointed directly to that office, others may be drawn from the High Court or the Court of Session in Scotland. In the latter case, the Lord Chief Justice of England and Wales or Northern Ireland, or the President of the Court of Session nominates a judge. In the former case selection will be made by the JAC and the office of Chamber President will be added to Schedule 14 to the CRA 2005 for this purpose.

69. Paragraph 4 of Schedule 4 permits a Chamber President to delegate his functions to another judge or other member who is assigned to the same Chamber.

70. Paragraphs 5 and 6 of Schedule 4 provide for the appointment by the Lord Chancellor of Deputy and Acting Chamber Presidents. Deputy Presidents are intended to be available to take on functions delegated to them by the Senior President or the Chamber President. Acting Presidents are to be appointed by the Lord Chief Justice of England and Wales to cover a temporary vacancy in the office of Chamber President.

71. Paragraph 7 of Schedule 4 requires the Chamber President to make arrangements for the issuing of guidance to judges, members and users, on the law and practice relating to the jurisdictions assigned to his chamber.

Clause 5: Senior President: power to delegate

72. This clause enables the Senior President to delegate any of his functions to any Judge of the Upper or First-tier Tribunal.

Clause 6: Report by Senior President of Tribunals

73. This clause requires the Senior President to give the Lord Chancellor a report on the cases that have come before the First-tier Tribunal and the Upper Tribunal that year. This provision is intended to support improvement both in the workings of the new tribunals and the standard of decision-making and review in cases which come before the tribunals. The clause gives the Senior President some flexibility in deciding which matters should be covered in the report, and the Lord Chancellor some flexibility in deciding which cases are a priority for the report.

Clause 7: Review of decision of First-tier Tribunal

74. This clause provides the First-tier Tribunal with the power to review decisions without the need for a full onward appeal and, where the tribunal concludes that an error was made, to re-decide the matter. This is intended to capture decisions that are clearly wrong, so avoiding the need for an appeal. The power has been provided in the form of a discretionary power for the Tribunal so that only appropriate decisions are reviewed. This contrasts with cases where an appeal is more appropriate, because, for instance, it is important to have an authoritative ruling, are dealt with in this manner.

75. Only decisions which are appealable under clause 8 can be reviewed. Some decisions are excluded from appeal and so cannot be reviewed.

Clause 8: Right to appeal to Upper Tribunal

76. A party to a case generally has a right of appeal on a point of law from the First-tier Tribunal to the Upper Tribunal. The right of appeal is subject to permission being given by either the First-tier Tribunal, or the Upper Tribunal. But there is no right of appeal against a decision which is "excluded". Excluded decisions are listed in subsection (5). The Lord Chancellor has a limited power to add to the list by order under subsection (5)(e).

77. Under subsection (7) the Lord Chancellor may by order define who is to be treated as a party to a case for the purposes of an appeal and therefore able to appeal. This is to deal with cases where it might be desirable for a person who was neither the person making the original appeal to the First-tier Tribunal, nor the respondent to the original appeal, to be able to make an onward appeal to the Upper Tribunal. This power is subject to affirmative resolution procedure – see clause 40(5) and (6)(a).

Clause 9: Proceedings on appeal to Upper Tribunal

78. This clause provides what the Upper Tribunal can do when it determines that an error has been made on a point of law by the First-tier Tribunal. It allows the Upper Tribunal to either remit the case back to the First-tier tribunal, or to make the decision which it considers should have been made. If it takes the latter option it can make findings of fact.

Clause 10: Right to appeal to Court of Appeal etc

79. This clause provides the basis on which appeals can be made to the Court of Appeal in England and Wales or Northern Ireland or the Court of Session in Scotland. As in clause 8, appeals lie on any point of law subject to permission being granted. Certain decisions are excluded and the Lord Chancellor can add to the list, but subject to the same constraints as in clause 8.

80. Under subsection (6) the Lord Chancellor may by order restrict appeals to the Court of Appeal to cases where the court or the Upper Tribunal considers that the proposed appeal would raise some important point of principle or practice or that there is some other compelling reason for the appeal to be heard. This provision is intended to deal with second appeals i.e. where a prospective appellant has had their case considered by both the First-tier Tribunal and the Upper Tribunal but wishes to pursue the case to the Court of Appeal. The criteria set out in this subsection are the same as the criteria applied by the Court of Appeal in considering second appeals from the High Court or county court (see Access to Justice Act 1999, section 55(1)). The intention is to restrict second appeals on the same point unless the wider public interest test is met.

81. The exercise of this power is subject to the affirmative resolution procedure. It does not apply to Scotland.

82. Subsections (9) to (11) require the Upper Tribunal to specify whether the appropriate appellate court is the Court of Appeal in England and Wales, the Court of Session or the Court of Appeal in Northern Ireland. This provision is intended to deal with situations where it is not obvious which is the appropriate appellate court e.g. where an appellant has moved from Scotland to England or vice versa, or in order that linked cases can be dealt with in the same court.

Clause 11: Proceedings on appeal to Court of Appeal etc

83. Where the appellate court determines that the Upper Tribunal has made an error of law, it has power to remit the case to be redecided, or to make the decision which it considers should have been made. This avoids the need for another hearing.

"Judicial Review"

84. Tribunals currently have no powers of judicial review. Clauses 12 to 16 create a statutory regime which enables the Upper Tribunal to exercise judicial review powers in appropriate cases. This will enable the user to have the benefit of the specialist expertise of the Upper Tribunal in cases akin to those which the Upper Tribunal routinely deals with in the exercise of its statutory appellate jurisdiction. These provisions do not alter the inherent or statutory jurisdiction of the High Court (as amended by clause 112) in any other respect.

85. There will be two situations in which the Upper Tribunal will be able to use these powers. The first is where a direction has been made by the Lord Chief Justice of England and Wales or his delegate specifying a class of case to be dealt with by the Upper Tribunal rather than the High Court. The second is where the High Court orders the transfer of an individual case because it considers it just and convenient to do so.

Clause 12: Upper Tribunal's "judicial review" jurisdiction

86. This clause confers power on the Upper Tribunal to grant certain forms of relief akin to those available in the High Court on an application for judicial review. This clause needs to be read alongside clauses 15 and 16, which set out the circumstances in which the Upper Tribunal has jurisdiction.

87. When it has jurisdiction, the Upper Tribunal may grant a mandatory order (an order that the respondent does something); a prohibiting order (an order that the respondent stops doing something); a quashing order (an order setting aside a decision or action as unlawful); a declaration; or an injunction. These remedies have the same effect as if made by the High Court. In determining whether to grant a remedy, the Tribunal must have regard to the principles of judicial review that would apply in the court from which jurisdiction has been delegated. Therefore the Upper Tribunal's powers are similar to the High Court's

Clause 13: Application for relief under section 12(1)

88. Because the Upper Tribunal's powers are similar to the High Court's in judicial review cases, the Upper Tribunal's powers are subject to similar conditions. Therefore it is necessary to have permission to apply to the Upper Tribunal to exercise its "judicial review" jurisdiction, and the Upper Tribunal may refuse permission, or refuse a remedy, if there has been delay in making an application.

Clause 14: Quashing orders under section 12(1): supplementary provision

89. This clause makes further provision as to what the Upper Tribunal might do if it decides to grant a quashing order. The Upper Tribunal's powers are similar to the High Court's (see clause 112).

Clause 15: Limits of jurisdiction under section 12(1)

90. Conditions need to be met for the Upper Tribunal to have power to deal with an application under clause 13 for relief under clause 12. These conditions are set out in clause 15. The first condition is that the applicant in question is only seeking a remedy that the Upper Tribunal is able to grant. The second condition is that the application does not call into question anything done by the Crown Court. This is because it would be anomalous to give a tribunal supervisory powers over a senior court. The third condition is that the application falls within a specified class of case. The class is designated by a Practice Direction made by or on behalf of the Lord Chief Justice with the concurrence of the Lord Chancellor.

Clause 16: Transfer of judicial review applications from High Court

91. Clause 16 amends the Supreme Court Act 1981 and the Judicature (Northern Ireland) Act 1978 to give effect to clauses 12 to 15. As a result, certain applications for judicial review will have to be transferred to the Upper Tribunal. In addition, the High Court may transfer to the Upper Tribunal individual cases that do not fall within a class specified under clause 15(6) but which can be best dealt with by the Upper Tribunal.

Clause 17 and Schedule 5: Tribunal Procedure Rules

92. At present, each tribunal has its own rules, and in many tribunals there are multiple sets of rules. Rule-making powers usually rest with the Lord Chancellor or the Secretary of State. They are usually subject to parliamentary procedure, and the Council on Tribunals must be consulted, but there is no standard form or approach, and no statutory requirement to consult or involve anyone. In the courts, rules are made by rule committees with judicial and practitioner membership under a unified set of powers, enabling a coherent approach to be taken to the development of procedure. The intention is to replicate this arrangement for the new tribunals.

93. Clause 17 sets out the basis on which procedural rules are to be made for the new tribunals. Schedule 5 makes provision for (a) what the rules may contain, (b) the creation of a Tribunal Procedure Committee, (c) the process for making procedural rules and (d) the power to amend primary legislation in pursuance of a rule change.

94. Tribunal Procedure Rules are subject to an overriding objective: the rules must be made with a view to securing that the tribunal system is accessible and fair, that proceedings before the tribunal are handled quickly and efficiently, that the rules are simple and simply expressed and that appropriate responsibility is conferred on tribunal members for ensuring that proceedings are handled quickly and efficiently. This is similar to the overriding objective governing the Civil Procedure Rules.

95. Matters which may be covered by Tribunal Procedure Rules are set out in clause 17(1) and Schedule 5. It is not intended that each jurisdiction will have rules that cover every aspect listed. Rather, the Tribunal Procedure Committee will exercise its judgement, within the process set out in Part 3 of Schedule 5, to determine which rules are needed in each jurisdiction. In addition the matters listed in Part 1 of Schedule 5

are not intended to be a comprehensive list of all the matters about which rules may be made.

96. The provisions governing the membership and responsibility for appointing members of the Tribunal Procedure Committee are loosely modelled on those for the rule committees making rules of court but are more flexible because of the diverse nature of tribunals. The Committee is intended to consist of core members and additional members appointed as and when required to provide jurisdiction-specific knowledge. One of the core members is the Senior President, or a person nominated by him. The Lord Chancellor, the Lord Chief Justice of England and Wales and the Lord President of the Court of Session appoint the other core members. The Lord Chief Justice of England and Wales or Northern Ireland or the Lord President of the Court of Session may appoint additional members at the request of the Senior President depending on what need has been identified. It may be, for instance, that the Committee needs to make rules for or affecting a jurisdiction with which its core members are unfamiliar, and then additional members with the appropriate expertise will be appointed.

97. The core membership consists of the Senior President or a person nominated by him, three people with experience of practice in tribunals or giving advice to persons involved in tribunal proceedings, a person nominated by the AJTC, a judge from each of the tribunals, a tribunal member and a person with experience in and knowledge of the Scottish legal system. The Lord Chancellor's role is limited to selecting persons with experience of tribunal proceedings or practice and appointing the member selected by the Administrative Justice and Tribunals Council. Consistent with the Concordat, the selection of judicial members falls to either the Lord Chief Justice or the Lord President.

98. Any additional members are appointed (at the request of the Senior President of Tribunals) by the Lord Chief Justice of England and Wales, the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland. It is expected that additional members will usually be members of the judiciary. The maximum number of additional members are intended to bring specialist knowledge to the Committee when discussing particular matters.

99. Under paragraph 24 the Lord Chancellor may make changes to the composition of the Committee, but only with the concurrence of the Lord Chief Justice of England and Wales or the Lord President of the Court of Session and the Lord Chief Justice of

Northern Ireland, where such a change would affect a member appointed to the committee by them.

100. Schedule 5 Part 3 details the process by which Tribunal Procedure Rules are to be made. This is consistent with the process for making Civil, Family and Criminal Procedure Rules. The Committee is required to consult before rules are made. In order for the rules to be submitted to the Lord Chancellor they must be approved by the Committee. The Lord Chancellor's powers once rules are submitted to him are limited to powers to allow or disallow. However, the Lord Chancellor does have the power to specify a purpose which must be achieved by rules. This is to ensure that, although the Tribunal Procedure Committee is independent, the Lord Chancellor is able to set objectives for the rules.

101. Once allowed by the Lord Chancellor, rules made under this process are subject to negative resolution procedure.

102. Schedule 5 Part 4 gives the Lord Chancellor power to amend, repeal or revoke any Act in pursuance of a rule change. This power is based upon the provisions in the Civil Procedure Act 1997.

Clause 18: Practice directions

103. This clause provides the Senior President with the statutory authority to supplement Tribunal Procedure Rules by means of practice directions. These directions may take the form of guidance, interpretation of the law, matters of precedent or the delegation of judicial functions to senior members. The giving of practice directions is one of the functions that the Senior President may choose to delegate to Chamber Presidents under clause 5. Following the Concordat, practice directions made either by the Senior President or a Chamber President will usually require the Lord Chancellor's approval. There are two exceptions. The first is where practice directions consist of guidance about the application and interpretation of law or the making of decisions. The second exception is where practice directions consist of criteria for determining which members of the tribunals may be chosen to decide particular categories of matter. Practice directions given by a Chamber President will always require the Senior President's approval, whether or not they also require the Lord Chancellor's approval.

Clause 19: Supplementary powers of Upper Tribunal

104. This clause provides the Upper Tribunal with the powers of the High Court or Court of Session to require the attendance and examination of witnesses and the production and inspection of documents, and all other matters incidental to the Upper Tribunal's functions. These are similar powers to the Employment Appeal Tribunal's under section 29 of the Employment Tribunals Act 1996.

Clause 20: First-tier Tribunal and Upper Tribunal: sitting places

105. This clause provides for the First-tier Tribunal or the Upper Tribunal to sit anywhere in the United Kingdom irrespective of the law under which a case arises. This will allow the flexible listing of cases for hearing in accordance with the needs of tribunal users. It does not, however, allow a tribunal to decide which law it wants to apply.

Clause 21: Enforcement

106. Subsections (1) to (3) ensure that monetary awards made by the First-tier and Upper Tribunals are enforceable through the courts. These provisions do not alter the methods of enforcement.

107. Many tribunal awards in England and Wales are currently enforced through the county court, but there are some where enforcement is currently through the High Court (eg the Lands Tribunal where enforcement may be through either court, and the Transport Tribunal where enforcement is in the High Court). Subsection (1) states that a sum payable following a decision of either the First-tier or Upper Tribunal will be recoverable as if it were payable either under an order of a county court in England and Wales or an order of the High Court in England and Wales. The intention is to retain flexibility as to the venue for enforcement for a particular jurisdiction, on the assumption that any provision made in the Tribunal Procedure Rules will be subject to rules governing the allocation of proceedings between the High Court and the county courts (the rules currently stipulate that judgments for £5,000 are to be enforced in the High Court).

108. In relation to tribunals where the governing statute does not currently allow for enforcement through the court system, it is not intended to alter the position until the relevant jurisdiction is transferred to the new tribunals.

109. Subsection (2) makes corresponding provision for Scotland. An order for payment made as a result of a decision of either the First-tier or Upper Tribunal made in Scotland (or a copy of such an order certified in accordance with Tribunal Procedure Rules) may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland (i.e. without the intermediate step of registering the decision with the Sheriff Court).

110. Subsection (3) makes corresponding provision for Northern Ireland. An order for payment made as a result of a decision of either the First-tier or Upper Tribunal in Northern Ireland will be recoverable as if it were payable under either an order of a county court in Northern Ireland or the High Court in Northern Ireland

111. Subsection (4) provides that the enforcement provisions in the preceding subsections do not apply to awards of damages, restitution or the recovery of a sum due made to an applicant by the Upper Tribunal exercising its 'judicial review' powers under clause 13 (6), because enforcement of such awards is dealt with in clause 13(7).

112. Subsection (5) empowers the Lord Chancellor to make an order (applying to England and Wales or to Northern Ireland) stipulating that a sum of a description specified in the order (payable in pursuance of a decision of the First Tier or Upper Tribunal) may be recoverable as if it were payable either under an order of a county court, or under an order of the High Court, but not both.

113. Subsection (6) allows for Tribunal Procedure Rules to be made which spell out where for the purposes of the enforcement provisions a decision is to be taken to have been made. This is necessary due to the different enforcement methods that apply to Scotland compared with England and Wales. Rules might, for example, provide that where a tribunal is sitting in Scotland to hear a case arising under the law of England and Wales, any sum payable in pursuance of a decision of the tribunal is recoverable as if the decision had been made in England and Wales.

Clause 22: Assessors

114. An assessor is an expert who is appointed by a court or tribunal to assist it in dealing with issues within the assessor's area of expertise. Some tribunals already have a power to appoint assessors and clause 22 will allow this practice to continue within the new tribunals. This clause provides the First-tier Tribunal or the Upper Tribunal

with the power to appoint an assessors to assist it with matters or questions of special difficulty. But it will not require the assessor to be used where it is inappropriate to the jurisdiction.

Clause 23: Mediation

115. Mediation and other forms of alternative dispute resolution are used increasingly in the justice system. They can provide more efficient and effective remedies, at lower cost and with less pressure on users. There is nothing to prevent tribunal judiciary or staff from acting as mediators in cases where mediation may be helpful in resolving cases without the need for full hearings. This clause provides the necessary statutory safeguards where mediation takes place. It is neither intended nor envisaged that mediation will take place in all jurisdictions. However, the term mediation can encompass a broad spectrum of activity. This clause has been designed to provide the statutory basis for those actions. The use of mediation in tribunal proceedings can be governed both by Tribunal Procedure Rules and by practice directions.

116. Subsection (7) provides that where staff members offer mediation services they may charge a fee (payable to the Lord Chancellor) for those services.

Clause 24: Costs or expenses

117. Many tribunals' powers to award costs are currently limited, either because they have no powers to award costs, or because the scope of any power they have is limited. This clause grants the tribunals the discretion to order costs and expenses in the same way as courts. It is not intended that these provisions will apply in all jurisdictions, rather that there will be flexibility as part of the creation of the new system to determine where a costs regime would be appropriate and whether there should be any limits to such a regime (for example, that costs should be awarded only against a party who has acted vexatiously or unreasonably). This is why subsection (1) is subject to provision made under the Tribunal Procedure Rules.

Clause 25: Fees

118. This provision grants the Lord Chancellor the power, with the consent of the Treasury, to prescribe by order fees to be paid for anything done in the First-tier Tribunal or the Upper Tribunal. Before making such an order, the Lord Chancellor must consult the Senior President and the Administrative Justice and Tribunals

Council. This power has been designed to cover in part those tribunals which currently charge a fee for their services and in part the possibility that at some point in the future it may be appropriate to charge fees in other jurisdictions. Where a fee is introduced in an area where a fee has not been previously been payable, clause 40(6)(b) requires that the order is subject to the affirmative resolution procedure.

Clause 26: Transfer of functions of certain tribunals

119. The transfer of jurisdictions to the new tribunals is a central feature of the Bill. This clause provides the Lord Chancellor with the power to transfer jurisdictions from those tribunals listed in the relevant parts of Schedule 6 to either of the two new tribunals or the employment tribunals or the Employment Appeal Tribunal. In this way adjudicative functions which are currently spread across a wide range of tribunals can be consolidated into the new tribunals and the employment tribunals and Employment Appeal Tribunal. The general policy of clause 26(5) to (8) is to restrict devolved functions from being transferred to the new tribunals.

120. Under clause 26(5), the general rule is that functions of tribunals which are within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly (i.e. devolved) may not be transferred to the First-tier Tribunal or Upper Tribunal under clause 27.

121. Clause 26(6) and (7) set out some exceptions. Functions in relation to appeals relating to estate agents and consumer credit, and criminal injury compensation appeals, may be transferred. But transfer of functions relating to criminal injury compensation appeals in Scotland will require the consent of Scottish Ministers.

122. Clause 26(8) provides that if any functions relating to the operation of a tribunal, or expenses for attending the tribunal, are exercisable by the National Assembly for Wales, functions of that tribunal may be transferred under clause 26 only with the consent of the Assembly.

Clause 27: Transfers under section 26: supplementary powers

123. Where functions are transferred under clause 26, supplementary powers are needed to give the transfer full effect. Subsection (1) confers power on the Lord Chancellor to provide by order for the abolition of a tribunal whose functions have

been transferred under clause 26, i.e. a tribunal, a tribunal member or a person who is an authorised decision-maker for a tribunal.

124. Subsection (2) enables the Lord Chancellor, in transferring functions of tribunals listed under Schedule 6, to also provide that where the tribunal is abolished, judicial office holders have a new office within either the First-tier Tribunal or the Upper Tribunal. However, it is not intended to use this power as respects any person whose existing office is that of Commissioner for the general purposes of income tax. That office is abolished by paragraph 1(1) of Schedule 8 to the Bill.

125. Subsection (5) allows the Lord Chancellor to provide by order for the continuation of procedural rules following a transfer of functions.

Clause 28: Power to provide for appeal to Upper Tribunal from tribunals in Wales

126. Where a jurisdiction is exercised by separate tribunals for England and Wales, difficulties could arise if there were different routes of onward appeal for the English and Welsh tribunals. This clause provides for an appeal to the Upper Tribunal from tribunals in Wales in two circumstances. Subsections (1) and (2) deal with a situation where the functions of a tribunal covering both England and Wales are transferred to the First-tier Tribunal in respect of England only. Subsection (3) deals with appeals from tribunals which already have a separate existence in Wales, and which are listed in Part 7 of Schedule 6. Without this power an appeal, if it exists, would continue to lie to the High Court. The intention is that users of these tribunals will have access to the Upper Tribunal for their onward appeals, on the same basis as users in England.

Clause 29: Transfer of Ministerial responsibilities for certain tribunals

127. This clause makes it possible to transfer administrative functions of other ministers (including Her Majesty's Revenue and Customs) in relation to tribunals to the Lord Chancellor. The power is similar to the power under section 1 of the Ministers of the Crown Act 1975 which enables transfer of functions between ministers.

128. Subsections (7) and (8) taken together prevent functions transferred to the Lord Chancellor from being transferred to another Minister of the Crown under subsection (1) or under the Ministers of the Crown Act 1975. This will replicate the effect of section 19 of, and Schedule 7 to, the CRA 2005, entrenching judiciary-related functions

in the office of the Lord Chancellor, and so helping to secure the independence of tribunals from the departments formerly responsible for them.

Clause 30: Transfer of powers to make procedural rules for certain tribunals

129. This clause enables the Lord Chancellor by order to transfer power to make procedural rules for certain tribunals to himself or to the Tribunal Rules Procedure Committee. Most of the powers that may be transferred under this clause are currently exercisable by the Secretary of State. This power will allow the Lord Chancellor to:

a) standardise the process for making rules for those tribunals whose functions are not scheduled to transfer into the new tribunal structure; or

b) transfer the responsibility for making rules for particular tribunals to the Tribunal Procedure Committee before their functions are transferred to the First-tier Tribunal or Upper Tribunal.

Clause 31: Power to amend lists of tribunals in Schedule 6

130. Schedule 6 shows which of the powers in the Bill are exercisable in respect of which tribunals. There are three main powers: clause 26 deals with the transfer of tribunals' functions, including adjudicate functions to the new tribunals under the Bill. Clause 29 deals with the transfer of executive functions in relation to tribunals to the Lord Chancellor. Clause 30 deals with the transfer of rule making powers to the Lord Chancellor and the Tribunal Procedure Committee.

131. Because of the number of permutations, there are currently seven lists.

- Part 1: tribunals where all three types of function are to be transferred.
- Part 2: a tribunal where only the adjudicative and executive functions are to be transferred. There are no rule-making powers to transfer.
- Part 3: tribunals where only the adjudicative and rule-making powers are to be transferred because all executive functions are already with the Lord Chancellor.
- Part 4: tribunals where only the tribunal's functions can be transferred because agreement has not yet been reached as to the transfer of the executive and rule-making functions.

- Part 5: tribunals where executive functions are to be transferred to the Lord Chancellor and rule-making functions to the Tribunal Procedure Committee but no change is intended in the tribunal's functions.
- Part 6: tribunals where only executive functions are to be transferred. No change is intended to the tribunal's functions and rule-making powers are to remain with the Secretary of State, as indicated in the Transforming Public Services: Complaints Redress and Tribunals.
- Part 7: tribunals in Wales where appeal is intended to be to the Upper Tribunal.

132. This clause gives flexibility by enabling the Lord Chancellor to add or remove tribunals so that the relevant powers can be exercised (or not exercised) in relation to them. The power is constrained by subsections (2)(a), (3) and (4). Under subsection (2)(a), a tribunal created otherwise than by or under an enactment (e.g. a private tribunal of some kind) cannot be brought within the new structure. Under subsection (2)(b), tribunals created on or after the last day of the Session in which the Bill is passed may not be added to any of the lists of tribunals in Schedule 6. If the First-tier Tribunal or Upper Tribunal is to have jurisdictions created by later legislation then it will need to be conferred by that later legislation rather than transferred using the machinery of clause 31. As the Tribunals are all-purpose in nature it is not expected that there will be a need to create any new tribunals.

133. Subsections (2)(c) and (3) preserve the position of the National Assembly for Wales. Subsection (4) prevents the power being used to bring any of the ordinary courts of law into the new tribunal structure. The terms "tribunal" and "ordinary court of law" are not defined but follow the terminology used in the Tribunals and Inquires Act 1992.

Clause 32: Orders under clauses 26-30: supplementary

134. This clause provides for power to amend, repeal or revoke enactments in connection with orders under sections 26 to 30.

Clause 33: Administrative support for certain tribunals: The general duty

135. This provision places the Lord Chancellor under a statutory obligation to ensure there is an efficient and effective system of tribunal administration. The duty is framed in respect of the First-tier Tribunal, the Upper Tribunal, the employment tribunals, the Employment Appeal Tribunal and the AIT. It mirrors section 1 of the Courts Act

2003, which sets out the Lord Chancellor's duty in respect of the courts in England and Wales. It is intended to show that tribunals are to be treated no less favourably than the courts.

Clause 34: Tribunal staff and services and Clause 35: Provision of accommodation

136. Clauses 34 and 35 are modelled on sections 2 and 3 of the Courts Act 2003 and grant the Lord Chancellor similar powers to provide staff, services and accommodation for tribunals. Clause 34 allows the Lord Chancellor to employ civil servants as tribunal staff, so that he can discharge his duty of administering the courts and providing support services. Like section 2 of the Courts Act 2003, it restricts the Lord Chancellor's ability to contract out services. Clause 35 gives the Lord Chancellor power to provide, equip, maintain and manage tribunal accommodation.

Clauses 36 and 37: The Administrative Justice and Tribunals Council

137. The existing Council on Tribunals will be replaced by an Administrative Justice and Tribunals Council (AJTC), which is established by clause 36 and Schedule 7. The AJTC, like the Council on Tribunals, will be a non-departmental public body, but will have a wider remit.

138. When the AJTC comes into existence, the Council on Tribunals (and its Scottish Committee) will be abolished. This will be effected by clause 37. If the Council on Tribunals has property, rights or liabilities at the time when it is abolished, clause 37 empowers the Lord Chancellor to make an order transferring them to the new Administrative Justice and Tribunals Council. The order is to be subject to negative resolution procedure.

Schedule 7: Administrative Justice and Tribunals Council

Members and Committees

139. The Council on Tribunals currently consists of between 10 and 15 members, and it is intended that the size of the AJTC will be comparable. Paragraph 1 stipulates that the AJTC is to consist of not fewer than 10 and not more than 15 appointed members, together with the Parliamentary Commissioner for Administration.

140. The provisions for appointment of the Council differ from the existing arrangements in two ways:

141. First, the National Assembly for Wales now have power to appoint one or two members to the AJTC. The Assembly do not have power to appoint members to the Council on Tribunals, although section 2(4) of the Tribunals and Inquiries Act 1992 provides that "regard shall be had to the need for representation of the interests of persons in Wales". The increased Welsh representation of the Council fulfils Sir Andrew Leggatt's recommendation (recommendation 254) that there should be a review of whether the Council had enough members representing "the interests of persons in Wales". This is also reflected in the creation of a Welsh committee for the AJTC (see below).

142. Second, while all appointments to the Council must be made with the concurrence of the Lord Chancellor and the Scottish and Welsh devolved administrations, paragraph 1(2) of Schedule 7 to the Bill makes it clear that each of the devolved administrations appoints its own members.

143. Members of the Council on Tribunals are appointed by the Lord Chancellor and Scottish Ministers jointly, under section 2 of the Tribunals and Inquiries Act 1992. Under paragraph 1(2) of Schedule 7, Scottish Ministers may appoint two or three members, the National Assembly for Wales may appoint one or two members, and the remainder are appointed by the Lord Chancellor. All appointments must therefore be by mutual agreement between the Lord Chancellor, Scottish Ministers and the National Assembly for Wales. The appointments made by the devolved administrations form the core of the Scottish and Welsh Committees of the Council.

144. The Chairman of the AJTC is nominated by the Lord Chancellor from among the appointed Council members, after consultation with the Scottish and Welsh devolved administrations. The Chairman is to hold and vacate office in accordance with the terms of his nomination and may resign by giving written notice to the Lord Chancellor. He may not continue as Chairman if his appointment as a Council member expires (It is expected that Council members will normally be appointed for a fixed term of 3 to 5 years) or is terminated. Paragraphs 5 and 8 make corresponding arrangements for the Chairmen of the Scottish and Welsh Committees.

145. Paragraph 3 stipulates that appointed members are to hold and vacate office in accordance with their terms of appointment. It is expected that these will usually be for

a fixed renewable term. Apart from a fixed term of appointment coming to an end, there are two ways in which a person may cease to be a member: resignation or removal by the Lord Chancellor. In order to safeguard the powers of the devolved administrations the Lord Chancellor may only remove Scottish or Welsh appointees with the concurrence of the relevant devolved administration. Removal may be on the grounds of inability or misbehaviour without cause. In line with Cabinet Office guidance on the establishment of non-departmental public bodies, paragraph 11 gives the Lord Chancellor power to pay compensation to a member removed without cause.

146. As with the Council on Tribunals, the AJTC has a Scottish Committee in order to deal with interests specific to Scotland. The Scottish Committee is to include the two or three Council members appointed by Scottish Ministers under paragraph 1(2)(a). One of these members is to be nominated by Scottish Ministers as chairman of the Committee. In addition, three or four non-Council members may be appointed to the Committee by the Scottish Ministers. The Parliamentary Commissioner for Administration (the UK Parliamentary Ombudsman) and the Scottish Public Services Ombudsman are members of the Committee by virtue of their offices. In essence these provisions mirror existing arrangements under section 2 of the 1992 Act. It is expected that appointments will normally be for 3 to 5 years.

147. Unlike the Council on Tribunals, the AJTC has a Welsh Committee (paragraphs 7 to 9). The Welsh Committee is to include the one or two Council members appointed by the National Assembly for Wales under paragraph 1(2)(b). One of these members is to be nominated by the Assembly as chairman of the Committee. In addition, two or three non-Council members may be appointed to the Committee by the Assembly. The Parliamentary Commissioner for Administration and the Public Services Ombudsman for Wales are members of the Committee by virtue of their offices. These provisions ensure that Welsh interests are represented in the same way as Scottish ones.

148. As with the Council on Tribunals, the Lord Chancellor has power to pay remuneration to the Chairmen of the Council and its Scottish and Welsh Committees, fees to Council and Committee members other than the Chairmen, and expenses (travel and subsistence) to members of the Council and its Committees (paragraph 10).

149. The AJTC's status as a non-departmental public body, not part of a central government department, is reflected in paragraph 12, which makes it clear that the Administrative Justice and Tribunals Council and its Scottish and Welsh Committees (like the Council on Tribunals and its Scottish Committee) are independent of the Crown.

Functions

150. The current remit of the Council on Tribunals, under section 1 of the Tribunals and Inquiries Act 1992, is relatively narrow. In particular it does not include review of the administrative justice system. Sir Andrew Leggatt recommended (recommendation 179) that the Council should be made responsible for upholding the system of administrative justice and keeping it under review, for monitoring developments in administrative law, and for making recommendations to the Lord Chancellor about improvements that might be made to that system. Accordingly, paragraph 14 stipulates that the Council is to keep the administrative justice system under review, and consider ways to make it accessible, fair and efficient and make proposals for research. The Council is also to advise the Senior President of Tribunals, the Lord Chancellor and the devolved administrations on the development of the system, and refer proposals for changes to the system.

151. Central to the AJTC's remit is the concept of the 'administrative justice system' from the point of view of the person in respect of whom a decision is made. The administrative justice system means the system by which administrative or executive decisions are taken and, if necessary, re-considered to achieve a fair ("just") result. It is not confined to the tribunal part of the process, and includes the procedures for making decisions, the law under which those decisions were made, as well as the systems for resolving disputes and airing grievances in relation to such decisions. Thus it is not intended that the functions of the Administrative Justice and Tribunals Council should be limited to the appropriate forums for legal redress, but they should extend to looking at the design of the whole system and how that system works in practice.

152. The remit of Administrative Justice and Tribunals Council will therefore cover:

a) The interaction between the state and the individual (including businesses).

b) The way in which different institutions (for example, government departments, ombudsmen, tribunals) interact to produce a decision on how the state and an individual are to interact. It is not intended that this function of the Administrative Justice and Tribunals Council should involve keeping these institutions under review, but rather the way in which the system functions generally. The only function of review of these institutions is in respect of

tribunals (paragraph 15) and statutory inquiries (paragraph 16), which are distinct and separate functions of the Administrative Justice and Tribunals Council.

153. An example is the social security benefits system. The circumstances where individuals are entitled to social security benefits are set out in legislation. Decisions about whether an individual is entitled to a benefit are made by civil servants in the name of the Secretary of State for Work and Pensions. Within the Department for Work and Pensions (DWP), there is a system whereby some of these decisions are reconsidered by other civil servants. Most of these decisions, whether initial decisions or reconsidered decisions, attract a right of appeal to a tribunal (the appeal tribunal established under section 4 of the Social Security Act 1998). If a decision does not attract such a right of appeal, then it may be subject to judicial review by the courts. Appeal tribunal decisions can be appealed to the Social Security Commissioners. Onward appeal from the Commissioners on a point of law lies to the Court of Appeal in England and Wales or Court of Session in Scotland.

154. In addition, a social security claimant who is dissatisfied with the way he has been treated, regardless of whether a right of appeal exists against a decision which has been made, can complain to the Secretary of State for Work and Pensions. Also, a claimant's Member of Parliament can ask the Parliamentary Commissioner for Administration (the Ombudsman) to investigate.

155. The Administrative Justice and Tribunals Council will have power to keep all these processes under review, and consider how the whole system can be made accessible, fair and efficient. Together, all these processes amount to the system of administrative justice in relation to social security. The Administrative Justice and Tribunals Council exercises its review functions in relation to that system.

156. For each part of the process – the initial decision-makers, those who reconsider decisions, Ombudsmen, the Minister, complaints handlers, the tribunals and the courts – the Council's remit when reviewing the administrative justice system is not to review their working as individual institutions, but to review how the system, which they produce as a result of their individual roles, functions. The Administrative Justice and Tribunals Council might consider, for example, that the number of judicial reviews can and should be reduced by creating new appeal rights, or that the number of appeals should be reduced by increasing the level, frequency and thoroughness of departmental review and reconsideration of decisions, and advise accordingly. The Administrative

Justice and Tribunals Council might advise the creation of an independent complaints reviewer or expansion of the role of the Ombudsman.

157. It is outside the Administrative Justice and Tribunals Council's function to review and report on the internal workings of the Department for Work and Pensions or the Ombudsman's office, as would be any views on reform of substantive social security law. The AJTC should be able to review and report on the working of the First-tier Tribunal and the Upper Tribunal (when the jurisdictions relating to social security appeals are transferred to them) by virtue of the distinct powers under paragraph 15.

158. In addition to the review of the administrative justice system, the AJTC has general functions with respect to certain tribunals ("listed tribunals"), and with respect to statutory inquiries. These are set out in paragraphs 15 and 16 respectively. The Council on Tribunals has duties in respect of statutory inquiries, but these duties are not consistent. Although the Council on Tribunals has under section 1(1) of the 1992 Act a duty to keep under review the constitution and working of the tribunals listed in Schedule 1 to that Act, and has a duty to consider and report on such particular matters relating to those tribunals as may be referred to it, the functions of the Council on Tribunals in relation to statutory inquiries are more limited. In particular, the Council on Tribunals is required to review and report on matters in relation to statutory inquiries only if those matters are referred to the Council on Tribunals or they are matters considered by the Council on Tribunals to be of special importance.

159. These anomalies will be absent from the Administrative Justice and Tribunals Council's general function, which will be to keep under review the constitution and working of tribunals and statutory inquiries. In addition, and in relation to both listed tribunals and to statutory inquiries, the Administrative Justice and Tribunals Council will be able to consider and report on any other matter that it determines to be of special importance. The Council may also consider and report on any particular matter relating to tribunals in general (not just listed tribunals), or to any particular tribunal, which is referred to the Council by ministers in accordance with Paragraph 17 (see below).

160. Paragraph 15(2) and 15(3) empower the Council (in accordance with recommendation 178 of the Leggatt Report) to scrutinise and comment on legislation (primary and secondary, including procedural rules), existing or proposed, relating to tribunals in general or to any particular tribunal. Sir Andrew Leggatt recommended that the Council should be given the opportunity to comment on any proposed

legislation affecting the constitution or working of tribunals. He also considered (Leggatt Report, paragraph 7.51) that "there should be a general expectation that where the Council has made formal representations to a Government department, it should receive a reasoned and constructive reply, capable of being put in the public domain". This power is not confined to listed tribunals, and "tribunal" in this context includes a tribunal which does not yet exist but is referred to in proposed legislation. Before exercising this power in relation to a tribunal or tribunals with jurisdiction in cases arising in Scotland or Wales, the Council must consult the Scottish or Welsh Committee as appropriate.

161. The aim is to ensure that the Council, like its predecessor, has an early opportunity to bring its expertise (and wider perspective) to bear on legislative proposals, as well as ensuring that government departments take note of the Council's views.

162. Under section 8 of the 1992 Act, the Council on Tribunals must be consulted on draft procedural rules. However, as Sir Andrew Leggatt pointed out (paragraph 7.52 of his Report) there is no requirement to consult it during the preparation of draft Bills for primary legislation. The provisions in paragraph 15 empower the Council to scrutinise and comment on all legislation which relates to any tribunal, other than a court of law. This would include, but is not confined to, legislation that amends existing legislation relating to a tribunal.

163. Transforming Public Services made it clear that it was not the Government's intention to place the Department introducing or responsible for such legislation under a statutory duty to consult the Council. Rather, a non-statutory code of practice will be developed, under which government departments will be expected to consult the Council on all tribunals legislation, where it is feasible to do so.

164. The Council will be able to exercise its power to scrutinise and comment on legislation relating to tribunals whether or not the Council has been consulted under the terms of the code of practice. The code of practice will also commit the departments responsible for the legislation to publish their responses to the Council's comments as part of the process of publishing primary or secondary legislation. Since not all legislation is published in draft form, some consultation may have to be on a confidential basis, with publication of comments where appropriate following publication of the legislation.

165. The AJTC's functions also include particular matters referred to it in relation to tribunals or statutory inquiries. Matters may be referred jointly by the Lord Chancellor, the National Assembly for Wales and a member of the Scottish Executive. However, matters relating solely to Scotland or Wales may respectively be referred by a member of the Scottish Executive or by the National Assembly for Wales. Matters not relating to Scotland and not relating to Wales alone, may be referred by the Lord Chancellor.

166. At present, there is only a statutory requirement for the annual report of the Council on Tribunals to be laid before Parliament (section 4(7) of the 1992 Act). Paragraph 18 is intended to ensure that, in accordance with the Leggatt Report (recommendation 175), the work of the Council should be reported to the relevant ministers and to an appropriate Parliamentary Select Committee.

167. A report on matters referred to the Council by ministers must be made to the authority or authorities who referred the matter. Any other report (i.e. those made by the Council as part of its review function or on matters which it determines to be of special importance) must be made to the Lord Chancellor, unless it relates to Wales or Scotland, in which case it must also be made to the National Assembly for Wales or to the Scottish ministers. The Lord Chancellor must lay before Parliament all reports made to him by the Council. Scottish Ministers must lay reports on matters within the legislative competence of the Scottish Parliament before the Scottish Parliament.

168. The arrangements for referring matters to the Scottish and Welsh Committees of the AJTC are in essence the same as the existing arrangements for the Scottish Committee of the Council on Tribunals, as set out in section 4 of the 1992 Act. The relevant Committee must be consulted, and the Committee's report be considered, before the Council reports on any matter within its remit relating to Scotland or Wales. The Committees may of their own motion make reports to the Council on any aspect of the Council's remit (including matters referred by ministers) as it affects Scotland or Wales. The Committees may submit their reports direct to the Scottish Ministers or National Assembly for Wales (as appropriate) if the Council does not make a report on the matters dealt with, or if the Council does not adopt the report made by the relevant Committee without modification. Any such reports must be laid before the Scottish Parliament, or published by the National Assembly for Wales (as appropriate).

169. The AJTC must formulate a general programme of the work that it plans to undertake in carrying out its functions, and send copies of it to the Lord Chancellor,

the National Assembly for Wales and Scottish Ministers (paragraph 21). Given the potential breadth of the Council's remit, and to avoid potential areas of overlap with existing statutory bodies, subsection (3) places a duty on the Council, in drawing up its work programme, to have regard to the work of the Civil Justice Council, the Social Security Advisory Committee and the Industrial Injuries Advisory Council.

170. The Council must make an annual report to the Lord Chancellor, Scottish Ministers and the National Assembly for Wales, which must be laid before Parliament and the Scottish Parliament (paragraph 22). In addition, the Scottish and Welsh Committees must make annual reports which, in the case of the Scottish Committee must be laid before the Scottish Parliament, and in the case of the Wales Committee must be published by the National Assembly for Wales.

171. Members of the AJTC and its Scottish and Welsh Committees have the right to attend as observers the proceedings of any listed tribunal (paragraph 23).

172. Paragraph 24 limits the remit of the AJTC in respect of Northern Ireland, reserving any matter that would be within the legislative competence of the Northern Ireland Assembly. The provision mirrors section 1(2) of the 1992 Act, which similarly limits the remit of the Council on Tribunals.

173. The AJTC must be consulted in relation to procedural rules for listed tribunals (paragraph 25). But this does not apply to Tribunal Procedure Rules made by the Tribunal Procedure Committee (eg rules for the Upper Tribunal and First-tier Tribunal), since the Administrative Justice and Tribunals Council will be represented on the Tribunal Procedure Committee and will be able to make comments in that forum.

174. The Council must consult the Scottish or Wales Committee as appropriate with respect to procedural rules for any tribunal, which has jurisdiction in relation to Scotland or Wales.

175. "Listed Tribunals" are definded in paragraph 26. The First-tier Tribunal and the Upper Tribunal are listed tribunals for these purposes, and the Lord Chancellor, the Scottish Ministers and the National Assembly for Wales have power to designate tribunals for which they are responsible as "listed tribunals". The definition of tribunals for these purposes extends only to statutory tribunals.

176. Where a tribunal does not have a separate Scottish or Welsh identity but has an identity covering the whole of the United Kingdom or Great Britain, the power to list a tribunal (and thus bring it under the supervision of the Council) resides in the Lord Chancellor. For example, the Social Security Commissioners are the responsibility of the Lord Chancellor on a Great Britain-wide basis, so the power to include the Social Security Commissioners in an order would be exercised by the Lord Chancellor.

177. A tribunal cannot be listed so far as it exercises functions within the legislative competence of the Northern Ireland Assembly. This prevents the AJTC from having any role in relation to tribunals which are devolved in Northern Ireland.

179. Paragraph 26 prohibits the listing of non-statutory tribunals. Such tribunals are not intended to come within the Administrative Justice and Tribunals Council's remit.

Clause 38: Delegation of Functions by the Lord Chief Justice etc

180. This clause enables the Lord Chief Justice to nominate a judicial office holder (as defined in Section 109(4) of the CRA 2005) to exercise any of the listed functions given to him under the Bill. These are:

- Concurrence with the removal of a judge of the First-tier Tribunal from office (Schedule 2 paragraph 3(2) and (6)(b)).
- Concurrence with a request for a district judge or District Judge (Magistrates' Courts) to sit in the First-tier Tribunal (Schedule 2 paragraph 6(3)(a)).
- Concurrence in the removal of a judge of the Upper Tribunal from office (Schedule 3 paragraphs 3(2) and (6)(b)).
- Concurrence with a request for a High Court Judge or Circuit Judge to sit in the Upper Tribunal (Schedule 3 paragraph 6(3)(a)).
- Power to nominate a High Court Judge to preside over a chamber (Schedule 4 paragraph 2(2)).
- Power to appoint an acting Chamber President (Schedule 4 paragraph 6(1)).
- Power to appoint members to the Tribunal Procedure Committee (Schedule 5 paragraphs 21(2), 22 and 23).
- Concurrence in an order changing the composition of the Tribunal Procedure Committee (Schedule 5 paragraph 25).

181. The clause makes similar provision for the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland.

Clause 39: Consequential and other amendments, and transitional provisions

182. Clause 39 gives effect to Schedule 8 (consequential amendments) and Schedule 9 (transitional provisions).

Schedule 8: Tribunals and inquiries: consequential and other amendments

183. Paragraph 1 abolishes the office of General Commissioner of Income Tax and their clerks and assistants. This paragraph is intended to be brought into force when the functions of the General Commissioners are transferred to the new Tribunals. It is not intended to use the power under clause 27(2) so as to cause persons holding the office of General Commissioners to become office-holders in the new tribunals.

184. Paragraph 6 enables litigants in person to obtain costs and expenses under the Litigation in Persons (Costs and Expenses) Act 1975 in tribunal proceedings where costs are awarded.

185. Paragraph 35 confers the title of Employment Judge on members of a panel of chairmen of employment tribunals.

186. Paragraph 36 requires the Secretary of State to act jointly with the Lord Chancellor when exercising his powers under Sections 4(4), 18(8) and 40(1) of the Employment Tribunals Act 1996.

187. Paragraph 39 makes the Senior President of Tribunals responsible for training and guidance of Employment Judges, in the same way that he is for First-tier Tribunal members under Schedule 2 paragraph 8.

188. Paragraph 40 confers the power to make practice directions in relation to employment tribunals on the Senior President and requires the consent of the Senior President and the Lord Chancellor for practice directions made by Presidents of Employment Tribunals.

189. Paragraph 41 makes provision for mediation in employment tribunals on the same basis as clause 23. Paragraphs 40 to 44 make similar provisions for the Employment Appeal Tribunal.

190. Paragraph 42 amends section 15(1) of the Employment Tribunals Act 1996 (enforcement in England and Wales as an order of a county court) so that an unpaid employment tribunal award does not need to be registered in the county court before enforcement can take place. This mirrors provisions in relation to the First-tier Tribunal and the Upper Tribunal in clause 21.

191. Paragraph 54 gives the Senior President the power to give practice directions in respect of the Asylum and Immigration Tribunal and the responsibility to make arrangements for training and guidance of its members.

192. Paragraph 55 amends section 98 of the Courts Act 2003 (register of judgments and orders etc) so that monetary decisions or awards of the First-tier Tribunal, the Upper Tribunal, an Employment Tribunal, or the Employment Appeal Tribunal may be included on the Register of Judgments and Orders established under the 2003 Act. Inclusion on the register, which is often consulted by banks, building societies, credit companies etc when considering applications for credit, may make it more difficult for defaulters to obtain credit (and thus provides an incentive to pay the sum due).

193. Paragraph 63 extends the guarantee of continued judicial independence in section 3 of the CRA 2005 to the tribunals judiciary.

194. Paragraph 66 makes it possible for a judge of the Upper Tribunal or a member of the Employment Appeal Tribunal to be appointed as the "Tribunals" member of the Judicial Appointments Commission.

195. Paragraph 67 adds the new tribunal offices to Schedule 14 of the CRA 2005 so that members are selected by the Judicial Appointments Commission.

Schedule 9 Tribunals: transitional provision

196. Schedule 9 sets out a number of transitional provisions, including provisions relating to the retirement dates and pensions for judges and other members of the First-tier Tribunal and Upper Tribunal.

Clause 40: Orders and regulations under Part 1: supplemental and procedural provisions

197. This clause sets out the procedure to be followed in respect of the various types of order which can be made under Part 1. These powers are mostly exercisable by the Lord Chancellor but the Scottish Ministers and the National Assembly for Wales can make orders in relation to tribunals administered by them but under the supervision of the Administrative Justice and Tribunals Council. Under clause 4(5) the Senior President can make an order relating to the jurisdictions assigned to chambers, and subsection (2) provides that this order is to be treated as if it had been made by a Minister of the Crown.

198. Under subsection (6) the following orders are subject to affirmative resolution:

- Clause 8(7): power to determine who is to be treated as a party to a case for the purposes of a right of appeal to the Upper Tribunal;
- Clause 10: restrictions on right of appeal to the Court of Appeal;
- Clause 25: fee orders, if no fee has previously been payable;
- Clause 26: power to transfer functions of a tribunal into the new tribunal structure;
- Clause 27(1): power to abolish tribunals when their functions have been transferred;
- Clause 28: appeals from tribunals in Wales to the Upper Tribunal;
- Clause 29: transfer of Ministerial responsibilities to the Lord Chancellor;
- Clause 30: transfer of powers to make procedural rules;
- Clause 31: power to amend the lists of tribunals in Schedule 6; and
- orders under clause 27(2), (5) and (7), and paragraph 29(1) of Schedule 5, which amend primary legislation.

199. Orders prescribing fees payable in respect of mediation conducted by staff must be laid before Parliament after being made. Orders under Clause 27(2) and (5) (which relate to the mapping across of existing office holders to new tribunal offices and to transitional preservation of procedural rules) are not subject to Parliamentary procedure (unless they amend primary legislation), nor are transitional orders.

PART 2: JUDICIAL APPOINTMENTS

SUMMARY

200. Part 2 of the Bill amends the minimum eligibility requirements for judicial appointments in England and Wales (and for some posts where the office-holders may sit in Scotland and Northern Ireland) with the aim of increasing the diversity of the judiciary. The existing eligibility requirements for judicial office are replaced with the requirement that a person must satisfy the "judicial-appointment eligibility condition". The clauses mean that rather than eligibility for office being based on possession of rights of audience for a specified period, a person who wishes to apply for one of the offices listed in Schedule 10 of the Bill will have to show that he has possessed a relevant legal qualification for the requisite period and that while holding that qualification he has been gaining legal experience. In respect of many of the offices, the number of years for which a person must have held his qualification before he becomes eligible for judicial office is also reduced.

201. Part 2 also enables the Lord Chancellor, following consultation with the Lord Chief Justice and the JAC, to extend by order the list of relevant qualifications for the purpose of the judicial-appointment eligibility condition. This will enable those with relevant qualifications and legal experience to apply for certain offices, which will also be specified in the order.

BACKGROUND

202. Eligibility for appointment to professional judicial office in England and Wales is currently dependent upon applicants possessing particular qualifications (within the meaning of the Courts and Legal Services Act 1990) which are based on possession of "rights of audience" for a prescribed number of years. The precise category of rights of audience required, and the length of time for which they must have been held, vary according to the judicial office concerned. However, the practical effect of the current arrangements is to restrict eligibility for almost all judicial posts to persons who have been qualified as barristers or solicitors in England and Wales for at least seven years (or, for some posts, 10 years). (Barristers, advocates and solicitors who have been qualified in Scotland or Northern Ireland for the required number of years are also eligible for some posts, notably in those tribunals which exercise UK-wide jurisdiction.)

203. A consultation paper, Increasing Diversity in the Judiciary, published by the Department for Constitutional Affairs in October 2004, invited views as to whether these statutory eligibility requirements constituted an obstacle to greater diversity in the judiciary. Responses to consultation indicated that the eligibility requirements were considered an obstacle to greater diversity in several respects. First, because they depended on possession of rights of audience before the courts, they helped to foster the (inaccurate) perception that advocacy experience was a requirement for judicial appointment, deterring eligible individuals from applying. Second, they excluded entirely members of certain legal professional groups (for example, legal executives) who might possess the skills, knowledge and experience needed to perform well in judicial office, and who also tended to be drawn from a wider range of backgrounds than barristers and solicitors. It was also argued that the existing requirements were unsatisfactory in that someone who qualified as a barrister or a solicitor but who then did no more legal work of any kind still became eligible for judicial appointment on the seventh anniversary of their qualification. Finally, respondents considered that the periods of time for which a qualification must have been held were too long, disadvantaging those who had joined the profession later in life but whose career paths might nevertheless render them fitted for consideration.

204. The provisions in this Part of the Bill seek to address these concerns by removing the existing link between eligibility for judicial appointment and possession of advocacy rights; by providing for the extension of eligibility for some appropriate appointments to holders of legal qualifications other than barristers and solicitors; by introducing a requirement that a person with a relevant qualification must also have gained legal experience to be eligible for office; and by reducing the number of years for which it is necessary to have held the relevant qualification and gained legal experience. It is to be noted that these changes attach to the eligibility threshold for appointment. The aim is to increase the pool of those eligible for office, but the current system of merit-based appointment will remain. These changes apply to those listed in Schedule 10 of the Bill, which includes a wide range of judicial offices in both mainstream courts and tribunals.

COMMENTARY ON CLAUSES: PART 2

Clause 41 Judicial appointments: "judicial-appointment eligibility condition"

205. This clause sets out the new basis of eligibility for judicial appointment. In order to satisfy the "judicial-appointment eligibility condition", an individual has to hold a

"relevant qualification" (i.e. as a barrister, a solicitor or a holder of another specified legal qualification) for a specified minimum number of years (generally five or seven, in place of the seven or ten specified in existing legislation), and has to have gained experience in law for the specified minimum number of years, while holding a relevant qualification. Activities which count as gaining experience in law are set out in clause 43.

206. The clause removes the anomaly identified under current legislation whereby an individual who qualifies as a barrister or a solicitor becomes eligible for judicial appointment simply through the passage of time, without necessarily ever having engaged in legal practice following qualification.

Schedule 10: Amendments relating to judicial appointments

207. The minimum eligibility requirements for judicial offices are contained in a large number of statutory provisions. This schedule amends those provisions in two main respects. First, the existing requirement of a qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 is replaced by a requirement to satisfy the judicial-appointment eligibility condition on an N-year basis. Second, the period of time for which a qualification should have been held, and experience in law acquired (N years), is reduced. For those judicial appointments which currently require possession of a ten-year qualification under the 1990 Act, the period is reduced to seven years and for those appointments which currently require a seven-year qualification, the period is reduced to five years. Where those with Scottish or Northern Irish qualifications are eligible for appointment, corresponding reductions are made.

Clause 42: "Relevant qualification" in section 41: further provision

208. This clause empowers the Lord Chancellor (after consultation with the Lord Chief Justice and the JAC) to extend the list of relevant qualifications for the purpose of the judicial-appointment eligibility condition in clause 41. The power is exercisable by order made under the affirmative resolution procedure.

209. Orders made under this clause would say which qualifications – other than being a barrister or a solicitor – would be "relevant qualifications" for the purpose of eligibility for particular judicial offices. The only qualifications which it would be permitted to specify in this way would be those awarded by the Institute of Legal Executives or by other bodies authorised to confer rights of audience or rights to conduct litigation under section 27 and 28 of the Courts and Legal Services Act 1990.

This would provide assurance that the bodies concerned had in place approved training and qualification arrangements for their members. The clause also provides for a qualification to cease to be relevant if the body which awarded it ceases to be an authorised body under the procedure set down in the 1990 Act.

210. It is envisaged that the power given to the Lord Chancellor under this clause would be exercised in the first instance to extend eligibility for specified appointments to Fellows of the Institute of Legal Executives and to registered patents agents and trade mark attorneys. It also provides flexibility to extend eligibility to duly qualified members of other authorised bodies, should that become appropriate as a result of future developments in the legal profession.

Clause 43: Meaning of "gain experience in law" in section 41

211. This clause defines various ways in which an individual may gain post-qualification experience in law so as to satisfy the "qualifying period" element of the judicial-appointment eligibility condition in clause 41. Consistent with the aim of encouraging applications from a wide range of suitably qualified people, these include not only those activities traditionally regarded as part of a lawyer's practice (e.g. legal advice and assistance) but also exercising judicial functions in a court or tribunal, arbitration and teaching or researching law. Broadly, similar activities are also included. Such work need not be performed full-time or for remuneration.

212. It should be noted that at the same time as gaining experience by undertaking these activities, an individual must also possess a "relevant qualification" – i.e. as a barrister, a solicitor or as a holder of a qualification awarded by one of the bodies to be specified by Order under clause 42.

213. Subsections (3) and (5) set out in what circumstances an individual would be treated as gaining experience in law for the purposes of this Part of the Bill, even when taking a break from legal practice. The absences covered are holidays, periods of leave connected to the birth or adoption of children up to a maximum of 12 months, and sickness or disability leave. These provisions equally apply to those who are employed and self-employed, and are separate from any statutory or contractual rights to such leave.

PART 3: ENFORCEMENT BY TAKING CONTROL OF GOODS

SUMMARY

214. Part 3 of the Bill unifies the law governing the activities of enforcement agents when taking control of and selling goods, and requires such agents (with certain exceptions) to hold a valid certificate issued by a county court. It also modernises and unifies most of the terminology used in various pieces of legislation where the new unified procedure will apply.

215. Part 3 also abolishes the common law right to distrain for rent arrears and replaces it with a new, more limited right and a modified 'out of court' regime for recovering rent arrears due under a lease of commercial premises.

BACKGROUND

Procedure

216. At present the law relating to enforcement by the seizure and sale of goods is complex and can be unclear and confusing. It is contained in numerous statutes, secondary legislation and common law and its language is old fashioned. There are various terms that describe this enforcement process, for example execution, distress and levy and various different procedures depending on the type of debt which is being recovered. Effective Enforcement recommended the terminology should be modernised and the procedure reformed.

217. Effective Enforcement also identified that persons who currently take control of goods are not subject to any uniform regulatory system and highlighted anecdotal evidence of some enforcement agents threatening and intimidating vulnerable debtors. Effective Enforcement therefore proposed a system to guard against malpractice and to protect debtors. It was initially intended that a licensing regime should be put in place, implemented via a regulatory body. While this remains the Government's long-term aim, as an interim measure the Bill replaces (and extends and modifies) the certification process that currently exists for bailiffs under the Distress for Rent Rules 1998. The extended and modified certification process will apply to persons taking control of goods who are not Crown employees or constables (the justification for such an exclusion being that Crown employees and constables, by virtue of their status, are already subject to adequate systems of control).

Rent Arrears Recovery

218. Distress for rent is a summary remedy which enables landlords to recover rent arrears without going to court, by taking goods from the let premises and either holding them until the arrears are paid or selling them. It is an ancient common law remedy which, over time, has been extended and modified by successive statutes.

219. The Law Commission's Report concluded that distress for rent has a number of features which make it inherently unjust to tenants, third parties and to other creditors and recommended its abolition.

220. Following a period of consultation, the Government decided to accept the Law Commission's recommendation. However, the consultation revealed that distress for rent is an effective remedy for recovering rent arrears, particularly for commercial properties. If it were to be abolished without any replacement, the Government concluded that there could be disadvantages both to landlords and to tenants of commercial properties.

221. The Bill therefore abolishes the current law on distress for rent and replaces it with a modified regime (called Commercial Rent Arrears Recovery or CRAR) for recovering rent arrears due under leases of commercial premises.

COMMENTARY ON CLAUSES: PART 3

Clause 44: Enforcement by taking control of goods

222. This clause gives effect to Schedules 11 and 12 of the Bill. Certain current powers to seize and sell goods can only be exercised according to the procedure for taking control of and selling goods detailed in Schedule 11.

223. The terminology in the various pieces of primary legislation relating to these powers has been amended, and some of the warrants and writs which give these powers, namely warrants of execution, warrants of distress and writs of fieri facias (except writs of fieri facias de bonis ecclesiasticis), are renamed warrants of control and writs of control.

224. A warrant of execution empowers a district judge to seize and sell a debtor's goods for the purpose of recovering money payable under a county court judgment or

order. A warrant of distress may be issued by a magistrates' court for the purpose of recovering a sum adjudged to be paid by a conviction or order of the court. The warrant requires the sum to be recovered by seizure and sale of the debtor's goods. A writ of fieri facias requires a sheriff or enforcement officer to seize and sell a debtor's goods for the purpose of recovering a sum due under a High Court judgment or order. A writ of fieri facias de bonis ecclesiasticis requires the bishop to seize a debtor's ecclesiastical property in order to satisfy a High Court judgment. As writs of fieri facias de bonis ecclesiasticis are unique and because of the special role of the bishop, they are not renamed (nor are they subject to the new unified procedure detailed in Schedule 11).

225. A writ or warrant of delivery is a writ/warrant to enforce an order for the delivery of particular goods that are identified in the writ/warrant. A writ or warrant of possession is a writ/warrant issued to enforce an order for possession of land.

226. Schedule 12 makes amendments to existing primary legislation, which are necessary to give effect to these changes or as a result of them.

Schedule 11: Taking control of goods

227. This Schedule prescribes a new procedure to be followed by enforcement agents when seizing and selling goods pursuant to powers under High Court writs of execution, county court warrants of execution, certain magistrates' court warrants of distress, High Court writs and county court warrants of delivery and possession which contain a power to seize and sell goods and the following enactments:

- sections 4 and 16 of the Inclosure Act 1773;
- section 91 of the Land Clauses Consolidation Act 1845;
- sections 151 and 159 of the Inclosure Act 1845;
- section 33 of the Railways Clauses Act 1863;
- section 13 of the Compulsory Purchase Act 1965;
- section 61 of the Taxes Management Act 1970;
- section 76 of the Magistrates' Court Act 1980;
- section 85 of the County Courts Act 1984;
- section 62A of the Local Government Finance Act 1988;
- section 35 of the Child Support Act 1991;
- Schedule 15, paragraph 12 of the Water Resources Act 1991;
- section 54 of the Land Drainage Act 1991;

- section 121A of the Social Security Administration Act 1992;
- section 14 of the Local Government Finance Act 1992;
- section 51 of the Finance Act 1997;
- Schedule 12, paragraph 1A of the Finance Act 2003;
- clause 54 of the Tribunals, Courts and Enforcement Bill.

228. The Schedule prescribes the entire process to be followed by enforcement agents when taking control of and selling goods under the above mentioned powers, from the serving of a notice, to taking control of goods, powers of entry, goods which may be seized, care of goods seized, the sale of goods seized and the distribution of the sale proceeds.

229. The Schedule also enables regulations to specify fees, charges and expenses that can be charged by a person in connection with taking control of goods (by way of example, the fees charged by an enforcement agent for taking control of goods). Such regulations will specify when and how such fees, charges and expenses will be recoverable from the debtor, to include when such amounts can be deducted from the proceeds of sale of any goods. The regulations may also specify that any disputed amount of such fees, costs and expenses is to be assessed in accordance with rules of court.

230. In addition, the Schedule sets out the remedial action and the level of damages available to a debtor against an enforcement agent who breaches the procedure. The Schedule does not make any provision for the debtor's right to bring a claim against an enforcement agent whose actions were not authorised at the outset because this is already covered by the existing law of tort. The Schedule also specifies the circumstances when a creditor can bring a claim against the debtor and it creates an offence if a person intentionally obstructs an enforcement agent in the lawful exercise of his power or if he interferes with goods seized.

Schedule 12: Taking control of goods: amendments

231. This Schedule amends the existing legislation referred to in paragraph 227 under which the unified procedure in Schedule 11 will be used. It also contains amendments that are consequential as a result of the introduction of the new procedure and terminology. So, where appropriate, references to warrants of execution and warrants of distress are amended to warrants of control, references to writs of fieri facias are amended to writs of control, references to distrain and distraint are amended to taking

control of goods and references to walking possession agreements are amended to controlled goods agreements.

232. A walking possession agreement is an agreement between the person who has the power to seize the goods ("the distrainor") and the debtor. The distrainor agrees that the debtor can retain possession of the goods without anyone being left on the premises to guard them. In return, the debtor agrees not to remove the goods until he makes payment for the debt and that the distrainor may return to the premises at a later date to remove the goods for sale if payment is not made.

233. In addition, where a power to distrain is not currently set out on the face of an Act, but provision is instead made for secondary legislation to authorise distraint, the Schedule will amend the Act so that the power to distrain is on the face of the Act rather than in secondary legislation.

Clause 45: Enforcement agents

234. The clause specifies the criteria to be met for an individual to act as an enforcement agent. This includes acting under a certificate under clause 46. The clause also creates an offence where an individual acts as an enforcement agent and does not meet the specified criteria.

Clause 46: Certificates to act as an enforcement agent

235. This clause specifies who may issue a certificate, under which an enforcement agent can act. The clause also enables regulations to make various provisions about the certificates, for example, conditions which may apply to issued certificates and the suspension and cancellation of certificates.

236. Subsection (3) enables enforcement agents who currently hold a certificate issued under section 7 of the Law of Distress Amendment Act 1888 to continue to operate under that certificate and after the certificate expires, regulations will specify that a certificate will need to be issued in accordance with the new certification provisions under this clause.

Clause 47: Common law rules replaced

237. This clause provides for the replacement of the common law rules about how the powers to take control of and sell goods are exercised. The provisions in Chapter 1, in particular Schedule 11, replace these common law rules. The replacement of the common law rules includes those that relate to remedies that are currently available to debtors (such as replevin) and offences by debtors (such as rescuing goods seized). Replevin is a process by which the owner can recover goods seized in return for an undertaking to bring proceedings to determine the right to seize the goods and for tendering sufficient security for the debt and the proceedings. Rescuing goods is where a person interferes with goods seized.

238. The clause also specifies that these common law rules will continue to apply in relation to those goods that have been distrained before this clause comes into force

Clause 48: Pre-commencement enforcement not affected

239. This clause provides that the new procedure for taking control of and selling goods does not affect any power to distrain where the goods were distrained against or made subject to a walking possession agreement before the new procedure comes into force.

Clause 49: Transfer of county court enforcement

240. This clause transfers the district judge's responsibility for the execution of warrants of control issued by a county court to any person authorised by or on behalf of the Lord Chancellor. In practice, the warrants will be executed by county court bailiffs.

Clause 50: Magistrates' courts warrants of control

241. This clause creates a new section 125ZA of the Magistrates' Courts Act 1980 so as to provide for the endorsement of warrants of control issued by the magistrates' court in line with the endorsement process for High Court writs under Schedule 7 to the Courts Act 2003 (and in line with clause 51 regarding county court warrants). The new section is referred to in paragraph 4 of Schedule 11.

Clause 51: County court warrants of control etc

242. This clause replaces the existing section 99 of the County Courts Act 1984. It applies to warrants of control issued by a county court and warrants of delivery and warrants of possession, which include a power to take control of goods and sell them. It details the procedure for endorsing county court warrants in line with High Court writs. The endorsement of a warrant with the date and time of receipt establishes the priority of a given debt. So, the order of priority in execution is dictated by the date and time of endorsement. This is referred to in paragraph 4 of Schedule 11.

Clause 52: Power of High Court to stay execution

243. This clause provides the High Court with the power to stop execution of a writ of control for such period of time and on such conditions as the court determines in line with the county court's power to stay execution. The power may only be exercised where the court is satisfied that the debtor is unable to pay any sum or instalment of any sum recovered against him.

Clause 53: Abolition of common law right

244. This clause abolishes the common law right to distrain for arrears of rent. Statutory repeals are dealt with in Schedule 13 and Part 4 of Schedule 22. Taken together, these provisions will sweep away the existing law on distress for rent.

245. Distress for rent is a summary remedy which enables landlords to recover rent arrears, without going to court, by taking goods from the demised premises and either holding them until the arrears are paid or selling them. At common law, the right of distress for rent arises automatically by virtue of the landlord and tenant relationship. So the remedy is almost always available to the landlord of premises, whether residential or commercial premises, when rent is in arrears. Distress for rent is an ancient common law remedy which, over time, has been extended and modified by statute.

246. The right to distrain has applied to different kinds of rent, including rentcharges. This clause and the statutory repeals will abolish distress for all forms of rent (see, for example, the repeal of section 121(1) of the Law of Property Act 1925, which confers statutory power to distrain for a rentcharge).

Clause 54: Commercial rent arrears recovery (CRAR)

247. This clause creates a new statutory right for a landlord of commercial premises to recover rent arrears by using the procedure in Schedule 11 for taking control of the tenant's goods. This allows the landlord to enter the let premises in order to take goods belonging to the tenant, then sell those goods and recover the rent arrears from the proceeds of sale. The right, which is called CRAR (commercial rent arrears recovery), replaces the existing right of distress for rent. But in contrast to distress, CRAR is available only to landlords of commercial premises.

Clause 55: Landlord

248. This clause defines "landlord" for the purposes of CRAR and accordingly identifies the person to whom CRAR is available. The definition in this clause reflects the position in the current law of distress for rent as to who can distrain for rent arrears.

249. Subsection (1) sets out the general rule that the landlord is the person entitled to the immediate reversion in the property comprised in the lease. This is the person to whom the property will revert back to at the end of the lease.

250. In most cases it will be clear who is entitled to the immediate reversion of the property. However, subsections (3) to (7) clarify the position in four particular circumstances, each reflecting the current law on distress for rent. The circumstances are:

- (in subsection (3)) where the premises are let under a tenancy by estoppel;
- (in subsection (4)) where the premises are let by joint-landlords;
- (in subsection (5) and (6)) where the let premises have been mortgaged;
- (in subsection (7)) where the court has appointed a receiver to deal with the let premises.

Subsection (3)

251. In the case of a tenancy by estoppel, the landlord may not have a legal estate in the land comprised in the lease, in which case he will not be entitled to the immediate reversion in that property. Subsection (3) makes it clear that such a person will nevertheless be a "landlord" for the purposes of CRAR and may therefore use CRAR

to recover rent arrears from his tenant, provided that all the other conditions are satisfied.

Subsection (4)

252. If the premises are let by more than one person who together hold the legal estate in those premises jointly (under, what is referred to in law as, a joint tenancy), then any one of those persons will be the "landlord" for the purposes of CRAR. This means that any one of them may exercise CRAR and may do so to recover the rent due to all of them.

Subsections (5) and (6)

253. If the premises are let by a person who has taken out a mortgage on the property, then that person (who is the "mortgagor" or borrower) will normally be the "landlord" who is entitled to use CRAR to recover rent due under that lease. But if, at any time, the mortgagee (the lender) gives notice of his intention to repossess the property, then he will become the landlord thereafter in relation to that existing lease.

254. However, similar to the current law on distress for rent, a mortgagee who becomes the landlord in this way will not be able to use CRAR to recover rent due under the existing lease if that lease is not binding on the mortgagee. This is because there will be no relationship of landlord and tenant between the mortgagee and the tenant under the existing lease. A lease will not be binding on the mortgagee if it is made after the mortgage was created, and if it is not made under either:

- an express leasing power contained in the mortgage deed, or
- section 99 of the Law of the Property Act 1925 (leasing powers of mortgagor and mortgagee in possession).

Subsection (7)

255. If a receiver has been appointed by the court in relation to the property that is subject to the lease, then that receiver may exercise CRAR in the name of the landlord.

256. Subsection (8) provides that a landlord who has a right to CRAR will need to authorise a certificated enforcement agent to carry out the procedure for CRAR on

his behalf (unless he himself is a certificated enforcement agent; see paragraph 2 of Schedule 11). The landlord will need to instruct the enforcement agent in writing. The form, content, and other requirements in relation to the written instructions from the landlord to the enforcement agent will be prescribed by way of secondary legislation.

257. Subsection (9) provides that any person who has a statutory right under any other legislation to use CRAR, is to be treated as "the landlord" for the purposes of CRAR.

Clause 56: Lease

258. This clause defines the term "lease". A lease means any lease that may exist in law or in equity. This clause makes it clear that a "lease" includes a tenancy at will, but does not include a tenancy at sufferance. So, for the purposes of CRAR, a "lease" includes all forms of lease, including long leases, short tenancies, tenancies by estoppel and other equitable leases.

259. A lease must, however, be evidenced in writing. The intention is to ensure that CRAR can only be used in circumstances where the main terms of the lease (particularly the rent) are clear and certain to the parties concerned.

Clause 57: Commercial premises

260. This clause defines what is meant by "a lease of commercial premises". A lease (lease A) will not be "a lease of commercial premises" if any part of the let premises is let under lease A (or let under any sublease B) as a dwelling, or occupied as a dwelling. So, for example, a lease of property comprising a shop and a flat will not be a lease of commercial premises if the flat is used, or is required by the lease to be used, as a dwelling. But if that lease does not impose any requirements as to the use of the flat, and the tenant chooses to use it either as a storeroom or office for the shop, then the lease will be one of commercial premises because no part of the demised premises is let or occupied as a dwelling.

261. This clause makes it clear that any occupation as a dwelling will not count if it is in breach of the terms of lease A or any lease that is superior to lease A. Similarly if the property has been sublet then any sub-letting as a dwelling will not count if it is in breach of the terms of a lease that is superior to lease B. The purpose of these provisions is to ensure that a commercial tenant cannot seek to prevent his landlord

from using CRAR against him by, for example, allowing a third party to occupy part of the premises as a dwelling. So the landlord can still use CRAR against his tenant in those circumstances, even though there are residential occupiers present. But the provisions are also designed to ensure that a landlord (who is himself a commercial tenant under lease A) cannot rely on his own breach of lease A to use CRAR against the tenants to whom he has sublet the property as a dwelling under lease B. So in those circumstances, the landlord cannot use CRAR in those circumstances because lease B will not be a lease of commercial premises.

Clause 58: Rent

262. This clause defines rent for the purposes of its recovery by CRAR, as the sum payable by the tenant for the possession and use of the premises under the lease, including any interest payable on that sum and any VAT chargeable on the sum or the interest.

263. Any amounts not directly attributable to the tenant's possession and use of the premises do not qualify e.g. council tax. This is the case even if the lease defines them as rent.

264. The rent may be merged with other sums so that it is payable as a combined figure, the individual figure not being known or able to be ascertained. In this situation, the rent will be considered to be that portion of the total sum as reasonably reflects the amount payable for the possession and use of the premises.

265. Rent which is payable under or by virtue of Part 2 of the Landlord and Tenant Act 1954 (c. 56) is deemed to be rent as defined by the clause, and is therefore recoverable by CRAR. Part 2 of the 1954 Act gives security of tenure to business leases, so that they are not ended by the expiry of the contractual term, but continue until terminated in accordance with the provisions of Part 2.

266. The definition of rent given by this clause, however, is not congruent with the meaning of rent at clause 53 (abolition of common law right) because clause 53 relates to a wider range of rents for which the right to the old remedy of distress for rent exists. For that reason, the interpretation of "rent" in this clause does not apply to clause 53 (see clause 69).

Clause 59: The rent recoverable

267. This clause sets out the conditions that must be met for the right to CRAR to become exercisable. The conditions are:

- the tenant is in arrears of rent before notice of enforcement is given;
- the amount of the arrears owed by the tenant is certain, or capable of being calculated with certainty; and
- the "net unpaid rent" equals or exceeds a set amount to be prescribed in regulations.

268. The requirement that the net unpaid rent must equal or exceed the prescribed minimum is a condition that must be satisfied at two stages: first, before the landlord gives notice of enforcement and, second, before he takes control of goods under Schedule 11. This means that the landlord will need to recalculate the "net unpaid rent" immediately before he takes control of goods. If the recalculated figure is lower than the prescribed minimum, it will not be permissible for the landlord to proceed to take control of goods.

269. The "net unpaid rent" is the amount of unpaid rent less any interest or VAT that may be payable on that amount and less any "permitted deductions". Permitted deductions from rent are deductions that a tenant is presently entitled to make from his rent under statute, at common law and in equity. Examples include sums that may be deducted or recouped from, or set off against, rent:

- under the terms of the lease;
- in respect of damages for the landlord's breach of his obligations to repair (or the cost of repairs, if carried out at the tenant's expense);
- in respect of damages for the landlord's breach of the covenant of quiet enjoyment;
- in respect of statutory compensation for improvements under section 11(2) of the Landlord and Tenant Act 1954.

270. The amount of rent that a landlord is entitled to recover by CRAR is the amount of unpaid rent less any permitted deductions that the tenant is entitled to make against that rent.

Clause 60: Intervention of the court

271. This clause sets out the powers of the High Court or a county court, as rules of court may provide, to intervene in the exercise of CRAR. The court's power arises only where the following conditions are met: firstly, notice of enforcement has been served on the tenant; secondly, the tenant has made an application to the court to intervene; and thirdly, the court is satisfied that the circumstances meet the prescribed grounds for intervening.

272. The court then has two options available to it. It may make an order to set aside the notice of enforcement, which effectively cancels that notice and prevents the landlord from taking any further steps under CRAR in relation to that notice. This would occur for example if the court considered that the preconditions for exercising CRAR had not been met.

273. Alternatively, the court may suspend the use of CRAR, by making an order that no further steps may be taken in exercise of CRAR without further order by the court. This might occur, for example, if there is a genuine dispute about the amount of rent in arrears or the calculation of the net unpaid rent. In those circumstances, the court may suspend the use of CRAR until that dispute is resolved.

Clause 61: Use of CRAR after end of lease

274. This clause deals with the use of CRAR after a lease has ended. The provisions of this clause are intended broadly to reflect the current law governing the availability of distress for rent after a lease has ended. Subsection (1) sets out the general rule that, when the lease ends, CRAR will cease to be available. But that is subject to two exceptions.

275. The first exception is set out in subsection (2). This ensures that a landlord who has taken control of goods under CRAR before the lease comes to an end (or under the second exception, below), is not prevented from completing the process by selling those goods.

276. The second exception is set out in subsections (3) and (4) and this is intended to preserve the effect of sections 6 and 7 of the Landlord and Tenant Act 1709 after those provisions are repealed by this Bill (see Schedule 13). This exception applies where the tenant remains in occupation after the lease comes to an end. It allows the landlord to

use CRAR for no more than six months after the lease has come to an end, provided that the lease was not ended by forfeiture, the landlord and tenant remain the same and, if a new lease has been granted to the tenant, it must be a lease of commercial premises. For this purpose it does not matter whether the new lease of commercial premises is in writing or not because the clause only permits the landlord to recover rent due under the expired lease of commercial premises, which must be in writing.

277. Subsection (6) defines when a lease ends for the purposes of this clause.

Clause 62: Agricultural holdings

278. The clause makes a couple of special provisions in relation to the exercise of CRAR where the let premises is an agricultural holding. It is intended to preserve the effect of sections 16 and 17 of the Agricultural Holdings Act 1986 for the purposes of CRAR. (Sections 16 to 19 of that Act will be repealed by this Bill; see Schedule 13).

279. First, there is a limitation on the rent that can be recovered by a landlord of an agricultural holding because CRAR cannot be used to recover rent that became due more than one year before the notice of enforcement is given. Second, any compensation that is due to the tenant under the Agricultural Holdings Act 1986 will be a "permitted deduction" for the purposes of CRAR, provided that the amount of compensation has been ascertained (for the meaning of "permitted deductions", see clause 59(7)).

Clause 63: Right to rent from sub-tenant

280. This clause makes provision for a landlord who is entitled to use CRAR against his immediate tenant to instead serve a notice on any sub-tenant requiring that sub-tenant to pay his rent directly to him, instead of paying it to his own landlord in the usual way. Its purpose is to allow the landlord to recover, from a sub-tenant, arrears of rent that are due to him from the immediate tenant.

281. The clause is intended to preserve the effect of sections 3 and 6 of the Law of Distress Amendment Act 1908 (which will be repealed by this Bill) in a form that is consistent with the other provisions of CRAR.

282. Where a notice is given to a sub-tenant under this clause, it must set out the amount of the arrears owed to the landlord (the superior landlord) by the immediate

tenant. The notice must also require the sub-tenant to pay his rent directly to the superior landlord instead of paying it to his own landlord, until the amount of arrears specified in the notice have been paid off, or rent ceases to be payable by the sub-tenant (for example, if he moves on), or the notice is replaced or withdrawn by the superior landlord.

283. Subsection (5) enables regulations to determine when a notice given by the landlord on a sub-tenant under this clause takes effect.

284. For as long as the notice has effect, the superior landlord will effectively stand in place of the sub-tenant's landlord for the purpose of recovering, receiving or discharging any rent payable by the sub-tenant under the notice, but only for that purpose. This means that the superior landlord can recover from the sub-tenant the amount stated in the notice by using CRAR. But the superior landlord cannot recover that sum from the sub-tenant by serving another section 63 notice on an inferior sub-tenant (see clause 66).

285. The superior landlord may serve more than one notice under this clause, but any later notice replaces an earlier one and where the landlord serves a later notice on a different sub-tenant he must withdraw the earlier one (see clause 65). This ensures that only one notice has effect at any one time.

Clause 64: Off-setting payments under a notice

286. This clause applies where a landlord has given notice to a sub-tenant under clause 63.

287. Any sums that the sub-tenant pays under the notice to the superior landlord will be deductible from the amount of rent he would otherwise have had to pay to his own landlord. So, if the sub-tenant is required to pay £250 a month to the superior landlord under a notice (i.e., until the stated arrears are paid off), then he is entitled to deduct £250 a month from his own rent for as long as he is required to continue making payments under that notice. If there is a hierarchy of sub-leases and the landlord serves notice on an inferior sub-tenant, then this diversion of rent may be passed up the hierarchy of superior sub-tenants until ultimately it is deducted from rent payable to the (defaulting) immediate tenant. For example, where the notice is served on sub-tenant C, he may deduct any sums paid to the superior landlord from rent due to his own landlord (sub-tenant B). Sub-tenant B may then deduct an equivalent amount

from his landlord (sub-tenant A) and sub-tenant A may deduct an equivalent amount from his landlord (the immediate tenant).

288. Payments under a section 63 notice will continue to be deductible from rent in this way, even after the arrears stated in the notice have been paid or the notice has been replaced by one served on another sub-tenant, unless the subtenant is aware of those facts. So a payment under a section 63 notice will not be deductible from rent if, at the time it is made:

- the landlord has already withdrawn the notice;
- the paying sub-tenant has already made payments under the notice that total an amount at least equal to the arrears stated in that notice;
- the paying sub-tenant knows that the arrears stated in the notice have already been paid off by some other means (e.g., by the immediate tenant).

289. Similarly, part of a payment under a section 63 notice will not be deductible from rent if, at the time it was made, that part of the payment, when added together with earlier payments made by the sub-tenant, at least equal the arrears stated in the notice.

Clause 65: Withdrawal and replacement of notices

290. If a landlord gives a section 63 notice to a sub-tenant, but subsequently gives another section 63 notice to the same or another sub-tenant for the same amount of arrears (or an amount including all or part of it) then the later notice will automatically replace the earlier notice. This ensures that, for any amount of arrears, there is no more than one notice in force at any one time.

291. A section 63 notice will cease to have effect when the amount of arrears stated in the notice has been paid off, or when the notice is replaced by a subsequent notice (see clause 63). A paying sub-tenant will always know that a section 63 notice has ceased to have effect when he himself pays an amount equal to the stated amount of arrears. But he may not necessarily know, for example, that the immediate tenant has paid off the arrears, or that the landlord has served a replacement notice on another sub-tenant. For that reason, this clause requires the landlord to withdraw a section 63 notice when that notice is replaced by another one, and when the amount in arrears is paid (unless it is paid wholly by the paying sub-tenant). This will ensure that

the paying sub-tenant is fully informed about the status of the notice that has been given to him.

Clause 66: Recovery of sums due and overpayments

292. Subsections (1) and (2) deal with the recovery of sums due from a sub-tenant under a section 63 notice. If a notice has been given to a sub-tenant, but that sub-tenant fails to pay the amount of arrears stated in the notice, then the superior landlord can recover that amount from him and he may use CRAR to do so. But the superior landlord cannot recover that sum from the paying sub-tenant by giving another section 63 notice to an inferior sub-tenant (see clause 66).

293. Subsections (3) and (4) deal with overpayments to the superior landlord under a section 63 notice which has ceased to have effect, for example, because the stated amount of arrears have been paid off or the landlord has given a replacement notice. These provisions ensure that any amount paid to the superior landlord under a section 63 notice will always count as if it were rent paid by the defaulting tenant (the immediate tenant). So any payment towards the stated amount of arrears will reduce those arrears and any overpayment (i.e. in excess of the stated amount of arrears) will constitute a credit against future rent due from the immediate tenant. If the immediate tenant has moved on, such that no future rent is due from him, then any overpayment under the notice will be treated as if it had been paid by him by mistake so that he may recover that payment from the superior landlord. But this does not affect any claim that the paying sub-tenant may have under the general law to recover or set-off the amount that he overpaid.

Clause 67: Contracts for similar rights to be void

294. This clause ensures that any contractual provision which gives a landlord a power to recover rent (or other similar types of payment) by taking control of, or selling, goods or which modifies a landlord's right to commercial rent arrears recovery (CRAR), will be void, i.e., have no legal effect. A contractual provision that seeks to do any of these things will accordingly be unenforceable. But contracts will be valid and enforceable to the extent that they prevent or restrict the use of CRAR. For example, a contract may provide that:

- the landlord may not use CRAR to recover arrears of rent under the lease, whether during a particular period or at all; or

- he may use CRAR, but if he does so he may not take control of certain goods (which he would otherwise be entitled to take control of under paragraph 9 of Schedule 11).

295. This clause is accordingly intended to prevent a landlord from making contracts to enlarge his power to take control of goods by CRAR or side-step the abolition of rent distress. For example, it will prevent a landlord from including any of the following provisions in a contract:

- a provision that gives a power to distrain for rent arrears, e.g., in relation to a lease of residential premises;
- a provision that extends the right to use CRAR, e.g. in relation to payments that are not 'rent' for the purposes of CRAR;
- a provision that modifies the procedures applying to CRAR, e.g., by dispensing with the need to give an enforcement notice.

Clause 68: Amendments

296. This clause introduces the minor and consequential amendments relating to this Chapter that are contained in Schedule 13. These include amendments to abolish statutory powers to distrain for rentcharges (conferred by, for example, section 121(2) of the Law of Property Act 1925).

297. It is not considered necessary to make any amendment to the Lodgers' Goods Protection Act 1871. Although there has been some doubt as to the extent of its repeal under section 8 of the Law of Distress Amendment 1908, it is considered that the Act is now wholly repealed by virtue of that enactment and section 132 of, and Schedule 6 to, the Judgements (Enforcement) Act (Northern Ireland) 1969. In any event, if not wholly repealed, the Lodgers' Goods Protection Act 1871 would now be superseded by the abolition of the common law to distrain for rent arrears under clause 53.

Clause 70: Abolition of Crown preference

298. This clause abolishes the rule that distraint for debts owed to the Crown takes priority over enforcement of other debts by seizure and sale of goods. This builds upon previous similar changes abolishing priority being given to debts owed to the Crown above other debts in matters of bankruptcy and insolvency.

Clause 71: Application to the Crown

299. This clause provides that Part 3 of the Bill applies to premises in which the Crown has an interest but that the powers created by Part 3 cannot be used to recover debts due from the Crown, to take control of or sell Crown goods or to enter premises which the Crown occupies.

Clause 72: Regulations

300. This clause contains definitions for "prescribed" and "regulations", under which powers to make regulations under Part 3 are exercisable by the Lord Chancellor. It sets out the parliamentary scrutiny applying to regulations under this Part, and provides for the power to make regulations to include power to make supplementary, consequential or transitional provision.

PART 4 ENFORCEMENT OF JUDGMENTS AND ORDERS

SUMMARY

301. Part 4 of the Bill makes a number of changes to existing court-based methods of enforcing debts in the civil courts. Part 4 also contains new provisions, including powers to obtain information about debtors.

BACKGROUND

Attachment of earnings orders

302. An attachment of earnings order (AEO) is a means of securing payment of certain debts by requiring an employer to make deductions direct from an employed debtor's earnings. Currently, the rate of deductions under an AEO made to secure payment of a judgment debt is calculated by a county court using information provided by the debtor.

303. Effective Enforcement identified weaknesses in the current system and in particular the fact that information provided by debtors is often unreliable. The Bill tackles this by making provision for a new method of calculation of deductions from earnings based on fixed rates, similar to the system used for council tax AEOs. Another weakness of the AEO system is that if a debtor changes job and does not

inform the court of his new employer's details, the AEO lapses. The Bill therefore enables the High Court, county courts, magistrates' courts and fines officers to request the name and address of the debtor's new employer from Her Majesty's Revenue and Customs ("HMRC"), for the purpose of redirecting the AEO.

Charging orders

304. A charging order is a means of securing payment of a sum of money ordered to be paid under a judgment or order of the High Court or a county court by placing a charge onto the debtor's property (usually a house or land or securities such as shares). A charging order can be made absolute or subject to conditions. Once an order is in place, a creditor can subsequently apply to court seeking an order for sale of the charged property.

305. At present, the court cannot make a charging order when payments due under an instalment order made to secure that same sum are not in arrears. In certain instances this can prejudice the creditor, allowing for example a debtor with large judgment debts, who is meeting his regular instalments, to benefit from the sale of a property without paying off the debt.

306. The Bill removes this restriction and enables access to charging orders in circumstances where a debtor is not yet in arrears with an instalment order. As a safeguard, the Bill allows the Lord Chancellor to set financial thresholds beneath which a court cannot make a charging order or order for sale, in order to ensure that charging orders are not used to secure payment of disproportionately small debts.

Information requests and orders

307. Currently, the only means of creditors to obtain information to assist them in determining how to enforce a civil judgment debt is by way of an Order to Obtain Information. This requires the debtor to attend court, which is problematic if the debtor is not co-operating with the court. The Bill enables the High Court and the county courts to request information from the DWP and Commissioners for HMRC, other government departments and/or prescribed third parties (including banks and credit reference agencies) on a judgment debtor who has failed to respond to the judgment or comply with court-based methods of enforcement to assist with the enforcement of a judgment debt. Such information will include name, address, date of birth, National Insurance number and the name and address of the debtor's employer.

COMMENTARY ON CLAUSES: PART 4

Clause 73: Attachment of earnings orders: deductions at fixed rates

308. This clause and Schedule 14 amend the Attachment of Earnings Act 1971 (the AEA 1971), by making provision for a fixed deductions scheme to introduce deductions from earnings at fixed rates for AEOs made by a county court to secure the payment of a judgment debt.

Schedule 14: Attachment of earnings orders: deductions at fixed rates

309. This Schedule is in two parts. Part 1 contains the main amendments to the AEA 1971 and inserts new sections and a new Schedule to enable a fixed deductions scheme to operate and to allow for a change in the basis upon which deductions from earnings are made under county court AEOs made to secure payment of judgment debts. Part 2 sets out consequential amendments to the AEA 1971.

310. Paragraph 2 amends section 6 of the AEA 1971 (effect and contents of order) by setting out the basis of deductions from earnings under different AEOs, and specifying that where an AEO is made by a county court to secure payment of a judgment debt, the AEO must specify that deductions under the order should be made in accordance with the fixed deductions scheme.

311. Paragraph 3 inserts a new section 6A into the AEA 1971 (the fixed deductions scheme) which defines the fixed deductions scheme and provides for the Lord Chancellor to set out the detail of the scheme in regulations, subject to the affirmative resolution procedure in the first instance. It is intended that such regulations will set out the scheme of deductions in tabular format, in a similar way as is presently used for deductions from earnings for the collection of council tax.

312. Paragraph 4 amends section 9 of the AEA 1971 (variation, lapse and discharge of orders) by specifying that the power of a court to vary an AEO is subject to Schedule 3A inserted by paragraph 7, which specifies circumstances in which a county court may, and circumstances in which a county court must vary an AEO made to secure the payment of a judgment debt.

313. Paragraph 5 inserts a new section 9A into the AEA 1971 (suspension of fixed deductions orders), and obliges a county court, in certain circumstances, to suspend an

AEO made under the fixed deductions scheme (a fixed deductions order). Where such a suspension order is made, the employer will not have to make deductions from the debtor's earnings and the debtor will make payments direct to the creditor in the manner specified by the court in the suspension order. Where a county court considers that a fixed deductions order is not appropriate (by way of example, because a county court considers that deductions should be more or less than the deductions specified in the fixed deductions scheme because of the personal circumstances of the debtor), it must make a suspension order. The aim of the suspension provisions is to simplify the position for employers, (who should only ever have to make deductions from earnings for county court AEOs made to secure a judgment debt in accordance with the fixed deductions scheme). Such a suspension order will specify the rate and timings of repayments by the debtor to the creditor, and might specify other terms. If any of the terms of the suspension order are broken (by way of example, if the debtor fails to make payments to the creditor), then the court must revoke the suspension order and reinstate the AEO (requiring the employer to make deductions from the debtor's earnings). Even where the terms of the suspension order have not been broken, the court may revoke the suspension order if it considers it appropriate to do so, and rules of court may specify the circumstances in which a court may make or revoke a suspension order of its own motion.

314. Paragraph 7 inserts a new Schedule 3A into the AEA 1971 (changing the basis of deductions). Part 1 of Schedule 3A provides for variations to the basis of deductions under an AEO made to secure a county court judgment debt, such a variation to be changing the basis of deductions from deductions made in accordance with Schedule 3 of the AEA 1971 (a Schedule 3 judgment debt order), to deductions made in accordance with the fixed deductions scheme, (a fixed deductions order), (therefore, varying an AEO so that the scheme of deductions changes from the current scheme to the new fixed tables scheme). Part 2 of Schedule 3A provides for an AEO made to secure a county court judgment debt to be changed from a fixed deductions order to a Schedule 3 judgment debt order.

315. Part 1 of Schedule 3A provides that a Schedule 3 judgment debt order can be varied to become a fixed deductions order, either on an application to the county court or of the courts own motion. The court must vary a Schedule 3 judgment debt order by way of changing it to a fixed deductions order if a Schedule 3 judgment debt order lapses (because the debtor has changed employment) and is then re-directed to the debtor's new employer (such a variation to take effect at the time of re-direction). Paragraph 6 of Schedule 3A enables the Lord Chancellor to specify by order a

"changeover date" when all existing Schedule 3 judgment debt orders should become fixed deductions orders. Paragraph 7 of Schedule 3A provides that where an AEO is varied pursuant to Part 1 of Schedule 3A, the employer must comply with the varied order (but will not incur liability for non compliance until 7 days have elapsed since service of the order as varied).

316. Part 2 of Schedule 3A deals with changing the basis of deductions under an AEO from a fixed deductions order to a Schedule 3 judgment debt order. Paragraph 10 provides that such a variation can only be made in accordance with Part 2 of Schedule 3A. Paragraph 11 of Schedule 3A specifies that where a county court directs that an existing fixed deductions order should take effect to secure payments under an administration order in accordance with section 5 of the AEA 1971, the AEO must be varied at the same time to specify that deductions under the AEO should be made in accordance with Schedule 3 to the AEA 1971. This is because, for an AEO made to secure payments under an administration order, the county court should retain the flexibility to specify different levels of deductions, and deductions at fixed rates are insufficiently flexible. Therefore, the Schedule 3 existing scheme of deductions should apply to AEOs made to secure payments under an administration order. Paragraph 8 of the Schedule makes a consequential amendment to section 5 of the AEA 1971 to this effect.

317. Part 2 of the Schedule makes consequential amendments to the AEA 1971 to enable operation of the fixed deductions scheme.

318. Paragraphs 9 to 15 amend section 14 of the AEA 1971, (power of the court to order the debtor and employer to provide specified information), in connection with the operation of fixed deductions orders to specify that unlike the position in connection with Schedule 3 deductions orders, the court will not need to order the debtor and/or the employer to provide particulars of the debtor's earnings and anticipated earnings, and as to his resources and needs (as the court will not need to be made aware of such facts when it is not setting the level of deductions under the AEO as deductions are to be made in accordance with the fixed deductions scheme). Similarly, paragraph 16 amends section 15 of the AEA 1971 (obligation of debtor and employer to notify changes) to specify that for fixed deductions orders, the debtor and/or the employer are not obliged to notify the court of particulars of earnings or anticipated earnings.

319. Paragraph 17 makes various consequential amendments in connection with the operation of consolidated attachment orders and paragraph 18 specifies that the fixed

deductions scheme should apply to a consolidated order where, before the consolidated order is made, one of the AEOs to be consolidated is a Schedule 3 judgment debt order.

Clause 74: Attachment of earnings orders: finding the debtor's current employer

320. This clause inserts sections 15A to 15D into the AEA 1971 to enable HMRC information to be provided to the courts for the purpose of re-directing a lapsed AEO.

321. Section 15A enables the High Court, county courts, magistrates' courts and fines officers, where an AEO has lapsed (where the debtor has changed employment but has failed to notify the court in accordance with his obligations in section 15(a) of the AEA 1971), to request HMRC to provide the name and address of the debtor's current employer for the purpose of re-directing the AEO. However, no request may be made under this section unless regulations governing the use and supply of debtor information are in force, having been made under section 15B(5) and (8). Section 15A enables HMRC to provide information to comply with a request, disapplies any legal restrictions that might otherwise apply in relation to the disclosure and also enables contractors who hold information on behalf of HMRC to disclose information pursuant to such a request.

322. Section 15B creates an offence where information obtained pursuant to section 15A is used or disclosed other than for a purpose connected with enforcement of the relevant AEO. Section 15C enables the Lord Chancellor to make regulations under section 15B, with the agreement of the Commissioners and subject to the affirmative resolution procedure. Section 15D sets out various definitions of terms used in sections 15A to 15C.

Clause 75: Payment by instalments: making and enforcing charging orders

323. This clause amends the Charging Orders Act 1979 ("the COA 1979") enabling the High Court and county courts to make a charging order where an instalments order has been made in relation to the sum of money to be secured by the charging order and the judgment debtor is not in default under that instalments order.

324. Subsection (3) provides that such a charge may not be enforced, (for example, by way order for sale), unless there has been a default in payment under the

instalments order, and enables rules of court to specify limitations upon enforcement of a charging order after there has been default under an instalments order.

325. Subsection (5) provides that any restrictions on enforcement of a charge set out in the inserted subsections 3(4A) to (4E) of the COA 1979 will not apply to any charge put on a bankrupt's home under section 313 of the Insolvency Act 1986.

Clause 76: Charging orders: power to set financial thresholds

326. This clause inserts a new section 3A into the COA 1979 to provide a power for the Lord Chancellor to specify financial thresholds below which a court cannot make i) a charging order and/or ii) an order for sale, the first such regulations to be subject to the affirmative resolution procedure, and thereafter, any subsequent regulations to be subject to the negative resolution procedure.

Clause 77: Application for information about action to recover judgment debt

327. This clause enables a judgment creditor to apply to the High Court or a county court for information about what type of court based action it would be appropriate to take to recover his debt (an information application), such court-based methods being, for example, a warrant of control, a third party debt order or an AEO.

Clause 78: Action by the court

328. This clause enables the High Court or a county court, where the creditor has made an information application, to either make a department information request or an information order, requesting or ordering a person to provide information to the court to assist with the creditor's information application. The debtor will be notified that the court intends to make an information request or order to give him an opportunity to object. However, the court may not make a department information request to HMRC unless regulations are in force governing the use and disclosure of information disclosed by HMRC, having been made under section 84(4) and (7). Subsection (6) enables the court to disclose information about the debtor to a recipient of an information order or request to enable that recipient to identify the debtor in his records (such information being, for example, the known name and address of the debtor). Subsection (7) disapplies any legal restrictions that might otherwise apply in relation to a disclosure under subsection (6)

Clause 79: Departmental information requests

329. This clause specifies the information that may be requested by the court from government departments. Subsection (3) specifies information that may be requested from "the designated Secretary of State" (the Secretary of State for Work and Pensions will be designated for this purpose) and subsection (4) specifies the information that may be requested from HMRC. Subsection (5) enables the court to request prescribed information from other government departments. Such government departments will be requested rather than ordered to provide information and non-legislative agreements will set out arrangements for the respective government departments to deal with such requests.

Clause 80: Information orders

330. This clause enables the court to make information orders requiring prescribed third parties to provide prescribed information about the debtor. It is envisaged that the recipients of such information orders are likely to be persons such as credit reference agencies and banks.

Clause 81: Responding to a departmental information request

331. This clause enables a government department in receipt of an information request to disclose information that it considers is necessary to comply with the request and also enables disclosure of information where such information is held by a government contractor. The clause disapplies any legal restrictions that might otherwise apply to such a disclosure. Arrangements concerning compliance with such requests will be set out in non-legislative agreements between DCA and the respective departments.

Clause 82: Information order: required information not held etc

332. This clause enables a recipient of an information order (the "information discloser") to avoid liability for failure to comply with the order where the information discloser:

- does not hold the relevant information and it is not being held on his behalf;

- is unable to ascertain whether he holds the information (by way of example, where the information supplied by the court to the recipient of the information order is not sufficient to enable the recipient of the order to identify information that relates to the debtor in its records); or
- would incur an unreasonable effort or expense if he complied with the order.

333. The information discloser is required to comply with the information order, but may produce a certificate to the relevant court in accordance with subsection (3).

Clause 83: Using the information about the debtor

334. This clause specifies how information obtained via an information order or department information request can be used by the court. Such information can be used by the court:

- to enable it to make a further department information request or information order in relation to the debtor, (by way of example to further disclose information to enable a recipient of an order or request to better identify the debtor from records, such as date of birth information);
- to provide the creditor with information about what court based action he could take to seek to recover his judgment debt;
- to enable a court to take any such action that is initiated by the creditor, by way of example, to enable the court to make and enforce an AEO in relation to the debtor, (and to enable information to be disclosed between courts for the purpose of enforcement).

335. Regulations will further restrict how information obtained via an information order or request can be further used or disclosed by the court to ensure protection of the debtor's rights and to prevent use of information that is not proportionate.

Clause 84: Offence of unauthorised use or disclosure

336. This clause creates an offence where information obtained pursuant to an information order or request is used or disclosed otherwise than in accordance with the purposes intended.

Clause 85: Regulations

337. This clause creates a power for the Lord Chancellor to make regulations relating to sections 77 to 84, with some requirement to seek the agreement of HMRC in relation to any regulations governing the use and disclosure of information disclosed by that Department.

Clause 86: Interpretation

338. This clause defines terms used in sections 77 to 85.

Clause 87: Application and transitional provision

339. This clause establishes the application of the provisions and sets out the transitional provision.

PART 5: DEBT MANAGEMENT AND RELIEF

SUMMARY

340. Part 5 of the Bill makes changes to two statutory debt-management schemes, Administration Orders (Chapter 1) and Enforcement Restriction Orders (Chapter 2).

341. Part 5, Chapter 3, also amends the Insolvency Act 1986 to allow for the introduction of a new form of personal insolvency procedure that entails the making, administratively by the official receiver, of a debt relief order (DRO) on the application of an individual debtor who meets specified criteria as regards his assets, income and liabilities. The effect of the order is to stay enforcement of the debts by creditors, the debts being discharged after a period of one year. While the order is in force, the debtor will be subject to similar restrictions and obligations as if he had been adjudged bankrupt.

342. Chapter 4 of this Part empowers the Lord Chancellor (or his delegate) to approve Debt Management Schemes ("DMSs") operated by a body of persons. Approved scheme operators will be able to arrange Debt Repayment Plans ("DRPs") for individual debtors. Subject to prescribed restrictions, schemes will be able to compel creditor participation and plans will be able to compose (that is, reduce or partially write off) debts. These schemes could be operated by a variety of service providers.

Existing providers of debt management advice and assistance do not have the power of compulsion and composition. In future, they will be able to choose whether to offer an 'approved scheme' as part of their service.

343. It is intended that DROs and DMPs will sit alongside and complement the existing statutory schemes, such as Administration Orders ("AOs") and Individual Voluntary Arrangements ("IVAs"). The intention is to provide a range of options to assist the rehabilitation of over-indebted people. The most appropriate scheme to use will depend on the particular circumstances.

BACKGROUND

Administration Orders and Enforcement Restriction Orders

344. Administration Orders ("AOs") are a court-administered debt management scheme for those with multiple debts totalling no more than £5,000, one of which must be a judgment debt. The provisions governing AOs are set out in sections 112-117 of the County Courts Act 1984.

345. The 1985 Civil Justice Review recommended a number of changes to the AO scheme and these were taken forward in section 13 of the Courts and Legal Services Act 1990 ("the CLSA 1990"). The changes included removal of the need for a judgment debt, an increase in the debt limit and the introduction of a strict three-year limit to the order. Section 13 also included, for the first time, an explicit power for the court to grant an order restricting enforcement where it considered that this would be more appropriate than an AO. Such an order, once made, would provide temporary relief from enforcement for those unable to meet their commitments for a period to be defined by each order. However, as concerns were raised about the viability of section 13, it has never been brought into force.

346. So, in July 2004 the Government consulted on a range of targeted options to offer better assistance to people with multiple debts (the Choice of Paths Consultation), including reform to the existing AO scheme and a revised and targeted Enforcement Restriction Order ("ERO") scheme. The Government's response paper on the consultation, published in March 2005, committed to a number of changes to the AO scheme including an increase in the debt ceiling and a time limit to orders. The paper also committed to a revised and more workable version of the ERO to address the

deficiencies identified in section 13 of the CLSA 1990. Part 5 of the Bill takes forward these changes.

Debt Relief Orders

347. At present if an individual encounters difficulty paying his debts, the remedies that are available either require him to have assets or funds available to distribute to his creditors on a regular basis (for example IVA, county court AO or a non statutory debt management plan) or, as with bankruptcy, there is a fee to access the remedy. This means that the procedures that are currently available are inaccessible to some people, since they do not have the financial means to use them.

348. Such people often have relatively low levels of liabilities, no assets over and above a nominal amount and no surplus income with which to come to an arrangement with their creditors.

349. The DRO has been devised following the Choice of Paths consultation, which determined that there was a perceived need for a remedy for people who are financially excluded from the current debt solution procedures, and a further consultation by The Insolvency Service in 2005 ("Relief for the Indebted – an Alternative to Bankruptcy?") on the detail of how it might operate. It is a procedure that will enable some individuals, who meet specified criteria as regards liabilities, assets and income, to seek relief from certain debts.

350. The DRO will be made administratively by official receivers (who will operate the scheme) and will not routinely require any judicial or other court intervention. The effect of the order will be to prevent creditors from enforcing their debts and the debtor will be discharged from the debts after a period of one year. Creditors will be notified of the making of an order and will have a right to make objections on certain grounds if they believe the order should not have been made.

351. The debtor will need to pay an up front entry fee to cover the administration costs but this will be significantly less than the deposit required for bankruptcy proceedings to be initiated. In order to keep costs to as low a level as possible, approved intermediaries from the debt advice sector will help an applicant decide if the DRO procedure is right for him before he applies to the official receiver, and assist the debtor in making his application. Again to maintain a low level of administrative costs (and therefore entry fee) the facility to apply for a DRO will be available only online.

352. To be eligible for an order the debtor will need to meet criteria as regards the level of liabilities, the level of assets and the level of surplus income, and these levels will be set in secondary legislation to enable them to be updated when necessary.

353. While the order is in force the debtor will be subject to the same restrictions and obligations as in bankruptcy, and will be subject to a similar regime of restrictions orders or prosecution if his conduct in relation to the insolvency is found to be culpable. There will be a right of appeal to the court for both the debtor and creditors who are dissatisfied with the way the official receiver has dealt with the case.

354. There is a facility to account for windfalls and increases in income during the period when the order is in force.

Debt Management Schemes

355. Many organisations currently offer advice and assistance to debtors. This can include negotiation with creditors to agree an acceptable schedule of repayments and drawing up plans to help debtors manage their finances and make those repayments. It is estimated that over 25,000 such debt repayment plans were arranged in 2004 and there are currently around 70,000 active plans.

356. Such schemes depend on the voluntary participation of the debtor and creditors, and operate without any form of regulation. There is currently no power to compel creditors to adhere to the terms of a debt repayment plan (that is to accept the planned repayments without taking enforcement action). Therefore, a single uncooperative creditor can effectively block the creation of a repayment plan that would benefit the debtor and all the other creditors in the long run. Nor is there any power to compose debts that cannot be repaid within a reasonable period as an incentive for the debtor to maintain the required repayments.

357. Measures in Part 5 of the Bill enable scheme operators to exercise powers to compel creditor participation by preventing enforcement action, and to write off a proportion of the debts where a debtor complies with a DRP but simply cannot repay the full amount in a reasonable timescale. The measures give the Lord Chancellor power to prescribe in regulations the circumstances in and the extent to which these powers may be exercised. For example, regulations might provide that only unsecured creditors may be compelled and might prescribe the maximum proportion of the total

debts that could be written off. Within these limits, individual schemes could make greater or lesser use of such powers.

358. The Bill also provides creditors with a right of appeal to a county court against the making and terms of a debt repayment plan.

359. Before making regulations to bring the DMS provisions into effect, the Government intends to undertake further research into existing statutory and non-statutory schemes for assisting the over-indebted and those in multiple debt situations (including the working of the reformed AO scheme). This would inform detailed proposals that would then be subject to a full public consultation exercise and regulatory impact assessment to confirm their benefits and cost effectiveness.

360. The Choice of Paths Consultation sought views on whether it would be desirable in principle for a scheme similar to the court-based AO scheme to be operated in the private and voluntary sectors. A majority of respondents thought that a non-court scheme could offer advantages over the AO scheme. The paper did not discuss the details of such a scheme. The provisions in this Chapter are intended to create powers to give effect to such schemes through regulations, subject to further consultation on the details.

COMMENTARY ON CLAUSES: PART 5

Clause 88: Administration orders

361. Subsection (1) of this clause replaces the existing Part 6 of the County Court Act 1984 ("CCA 1984").

Section 112A – Administration orders

362. Section 112A provides that an administration order ("AO") is an order to which certain debts are scheduled, which imposes a requirement on the debtor and which imposes requirements on certain creditors. Debts are to be scheduled to the order in accordance with the provisions in sections 112C, 112D, 112Y(3) and 112Y(4). The requirement which must be imposed on the debtor is set out in section 112E and this is a requirement to make repayments towards scheduled debts whilst the AO is in force. The requirements which must be imposed on certain creditors are set out in sections

112F to 112I and these are all requirements which restrict the ability of those creditors to take enforcement action whilst an AO is in force.

Section 112B – Power to make order

363. This section sets out the conditions that must be met before the court can make an AO in relation to a debtor. This is a new test for making AOs which introduces the concept of "qualifying debts" together with other new requirements that must be met before an AO can be obtained. Section 112AB provides that a "qualifying debt" is any debt, except for a debt that is secured against an asset, such as a mortgage, or a debt that falls within a description specified in regulations. The conditions which must be met before an AO can be made are:

- the debtor must have at least two qualifying debts, and he must be unable to pay at least one of them;
- the debtor must not have any business debts;
- the debtor must not be excluded by the AO, voluntary arrangement or bankruptcy exclusions as defined by section 112AH;
- the debtor's total qualifying debts must be less than the amount prescribed in regulations ("the prescribed maximum");
- the debtor's surplus income must be more than the amount prescribed in regulations ("the prescribed minimum").

364. Section 112AE sets out how "surplus income" is to be calculated. It is to be calculated in accordance with regulations. Before making an AO, the court must have regard to any objections. The Civil Procedure Rules 1998 will govern the procedure for making the order.

Section 112C – Scheduling declared debts

365. Debtors will be required to declare all qualifying debts, including those which are not due at the time of applying for an order, to ensure that the court has a true picture of their indebtedness. This section provides that when making an AO, the court must schedule to the order all declared debts already due. Declared debts that become due after an AO is made must be scheduled to the order following an application by the debtor or creditor and after considering any objections made to the debt being scheduled (in accordance with section 112AG(5)).

Section 112D – Scheduling new debts

366. This section gives the court the power to schedule to an existing AO qualifying debts arising after an order is made and becoming due during the life of the order, on the application of the debtor or a qualifying creditor. A "qualifying creditor" is a creditor under a qualifying debt (see section 112AA(1)). However, this power is dependent on the total debt figure (including the new debt) not exceeding the prescribed maximum.

Section 112E – Repayment Requirement

367. This section imposes a requirement on the debtor to make repayments towards scheduled debts during the life of an AO. Debts may either be repaid in full or to the extent decided by the court and different debts may be repaid to different extents.

368. Subsection (5) provides the court with the option to order that repayments are not to be made on debts arising after an order is made and scheduled to the order under section 112D, until all of the repayments required in respect of previously declared debts have been made. This provision is designed to discourage irresponsible lending and borrowing.

369. The section also provides that repayments must be made by instalments and the amount of instalments must be determined in accordance with regulations. The regulations must make provision for instalments to be determined by reference to the debtor's surplus income. The section also allows the court to order repayments to be made by other means, such as by lump sums, in addition to the regular instalments, for example, where the debtor disposes of property.

Section 112F – Presentation of bankruptcy petition

370. Sections 112F to 112I set out the requirements that must be imposed by an AO on certain creditors for as long as the AO is in force.

371. The first requirement, in section 112F, provides that any qualifying creditor of the debtor is to be prohibited from presenting a bankruptcy petition against that debtor, unless he has the court's permission. This is similar to the current provision under section 112(4) of the CCA 1984. However, unlike section 112(4), this new section does not include a prohibition on a creditor joining in a bankruptcy petition that has

been presented by another creditor. So, if a qualifying creditor obtains the court's permission to present a bankruptcy petition (or if a non-qualifying creditor presents a petition without the court's permission), then all of the debtor's creditors will be able to join in those bankruptcy proceedings. If this leads to the making of a bankruptcy order against the debtor, then the court which made the AO will be required to revoke that AO (see section 112U(4)(b)).

Section 112G – Remedies other than bankruptcy

372. This section sets out the second requirement that must be imposed by an AO on certain creditors. This is similar to the current provision under section 114 of the CCA 1984. It prohibits qualifying creditors from seeking to recover their debt by pursuing any other remedy (that is, other than bankruptcy) without the court's permission. However, regulations may be made under this section to exempt certain creditors from this requirement in appropriate circumstances. For example, exemptions will apply in respect of debts that are a criminal fine, a student loan or that are due under an order made in family proceedings or maintenance assessments made under the Child Support Act 1991. In relation to these particular types of debt, it is appropriate that the creditor should be free to recover the debt from the debtor, even though an AO is in force. These exceptions will be in line with those categories of debt which are non provable in bankruptcy proceedings and the new scheme of AOs and DROs will have similar exemptions. Also, regulations under DRPs may make provision for such exemptions. This ensures a consistent approach, which is essential to facilitate movement between these schemes for those debtors who need it.

Section 112H – Charging of interest etc

373. This section sets out the third requirement that must be imposed by an AO on certain creditors. Any creditor under a scheduled debt is prevented from charging any interest, fee or charge in respect of the scheduled debt during the life of an order.

Section 112I – Stopping supplies of gas or electricity

374. This section sets out the fourth requirement that must be imposed by an AO on certain creditors – in this case, creditors who are domestic utility suppliers. This largely replicates what would have been section 112A of the CCA 1984, had section 13(5) of the CLSA 1990 been commenced. However, these provisions are limited to imposing

restrictions on electricity and gas suppliers because the Water Industry Act 1991 already restricts the powers of water suppliers in relation to domestic supply of water.

Section 112J – Application for an order

375. Unlike the current provisions, which allow the court to make an order on its own initiative, this new section provides that an AO can only be made on the application of the debtor. It also removes the current need for the debtor to have at least one court judgment in respect of any of his debts. This will ensure that a debtor who needs the protection of an AO is able to obtain an AO without first having to wait for one of his creditors to take him to court.

Section 112K – Duration

376. This section differs from the current legislation by setting a maximum overall limit of 5 years on the duration of an AO. At present, AOs are not time limited. Section 112(9) of the CCA 1984, which was to be inserted into that Act by section 13(4) of the CLSA 1990 had it been commenced, limited AOs to a maximum period of 3 years. An order will cease to have effect 5 years after the date on which it was made, unless the court has specified an earlier date in the order. If the court specifies an earlier date when it makes the AO, then it may subsequently extend the length of that order under section 112S (variation of duration), provided that the overall length remains within the 5 year time limit from the making of the order. The court may also revoke an AO before it is due to expire, under section 112U or section 112V (duty and power to revoke order), and in those cases the order will cease to have effect in accordance with the revocation.

377. The intention is to make the AO scheme more effective by providing certainty about the length of the order, as well as an opportunity for a debtor's rehabilitation (because of the fixed term), a reasonable return to creditors and an incentive to maintain the repayments.

Section 112L – Effect on other debt management arrangements

378. This new section defines the relationship between an AO and the other debt management arrangements set out in subsection (6), which are AOs, DROs and DRPs. It provides that when an AO is made, any other debt management arrangement which had effect in relation to the same debtor immediately before it was made will cease to

have effect automatically when the AO is made. Provision is also made for the court to notify the provider of the other arrangements as soon as practicable, or as soon as it becomes aware of their existence, of the making of the AO. Similar provisions are incorporated into the revised ERO scheme and the new DRO scheme. Also, regulations under DRPs may make similar provision. This will ensure that no more than one debt management arrangement has effect in respect of the same debtor at the same time.

Section 112M – Duty to provide information

379. This new section applies as long as an AO is in force and requires a debtor, who is the subject of an AO, to supply information about his earnings and income (including, for example, any cash that he might win or receive as a gift) and his assets and expenditure at intervals to be specified in regulations. The information to be provided must include details of any anticipated changes that are likely to occur before the next statement is due, for example if the debtor knows that he is due to receive a bonus in his next pay. Additionally, debtors will be required to notify the court within a period, again to be specified in regulations (probably 7 – 14 days), before he disposes of any property (including cash) that is above a set value, to be specified in regulations.

380. This new provision is intended to facilitate the court's role in actively managing an AO, for example by exercising its powers to vary or revoke the order where appropriate.

Section 112N – Offence if information not provided

381. This section provides that any failure to provide information, as required under section 112M, is an offence which is punishable by a county court judge who may impose a fine of not more than £250 or imprisonment for not more than 14 days. This offence is not a criminal offence; instead it is treated as if it were a contempt of court. The penalty is equivalent to that which applies to a debtor who fails to provide the information required by section 15 of the Attachment of Earnings Act 1971 (see section 23 of that Act).

Section 112O – Existing county court proceedings to be stayed

382. This section provides that any county court proceedings that were pending against the debtor when the AO was made, must be stayed if the following conditions apply:

- the proceedings relate to one of the debtor's qualifying debts and they are not bankruptcy proceedings;
- following the making of the AO, the creditor under that debt is unable to enforce it because of the prohibition referred to in section 112G (remedies other than bankruptcy); and
- the county court, in the proceedings which are to be stayed, has notice of the AO.

383. Where proceedings are stayed under this section, the county court has discretion to allow the creditor any costs incurred in the stayed proceedings. Those costs may be added to the qualifying debt or, if the debt is scheduled to the AO, to the amount scheduled in respect of the debt but only if the court is not under a duty to revoke the order because the total qualifying debts, including the costs, exceeds the prescribed maximum (see section 112U(6)(b)).

Section 112P – Appropriation of money paid

384. This section partly replicates the current provision in section 117 of the CCA 1984.

Section 112Q – Discharge from debts

385. This section places a duty on the court to discharge the debtor from a scheduled debt and to de-schedule the debt where the debt is repaid to the extent provided in the order, even if the debt is not repaid to its full extent. Once all of the scheduled debts have been repaid to the extent required by the order, then the court must revoke that order.

Section 112R – Variation

386. This section provides that the court may vary an AO on its own initiative or on the application of either the debtor or a qualifying creditor. This provision allows the court to take a more pro-active role in the management of the order by being able to react to information received from the debtor under section 112M.

Section 112S – Variation of duration

387. This section makes provision to allow the court to vary the duration of an AO. So, for example, an AO that was due to come to an end after 5 years from the day it was made can be shortened so that instead it comes to an end after 4 years from the

day it was made. Similarly, an AO that was due to come to an end after 3 years, can be extended so that it continues to have effect for a further 2 years. But the overall duration of an AO (including any extensions under this section) must not exceed a period of 5 years from the day it was made.

Section 112T – De-scheduling debts

388. This new section enables the court to use its power of variation under section 112R to vary an administration order by de-scheduling the debt, if it appears to the court that it is just and equitable to do so. This will normally be when debts have been incorrectly scheduled to an order.

Section 112U – Duty to revoke order

389. This section makes provision for the revocation of an order on specified grounds. It places a duty on the court to revoke an AO if it becomes apparent that at the time the order was made, or subsequently, the entry criteria in section 112B were not or are no longer met. That is where the debtor:

- did not have two or more qualifying debts/does not have any qualifying debts;
- had/has a business debt and in either case he is still a debtor under that debt;
- was excluded under the AO, voluntary arrangement or insolvency exclusions (as defined in section 112AH), is now excluded under the voluntary arrangement exclusion or is now the subject of a bankruptcy order;
- was/is now able to pay all of his qualifying debts;
- had/has total qualifying debts exceeding the prescribed maximum; and
- had/has surplus income less than or the same as the prescribed minimum.

Section 112V – Power to revoke order

390. This section gives the court, on its own motion or on the application of either the debtor or a qualifying creditor, a general power to revoke an AO in circumstances where it does not have a duty to do so. This power may be used particularly where a debtor fails to make two payments (whether consecutive or not) required by the order under section 112E or fails to provide information required under section 112M.

Section 112W – Effect of Revocation

391. This section confirms that if an order is revoked under a duty or power in this Part, then it ceases to have effect in accordance with the terms of the revocation.

Section 112X – Notice when order made, varied, revoked etc

392. This section imposes a duty on the court to send notice to all creditors with scheduled debts if and when the following things happen:

- when an AO is made, varied or revoked;
- when a debt is scheduled to the order at any time after it is made;
- when the court itself is given notice that another debt management arrangement has been made (with the consequence that the AO has ceased to have effect automatically).

Section 112Y – Failure to take account of all qualifying debts

393. This section places a duty on the court to schedule an undeclared debt to an AO if the following conditions apply:

- an AO has been made but because of an undeclared debt, the total amount of the debtor's qualifying debts was not properly calculated;
- the undeclared debt is due, whether or not it became due before or after the AO was made; and
- the total debt is less than or the same as the prescribed maximum.

394. If the undeclared debt is not yet due, the court must schedule the debt to the order when it becomes due. Where the inclusion of the debt would result in the total debt exceeding the prescribed maximum, the court must instead revoke the order.

395. Under this section, the court must take account of any representations (including representations about why a debt should not be scheduled) in accordance with section 112AG(5)).

Section 112AA – Main definitions

396. This section explains the meaning of key expressions used in this Part. In particular, it confirms that the terms "administration order" and "debtor" have the meanings given to them in new sections 112A and 112B, respectively. It also defines "qualifying creditor" as a creditor under a qualifying debt and confirms that, subject to the normal rules of court, "proper county court" refers to the court that made the order.

Section 112AB – Expressions relating to debts

397. This section defines a "qualifying debt" as any debt that is not secured against an asset or specified in regulations. A "business debt" is defined as a debt incurred in the course of a business. This section confirms that references to debts include only those debts that have arisen and therefore contingent debts are not included.

Section 112AC – Inability to pay debts

398. This section specifies that a debtor is considered to be unable to repay a debt if, when the debt is due, he fails to pay it (if the debt is repayable by a single payment) or, he fails to make one or more payments (if the debt is repayable by a number of instalments) and is unable to pay the single payment or all of the missed payments.

Section 112AD – Calculating the debtor's qualifying debts

399. This section requires the court to calculate the total amount of a debtor's qualifying debts by taking into account all qualifying debts that have arisen before the calculation, including those which are not due to be paid at the time of the calculation (that is, where payment is deferred). This ensures that the court is aware of the true extent of a debtor's indebtedness. In addition, the section requires regulations to make further provision about how the total amount of a debtor's qualifying debts is to be calculated and enables regulations to make provision about how the amount of any particular qualifying debt is to be calculated.

Section 112AE – Calculating the debtor's surplus income

400. This section requires the debtor's surplus income to be calculated in accordance with regulations which must make provision about what is surplus income (this is likely

to be the difference between average income, over a specific period, and justifiable expenditure) and the period by reference to which the debtor's surplus income is to be calculated. The regulations may allow the court to take into account the debtor's assets, such as his savings, when calculating his surplus income.

Section 112AF – Debts becoming due

401. This section specifies when a debt, which is repayable by a single repayment or by a number of payments, becomes due. The debt becomes due when the time for making the single payment or the first of the payments is reached

Section 112AG – Scheduling and de-scheduling debts

402. This section explains when a debt is scheduled to and de-scheduled from an AO. If the amount of the debt and the name of the creditor under the debt is included in a schedule to the order, the debt is scheduled to the order. The debt is de-scheduled when this information is removed from the schedule. The court must not schedule or de-schedule a debt without having regard to any representations from any person about why the debt should not be scheduled or de-scheduled. However, where an undeclared debt is scheduled under section 112Y, the court need not have regard to any representations made by a debtor about the scheduling of that debt. Also, where a debt is de-scheduled because a debtor is discharged from his debt under section 112Q, the court need not have regard to any representations made by any person.

Section 112AH – The AO, voluntary arrangement and bankruptcy exclusions

403. This section defines the AO, voluntary arrangement and bankruptcy exclusions, which are relevant to the court's power to make an AO (see section 112B(4)). It specifies that a debtor is excluded under the:

- **AO Exclusion** if he currently has an AO, or he previously had an AO within the last 12 months. For this purpose, the 12-month period begins on the day that the previous AO ceased to have effect. But a debtor who has had an AO within the last 12 months is not excluded under this provision if the previous AO (a) ceased to have effect by virtue of another debt management arrangement listed in section 112K(7) coming into force, or (b) was revoked for the reason that the debtor no longer had any qualifying debts (see section 112U(1)(b));

- **Voluntary Arrangement Exclusion** if the debtor is the subject of an interim order under section 252 of the Insolvency Act 1986 (interim court order pending an individual voluntary arrangement) or where he is bound by an individual voluntary arrangement approved under Part 8 of that Act;

- **Bankruptcy Exclusion** if a petition under Part 9 of the Insolvency Act 1986 has been presented in respect of the debtor but has not yet been decided, or if the debtor is an undischarged bankrupt.

Section 112AI – Regulations under this Part

404. This section provides the Lord Chancellor with powers to make regulations under this Part.

405. Subsection (2) of this clause enacts Schedule 15.

Schedule 15: Administration orders: consequential amendments

406. This Schedule contains a number of amendments to numerous Acts which are consequential as result of the new provisions in Part 6 of the CCA 1984.

407. Subsection (3) of this clause specifies that the application of the new provisions do not apply where an AO was made or an application for an AO was made before the day on which the new provisions come into force.

Clause 89: Enforcement restriction orders

408. Subsection (1) of this clause inserts a new Part 6A into the CCA 1984.

Section 117A – Enforcement Restriction Orders

409. Section 117A provides that an enforcement restriction order ("ERO") is an order which imposes requirements on certain creditors and which may also impose a requirement on the debtor. The requirements which must be imposed on certain creditors are set out in sections 117C to 117E and these are all requirements which restrict the ability of those creditors to take enforcement action whilst an ERO is in force. The requirement which may be imposed on the debtor is set out in section 117F

and this is a requirement to make repayments towards certain debts whilst the ERO is in force

Section 117B – Power to make order

410. This section sets out the conditions that must be met before the court can make an enforcement restriction order in relation to a debtor. This is a new test for making EROs, which introduces the concept of "qualifying debts" together with other new requirements that must be met before an ERO can be obtained. Section 117T provides that a "qualifying debt" is any debt, except for a debt that is secured against an asset, such as a mortgage, or a debt that falls within a description specified in regulations. The conditions which must be met before an ERO can be made are:

- the debtor must have at least two qualifying debts, and he must be unable to pay at least one of them;
- the debtor must not have any business debts;
- the debtor must not be excluded by the ERO, voluntary arrangement or bankruptcy exclusions as defined by section 117W;
- the debtor must be suffering from a sudden and unforeseen deterioration in his financial circumstances from which there must be a realistic prospect of improvement in financial terms within 6 months from when the order is made.

411. The Civil Procedure Rules 1998 ("CPR") will govern the procedure for making the order. It is intended that the court should be able to make the order without first giving notice to the creditors. For that reason, section 117B(10) allows the CPR to disapply the requirement for the court to consider any objections before making an order. However, the court will be required to have regard to any objections that a creditor may have after the order has been made and may vary or revoke the order if appropriate, in the light of those objections.

Section 117C – Presentation of bankruptcy petition

412. Sections 117C to 117E set out the requirements that must be imposed by an ERO on certain creditors for as long as the ERO is in force. The first requirement, in section 117C, provides that any qualifying creditor of the debtor is to be prohibited from presenting a bankruptcy petition against that debtor, unless he has the court's permission. This is similar to the current provision under section 112(4) of the CCA 1984 which applies to administration orders ("AOs"). However, unlike section 112(4),

this new section does not include a prohibition on a creditor joining in a bankruptcy petition that has been presented by another creditor. So if a qualifying creditor obtains the court's permission to present a bankruptcy petition (or if a non-qualifying creditor presents a petition without the court's permission), then all of the debtor's creditors will be able to join in those bankruptcy proceedings. If this leads to the making of a bankruptcy order against the debtor, then the court which made the ERO will be required to revoke that ERO (see section 117O(4)(b)). A "qualifying creditor" is a creditor under a qualifying debt (see section 117T(1)).

Section 117D – Remedies other than bankruptcy

413. This section sets out the second requirement that must be imposed by an ERO on certain creditors. It re-enacts in part what would have been section 112A(2) of the CCA 1984, which was to be inserted by section 13(5) of the CLSA 1990 had it been commenced. This second requirement prohibits qualifying creditors from seeking to recover their debt by pursuing any other remedy (that is, other than bankruptcy) without the court's permission. However, in contrast to section 112(4) of the CCA 1984, regulations may be made under this section to exempt certain creditors from this requirement in appropriate circumstances. For example, exemptions will apply in respect of debts that are a criminal fine, a student loan or that are due under an order made in family proceedings or maintenance assessments made under the Child Support Act 1991. In relation to these particular types of debt, it is appropriate that the creditor should be free to recover the debt from the debtor, even though an ERO is in force. These exceptions will be in line with those categories of debt which are non provable in bankruptcy proceedings and the new scheme of AOs and DROs will have similar exemptions. Also, regulations under DRPs may make provision for such exemptions. This ensures a consistent approach, which is essential to facilitate movement between these schemes for those debtors who need it.

Section 117E – Stopping supplies of gas or electricity

414. This section sets out the third requirement that must be imposed by an ERO on certain creditors, in this case creditors who are domestic utility suppliers. Again this largely replicates what would have been section 112A of the County Court Act 1984, had section 13(5) of the CLSA 1990 been commenced. However, these provisions are limited to imposing restrictions on electricity and gas suppliers because the Water Industry Act 1991 already restricts the powers of water suppliers in relation to domestic supply of water.

Section 117F – Repayment requirement

415. This section sets out the requirement that may be imposed by an ERO on the debtor. This gives the court discretion to order the debtor to make payments towards one or more of his qualifying debts, whilst the ERO is in force, provided that the debtor has sufficient surplus income. Regulations will make provision about what is surplus income (which is likely to be the difference between average income and justifiable expenditure, in common with the AO provisions) and specifies that assets, such as the debtor's savings, may be taken into account when making this calculation. It also allows the court to vary the repayment requirement of its own initiative or on the application of the debtor or a qualifying creditor.

Section 117G – Application for an order

416. This section specifies that only a debtor can apply for an ERO and that a debtor can make an application regardless of whether any of his creditors has obtained a court judgment in respect of any of his debts. (Under the current provisions in the CCA 1984, a judgment debt is a precondition to the court making an AO or ERO). This will ensure that a debtor who needs the protection of an ERO is able to obtain an ERO without first having to wait for one of his creditors to take him to court.

Section 117H – Duration

417. This section provides for a maximum overall time limit of 12 months on the duration of an ERO. An order will cease to have effect 12 months after the date on which it was made, unless the court has specified an earlier date in the order. If the court specifies an earlier date when it makes the ERO, then it may subsequently extend the length of that order under section 117N (variation of duration), provided that the overall length remains within the 12 month time limit from the making of the order. The court may also revoke an ERO before it was due to expire, under section 117O or section 117P (duty and power to revoke order), and in those cases the order will cease to have effect in accordance with the revocation.

Section 117I – Effect on other debt management arrangements

418. This new section defines the relationship between an ERO and the other debt management arrangements set out in subsection (6), which are AOs, DROs and DRPs. It provides that, when an ERO is made, any other debt management arrangement

which had effect in relation to the same debtor immediately before it was made will cease to have effect automatically when the ERO is made. Provision is also made for the court to notify the provider of the other arrangements as soon as practicable, or as soon as it becomes aware of their existence, of the making of the ERO. Similar provisions are incorporated into the revised AO scheme and the new DRO scheme. Also, regulations under DRPs may make similar provision. This will ensure that no more than one debt management arrangement has effect in respect of the same debtor at the same time.

Section 117J – Duty to provide information

419. This new section applies as long as an ERO is in force and requires a debtor, who is the subject of an ERO, to supply information about his earnings and income (including, for example, any cash that he might win or receive as a gift) and his assets and expenditure at intervals to be specified in regulations. The information to be provided must include details of any anticipated changes that are likely to occur before the next statement is due, for example if the debtor knows that he is due to receive a bonus in his next pay. Additionally, debtors will be required to notify the court within a period, again to be specified in regulations (probably 7 – 14 days), before he disposes of any property (including cash) that is above a set value, to be specified in regulations.

420. This new provision is intended to facilitate the court's role in actively managing an ERO, for example by exercising its powers to vary or revoke the order where appropriate.

Section 117K Offence if information not provided

421. This section provides that any failure to provide information, as required under section 117J, is an offence which is punishable by a county court judge who may impose a fine of not more than £250 or imprisonment for not more than 14 days. This offence is not a criminal offence; instead it is treated as if it were a contempt of court. The penalty is equivalent to that which applies to a debtor who fails to provide the information required by section 15 of the Attachment of Earnings Act 1971 (see section 23 of that Act).

Section 117L – Existing county court proceedings to be stayed

422. This section provides that any county court proceedings, that were pending against the debtor when the ERO was made, must be stayed if the following conditions apply:

- the proceedings relate to one of the debtor's qualifying debts and they are not bankruptcy proceedings;
- following the making of the ERO, the creditor under that debt is unable to enforce it because of the prohibition referred to in section 117D (remedies other than bankruptcy); and
- the county court, in the proceedings which are to be stayed, has notice of the ERO.

423. Where proceedings are stayed under this section, the county court has discretion to allow the creditor any costs incurred in the stayed proceedings and those costs may be added to the qualifying debt.

Section 117M – Charges

424. This new provision prohibits qualifying creditors from making any charge, other than interest or charges relating to issues before an ERO came into existence, for the period while an ERO is or was in force. So the prohibition remains in place even after the ERO has ceased to have effect. This provision is designed to prevent creditors, who are prohibited from enforcing their debts whilst an ERO has effect, from penalising the debtor under the ERO by imposing additional penalty charges or interest for his late payment of the relevant debt. If the creditor tries to impose any such charge, in breach of this section, then that charge will be unenforceable.

Section 117N – Variation of duration

425. This section makes provision to allow the court, on its own initiative or on the application of the debtor or a qualifying creditor, to vary the duration of an ERO. So, for example, an ERO that was due to come to an end after 12 months can be shortened so that instead it comes to an end after 8 months from the day it was made. Similarly, an ERO that was due to come to an end after 6 months, can be extended so that it continues to have effect for a further 3 months. But the overall duration of an ERO (including any extensions under this section) must not exceed a period of 12 months from the day it was made.

Section 117O – Duty to revoke order

426. This section makes provision for the revocation of an order on specified grounds. It places a duty on the court to revoke an ERO if it becomes apparent that at the time that the order was made, or subsequently, the entry criteria in section 117B were not or are no longer met. That is where the debtor:

- did not have two or more qualifying debts/does not have any qualifying debts;
- had/has a business debt and in either case he is still a debtor under that debt;
- was excluded under the ERO, voluntary arrangement or insolvency exclusions (as defined in section 117W), is now excluded under the voluntary arrangement exclusion or is now the subject of a bankruptcy order;
- was/ is now able to pay all of his qualifying debts;
- was not/is no longer suffering from a sudden and unforeseen deterioration in his financial circumstances; and
- did not have/no longer has realistic prospects of improvement in his financial circumstances.

427. Additionally, the court must revoke an ERO if it becomes apparent that at the time the order was made it was not in fact fair and equitable to make the order or where it is not now fair and equitable for the order to continue to have effect.

Section 117P – Power to revoke order

428. This section gives the court, on its own motion or on the application of either the debtor or a qualifying creditor, a general power to revoke an ERO in circumstances where it does not have a duty to do so. This power may be used particularly where a debtor fails to comply with a repayment requirement that is (or was) included in the order under section 117F or fails to provide information required under section 117J.

Section 117Q – Effect of revocation

429. This section confirms that if an order is revoked under a duty or power in this Part, then it ceases to have effect in accordance with the terms of the revocation.

Section 117R – Notice of order

430. This section imposes a duty on the court to send notice to all qualifying creditors if and when the following things happen:

- when an ERO is made, varied or revoked;
- when the court itself is given notice that another debt management arrangement has been made (with the consequence that the ERO has ceased to have effect automatically).

Section 117T – Main definitions

431. This section explains the meaning of key expressions used in this Part. In particular, it confirms that the terms "enforcement restriction order" and "debtor" have the meanings given to them in new sections 117A and 117B, respectively. It also defines "qualifying creditor" as a creditor under a qualifying debt and confirms that, subject to the normal rules of court, "proper county court" refers to the court that made the order.

Section 117U – Expressions relating to debts

432. This section defines a "qualifying debt" as any debt that is not secured against an asset or specified in regulations. A "business debt" is defined as a debt incurred in the course of a business. This section confirms that references to debts include only those debts that have arisen and therefore contingent debts are not included.

Section 117V – Inability to pay debts

433. This section specifies that a debtor is considered to be unable to repay a debt if, when the debt is due, he fails to pay it (if the debt is repayable by a single payment) or, he fails to make one or more payments (if the debt is repayable by a number of instalments) and is unable to pay the single payment or all of the missed payments.

Section 117W – The ERO, voluntary arrangement and bankruptcy exclusions

434. This section defines the ERO, voluntary arrangement and bankruptcy exclusions, which are relevant to the court's power to make an ERO (see section 117B(4)). It specifies that a debtor is excluded under the:

- **ERO Exclusion** if he currently has an ERO, or he previously had an ERO within the last 12 months. For this purpose, the 12-month period begins on the day that the previous ERO ceased to have effect. But a debtor who has had an ERO within the last 12 months is not excluded under this provision if the previous ERO (a) ceased to have effect by virtue of another debt management arrangement listed in section 117H(7) coming into force, or (b) was revoked for the reason that the debtor no longer had any qualifying debts (see section 117O(1)(b));

- **Voluntary Arrangement Exclusion** if the debtor is the subject of an interim order under section 252 of the Insolvency Act 1986 (interim court order pending an individual voluntary arrangement) or where he is bound by an individual voluntary arrangement approved under Part 8 of that Act;

- **Bankruptcy Exclusion** if a petition under Part 9 of the Insolvency Act 1986 has been presented in respect of the debtor but has not yet been decided, or if the debtor is an undischarged bankrupt.

Section 117X – Power to make regulations

435. This section empowers the Lord Chancellor to make regulations under this Part.

Clause 90: Debt Relief Orders

436. Clause 90 gives effect to Schedules 16, 17 and 18 and makes provision for the addition of a new Part 7A of the Insolvency Act 1986 and additional Schedules (Schedule 4ZA on the conditions to be met for a DRO and Schedule 4ZB relating to debt relief restrictions orders) to that Act. These provisions relate to the operation of a new individual insolvency procedure, the debt relief order ("DRO").

Schedule 16 – Part 7A to the Insolvency Act 1986

437. Schedule 16 contains the text of new Part 7A to be inserted into the Insolvency Act 1986.

Section 251A: Debt Relief Orders

438. This clause provides that an individual who is unable to pay his debts can apply for a DRO. It specifies the type of debt – known as a qualifying debt- that will be covered by the order, and explains the meaning of "qualifying debt".

Section 251B: Making of application

439. Clause 251B states that the application must be made through an approved intermediary. The term "approved intermediary" is defined later. The clause sets out some of the detail about the individual's affairs that must be included in an application for a DRO, and makes provision for the individual insolvency rules made under section 412 to prescribe the form and manner in which the application should be made and the information that must be supplied in support of the application.

Section 251C: Duty of official receiver to consider and determine application

440. This clause describes the steps the official receiver should take when an application for a DRO has been made. It allows the official receiver to stay his consideration of the application until he receives answers to any queries raised by him with the debtor.

441. The clause sets out the circumstances in which the official receiver must refuse the application (if he is not satisfied that the debtor meets the criteria for a DRO) and also that he may refuse it if the application does not meet with the requirements imposed by 251B or if queries raised with the debtor have not been answered to the official receiver's satisfaction. If the official receiver refuses the application he must give reasons to the debtor. If he does not refuse the application then he must make the order.

Section 251D: Presumptions applicable to the determination of an application

442. The official receiver must apply certain presumptions when determining an application for a DRO. This clause requires him to presume that the debtor meets the requirements for a DRO if it appears to be the case from information supplied in the application and he has no reason to believe that the information supplied is inaccurate or that the debtor's circumstances have changed since the application date.

443. The official receiver must also presume that the debtor meets the conditions as to eligibility as set out in Schedule 4ZA providing he has no reason to believe that incomplete or inaccurate information has been supplied in the application or in support of it. The official receiver may also presume that the debts specified at the date of the application are qualifying debts unless he has reason to believe otherwise.

Section 251E: Making of debt relief orders

444. This clause makes provision for the form of the DRO and entry of its details on the individual insolvency register provided for by the Insolvency Act 1986. It also makes provision for the steps that the official receiver must take once the order has been made, including providing a copy of the order to the debtor, and allows for rules to prescribe other steps he must take in particular with regard to notifying creditors and informing them of the grounds on which they may object.

Section 251F: Moratorium from qualifying debts

445. Clause 251F sets out the effect of a DRO. It states that once the order is entered onto the register, a moratorium in respect of the debts specified in the order takes effect. During the moratorium creditors specified in the order are prohibited from taking proceedings to enforce the debt or present a bankruptcy petition in relation to that debt, except with leave of the court.

Section 251G: The moratorium period

446. This clause states how long the moratorium period is. The period is one year from the date of entry on the register unless the order is terminated early or the period is extended in accordance with the provisions of the section.

447. The clause also makes provision for the moratorium period to be extended by the official receiver or the court and the circumstances in which an extension is permitted.

Section 251H Discharge from qualifying debts

448. Clause 251H provides for the debtor to be discharged from his qualifying debts specified in the order at the end of the moratorium period, and the circumstances in which the debtor will not be discharged from the debts – in particular if the

moratorium period is terminated early. The debtor will not be discharged from any debts listed in the order that were incurred through fraud. The clause also specifies that discharge of the debtor from the debts does not release any other person from their liability for the debts.

Section 251I Providing assistance to official receiver etc

449. This clause sets out the duties imposed on the debtor with regard to assisting the official receiver in his duties. It requires the debtor to provide the official receiver with information about his affairs and also to notify the official receiver of changes in his circumstances during and before the moratorium period. He must also notify the official receiver if he becomes aware of any errors or omissions in his application.

Section 251J Objections and Investigations

450. Clause 251J makes provision for any person specified in the order as a creditor to object to the making of the order or his inclusion in the order or to details of the debt specified. It also gives details of how the objection must be made and requires the official receiver to consider the objection. It allows the official receiver to carry out an investigation if it seems appropriate and gives a power to the official receiver to require any person to give him information and assistance.

Section 251K Power of official receiver to revoke or amend a Debt Relief Order

451. This clause sets out the circumstances in which the official receiver may revoke the order and gives him a power to amend the order during the moratorium period to correct errors and omissions.

Section 251L Powers of court in relation to debt relief orders

452. This clause enables persons who are dissatisfied with the actions of the official receiver to apply to the court and for the court to give directions or make any order it thinks fit. It also enables the official receiver to make an application for directions or an order in relation to any matter arising in connection with the DRO or an application for a DRO. An application to the court may, subject to anything contained in the rules, be made at any time.

Section 251M: Inquiry into debtor's dealings and property

453. This clause enables the court, on the application of the official receiver, to require the debtor, the debtor's spouse, former spouse, civil partner or former civil partner or any person appearing to be able to give information or assistance to the court to appear before the court. There are sanctions for failure to appear without reasonable excuse – the court may issue a warrant for the person's arrest or order the seizure of books, papers and other items.

Section 251N: False representations and omissions

454. In order that the official receiver can determine whether a DRO should be made, the debtor must provide complete and accurate information about his affairs. Similarly, the debtor remains under an obligation to provide information to the Official Receiver once the DRO is made. This clause provides that a debtor who deliberately provides false information or omits pertinent information commits an offence.

Section 251O: Concealment or falsification of documents

455. This clause provides that a failure to produce books, papers or other documents to the official receiver is an offence. Similarly, preventing such records being produced, or their concealment, destruction or falsification will also be unlawful. The offence may be committed before the application for the DRO has been made, and during both the application process and the moratorium period, and it is irrelevant that the order may have been revoked subsequent to an offence being committed.

Section 251P: Fraudulent disposal of property

456. In order to meet the eligibility criteria for a DRO, the debtor must meet various conditions including a limit on the value of property he owns. A debtor who disposes of property, whether in an attempt to meet the eligibility criteria or to deny creditors access to that property, is clearly acting in an inappropriate manner. The clause ensures that a debtor, who fraudulently disposes of property, commits an offence. The offence may be committed before the application for the DRO has been made, and during both the application process and the moratorium period, and it is irrelevant that the order may have been revoked subsequent to an offence being committed.

Section 251Q: Fraudulent dealing with property obtained on credit

457. This clause makes it an offence, if the debtor disposes of property obtained on credit for which he has not paid, and similarly penalizes the knowing recipient of such property. No offence is committed if the disposal or acquisition was in the ordinary course of the debtor's business, but particular attention will be paid to the price paid for the property. The offence may be committed before the application for the DRO has been made, and during the application process.

Section 251R: Obtaining credit or engaging in business

458. This clause makes it an offence, if the debtor obtains credit (either alone or jointly with another person) to the extent of a prescribed amount, or trades in a name other than that which the DRO was made, without disclosing his status. His status is that there is a moratorium in force in relation to a DRO or that there is a debt relief restrictions order in force. The clause also includes an explanation of the expression "obtaining credit".

Section 251S: Offences: supplementary

459. This clause sets out who may institute proceedings for an offence under this Part and the penalties imposed on a person who commits such an offence. The clause also makes it clear it is not a defence that the conduct complained of was done outside England and Wales.

Section 251T: Approved intermediaries

460. This clause defines an approved intermediary and makes provision for rules to specify the types of activities that should be undertaken by an intermediary.

461. It also states that authorisation will be granted by a competent authority designated by the Secretary of State to grant authorisations, and allows for rules to make provision as to the procedure for designating persons to be competent authorities, the types of persons who may not be authorised to act as approved intermediaries, the procedure for dealing with applications to competent authorities for authorisation and the withdrawal of designation to act as a competent authority.

Section 251U Debt relief restrictions orders and undertakings

462. This clause gives effect to Schedule 4ZB, which makes provision about debt relief restrictions orders.

Section 251V Register of debt relief orders etc

463. Clause 251V requires the Secretary of State to establish and maintain a register of DROs, debt relief restrictions orders and debt relief restriction undertakings.

Section 251W Interpretation

464. This clause defines the meaning of various expressions used in this Part of the Insolvency Act 1986.

Schedule 17: Schedule 4ZA to the Insolvency Act 1986

465. Schedule 17 contains the text of new Schedule 4ZA to be inserted into the Insolvency Act 1986.

Part 1 Conditions which must be met

466. This part of the schedule sets out conditions that the debtor must meet in order to obtain a DRO. There are particular conditions with regard to personal presence at the time of the application, previous insolvency history, limits on overall indebtedness (the amount of which is prescribed in rules), limit on the debtor's surplus monthly income (also prescribed in rules) and a limit on the values of the debtor's property (also to be prescribed in rules).

Part 2 Other grounds for refusing an application

467. This part of the schedule sets out other conditions which the debtor must meet in order to obtain a DRO, specifically that he must not have entered into a transaction at an undervalue or given a preference to another person.

Schedule 18: Schedule 4ZB to the Insolvency Act 1986

468. This schedule contains the text of new Schedule 4ZB to be inserted into the Insolvency Act 1986. It sets out who may apply for a debt relief restrictions order or undertaking, possible grounds for obtaining one and gives details as to the timing of an application, the duration of the order or undertaking.

Clause 91: Debt management schemes

469. This clause defines "debt management scheme" as used in this Chapter.

470. Subsections (2) to (4) set out conditions that must be met by all schemes that are seeking approval. Schemes must apply only to individual debtors (that is, not companies or partnerships) who do not have any debts incurred in the course of business. Schemes may be open to all such individuals or to particular categories (as defined by the particular scheme). Schemes must also allow any debtor to whom the scheme applies to ask that a DRP be arranged. Where such a request is made, the scheme operator, or an authorised person under the scheme, must decide whether a DRP is appropriate for the debtor (in accordance with the terms of the scheme, some of which may be prescribed under clause 93), and if so, arrange the plan.

471. Subsection (5) specifies that the operator of an approved scheme must be a body of persons, (for example, a company or a partnership rather than an individual). Therefore it would be possible for a body such as Citizens Advice, or an existing repayment scheme provider such as the Consumer Credit Counselling Service or Payplan, or for a private company, to operate an approved scheme. But it would not be possible for an individual to do so.

Clause 92: Debt repayment plans

472. This clause defines "debt repayment plan" as used in this Chapter. Subsections (2)-(4) outline conditions that must be satisfied by a plan. The plan must specify some or all of the debtor's debts and provide for full or partial payment of those debts in accordance with the plan. The remainder of the debts would be written off, provided that the debtor had complied with the terms of the plan (see clause 96).

Clause 93: Approval by supervising authority

473. This clause enables a supervising authority (see clause 106) to approve DMSs. It also permits the Lord Chancellor to make regulations prescribing both the conditions that must be satisfied for a scheme to be approved and any considerations that the authority must or must not take into account when considering a request for approval. These conditions and considerations may, in particular, relate to any of the matters listed in Schedule 20. These include the constitution, governance, size and financial standing of the scheme operator, and the terms and operation of the DMS. Regulations could, for example, require schemes to include terms that prevented secured debts from being included in DMPs, or which specified minimum levels or periods of repayment.

Schedule 20 – Regulations under sections 93 and 95

474. This Schedule specifies provisions that may be made in regulations as to conditions or considerations about the approval of a scheme under clause 93, and as to the terms of approval of a debt management scheme under clause 95.

Clause 94: Applications for approval

475. This clause allows the Lord Chancellor to make regulations specifying an application procedure for the approval of DMSs, and provides that such regulations may enable a fee to be charged for an approval application.

Clause 95: Terms of approval

476. This clause provides that an approval will be subject to terms that may be specified in regulations or in the terms of the approval itself. Such terms might include the duration of the approval, (which could be given for a defined period, for example, for 5 years). Different types of schemes might be approved for different periods. On the expiry of an approval, a fresh approval could be sought. Such regulations might also make provision as to termination of an approval other than by expiry, (for example, termination of an approval if terms of the approval are breached). Other terms to be specified in regulations could include particular requirements that may be imposed on the scheme operator covering such matters as the continued operation of the scheme, and, for example, the provision of reports relating to the operation of a scheme.

Clause 96: Discharge from specified debts

477. This clause specifies that a debtor is discharged from the debts specified in the plan only when all of the payments required under the plan have been made. This allows debts to be partially written off, providing the order has been complied with and all the necessary repayments made.

Clause 97: Other effects

478. This clause enables regulations to be made about the effect of a DRP (or a request for a plan to be arranged). Regulations may make provision about:

- obligations to repay debts in accordance with agreements made before the order came into force (that is, cancelling or suspending the obligation to pay debts other than in accordance with the DRP);
- obligations to pay interest or fees in respect of debts;
- restrictions on creditors rights to present bankruptcy petitions, pursue remedies through the courts or take other enforcement action;
- the stay of pending court proceedings:
- the variation or removal at the end of the plan of a creditor's right to charge interest, fees or charges in respect of the period when the plan was in operation;
- the effect of a DRP on other debt management arrangements.

479. Removal or variation of rights and/or obligations as above might be conditional, (for example, conditional on compliance with a DRP).

Clause 98: Registration of plans

480. This permits regulations to provide for the registration of DRPs in the register of judgments, orders and fines, and enables section 98 of the Courts Act 2003 to be amended by such regulations for this purpose. Registration would provide a mechanism by which potential lenders could check whether a person was currently subject to a DRP.

Clause 99: Right of appeal

481. This clause allows a creditor to appeal to a county court against the fact that a plan has been arranged, that their debt has been included in the plan or the terms of the plan.

Clause 100: Dealing with appeals

482. This clause applies if an appeal is made to a county court under clause 99. It provides that the court may order the scheme operator to:

- reconsider the decision to arrange a plan;
- reconsider the terms of the plan;
- modify the plan; or
- revoke the plan.

483. Additionally, this clause allows the court to make interim provisions in respect of the period before the appeal is determined.

Clause 101: Fees under approved scheme

484. This clause allows regulations to make provision as to the fees that an operator may charge, and who may be charged them, in connection with the operation of a DMS. Subsection (3) enables such regulations to either specify precise fees that a scheme operator can charge, or to specify requirements, such as limits, with which the scheme operator must comply when determining fee levels. Subsection (4) provides that regulations made under this clause must be used to ensure that only reasonable fees are charged, and subsection (5) goes onto specify that the overall income received from these fees must not exceed the cost to the operator of running the scheme.

Clause 102: Procedure for termination

485. This clause allows regulations to specify a procedure for terminating the approval of a scheme. This procedure may require the supervising authority to give notice and reasons, conditions that must be met and a period that must elapse before the termination takes effect.

Clause 103: Terminating an approval

486. This clause provides that a scheme may only be terminated in accordance with the following:

- any terms which the approval is subject to under clause 95;
- any provisions made in regulations under clause 102; or
- any other provisions made under this Chapter.

Clause 104: Alternatives to termination

487. This clause allows regulations to provide for alternatives to termination of an approval. Such regulations may provide for the transfer of the operation of a scheme to another body, (to include transfer of the scheme from the scheme operator to the supervising authority itself). Such a transfer might be appropriate in order to protect debtors and creditors where, for example, the operator of the scheme no longer meets the terms of approval, but the scheme itself does comply with any relevant terms.

Clause 105: Effects of end of approval

488. Where the approval of a scheme comes to an end, (for whatever reason), this clause enables regulations to specify what effect this will have on existing DRPs under that scheme. The clause provides an important safeguard for debtors by allowing such regulations to specify that plans can continue to operate, where appropriate, as though the scheme is still approved or as though the plan had been made under a different approved scheme.

Clause 106: The supervising authority

489. This clause defines the "supervising authority", (the person who approves DMSs), and specifies that the supervising authority can be either the Lord Chancellor or a person authorised by the Lord Chancellor. This clause therefore enables the Lord Chancellor to delegate his approval powers (for example, such powers might be delegated to a judicial or existing national advice body).

Clause 107: Financial support

490. Although the supervising authority will be able to charge application fees (see clause 94), it is possible that such fees may not be sufficient to meet the initial start up and operational costs that will be incurred in connection with these proposals. This clause therefore enables the Lord Chancellor to make payments to the supervising authority and such payments can be made out of money provided by Parliament.

Clause 108: Regulations

491. This clause empowers the Lord Chancellor to make regulations under this Chapter. Regulations will be subject to the affirmative resolution parliamentary procedure on the first occasion they are made under any section (or if regulations under clause 98 amend primary legislation). Otherwise they will be subject to the negative resolution parliamentary procedure.

PART 6: MISCELLANEOUS

SUMMARY

492. Part 6 enables High Court enforcement officers to execute writs of possession issued to enforce compulsory purchase orders, and removes the obligation for enforcement of such writs from High Sheriffs. This Part also amends subsection 31(5) of the SCA 1981, reproducing and extending the effect of the existing judicial review provision. In particular, it provides that where the decision maker in question is a court or tribunal and the decision is quashed on the ground that there has been an error in law, the High Court will be able to substitute its own decision where, without that error, it is satisfied that there would have been only one decision which the court or tribunal could have reached.

BACKGROUND

Compulsory purchase

493. Currently, there is an anomaly as regards the execution of High Court writs in that High Court enforcement officers and High Sheriffs are able to execute High Court writs of execution, but only High Sheriffs are able to enforce writs of possession issued to enforce compulsory purchase orders. The proposed changes will align the

enforcement of compulsory purchase orders with the regime for enforcing High Court writs of execution contained in section 99 of and Schedule 7 to the Courts Act 2003.

Judicial review

494. Section 31(5) of the SCA 1981 currently provides that where the High Court quashes a decision, it can return the matter to the relevant body with a direction that it reach a decision in accordance with the findings of the High Court. In its 1994 Report, Administrative Law: Judicial Review and Statutory Appeals,[3] the Law Commission confirmed that there was significant support for the High Court to alternatively have the power to substitute its own decision for that of an inferior court or tribunal provided that it was restricted to situations where the decision to remit was a mere formality.

495. This recommendation was partly implemented in October 2000 as Rule 54.19(3) of the CPR. However, as this provision was introduced by way of rules only, its scope is limited to those situations where statute does not give the power to take decisions in a particular area to a specific person or body. Therefore, it is unclear whether it would be available in respect of all inferior courts or tribunals. In addition, it is not defined as proposed by the Law Commission in that it is not currently limited to either: decisions of inferior courts and tribunals only; or, situations where the court is satisfied that there was only one decision that could be arrived at and the decision arose out of an error of law. As a result, the scope of the current power is unclear and anecdotal evidence suggests that the power has not, in fact, been used since its introduction.

496. The Law Commission's recommendation was fully endorsed in Sir Jeffrey Bowman's Review of the Crown Office List, which was published in March 2000. The government subsequently consulted on the Law Commission's proposal during summer 2001. A response paper in October 2003, summarising the responses received, confirmed that the introduction of a primary power for the High Court to substitute its own decision as proposed by the Law Commission was both necessary and welcome.

3 Report No. 226

COMMENTARY ON CLAUSES: PART 6

Clause 110: Enforcement by enforcement officers

497. This clause amends the Land Clauses Consolidation Act 1845 and the Compulsory Purchase Act 1965 to enable writs of possession issued to enforce compulsory purchase orders to be executed by High Court enforcement officers.

498. This change aligns the enforcement of compulsory purchase orders with the regime for enforcing High Court writs of execution contained in section 99 of and Schedule 7 to the Courts Act 2003. We are not removing the right of a sheriff to enforce a writ of possession issued to enforce a compulsory purchase order, should one be directed to him and should he wish to enforce it. The clause removes the obligation, with the attendant legal responsibilities and liabilities, to enforce such writs of possession (High Sheriffs being unpaid volunteers who are appointed annually).

Clause 111: Supplementary and Schedule 21: Compulsory purchase: consequential amendments

499. Clause 111 amends Schedule 7 to the Courts Act 2003 to enable the arrangements that are currently in place for enforcement officers executing High Court writs of execution, (identifying enforcement districts, providing for administrative arrangements for enforcement of such writs and extending to enforcement officers powers and obligations that sheriffs have under common law), to be extended to High Court enforcement officers executing writs of possession issued to enforce compulsory purchase orders.

500. Schedule 21 makes consequential amendments in connection with the above.

Clause 112: Judicial review: power to substitute decisions

501. This clause replaces the existing section 31(5) of the SCA 1981 and extends the power of the High Court in respect of quashing orders. The High Court will still have the power to return a matter to a decision maker with a direction that it reach a decision in accordance with its findings. However, where the decision maker is a court or tribunal and the decision is quashed on the ground that there has been an error of law, the court will, alternatively, be able to substitute its own decision for that decision

if it is satisfied that without the error there would have been only one decision that the court or tribunal could have reached.

502. Unless the High Court directs otherwise, a substitute decision will have effect as if it were a decision of the relevant court or tribunal.

PART 7: GENERAL

SUMMARY

503. Part 7 provides for the provisions of the Bill to extend only to England and Wales, subject to specified exceptions. It provides for the provision of the Bill to come into force in accordance with orders made by the Lord Chancellor, and confers power on the Lord Chancellor to make transitional provision by order.

COMMENTARY ON CLAUSES: PART 7

Clause 113 and Schedule 22: Repeals and protected functions of the Lord Chancellor

504. Clause 113(1) introduces Schedule 22. Schedule 22 lists repeals arising from, among other things, the new statutory framework for tribunals and the new, unified law on enforcement. Clause 113(2) makes all the Lord Chancellor's functions under Part 1 protected functions for the purposes of section 19(5) of the CRA 2005, so that they cannot be transferred to another Minister without primary legislation.

Clause 114: Extent
Clause 115: Commencement and transitional provision
Clause 116: Short title

505. By virtue of clause 114, Parts 1, 2 and 7 of the Bill extend to England and Wales, Scotland and Northern Ireland and Parts 3 to 6 extend only to England and Wales. This is subject to subsections (4) and (5). Clause 115 provides for the Lord Chancellor to specify commencement dates for provisions in the Bill by order.

EFFECTS OF THE BILL ON PUBLIC EXPENDITURE

506. The main impact of implementation of this legislation will be felt across the DCA.

Tribunals

507. The tribunal provisions in the Bill create the framework for future improvements in service and delivery. It is estimated that it will cost around £50,000 to implement the new arrangements, with additional annual running costs of approximately £160,000. (These costs stem principally from support for the Senior President of Tribunals and the new Tribunal Procedure Committee.)

Judicial Appointments

508. The changes to judicial eligibility requirements are expected to result in additional annual costs of up to £250,000. These costs will stem from the JAC having to process an increased number of applications for judicial posts and the time it will take JAC staff to consider whether an applicant has obtained the necessary legal experience post-qualification.

Enforcement by Taking Control of Goods

509. The new, unified law on enforcement is expected to result in one-off implementation costs of around £307,000. These costs will be incurred through training and publicity for the new regime.

Enforcement of Judgments and Orders

510. The main costs flowing from Part 4 will arise from a new IT system to implement the data-sharing powers. The system is expected to cost around £1.5M. Annual running costs will be met through the fees creditors will be charged to use the service.

511. Other costs arising under this part of the Bill include £250,000 for the Attachment of Earnings fixed rate deductions provisions, which will cover changes to IT systems, training and publicity.

Debt Management and Relief

512. Costs of £200,000 will also arise for changes to IT systems, training and publicity for Enforcement Restriction Orders. The Debt Relief Order proposals are likely to cost around £190,000 to implement. These costs will arise from training and publicity material.

EFFECT ON PUBLIC SECTOR MANPOWER

513. The Tribunals, Courts and Enforcement Bill necessitates only minor changes to public service manpower. The Judicial Appointments proposals are likely to lead to an increased number of applications for judicial posts and it is estimated that an additional six members of staff at the JAC would be required to process these. The remainder of the proposals should be met from within DCA's existing resources.

COST TO BUSINESS AND REGULATORY IMPACT

514. The provisions in the Bill relating to judicial diversity will have no significant or disproportionate impact on business, charities or the voluntary sector. Separate Regulatory Impact Assessments have been completed for the following provisions: tribunal reform (public sector impact only); regulation of enforcement services; reform of court-based enforcement processes; Administration Orders, Enforcement Restriction Orders and Non-Court Based Debt Management Schemes; and Debt Relief Orders. The RIAs have been prepared in consultation with the Better Regulation Executive and are attached.

515. The Regulatory Impact Assessments concluded that the Bill will not significantly affect business. The main cost to business would be the requirement that the small minority of enforcement agents who do not hold a county court certificate must obtain one (assuming that businesses pay the fee on behalf of their employees). There would also be some associated training costs. These would be offset by other proposals in the Bill to introduce a simplified and consolidated piece of enforcement agent law (which will be easier for agents to use) and a new, unified fee structure that will reward their activity more proportionately.

516. The Regulatory Impact Assessments for this Bill are being placed in the libraries of both Houses and on the web-site of the Department for Constitutional Affairs and (for Debt Relief Orders) the web-site of the Department for Trade and Industry.

COMMENCEMENT

517. The provisions in the Bill would come into force on days appointed by the Lord Chancellor by order.

EXTENT

518. Part 1 of the Bill extends to the whole of the United Kingdom.

Territorial application – Northern Ireland

519. Clause 26(5) prohibits the transfer to the First-tier Tribunal or Upper Tribunal of functions of a tribunal where the provision conferring that function is within the legislative competence of the Northern Ireland Assembly. But by virtue of clause 26(6), appellate functions of the Secretary of State under the following provisions may be transferred:

a) section 41 of the Consumer Credit Act 1974;

b) section 7(1) of the Estate Agents Act 1979.

520. Clause 30(2) prohibits the transfer to the Lord Chancellor or Tribunal Procedure Committee, under clause 30(1), of rule-making powers where the provision conferring those powers is within the legislative competence of the Northern Ireland Assembly.

Territorial Application – Scotland

521. Clauses 12 to 16, which confer a "judicial review" jurisdiction on the Upper Tribunal, do not apply to cases arising under Scottish law.

522. Clause 25(5), which provides for tribunal fees prescribed by an order under clause 25 to be recoverable summarily as a civil debt, does not apply to recovery of fees in Scotland.

523. Clause 26(5) prohibits the transfer to the First-tier Tribunal or Upper Tribunal of functions of a tribunal where the provision conferring that function is within the legislative competence of the Scottish Parliament. But by virtue of clause 26(6) and (7),

functions of an adjudicator under section 5 of the Criminal Injuries Compensation Act 1995 may be transferred with the concurrence of Scottish Ministers.

524. Clause 30(2) prohibits the transfer to the Lord Chancellor or Tribunal Procedure Committee, under clause 30(1), of rule-making powers where the provision conferring those powers is within the legislative competence of the Scottish Parliament.

525. Paragraph 1(2)(a) of Schedule 7 provides for Scottish Ministers to appoint either two or three members to the Administrative Justice and Tribunals Council, with the concurrence of the Lord Chancellor and the National Assembly for Wales.

526. Paragraph 4 of Schedule 7 creates a Scottish Committee of the Administrative Justice and Tribunals Council.

Territorial Application – Wales

527. Clause 26(8) prohibits the transfer to the First-tier Tribunal or Upper Tribunal of functions of a tribunal without the consent of the National Assembly for Wales, where any functions relating to the operation of the tribunal or to expenses for attending the tribunal's proceedings are exercised by the Assembly.

528. Clause 28 contains special provisions which apply where a tribunal's functions are transferred to the First-tier Tribunal in respect of England and not Wales. This could have the effect that onward appeals in respect of the same jurisdiction lie to the Upper Tribunal in relation to England and (for example) to the High Court in relation to Wales. In those situations the Lord Chancellor may by order provide for the onward appeals in Welsh proceedings to be to the Upper Tribunal. Clause 28(3) also gives the Lord Chancellor power to provide by order for appeals from a number of Wales-only tribunals to be to the Upper Tribunal instead of to the court.

529. Clause 31(2)(c) restricts the Lord Chancellor's power to add a tribunal to any of the lists of tribunals in Schedule 6 to the Act (which would enable the Lord Chancellor's powers to transfer functions to be exercised in relation to that tribunal) where any functions relating to the operation of the tribunal or to expenses for attending the tribunal's proceedings are exercised by the National Assembly for Wales. That power may be exercised only with the Assembly's consent.

530. Paragraph 1(2)(a) of Schedule 7 provides for the National Assembly for Wales to appoint either two or three members to the Administrative Justice and Tribunals Council, with the concurrence of the Lord Chancellor and Scottish Ministers.

531. Paragraph 7 of Schedule 7 creates a Welsh Committee of the Administrative Justice and Tribunals Council.

EUROPEAN CONVENTION ON HUMAN RIGHTS

532. Part 1 of the Bill raises issues as to article 6 (right to fair trial) and First Protocol, article 1 (protection of property) but the Department is of the view that the provisions of Part 1 are compatible with the Convention.

533. Article 6 will be engaged in most of the proceedings before the First-tier Tribunal and Upper Tribunal, and there will therefore be a requirement that the tribunal be independent and impartial. The Department's view is that the Bill secures independence and impartiality, in particular through:

a) the procedure for appointing and selecting judges and other members of the First-tier Tribunal and Upper Tribunal, which involves the JAC;

b) the security of tenure enjoyed by judges and other members of the First-tier Tribunal and Upper Tribunal;

c) the extension of the obligation in section 3 of the CRA 2005 to uphold the independence of the judiciary to include the judges and other members of the First-tier Tribunal and Upper Tribunal.

534. The new tribunals' procedures will also need to comply with article 6 (where it is engaged). Since the jurisdictions which the new tribunals will exercise are so diverse, there is little procedural detail in the Bill. That detail will be contained in Tribunal Procedure Rules made by the Tribunal Procedure Committee, which will be obliged to act compatibly with the Convention.

535. The Bill provides for the abolition of the General Commissioners under the Taxes Act 1970 and the office of clerk to the Commissioners. It does not make any provision for the compensation of clerks. But the Department takes the view that this does not breach article 1 of the First Protocol because neither the office of clerk nor

the possible expectations of remuneration or pensions associated with the office constitute possessions for the purposes of that Article.

536. The Parts of the Bill that deal with the enforcement of debts and with debt relief engage the Convention rights of debtors and creditors to a fair trial (ECHR Article 6), to respect for private life (ECHR Article 8) and to the protection of property (ECHR First Protocol, Article 1). A creditor is entitled to the effective recovery of money lawfully due to him or her. A debtor is entitled to no greater intrusion on his or her property or privacy than is needed to achieve that. The provisions in those Parts all involve striking a balance between those sometimes competing rights.

537. The provisions that deal with obtaining information about a debtor from someone else depend on there being a court judgment for the debt or a court order for the information. If there is a good reason, the debtor can object. And the information can only be sought and used for the specific purpose of enforcing the judgment.

538. The provisions that deal with enforcing a court judgment for a debt by entering a debtor's or other premises, if necessary searching them, and then taking control of the debtor's goods in order to pay the creditor depend on there being a judgment in the creditor's favour in the first place. The enforcement procedure is under the ultimate control of the court and the debtor can ask the court to stop it if there is a good reason. If someone enforcing a judgment abuses the power to do so, there are sanctions. And if a debtor obstructs the enforcement without a lawful reason, there are sanctions against that debtor.

539. The provisions that impose limitations on the enforcement of debts (administration orders, enforcement restriction orders and debt management schemes) all involve a court order or access to a court. They require or allow the participation of debtors and creditors. Their purpose is to achieve a managed discharge of debts so that creditors will receive as much as possible of what they are owed.

540. The provisions that deal with the recovery of commercial rent arrears are in response to concerns that the present law is insufficiently clear to be compatible with the Convention rights of either debtors or creditors. Landlords and tenants of commercial premises deal with each other on commercial terms. It is right that each should discharge his or her obligations to the other promptly, including the tenant's obligation to pay the rent. So it is fair and in the interests of the economic well-being

of the country to allow landlords to recover unpaid commercial rent by taking control of the tenant's goods without first going to court. But if they do then the Bill imposes the same procedures and safeguards as apply to the enforcement of a court judgment, including intervention by the court, and any abuse of those powers is subject to sanctions.

541. Finally, where in the general public interest other legislation already allows the recovery of certain debts by taking control of goods without a court judgment – for example, the collection of some taxes – the Bill again imposes the same procedures and safeguards as apply to the enforcement of a judgment. So it enhances the compatibility of that other legislation with the rights of everyone concerned.

GLOSSARY OF ABBREVIATIONS

AIT	Asylum and Immigration Tribunal
AJTC	Administrative Justice and Tribunals Council
AO	Administration Order
AEA 1971	Attachment of Earnings Act 1971
AEO	Attachment of Earnings Order
CCA 1984	County Court Act 1984
COA	Charging Orders Act 1979
CLSA 1990	Courts and Legal Services Act 1990
CPR 1998	Civil Procedure Rules
CRA 2005	Constitutional Reform Act 2005
CRAR	Commercial Rent Arrears Recovery
DAC	Discipline and Appeals Committee
DCA	Department for Constitutional Affairs
DMS	Debt Management Scheme
DRO	Debt Relief Order
DRP	Debt Repayment Plan
DTI	Department for Trade and Industry
DWP	Department for Work and Pensions
ERO	Enforcement Restriction Order
HMRC	Her Majesty's Revenue and Customs
IVA	Individual Voluntary Arrangement
JAC	Judicial Appointments Commission
SCA 1981	Supreme Court Act 1981

Contents

I. Tribunals: Public Sector Impact Assessment

1. TITLE OF PROPOSAL

1.1 The Public Sector Impact Assessment for the tribunals elements of the Tribunals, Courts and Enforcement Bill.

2. SUMMARY

1.2 The Bill will provide a new overarching statutory framework for tribunals. This framework will support the new executive agency, the Tribunals Service, (launched on 3rd April 2006) in delivering improved services to users. It will also clarify the relationship of tribunals to the courts and the wider administrative justice system.

1.3 These reforms have been agreed following Sir Andrew Leggatt's review of the tribunals system in 2001 and the White Paper Transforming Public Services: Complaints, Redress and Tribunals in 2004. The main non-legislative change, the creation of the Tribunals Service, did not require primary legislation and has been effected through machinery of government changes.

1.4 There are now two options for making further improvements to the tribunals system: not legislating and legislating.

a) Not legislating: Although the Tribunals Service will be able to make improvements to the administration of tribunals, the statutes that govern each separate tribunal, and particularly the separate appointments to judicial office, would restrict reforms. The full potential of the reforms would therefore not be realised. The only benefit of this option would be to save the minimal costs associated with the provisions of the Bill.

b) Legislate: Implement the provisions of the Bill. This would lead to a simpler and better structured tribunals system that would be flexible enough to accommodate the needs of different jurisdictions and users.

1.5 The specific changes contained in the Bill are as follows:

- Introduce a new First-tier Tribunal and an Upper Tribunal into which existing jurisdictions can be mapped;
- Establish a new office of Senior President of Tribunals to act as the leader of the judiciary;
- Replace the dozens of existing judicial offices with five new categories of judicial offices;
- Allow a deployment process to be established for Tribunals Judiciary;
- Provide for a Tribunals Procedure Committee to be created;
- Create an Administrative Justice and Tribunals Council with a remit covering the whole administrative justice system.

1.6 The Bill essentially creates the framework for future improvements in service and customer delivery, but is not itself costly. It is estimated that it will cost in the region of £50,000 to set up the new arrangements, and result in additional annual running costs of approximately £160,000 overall. This is minimal against running costs of around £280m per annum for those tribunals that make up the Tribunals Service. It is expected that this simplified structure will give rise to savings that will easily outstrip the costs.

3. PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

1.7 To provide a new overarching statutory framework for tribunals that:

a) compliments the Tribunals Service, helping to remove statutory restrictions which may hinder the delivery of improved services to users;

b) clarifies the relationship of tribunals to the court system and the wider administrative justice landscape; and

c) is consistent with the constitutional reforms as set out in the Concordat agreed in January 2004 between the Lord Chancellor and the Lord Chief Justice of England & Wales, and the Constitutional Reform Act 2005.

Background:

1.8 In May 2000 Sir Andrew Leggatt was appointed to undertake a review of tribunals. His report Tribunals for Users: One System, One Service was published in August 2001. He gave a picture of an incoherent and inefficient set of institutions which, despite the efforts of the thousands of people who work in tribunals, provided a service to the public which was well short of what people are entitled to expect and what can be achieved. Sir Andrew set out a convincing case for change and made a number of recommendations on how to improve the service to tribunal users.

1.9 Most of his recommendations were aimed at improving the services that tribunal users receive, such as having access to information about the tribunal process, access to information about their rights, and more generally, by having fair, efficient and speedy procedures. He argued that bringing the largest central Government tribunals together in a single service would ensure a more effective and efficient delivery of tribunals justice than the current fragmented system. He stated that it would be better for tribunals to be administered separately from the Department whose policies or decisions they consider. Judiciary and staff should be brought together into this single service which would allow greater flexibility in the way they are deployed for the benefit of users.

1.10 After extensive consultation, in July 2004 the Department for Constitutional Affairs (DCA) published the White Paper: Transforming Public Services: Complaints, Redress and Tribunals providing a formal response to Sir Andrew's report and the broad thrust of his recommendations.

1.11 One aspect is the creation of a new agency – the Tribunals Service – to provide an efficient and cost effective administration for tribunals. This Agency was formally set up in April 2006 when responsibility for administering the Appeals Service, the Employment Tribunals Service, the Special Educational Needs & Disability Tribunal for England, the Criminal Injuries Compensation Appeals Panel and the Mental Health Review Tribunals for England transferred to the Department for Constitutional Affairs.

1.12 These changes did not require primary legislation and were effected by machinery of government changes. Therefore this assessment does not deal with them in any detail except insofar as they are relevant to the Bill.

1.13 Neither Sir Andrew's report nor the White Paper commented in detail whether there should be any changes to the way these tribunals operated. However, one of the major criticisms in Sir Andrew's report was the vast differences in procedures and processes within tribunals. He recognised the need for simplification and overhaul of tribunal rules and recommended that tribunals' procedural rules should be as consistent as possible, hence the creation of the Tribunal Procedure Committee outlined in the Bill.

1.14 However, the White Paper also set out the need for reform of tribunals in the context of how the wider administrative justice system functions. It addressed the issue of tribunals, ombudsmen, the courts and complaint handlers learning from each other to offer a tailored package of dispute resolution, focused on the needs of the user.

1.15 These changes will be difficult to deliver without the overarching framework contained in the Bill. This framework will achieve the Government's aim by bringing individual tribunals closer together but allowing specialisation to be retained where it is in the interests of the user. The Bill will allow deployment of panel members across tribunals where members have the necessary skills and expertise. It will permit the use of tribunal staff to supplement the judicial role. It will also bring tribunals into line with the principles set out in the Constitutional Reform Act, providing for appointments to the new tribunals to come within the remit of the Judicial Appointments Commission and for deployment of the judiciary to be the function of a more unified judicial hierarchy under the Senior President.

1.16 There has not been any fundamental change to the tribunals system for almost 50 years and during that time the numbers of tribunals has increased significantly. There are currently over 70 different administrative tribunals in existence, created largely on an ad-hoc basis. There has been no systematic approach to the establishment of these tribunals, contributing towards a fragmented and complex administrative justice landscape. They are rarely thought of as a single entity and have no common standards for performance or accountability against which their delivery of services can be judged or monitored.

Rationale for Government Intervention

1.17 If the Government does not act by implementing the changes in the Bill, it will not be able to provide the full range of improvements to the tribunals system for both

the public sector and the users it serves. The changes brought about by the Bill will build on reforms already in progress to ensure that the tribunals system is independent, coherent, professional, cost-effective and user-friendly.

1.18 Without the Bill the Government will not be able to fully address the problems of the system identified by Sir Andrew Leggatt, the findings of which the Government has already accepted. The Government has already demonstrated its commitment to improving the services that tribunals give users.

1.19 Although the creation of the Tribunals Service to deliver services more efficiently and cost effectively can be achieved without legislation, without a Bill neither the substantial changes to the judicial framework nor the flexibility as envisaged in the White Paper can be achieved. The reforms will improve the end-to-end decision making process, increasing flexibility and facilitating long-term improvements. However, just as importantly, failure to make any improvements will cast serious doubt over the Government's commitment to the reform programme.

Devolution

1.20 These provisions cover the UK except where expressly limited in their extent.

4. CONSULTATION

1.21 The tribunal reform provisions have been the subject of extensive consultation both within Government and with wider stakeholders. There have been two formal consultation exercises, with the White Paper Transforming Public Services: Complaints, Redress and Tribunals and the earlier consultation that accompanied publication of Sir Andrew Leggatt's Review.

5. OPTIONS

1.22 The White Paper Transforming Public Services: Complaints, Redress and Tribunals set out the Government's rationale for accepting Sir Andrew Leggatt's recommendation to create an executive agency dedicated to administering tribunals. The executive agency is charged with improving service to users, including improving standards of decision-making across Government, and where things do go wrong, promote quicker and more effective dispute resolution. There will be better information about the tribunal process, with better advice and support. The new agency will

co-ordinate a national network of hearing centres, providing greater accessibility to users.

1.23 The White Paper also outlined proposals for changes in the way tribunals function in relation to the other parts of the administrative justice system. The proposals build on the new arrangements as provided for under the Concordat (agreed between the Lord Chancellor and the Lord Chief Justice in January 2004) and the Constitutional Reform Act 2005. This put the relationship between executive, legislature and judiciary on a modern footing, respecting the separation of powers between the three structures. The Lord Chancellor, as a Minister, is no longer a judge and is therefore a member of the executive arm of the constitution. The Lord Chief Justice has assumed the role as head of the judiciary of England and Wales, although the Bill will provide for most of the Lord Chief Justice's existing powers in relation to tribunals to be transferred to the Senior President. Furthermore, these proposals will encourage greater cross-fertilisation of approaches across the different parts of the administrative justice system.

1.24 The White Paper made a number of recommendations about improving public services and improving access to justice. At the heart of these proposals were plans for a unified service, replacing the existing fragmented arrangements. Bringing the largest central Government tribunals together in a single service will ensure a more effective and efficient delivery of tribunals justice. The tribunals judiciary will be brought together in a single framework, thus strengthening the independence of the judiciary and allowing greater flexibility in the way they are deployed.

1.25 The options set out below address the two possible mechanisms for implementing those proposals. They are based on the premise set out in the White Paper that the Government is committed to improving the service offered by tribunals through more joined-up administration and the use of proportionate dispute resolution.

Option 1 – Not legislate

1.26 Without legislation, a number of improvements to the services users receive can still be made. The Tribunals Service can seek to implement improved and more efficient administration. Estates can be shared and common IT systems can be introduced over time, although any alignment of administration may be constrained by processes and procedures set out in primary legislation. Therefore, whilst this option will provide for some improvements, it will be restricted by the statutes that govern the operation of each individual tribunal administered by the new agency. This will inevitably mean that

the full potential of any suggested improvements would fail to be recognised, reducing the effectiveness of the new agency in its mission to offer an improved level of service.

Option 2 – Legislate

1.27 Legislation will create a new flexible overarching statutory framework for tribunals, allowing incremental changes over time. This flexible approach will bring together tribunals into the one organisation, but will allow a small number of individual specialist tribunals to retain their own procedures where this is in the interests of users. Changes will be made by introducing:

A First-tier Tribunal and an Upper Tribunal

1.28 The system will be simplified and for most jurisdictions will consist of two tiers, a First-tier Tribunal and an Upper Tribunal. The First-tier Tribunal will hear appeals from the original decision making body, and the Upper Tier will act as an appellate level for decisions of the First-tier Tribunal, appeals being on a point of law only. This simple framework will also allow the introduction of a coherent system of appeals with appropriate oversight by the courts, ensuring that only those tribunal cases that should go to the courts do go to the courts, and reducing the need for judicial review.

Senior President of Tribunals

1.29 The Senior President of Tribunals will provide the tribunals judiciary with clear leadership and a single voice. He or she will have a role in defining the way the new organisation is established, and will have a statutory responsibility to bring leadership to the service, ensuring the needs of all jurisdictions and judicial members are met. By having a clearly defined set of statutory responsibilities, such as the training, education and welfare of tribunals judiciary, and working with the Judicial Appointments Commission to ensure that tribunal interests and requirements are fully represented in the appointments process, the Senior President will have an important role in shaping the new organisation.

Appointment to an office not a jurisdiction

1.30 The Bill will provide for the creation of five categories of appointment to the new tribunals: Tribunal Judge, Tribunal Member, Deputy Tribunal Appeal Judge, Tribunal Appeal Judge and Tribunal Appeal Member. The creation of these new judicial offices will allow the deployment (assignment) of members across jurisdictions

and ensure that the judicial function they carry out is properly reflected in their title. This replaces the current process whereby tribunal office holders are appointed to an individual tribunal (a jurisdiction).

Assignment

1.31 A key feature of the new system will be the ability to deploy members across jurisdictions where they have the necessary knowledge or the ability to acquire it. This proposal recognises that within the tribunal system there already are a substantial number of members who are capable of sitting in more than one jurisdiction. Introducing flexibility will assist the new organisation in delivering a more efficient and effective service to its users. Assignment will be an open, fair and transparent process and will enable suitable judicial office holders to be identified quickly and trained sooner than those entering the system. This will allow the Tribunals Service to have access to judiciary to hear cases at relatively short notice, particularly to meet peaks and troughs in workloads between jurisdictions.

A Tribunal Procedure Committee

1.32 The Concordat agreed between the Lord Chancellor and the Lord Chief Justice set out the respective roles of the judiciary and the executive in making rules for judicial fora. The creation of a Tribunal Procedure Committee will bring rule-making for tribunals into line with the principles set out in the Concordat and the Constitutional Reform Act 2005. It will allow tribunals to develop a coherent programme of procedural reform in much the same way as has been achieved for the civil courts in England and Wales.

An Administrative Justice & Tribunals Council

1.33 To compliment all of these proposals the Council on Tribunals will be abolished, and replaced by an Administrative Justice and Tribunals Council, which will subsume the Council's current functions, but also take on a wider remit, including advising ministers on how to make the administrative justice system more accessible, fair and efficient, with particular reference to user priorities and concerns.

Business sectors affected

1.34 The proposed changes will have no adverse effect on those who use or advise users of the new organisation, and those who work within the organisation. Existing rights to bring appeals or cases will not be affected. The new structures established by the Bill will not immediately bring about any changes in the processes and procedures of individual tribunal jurisdictions. However, they will create an opportunity to bring about changes in the future without further legislation which will simplify access and process. It is envisaged that as each tribunal transfers to DCA they will continue with their own procedures and processes until such time as the Tribunal Procedure Committee aligns procedural rules. Where jurisdiction-specific changes are proposed these are or will be in the future the subject of separate consultations and Regulatory Impact Assessments as appropriate.

6. COSTS AND BENEFITS

Benefits

Option 1 –Not legislate

1.35 The only benefits that would accrue from not seeking to legislate would be the savings associated with not establishing the new institutions created by the Bill. These are minor.

1.36 Clearly some of the structures created by the Bill could have an informal existence. However, without a clear statutory basis many of the benefits would be lost. Taking each of the proposals in turn:

- **Senior President** – the creation of a unified judiciary means there should be a single voice to speak for the tribunal judiciary collectively, hence the creation of the post of Senior President. Without this post, there is a danger that proposals for the reform of the administration of tribunals will be developed in isolation, not taking on board the needs of all the disparate jurisdictions in the new organisation. This will hamper the development of an effective partnership between the judiciary and administrators. Without legislation, a senior member of the judiciary can be given an oversight role to help provide the conduit between tribunals and the mainstream courts. However, he would have no statutory powers or duties and no formal authority over tribunals resulting in a figurehead dependent on the consensus of Tribunal Presidents.

- **Deployment/assignment across jurisdictions** – without legislation members can as at present, be appointed to multiple tribunal panels but they have to go through the full appointments process created under the Constitutional Reform Act 2005. This is a time consuming process that would go against Sir Andrew's recommendation of a flexible system of judicial deployment. There are potential savings to be made. For example, recruitment costs for part-time legal members are in the region of £7,000 – £10,000. If there were 6 assignment competitions conducted in one year, this would be an annual saving of at least £42,000.
- **Tribunal rules** – legislation creates tribunals as separate bodies, with their own appointments, powers, functions and appeal rights. Therefore the jurisdictional boundaries of each tribunal are fixed and cannot be amended without legislation. There is nothing to prevent the Lord Chancellor or another Secretary of State from establishing an advisory committee to assist him with procedural rule changes. However, without legislation it will not be possible to clarify and codify appeal rights.
- Neither will it be possible to alter the remit of the **Council on Tribunals**, which is currently circumscribed by legislation. Without the Bill it would not be possible to give the Council an enhanced remit.

1.37 There would also be disappointment among stakeholders when the full range of possibilities brought about by the Bill could not be delivered within the existing statutory constraints.

Option 2 – Legislate

1.38 The key advantage legislation offers is that it allows all of the above to be taken forward in a structured and clear way. This ensures that all users understand the changes whilst at the same time enabling the tribunal system as a whole to respond quicker to changes in user need.

1.39 Therefore, the role of the **Senior President** can be set out including his relationship with individual Presidents. The **Procedure Committee** can be put on a statutory basis with the power to bring about rule changes and the expenses incurred by its members can be remunerated. Legislation allows the creation of a bespoke **deployment** system geared to the needs of tribunals and their users. The system will not require a full appointments process for those tribunal members who have already demonstrated suitability to hold judicial office but instead allows for the testing of knowledge and expertise.

1.40 Furthermore, legislation allows for a more responsive and flexible structure to be created. Through establishing two new tribunals and transferring all existing jurisdictions into one or other of them, the system as a whole will have greater flexibility in absorbing new work or responding to fluctuations. The new structure also allows the introduction of a more coherent appellate system from tribunals and clarification of the relationship of tribunals to the principles set out in the Constitutional Reform Act. It will also create more adaptable boundaries between courts and tribunals by allowing the courts to transfer certain types of case to tribunals and reducing the need for judicial review hearings in the Administrative Court.

1.41 Similarly, legislative change will enable the **Administrative Justice & Tribunals Council** to be more proactive with regard to administrative justice matters. The new body will be responsible for keeping the administrative justice system under review and for considering ways to make the system accessible, fair and efficient. It will be able to advise the Lord Chancellor, Scottish Ministers, the National Assembly for Wales and the Senior President on the development of the Tribunals Service, and be able to refer proposals for changes to them. The Bill will also provide for the Council's reports to be laid before Parliament, and will give members of the Council the statutory right to attend as observers proceedings of tribunals under the Council's supervision.

1.42 These changes will have a minimal direct impact upon the business sector, but they should over time mean that that sector will be dealing with a more coherent and efficient system of justice and Government decision-making machinery.

Costs

1.43 The estimated costs associated with establishing each of the new structures are set out below. These figures are only indicative.

The First-tier Tribunal and an Upper Tribunal

1.44 The movement of tribunal jurisdictions into the new structures will not of itself necessitate any changes and therefore will not mean any additional costs. Where new appeal rights are introduced or appeal rights are moved from the courts there will be some minor associated costs.

1.45 These costs are likely to materialise in the form of increased workload. This can be put down to:

a) A small number of tribunals which have statutory appeal rights from the First-tier Tribunal to the High Court will instead lie to the Upper Tribunal;
b) Judicial Review hearings could be heard in the Upper Tribunal (on licence from the High Court);
c) A new appeal right will be created for those tribunals which previously had no statutory appeal rights – at this stage this only affects the Criminal Injuries Compensation Appeals Panel (CICAP).

1.46 We have tried to predict the caseload for each of these categories, based on very limited information as there are no detailed statistics available from the Administrative Court Office.

a) From January 2004 to April 2005 there were 29 statutory applications for appeals from tribunals within scope of these reforms, all from the Special Educational Needs and Disability Tribunal (although it is not clear how many of these were effective). Allowing for the fact that there may be an increase in volume due to the accessibility of the Upper Tribunal, we estimate there may be around 50 applications during the first year. The change will be advantageous to users, as the cost of an appeal to the High Court is considerably more than an application to the Upper Tribunal would be. However, the cost to the organisation will be minimal.
b) Decisions made by Mental Health Review Tribunals have the most applications for judicial reviews. From September 2003 to September 2005 there were about 80 reported cases, although again, it is not clear how many of these were effective as the Administrative Court Office do not keep these statistics. Assuming that there is an even split of cases between the two years, and allowing for an increase in applications due to improved accessibility, we estimate that about 50 applications will be made within the first twelve months of the new organisation. The subsequent administrative cost will be minimal.
c) Information obtained from CICAP has indicated that from September 2004 to September 2005 there were 12 applications for Judicial Reviews of CICAP decisions. Bearing in mind that there is currently no appeal right to the High Court, we have taken the view that once a new right has been established, there will be around the same number of appeals, with a similar reduction in the number of Judicial Reviews.

1.47 As the jurisdictions of the current tax tribunals transfer into the new structures we intend to take the opportunity to reform the current arrangements for dealing with tax appeals. Current proposals assume that any reform option will be broadly similar to existing costs.

1.48 Tax appeals from all existing jurisdictions currently have an onward right of appeal to the High Court. Future onward tax appeals will be to the Upper Tribunal and, based upon current onward appeal rates, we estimate that there will be an upper limit of around 150 tax applications to the Upper Tribunal. Overall, allowing for the fact that the Upper Tier will be more accessible than the High Court, in terms of additional work for the Upper Tier, we anticipate the following:

Upper Tribunal applications from Tax Tribunals	150 (estimated administrative and judicial costs approx. £485 per case)
New appeal rights to the Upper Tribunal	50 (estimated costs as above)
Applications for Judicial Reviews	50 (estimated costs as above)

1.49 We now need to consider whether additional judiciary will be required to deal with this new workload. The total number of applications made to the Administrative Court in 2004 can be broken down as follows:

Appeals and applications	2,282	(including 1,816 applications made under s101 of the Nationality, Immigration and Asylum Act 2002)
Appeals by way of case stated	130	
Judicial Reviews	4,207	
Total	6,619	

1.50 As can be seen above, the estimated amount of new work for the Upper Tribunal (250), compared to the total amount of work undertaken by the Administrative Court (6619) is very small. Although there are 38 High Court Judges who are nominated to deal with Administrative Court matters, on average about 8 judges a week are allocated to the Administrative Court. Bearing in mind that Jurisdictional Presidents will also able to hear Upper Tribunal cases, we do not think

additional judiciary will be required to support the extra work: on the contrary, we expect there to be savings in the time of Administrative Court judges.

1.51 In order to ascertain the additional cost of new work to the Upper Tribunal, we have worked out the judicial and administrative cost of one simple case within the Commissioners' Office (previously the Office of Social Security and Child Support Commissioners), which will form the core of the Administrative Appeals Chamber. Of all the jurisdictions, we consider this to be the closest in process to that of the appeals and judicial reviews currently being heard in the Administrative Court.

1.52 Using information available, we have estimated that the administration and judicial costs for a substantive case at the Commissioners' Office to be around £484. By comparison, we believe the estimated costs for a substantive Judicial Review case to be in the region of £600. Thus, it is evident that there are savings to be made by the change of appeal rights.

Senior President of Tribunals

1.53 Although the legislation will provide for a separate appointment, the current (non-statutory) Senior President is a serving judge and we anticipate that that will continue for the future so there are no extra salary costs. If a separate appointment is made we anticipate an offsetting reduction elsewhere in the need for judges so the change would be cost-neutral. Provision will be made for allowances and expenses to be paid but it is not possible to cost these at this time. Since the acting Senior President's nomination in September 2004, just over £8,500 has been spent to date on travelling expenses incurred through this role. The Senior President will have a continuing role in improving the organisation which will involve travelling to various venues across England, Wales, Scotland, Northern Ireland and quite possibly abroad. We therefore expect these costs to continue and estimate an annual expenditure of around £4,000.

1.54 In fulfilling his statutory obligations, the Senior President will need administrative support. As this has already been provided for within existing resources it is not included within the costs of these proposals. Any additional resources over and above those already provided will be detailed separately below.

Five categories of tribunal judiciary

1.55 These new Judicial Offices will be created in legislation. Once the terms and conditions of the new offices have been agreed, each judicial office holder will be mapped into one of the new Judicial Offices. There will therefore be no costs for implementing these titles.

Assignment

1.56 Assignment will make the best use of judicial resources already within the system. As a process is still being determined, it is possible that additional administrative support may be required, amounting to less than £100,000 per year. However, savings will be made by making better use of existing judicial resources (including salaried judicial office holders), which will lead to lower recruitment costs.

A Tribunal Procedure Committee

1.57 The draft Bill states the statutory composition of the Committee, which will be drawn from judicial and non-judicial members. There will be no recruitment costs for judicial members as they will be appointed from existing office-holders. However, in order to comply with guidelines laid down by the Office of the Commissioner for Public Appointments (OCPA) for recruitment to public bodies, there will need to be an open competition for the non-judicial posts which will cost in the region of **£50,000**. As appointments to Procedure/Rule Committees are usually made for a period of between 2 – 4 years, these costs are likely to arise every couple of years. Any administrative support required for re-appointment of Committee members will be met via the Secretariat.

1.58 By definition, Procedure/Rule Committees are statutory advisory Non-Departmental Public Bodies since they do not pay their chair or members, do not directly employ staff and do not control their own budgets. Although the posts do not attract any sort of remuneration, travelling and subsistence claims may be paid. Costs will arise from travelling (Committee members are entitled to first class travel) as well as taxi costs and any food bought on the day. Members will be geographically spread, and there may also be hotel costs (if a member has a very long travelling journey). The other Procedure/Rule committees within DCA average about £450 per meeting, and we consider travelling and subsistence costs for the Tribunal Procedure Committee members will be the same.

1.59 We estimate that the cost of a Tribunal Procedure Committee meeting will be not more than £1,000. Assuming that the Committee will meet once every two months, we consider travelling and subsistence and catering costs will not exceed an annual total of **£6,000**.

1.60 Users and practitioners will need to have access to procedural rules being made by the Tribunal Procedure Committee. Current Procedure/Rule committees publish their rules either on the relevant website and/or in hard copy. The most important issue to be decided here is one of access i.e. whether all users would have access to the rules if they were only published on the internet.

1.61 The contract would need to undergo a tendering process but as a rough guide, the Civil Procedure/Rule Committee has a contract with The Stationery Office worth £37,000 a year. The Family Procedure/Rule Committee have estimated their contract will cost in the region on £39,000. Both contracts involve publishing on the internet, and are also dependent upon a number of hard copies being sold i.e. the higher the number of hard copies sold, the lower the contract value. These issues will need to be decided at a later stage, but as a guide, we consider publishing costs to be in the region of **£45,000**. This is not a new cost; it would mean one single payment for publishing all rules of tribunals within the new organisation, rather than paying separate publishing costs each time a new rule is made.

An Administrative Justice & Tribunals Council

1.62 The Council on Tribunals will be abolished and replaced by a new body, the Administrative Justice & Tribunals Council. On implementation, the existing membership of the Council on Tribunals will become members of the new body, but as the new Council broadens its horizons, as and when new vacancies arise, the composition of the Council will change to accommodate its enhanced role. However, the size and general function of the Council will not change sufficiently to generate any extra cost beyond the current running cost of the Council on Tribunals.

1.63 The table below provides estimated costs for establishing and running each of the new structures for the next three years:

Structure	Estimate new costs for establishing	Estimated running cost for year one	Estimated running cost for year two	Estimated running cost for year three
First-tier and Upper Tier	Nil	No extra costs	No extra costs	No extra costs
Senior President of Tribunals	Nil	£4,000	£4,000	£4,000
New offices of appointment	Nil	No extra costs	No extra costs	No extra costs
Assignment	Nil	Less than £100,000	Less than £100,000	Less than £100,000
Tribunal Procedure Committee	£50,000	£51,000[1]	£51,000	£101,000
Administrative Justice & Tribunals Council	Nil	No extra costs	No extra costs	No extra costs

Social Impacts

1.64 We consider that these policies would not have an adverse impact on different groups of people, including minority groups.

7. MONITORING AND EVALUATION

1.65 The Tribunals Service will remain under constant review with an obligation on the Chief Executive of the Tribunals Service to report annually on the progress of the new agency. The Lord Chancellor and the Senior President will report annually on the working of the two new tribunals and the cases coming before them. Users will also be consulted to see how the service develops. We do not expect the collation of this report to have a major impact on resources since the monitoring of progress will be ongoing and the new IT will facilitate easy access to relevant information and statistics.

1 Publishing costs will not be incurred until after the first rule has been signed by the Lord Chancellor, the timing of which is dependent on whether a Shadow Committee will be formed.

II. Regulation of Enforcement Services – full Regulatory Impact Assessment

1. TITLE OF THE PROPOSAL

2.1 Regulation of enforcement services provisions in the Bill, covering: unified enforcement agent law, commercial rent arrears recovery, regulation of enforcement agents and fees.

2. PURPOSE AND INTENDED EFFECT OF MEASURE

i) Objectives:

2.2 To reform enforcement services in the following manner:

- Unified enforcement agent law – to simplify and codify a previously complex and disparate area of the law, making it easier for all concerned (creditors, debtors and enforcement agents) to understand and implement, and ensuring that debtors receive fairer treatment from enforcement agents and are not subject to oppressive activities.
- Regulation – to raise standards and improve professionalism, thereby raising public confidence in the industry and those who work within it, ensuring that all those who work within the industry are adequately trained and are subject to appropriate regulatory structures and disciplinary procedures.
- Commercial Rent Arrears Recovery (CRAR) – to ensure that a quick and easy remedy remains for commercial landlords to recover outstanding rent arrears that is effective and proportionate, whilst at the same time being compliant with the European Convention on Human Rights (ECHR).
- Fees reform – by introducing a single simplified fee structure, to end the abuse of fee scales and exploitation of loopholes by unscrupulous enforcement agents that can occur under the existing fee structure – the current major cause of complaints against enforcement agents.

ii) Devolution:

2.3 These proposals apply to England and Wales only.

iii) Background:

Description of the industry

2.4 We estimate that there are currently 5,200 enforcement agents operating within England and Wales. This figure is made up of approximately 600 County Court bailiffs, 1,600 other state employed enforcement agents (such as tax collectors, customs officers etc), 200 local authority employed enforcement agents, 1,600 certificated bailiffs and 1,200 non-certificated private bailiffs. We further estimate that there are approximately 150 firms operating within the industry.

2.5 Many of these currently operate without any formal or statutory regulation. County Court bailiffs and other state employed enforcement agents are crown employees and civil servants, and are therefore subject to exactly the same recruitment and conduct and discipline processes (including those for making complaints about them) as all other civil servants.

2.6 Local authority employed enforcement agents and certificated bailiffs are subject to a certification process through the courts. They need to obtain this certificate before being allowed to enforce for numerous categories of debt, such as rent arrears, council tax arrears, non-domestic rate arrears and parking fines. To obtain their certificate, applicants need to satisfy the judge that they are a fit and proper person to hold a certificate, that they possess sufficient knowledge of the law of distress (the seizure of goods to pay for debts), and they are not engaged in the business of buying or selling debt. They must also lodge a monetary bond with the court by way of security. Complaints as to the fitness of a person to hold such a certificate are to be made to the court that issued said certificate.

2.7 In general terms, there is currently no formal complaints process for private enforcement agents. There are professional associations that exist which individual bailiffs or bailiff firms may belong to, and which have their own internal complaints and disciplinary procedures, but these run totally independently from government control or approval. Enforcement agents are expected to comply with the guidelines laid down in the National Standards for Enforcement Agents, published by the then Lord Chancellor's Department (LCD) in April 2002, but this is merely a document containing guidance as to good practice that was endorsed by many bodies working within the industry, and has no legal force behind it.

2.8 Our proposals for enhanced and extended certification, however, would give equal access to a complaints mechanism, exercised by a judge at the court that issued the certificate, to anyone who wished to complain about the actions of all private bailiffs. For those who will not be certificated, for example crown employees and police constables, there are existing methods of complaint against these groups that are considered appropriate and suitably robust.

Identified problems within enforcement services

- The law in this area is currently complex and confusing. There are numerous different types of enforcement agent attempting to enforce numerous different types of debt under numerous different enabling powers. In many cases these powers are different, enabling different agents to have differing powers, or enabling certain actions to be taken when enforcing one type of debt that could not be taken when enforcing another type of debt. These differing powers can be confusing even for the agents themselves, whilst for debtors and their advisors, it can be an absolute minefield trying to pick a way through the many and various pieces of enforcement agent law that exist currently. It is therefore proposed that a single piece of enforcement agent law is introduced, giving all enforcement agents the same rights and powers in most instances. This will make it easier for all involved in the process to understand exactly what is going on. It will also give a single set of remedies available for debtors, creditors and enforcement agents alike, for any illegal or irregular actions they may take during the course of the process of taking control of and selling goods.
- The regulatory structure for enforcement agents in England and Wales is currently very fragmented. Whilst there are some elements within the industry that are quite strictly regulated, there are others that are only subject to informal regulation through trade associations, and others that appear to be subject to no regulation at all. There is clearly a need for a more formalised structure to regulate the industry, which would raise standards of professionalism within the industry, and give the public greater confidence in it.
- It was feared that some aspects of the current civil enforcement regime in England and Wales were not ECHR compliant. This was thought particularly to be the case with the existing system whereby landlords could recover unpaid rents by taking distress action against tenants in residential premises without the need for a court order, an issue which had been brought up as far ago as 1991 in a Law Commission report on the subject.

- The existing fee structures are open to abuse. Similar to the existing laws surrounding distress, each differing power brings with it a differing fee structure. Again, these are complex and can be confusing. This can lead to incorrect fees being charged, either by accident or because unscrupulous enforcement agents exploit the complex nature of the fee structure to charge excessive fees and exploit loopholes, hoping that the debtor will be ignorant of the fee scales and not notice. An excessive fee charge is the biggest cause of complaints against enforcement agents.

Previous attempts to reform the industry

2.9 Civil enforcement as a whole has been subject to at least 4 reviews since the late 1960s. But these have achieved little in the way of reforming enforcement agent law or the regulation of enforcement agents, mainly because this area is just so complicated. Reviews have run out of momentum and nothing tangible has resulted from them. There has also been obstruction to reform from some quarters in the past.

The Green and White Papers and other consultation documents

2.10 The Green Paper Effective Enforcement was published in July 2001. This paper outlined options for, and canvassed views upon, a future structure for the regulation of enforcement services, a single piece of enforcement agent law, and a single, simplified fees structure.

2.11 Responses to the Green Paper were published in Towards Effective Enforcement: Responses to Consultation in April 2002. Eighty-four responses were received. There was a large consensus among the respondents that enforcement services in England and Wales are in need of regulation. There was also considerable support for a single piece of enforcement agent law, and for a single, simplified fee structure.

2.12 Options for regulation that had been proposed included increased court based regulation, voluntary self-regulation, compulsory self-regulation, or statutory regulation through a Commission, based upon the model provided by a body such as the Financial Services Authority or the Immigration Services Commission. Most respondents favoured regulation by way of a statutory body such as a Commission. The Department for Constitutional Affairs subsequently identified the Security Industry Authority (SIA) as an existing body whose functions and responsibilities have broad synergies with the stated intentions for the regulation of enforcement activities.

2.13 The SIA was set up under the Private Security Industry Act 2001 by the Home Office in April 2003 as a Non Departmental Public Body (NDPB) to regulate and license security operatives in the private sector, including door supervisors, wheel clampers and private investigators. With some broadening of its scope, the SIA could provide a cost-effective means of regulating the enforcement industry. This would be less expensive than setting up a wholly separate commission dedicated to the enforcement industry.

2.14 Proposals for regulating the enforcement industry through the SIA, including a partial RIA, were therefore included in the White Paper Effective Enforcement Published in March 2003, as were proposals for a single piece of enforcement agent law and a single, simplified fee structure.

2.15 Since publication of the White Paper, however, several policy changes have been made with regard to policy for regulating the civil enforcement industry:

- The Bill will no longer provide for regulation of enforcement agents through the SIA. Following consultation with colleagues at the Home Office, these proposals have been withdrawn, on the understanding that they will be reconsidered at a later date.
- Any future regulatory body would no longer be responsible for administering training and qualifications. It is also no longer intended that a regulatory body would oversee a complaints scheme and establish a Complaints Board. This is due to a legal concern in respect of Article 6 of the ECHR that complaints should not be allowed to bypass the court, even where a right of appeal on the decision to the courts exists. Nor is it intended that a regulatory body will accredit the functions of professional associations.
- Finally, it is no longer policy that such a regulatory body would have the power to make recommendations to the Lord Chancellor on fees. That would remain the role of policy officials within this department.

2.16 Similarly, a consultation paper was issued in May 2001, outlining options for, and canvassing opinions on, the future of the enforcement method presently available for landlords wishing to recover unpaid rents from commercial and residential tenants known as Distress for Rent (DfR). This followed on belatedly from a report issued on the same subject by the Law Commission in 1991, which had called for the complete abolition of distress for rent.

2.17 The responses to this consultation paper were published in April 2002. Of the 157 responses, 79.6% were in favour of keeping a distress for rent type recovery mechanism in place for commercial premises, but 87.5% also agreed that it should be abolished for residential tenancies, agreeing that there was clearly a potential conflict with the ECHR.

2.18 As a result, new proposals for distress for rent were also included in the White Paper Effective Enforcement. The centuries old common law right to distress for rent is to be abolished. It is to be replaced by a statute based recovery method, to be known as the Commercial Rent Arrears Recovery system, or CRAR. As the name suggests, this will only be available in commercial tenancies for commercial properties, and it has been drafted in such a way as to ensure that it is ECHR compliant.

iv) Rationale for Government Intervention:

Identified problems within the industry

2.19 Enforcement agent law is currently very complex and confusing, and comes from a number of sources, whilst regulation of the enforcement profession is currently fragmented, with some individuals operating outside of any structures and some evidence of threats and intimidation being used against vulnerable people in their own homes. The fee structure is similarly flawed and open to abuse, whilst there are concerns about whether some parts of the existing enforcement agent law are ECHR compliant.

The scale of those problems

2.20 We do not have statistical information on the scale of the problem. Anecdotal evidence is contained in the report Undue Distress, published by the National Association of Citizens Advice Bureaux in May 2000. This report also confirmed that 96% of complaints made by the public to them about the activities of civil enforcement agents are about private bailiffs (i.e. only 4% are about public sector officers, such as county court bailiffs). Whilst the introduction of a single piece of enforcement agent law and a revision of the fee structure will address some of the areas of malpractice, without increased regulation the impact of these changes would be diminished.

Will these problems worsen without Government intervention?

2.21 It has been suggested by the advice sector that the full scale of the issues is not apparent, as debtors are not aware of their rights. The voluntary sector is responsible for advising debtors of their rights and is therefore paying the price. Not only is there a fear that without this reform incidences of malpractice and fee scale abuse will increase, but also that ineffective and oppressive enforcement of debts by unscrupulous agents will exacerbate the problems of escalating debts and social exclusion.

What other methods have been used to address this problem?

2.22 In April 2002 the Lord Chancellor's Department published National Standards for Enforcement Agents. This laid down a code of minimum standards of behaviour for enforcement agents, and was endorsed by all the major stakeholders within the industry. It was the first document of its kind. But it was voluntary guidance – nobody was obliged to abide by its contents and it did not replace existing local agreements, codes of practice or legislation.

3. CONSULTATION

Regulation of enforcement services

2.23 Options for regulation were submitted for public consultation in the Green Paper Towards Effective Enforcement (July 2001) and the responses were published in the post consultation report (May 2002). The overwhelming majority of respondents favoured the statutory regulation of enforcement services. Subsequent to that consultation exercise, policy officials identified the possibility for regulation through the Security Industry Authority, which could carry out the same functions as a statutory Commission through an existing NDPB. This remains our long-term objective.

2.24 However, as an interim measure towards that eventual long-term aim, this Bill proposed to introduce an enhanced and extended certification process, based upon the court based certification process currently in existence and operated under the Distress for Rent Rules 1988 (SI 1988/2050). This will extend the process currently in place to approve certificated bailiffs who wish to carry out distraint for e.g. rent arrears, council tax, non-domestic rates, parking fines etc to all persons who wish to carry out enforcement work.

2.25 Key stakeholders include the following:

- The High Court Enforcement Officers Association (a professional body regulating the activities of HCEOs).
- The Enforcement Services Association (a trade association representing individual bailiffs).
- The Association of Civil Enforcement Agencies (representing bailiff companies and firms).
- The Local Authority Civil Enforcement Forum (representing local authority enforcement agents).
- The judiciary.
- The advice sector (e.g. Citizens Advice, the Money Advice Association, the Federation of Independent Advice Centres).
- Organisations that represent court users (e.g. the Civil Courts Users Association).
- Other government departments who make use of enforcement agents or have policy responsibility for areas where enforcement agents are used (e.g. HMRC, for enforcement of tax debts etc, ODPM, for enforcement of council tax and non-domestic rates etc).
- The unions that represent court staff, including county court bailiffs.

2.26 The industry has generally been supportive of the proposals. In particular they were supportive of regulation by the SIA rather than an independent commission, mainly due to a desire to see increased professionalism within the industry, but also in the light of the cheaper fees for licences and approvals that would be charged by the SIA rather than by an independent commission.

Unified enforcement agent law

2.27 There have been several reviews of enforcement procedures over recent years that have resulted in minor changes to enforcement law (most recently in 1992 and 1999). The need for wholesale reform of the law was most recently identified by Professor Jack Beatson in his Independent Review of Bailiff Law (2000), which was supported by 86% of the respondents to his consultation. Subsequent consultations during the Enforcement Review, across all sectors involved in enforcement, have agreed upon the need for the introduction of a single piece of enforcement agent law. There is overwhelming consensus that simplification and clarification of the law is necessary. It is felt that clarification of enforcement agent law will help to achieve one of the underlying objectives of the Enforcement Review, to make enforcement more

straightforward and understandable. Additionally, clarification aims to ensure that debtors receive fairer treatment from enforcement agents and are not subject to oppressive activities by ensuring all parties have greater knowledge of their rights.

Commercial Rent Arrears Recovery (CRAR)

2.28 There have been several reviews of Distress for Rent procedures over recent years, calling for reform, if not outright abolition of this procedure. The most notable of these was a Law Commission report entitled Landlord and Tenant Distress for Rent, published in February 1991. This department published its own consultation paper into the future of the Distress for Rent procedure in May 2001. The results of this were published in April 2002, and the findings of this report formed the basis of the policy proposals outlined in the White Paper Effective Enforcement.

Fees

2.29 The Green Paper Towards Effective Enforcement consulted on the fee principles to be set out in primary legislation. Full details of the responses to the Green Paper may be found in the Post-Consultation Report (May 2002). Fee principles and the potential components of a fee structure were subject to further consultation, many of the proposals comprising the basis of the new fee structure were included in the Second Report of the Advisory Group on Enforcement Service Delivery, published in August 2002. The Advisory Group report followed extensive consultation and analysis, including an early discussion paper, Warrant Enforcement: Towards a New Fee Structure, which was submitted to a range of individuals and organisations active in enforcement services.

2.30 The recommendations from the Advisory Group were included in the White Paper.

4. OPTIONS

A. Regulation of enforcement services

2.31 The Green Paper assessed that in the absence of regulation there were insufficient sanctions to prevent oppressive behaviour by unscrupulous enforcement agents. This RIA will therefore consider three options:

i. No change;
ii. Regulation through a separate Enforcement Services Commission;
iii. An enhanced and extended certification process.

2.32 The aim of regulation is to ensure that taking control of goods (this is not always done pursuant to a writ or warrant e.g. tax debts) is carried out appropriately, effectively and fairly in relation to both debtors and creditors. The broadened remit of the Enforcement Review, announced by the Lord Chancellor on 6 March 2001, envisaged the eventual regulation of all public and private enforcement activities, with a long term aim of raising standards across the profession, and promoting best practice, fostering public confidence and creating a level playing field across the industry.

2.33 In the long term, it is still envisaged that any such regulatory body would regulate public and private enforcement activities by:

- licensing enforcement agents;
- approving enforcement agencies;
- making recommendations to the Lord Chancellor on legislative change; and
- issuing a Code of Practice.

2.34 As a significant step towards that long-term objective, this Department proposes that a new and enhanced certification process, loosely based on the existing certification process for enforcement agents under the Distress for Rent Rules 1988, should be introduced. This will cover all enforcement agents who are not Crown employees or police constables who are engaged in taking control of goods under the new code (the single piece of enforcement agent law), also to be introduced in this Bill.

Option 1 – To do nothing and leave enforcement services as it is.

2.35 At present the enforcement profession is fragmented, with some individuals operating outside of any structures and some evidence of threats and intimidation being used against vulnerable people in their own homes. The existing perceived problems would continue unchecked if some form of regulation is not introduced, to the detriment of confidence in the justice system.

Option 2 – Regulation through a separate Enforcement Services Commission.

2.36 There was a large consensus among the respondents that enforcement services in England and Wales are in need of regulation. Most favoured regulation by way of a statutory body such as a Commission.

2.37 It was originally proposed in the Green Paper that regulation would be by way of an independent, statutory, self-financing Non-Departmental Public Body. This was tentatively given the title of the Enforcement Services Commission, and would be modelled upon, for example, the Financial Services Authority or the Immigration Services Commission. It would have regulatory functions, designed to ensure that all those licensed to provide enforcement services were fit and competent to do so and were suitably trained and qualified. It would also approve companies that provided enforcement services, accredit professional associations and training providers, oversee a national data access scheme for enforcement agents, investigate complaints, and carry out research and make recommendations with regard to possible changes in enforcement agent law and fees.

2.38 It was envisaged that initial set up costs would be £1.1m and would have to be initially funded by the Treasury, whilst annual running costs would be £1.7m and would be funded through income from licence fees. Initial set up costs could also be recouped in this manner.

2.39 The Department for Constitutional Affairs subsequently identified the Security Industry Authority (SIA) as an existing body whose functions and responsibilities have broad synergies with the stated intentions for the regulation of enforcement activities.

Option 3 – An enhanced and extended certification process.

2.40 Our proposed interim measure is that all enforcement agents (meaning persons who take control of goods) who are not Crown employees (such Crown employees being, by way of example, county court bailiffs, tax collectors, customs officers and civilian enforcement officers), or police constables (insofar as a warrant of distress may technically still be directed to a constable for enforcement), would need to be certificated under provisions to be included in the Bill. Those contracted to provide services to Crown departments who are not permanent crown employees would require certification.

2.41 Certificates would be granted by a county court, on a similar basis to how they are currently granted under the Distress for Rent Rules 1988. Applicants would need to satisfy the judge that they are a fit and proper person to hold a certificate, that they possess a suitable knowledge of the law regarding the taking into control of and sale of goods, and that they are not involved in the buying and selling of debt. A bond would also have to be lodged. The county court would also have the power to cancel or suspend certificates. The Lord Chancellor would have regulation making powers regarding certification, and it is envisaged that these would be used to ensure that the requirements of the certification process are suitably enhanced to ensure improved standards and increased professionalism.

B. Single piece of enforcement agent law

Option 1 – To do nothing and leave the enforcement agent law as it is.

2.42 Existing enforcement agent law is complex. If no changes are made this lack of clarity would persist, and creditors, debtors or enforcement agents would continue to find the law difficult to understand.

Option 2 – single piece of enforcement agent law

2.43 The Bill proposes a single piece of enforcement agent legislation. It is intended that this would govern the activities and actions of all civil enforcement agents, be they public or private sector, and whether they are enforcing court-based writs and warrants or non court-based liabilities.

2.44 These proposed reforms would clarify existing law, much of which is very old and complex. It would also codify existing law, which is currently found in many disparate places and is based on many different legal sources, in one single legal entity that would be written in plain English, making it much easier for creditors, debtors and enforcement agents alike to understand.

2.45 The single piece of enforcement agent law would include a unified set of legal remedies available for wrongful actions carried out during the course of distraint action. These proposals would achieve the following:

- They would clarify the legal remedies available for wrongful actions.

- They would cover wrongful actions by enforcement agents, debtors and creditors alike, and would cover "irregular" actions (including what is currently known as "excessive" action).
- Redress for illegal actions would be available through the existing laws of tort, whilst redress for irregular actions would be available by bringing an action for a breach of the new code.
- They would ensure that all actions taken by enforcement agents are legal and proportionate.

C. Distress for Rent reforms

Option 1 – To do nothing.

2.46 The existing practice would not be ECHR compliant.

Option 2 – Abolish the practise of distress for rent in both residential and commercial property without creating a replacement.

2.47 Distress for rent is a non-court based remedy, currently available for commercial and residential premises alike, that enables landlords (or certificated bailiffs acting on their behalf) to seize goods belonging to the debtor tenant and sell them to cover unpaid rent arrears. Abolishing distress for rent and not providing an alternative recovery method would force all such cases to be enforced through the courts. This would prove to be slow and costly for landlords, and would place extra burdens upon the courts. It would have a particularly negative effect on short-term lets and difficult to let properties.

Option 3 – Distress for rent retained and modified to improve Human Rights compliance.

2.48 Under proposals in the Bill, distress for rent would be abolished to address ECHR issues. It would be replaced with a new right and a modified regime for recovering rent arrears, to be known as Commercial Rent Arrears Recovery (CRAR). This would be a non-court based remedy, available in relation to non-residential premises only (unlike the current law on distress for rent which applies to both residential and non-residential premises, with a few exceptions). Under the provisions on CRAR, commercial landlords would be able to recover arrears of rent by engaging

certificated enforcement agents, who would follow new procedures for taking control of, and selling, the goods of the tenant.

2.49 The rules on CRAR would closely mirror those of the new unified enforcement agent law in respect of exempt goods provisions, powers of entry, remedies, hours of day when goods can be taken into legal control etc. They would also set out more clearly the actions that landlords and their tenants are legally entitled to take, and contain new safeguards to ensure that CRAR complies with ECHR.

2.50 One of the safeguards is that CRAR would only be available where there is a minimum of one week's rent in arrears. This is so that CRAR cannot be used to recover disproportionately small levels of debt. A second safeguard is that the landlord would be required to give one week's written notice of intention to use the remedy. The notice would include information to the tenant on the amount due, any charges that can be made, and how payment can be made to avoid the removal and sale of goods. It would also outline the debtor's legal rights and avenues of complaint. The notice period is intended to allow the tenant sufficient time to obtain legal advice and exercise his right of access to the courts, and where appropriate and possible to pay the arrears due. A further safeguard is that only certificated bailiffs, acting on the written instruction of the landlord, would be allowed to enter the premises to take legal control of the tenant's goods up to the value of the arrears and any costs. (Previously, the landlord himself or a certificated bailiff acting on his instruction were permitted to take legal control of goods). This rule would ensure that the person carrying out the procedure has sufficient knowledge of the law and is subject to appropriate controls.

2.51 Residential landlords would still have access to redress through the courts, where, having gained their judgment, the whole raft of court based enforcement methods would be available to them.

D. Fees

Option 1 – No change

2.52 The existing fee regime is complex and difficult for creditors, debtors and enforcement agents to understand. The lack of clarity, may make the system more open to abuse. Unchanged, the problems would continue.

Option 2 – A new uniform fee structure.

2.53 The new unified fees regime for taking control of goods would introduce a more transparent, consistent and proportionate system. The unified regime would minimise fruitless activity by enforcement agents and encourage improved payment by debtors.

2.54 Unification is intended to make enforcement more effective and improve public confidence in the justice system. At the same time, the introduction of the new fee regime should bear down on abuse and exploitation of the vulnerable by enforcement agents.

2.55 The policy should achieve the following:

- A fee regime that brings uniformity, transparency and consistency to the various debt streams, capable of quantifying the amounts that enforcement agents can charge and what debtors can expect to be charged and the cost of defaulting.
- That enforcement agents would be remunerated for the work they do regardless of the eventual success in taking control of goods. The Bill would give the Lord Chancellor powers to create a fee structure that is likely to comprise:
  - an up-front fee that would cover all the initial costs incurred by an enforcement agent;
  - a fixed fee to be charged for discrete actions common to all debt streams; and
  - a variable fee to be charged for example, for things such as storage or removal costs.
- Debtors should benefit from the uniformity and clarity of a single fee structure where it is known at each point in the enforcement process what fees and charges they would incur then and in the future. The fee structure may also allow for payment by instalments.

2.56 We do not have any specific examples of what the fee rates would be. The unified fee rates would be fixed after public consultation.

4. COSTS AND BENEFITS

Sectors and groups affected by these proposals:

- Enforcement agents.
- Debtors

- Creditors.
- The advice sector.
- The courts.
- The judiciary.

Social Impacts

2.57 We consider that these policies would not have an adverse impact on different groups of people, including minority groups.

A. Regulation of enforcement services

Option 1 – No change

2.58 This option was considered in the Green Paper, and respondents were resolutely against it as an outcome.

Costs

2.59 This option would incur no additional costs to debtors or creditors. There would, however, be a continuing cost to voluntary and charitable organisations, as there is widespread concern that the present unregulated system allows the unscrupulous to exploit the vulnerable, as identified by Citizens Advice.

Benefits

2.60 The status quo would remain; therefore there would be no extra cost to business. The enforcement agents are familiar with the current system and have developed working practices to deal with the number of warrants issued. We are unable to ascertain how much debt is covered by these warrants, but as an indication, the level of debt successfully recovered between January 2003 and December 2003 in the county courts was £49.8 million from 355,476 warrants issued worth a total of £186.3 million.

Option 2 – Regulation through a separate Commission.

2.61 This option was considered in the Green Paper and gained support from a range of stakeholders as detailed in the post-consultation Report.

Costs

2.62 Regulation through an Enforcement Services Commission would incur costs through the establishment and running of a new NDPB. The cost figures were outlined in the Green Paper, as such they are likely to be:

- set up costs of £1.1 million;
- staff costs of £1.2 million per annum;
- accommodation costs of £300,000 per annum;
- other recurring costs including ongoing IT, research, support services, travel and subsistence, marketing, publicity and recruitment of an estimated £200,000 per annum.

2.63 Total estimated cost for regulation through an Enforcement Services Commission is therefore estimated at **£1,700,000** per annum plus one-off set up costs of **£1,100,000**. The figures may be reduced on the basis that the Commission is expected to be self-financing but not profit making.

Costs on Business

2.64 Any separate Commission would have to be self-financing. Therefore, the costs would be shared between the approximate 5,200 enforcement agents that would apply for a licence. Based on the costs of similar licences issued by the SIA, the probable licence fee would be £500 each, giving a total annual income from fees of £2.6 million. Enforcement agencies would also be obliged to pay for approvals, which, based on those firms already subject to approved contractor schemes under the SIA, we estimate would need to cost £750 each. Businesses may wish to pay for the licence of employees but they would not be obliged to do so.

Benefits

2.65 A separate Commission to regulate enforcement services would ensure that all enforcement agents, as officers of the court, would be required to balance their duties to the court, the creditor and the debtor. A regulatory body would embrace enforcement in the public and private sectors, applying uniform standards and sharing best practice, ensuring a level playing field across the profession.

2.66 Under a regulatory framework, enforcement agents and service providers would raise standards and operate on a professional level through:

- guidance in a published Code of Practice, and
- transparency through a register that would be available to the public.

2.67 The courts, by imposing appropriate penalties for misbehaviour, would effectively curtail the oppressive activities of unscrupulous enforcement agents. The Commission would ensure that all enforcement agents are licensed and meet the licence criteria. As we are unable to quantify the level of unscrupulous activity we are unable to estimate the reduction on change.

2.68 Those in debt, who are often among the most vulnerable and socially excluded, would have protection and better information about their rights and advice about coping with their responsibilities.

Option 3 – Enhanced and extended certification process.

Benefits

2.69 Regulation through an enhanced and extended certification process would achieve many of the same benefits as Option 2 for the private sector, namely that debtors would benefit from a regulated system to guard against unscrupulous activity, creditors would have access to certificated enforcement agents, and enforcement agents who do not abuse the system would not be undercut by those acting in an unscrupulous manner.

2.70 Under the provisions in the Bill, it would become an offence to take control of goods under the new code without a certificate (unless exempt). Regulations may provide for judges to cancel or suspend certificates, and to hear complaints against the actions of certificated enforcement agents. In addition enforcement agents may have to lodge a bond as security to cover the costs of any such complaints.

Costs

2.71 Regulation through the judiciary in this way would involve little if any additional financial burdens by way of start up costs, as the judges, staff, buildings, systems and structures would already be in place. Applicants would pay for any further costs that may arise through the fees payable for certification.

Costs on individual agents

2.72 All enforcement agents (unless they are exempt) would be required to obtain a certificate. The cost of applying for a certificate is currently £130. This is considerably cheaper than the estimated cost of licences issued under a separate Commission, even with the Commission operating on a non-profit basis. The licence fee for enforcement agents would need to be set on the basis of recovering an appropriate share of the courts core costs and the additional costs to the Department for regulating this sector.

2.73 To qualify for certification individual agents would have to undergo training to the required standard, acquire the appropriate qualifications and obtain adequate insurance. We have estimated that the costs of training for enforcement agents are likely to be £110 per head per day. The costs may be less where an acceptable and recognised level of training has already been acquired.

2.74 It is anticipated that enforcement agents who are already certificated would only need one day's training in the requirements of the new single piece of enforcement agent law. Those that are not currently certificated would not only require that, but an additional day's training in the requirements of the new certification scheme.

2.75 The enhanced and extended certification process would not apply to Crown employees, and therefore 600 county court bailiffs and 1600 other state employed enforcement agents would be exempt. In addition, the 200 local authority employed and 1,600 (out of a total of 2,800 other persons who carry our enforcement work) certificated bailiffs are already subject to certification. The process would therefore only be new to the 1,200 other enforcement persons who are currently uncertificated. They would need under a day's training in the requirements of the new process (@£110 per day = £132,000) and pay for their certificates (@£130 = £156,000). Total costs to these people would therefore be £288,000.

2.76 In the longer term, as their current certificates expire, those who are currently approved under the existing system would need to be trained in the requirements of the new system. This would therefore result in long term training costs totalling £22,000 on local authorities and £176,000 on the private sector[1]. For those enforcement agents who are brand new to the industry, six-and-a-half days of training would be necessary to attain the required standard to be certificated. It is also anticipated that, once certificated, new enforcement agents would be required to do two days per year

1 (Costs of the certificates themselves are not included as these people have to have them anyway under the existing system).

continuing professional development to maintain the standards required to keep their certificate when it comes around for renewal.

Costs on business

2.77 Where enforcement agents are employees of a business, that business may well finance the certification costs, training costs and bond / insurance costs of its employees.

Costs on any charities

2.78 Debt advisors would need to familiarise themselves with the new procedures for a regulated enforcement profession. The specific cost is not known, however volunteers working in the area of debt advice currently receive free training funded by sponsors, who donate funds to the Federation of Independent Advice Centres totalling £1.5 million over two years. The costs would form part of existing ongoing training, it is therefore not a new cost, and the funding is already in place to cover this.

Costs to the courts

2.79 Under the new enhanced and extended certification process, the county courts would continue to administer the certification process. An application for an enforcement agent's certificate currently costs £130, which is the amount of the court fee charged. Applications are listed before a circuit judge for around 15 minutes, and there is also a certain amount of preparatory clerical work that court staff must carry out. Courts must also take out an advertisement in a local newspaper.

2.80 The Department considers that the fee charged for an application for a certificate must adequately reflect the cost to the courts in terms of judicial time and the clerical support necessary to run the system properly. It is anticipated that as much of the processing work as possible would be done by clerical support staff – after all, judges' core skills lie in adjudication, not in completing administrative tasks. These judicial skills are a scarce resource. However, it is accepted that a certain amount of judicial time would be required, not just for the process of dealing with applications but also in dealing with complaints against certificated enforcement agents. Whilst we envisage that there would be extra pressures on the courts and judicial time, in order to respond to the extra applications for certificates from the currently uncertificated persons who carry out enforcement work, we anticipate the overall cost to the courts would be neutral. Any increased costs incurred due to the extra applications would be offset by increased income from fees.

B. Single Piece of Enforcement Agent Law

Option 1 (No change)

Benefits

2.81 The main benefit of the current system is that the judiciary, barristers, solicitors, voluntary sector and enforcement agents are familiar with the system. There would be no extra costs if the status quo were maintained.

Costs

2.82 There would be a continuing cost to voluntary and charitable organisations as there is widespread concern that the present unregulated system allows the unscrupulous to exploit the vulnerable. At present, enforcement agents have been portrayed in a negative light and have been subject to much negative publicity. This has much to do with the lack of clarity in enforcement law where there is a lack of understanding as to what actions enforcement agents are able to take and the fees they are able to charge. Enforcement agents would continue to be subject to negative publicity and criticism and this could increase if debt levels in England and Wales increase.

Option 2 (Single piece of enforcement agent law)

Benefits

2.83 Currently the law is open to interpretation and largely based on case law. This means that disputes frequently take place and these can be expensive and time-consuming. Having a single piece of enforcement agent law with all legislation relating to enforcement action set out in one place would greatly reduce the number of court cases which query the law on enforcement action, although there may be an initial increase in complaints under the new complaints system.

2.84 New legislation would also decrease the number of complaints that are made directly to enforcement agencies or their associations. By simplifying and harmonising the legislation, much court time would be saved and the legislation would be significantly simpler to understand for all the parties. There would also be increased clarity for the debtor and enforcement agent in relation to illegal and irregular behaviour. This should result in fewer complaints against enforcement agents and greater public confidence in the system.

Costs

2.85 There would be a continuing cost to voluntary and charitable organisations as there is a widespread concern that the present unregulated system allows the unscrupulous to exploit the vulnerable. At present, enforcement agents have been portrayed in a poor light and subject to negative publicity. This has much to do with lack of clarity in enforcement law, where there is a lack of understanding as to what actions enforcement agents are able to take and the fees that they can charge. A cost of continuing with the present system would be that enforcement agents would continue to be subject to negative publicity and criticism and this could escalate if personal debt levels increase.

2.86 Her Majesty's Courts Service (HMCS) estimates the cost of re-training staff, including members of the judiciary and approximately 600 enforcement agents (county court bailiffs) in the new law would be £64,000. Retraining of all other enforcement agents, of whom we estimate there to be 4,600, would be required. Training for all of these would take one day and cost £110 per head. The total estimated cost would be £506,000 (£176,000 for crown employed agents, £22,000 for local authority employed agents, and £308,000 for the private sector, of which we estimate £165,000 would fall upon small businesses and £143,000 on the self-employed).

2.87 The Security Industry Training Organisation is developing a national occupational standard and NVQ. We estimate direct costs arising from this at £25,000. The cost of voluntary debt advice sector training is estimated at £1,500,000. This is funded from the Money Advice Trust. It is estimated that the publication costs for new court forms, information leaflets etc. would be £20,000, to be met by HMCS.

C. Distress for Rent

Option 1 (No change)

Benefits

2.88 Distress for rent is a quick, cheap and effective procedure. At present, out of 60,000 procedures carried out, 56,000 are successful in collecting rent arrears. It acts as a deterrent for non-payment of rent. Distress for rent overcomes the disadvantage that commercial landlords face compared to other creditors, in that they are unable to discontinue supply of their services. Distress for rent allows commercial tenancies to rent to marginal business tenants and marginal properties, which reduces risks for owners of letting premises, and they can therefore offer them on more advantageous

terms. Landlords, tenants and enforcement agents are familiar with the present system and so they would not need to learn about any new procedures.

Costs

2.89 Concern has been expressed that distress for rent might breach the right to a fair trial, the right to respect for privacy and family life, and the right to quiet enjoyment of possession and could therefore be challenged under the Human Rights Act 1998. Distress is felt to be a disproportionate remedy, especially in lower rent residential premises. Tenants do not always get a fair price for goods that are removed and sold. Enforcement agents who rely on fees for taking legal control of goods have more incentive to abuse the system.

Option 2 (Abolish distress for rent in without creating a replacement)

Benefits

2.90 If the practice of distress for rent were abolished, the recovery of rent arrears would be placed on the same footing as the recovery of other debts. Business tenants would no longer have enforcement agents take legal control of their goods immediately and without warning and could continue to use or trade them. It is probable the business tenant would receive a better price for his or her goods than the valuation placed on them by the landlord. Business tenants would receive fairer treatment in the case of exploitation by the landlord by having access to established court procedures and they could challenge the actions of harsh landlords. Other creditors would be on a more level playing field with commercial landlords for recovery of debts than under the existing regime.

Costs

2.91 The threat of using distress for rent is very effective, although there is no similar indication of the impact of court action. Costs to landlords include a higher proportion of rent arrears and repossession fees and other associated costs. Costs of seeking arrears through the courts would fall to commercial landlords. Additional costs to business tenants would be the cost of court procedures minus the costs they would incur under distress for rent procedures. Costs to enforcement agents include the loss of around £4 million in fees. These may account for between 4% and 20% of an agent's income, depending on their speciality. Cost to courts would mean that the remaining method of recovering debt would be by money judgments and, in certain cases, using the insolvency procedure. It is possible this would lead to 60,000 new claims and nearly 8,000 additional hearings.

Option 3 (Distress for rent retained and modified)

Benefits

2.92 Compliance costs of a revised procedure are likely to be low. Legislation for a modified remedy would improve access to justice by making procedures clear to both commercial landlords and business tenants. Other benefits would include legal certainty, leading to greater confidence in the justice system; responsible fee charging by enforcement agents; and fewer complaints about enforcement agents' behaviour.

Costs

2.93 Costs would be minimal. There would be little in the way of extra costs for court hearings for residential rent arrears (as over 90% of distress for rent currently carried out is for commercial rent arrears), and little loss of work for enforcement agents for similar reasons. Costs to enforcement agents would be minimal as they already need to be certificated to carry out distress for rent and that would not change for CRAR. Additional retraining costs would also be minimal, as enforcement agents would need to be retrained in the requirements of the new unified enforcement agent law anyway.

D. Fees

Option 1 (No change)

Benefits

2.94 Creditors who currently have enforcement work undertaken for them free of charge would continue to receive a service at no cost to themselves. Enforcement firms, HMCS and debt advice services would avoid retraining costs.

Costs

2.95 There would be a continuing financial cost to private sector enforcement agents and agencies undertaking work whereby they take control of goods for free or pay to undertake work which proves unsuccessful. Enforcement agents would continue to suffer a public perception that they exploit the existing fee system to ensure profitability.

Option 2 (New fee structure)

Benefits

2.96 The introduction of an up-front fee would ensure enforcement agents receive remuneration for work undertaken, regardless of the eventual success of the enforcement action. Minimising the degree of fruitless enforcement activity, the costs of which are met by agents, agencies and the debtors who do pay. Fixed fees may mean an increase in the income of enforcement agents.

2.97 The new fee structure should introduce a greater degree of certainty and control for enforcement agents, as they would be able to work with set figures and negotiate contracts with a firmer notion of the minimum level of return they can expect. Debtors would be aware of their potential liabilities benefiting from the uniformity and clarity of a single fee structure.

Costs

2.98 The introduction of an up-front fee would ensure that enforcement agents receive remuneration for work undertaken, regardless of their eventual enforcement success. Fixed fees may result in lower charges and costs payable to enforcement agents who have been able to charge a higher or variable rate for what has become a fixed cost activity. Enforcement agents would be responsible for notifying the debtor of the fees they would incur if they fail to pay the amount owing (our estimate is approximately £12 million, though the majority of this figure should be recoverable from the debtor).

5. SIMPLIFICATION AND REDUCING ADMINISTRATIVE BURDENS

2.99 The proposals for certification, enforcement agent law and fees unify existing disparate procedures and therefore are key simplifications and reduce burdens on enforcement agents etc. Implementation would impose an initial burden on courts, due to the requirement for certification. Over the longer term, we anticipate that the simplified structure and overall regulation process would lead to fewer complaints for the courts to deal with.

6. SMALL FIRMS IMPACT TEST

2.100 There are currently approximately 150 firms that employ certificated enforcement agents in the private sector. Some of these employ a small number

of agents. Regulation through a statutory body may incur extra costs for small businesses, if they choose to cover the costs of their employees.

2.101 There are no known figures for landlords undertaking distress themselves. Landlords of business tenancies would in future need to employ an agent to undertake distress for rent (unless they themselves were also a certificated enforcement agent). The payment of an agent's fees varies greatly as some agents charge landlords, others take all of their payment from the tenant – therefore, this is an unknown quantity. Whilst an amended DfR regime would introduce greater protection of tenants, there is the possibility that the use of DfR on small businesses may still cause a disproportionate loss, possibly resulting in business failure.

2.102 With regard to the new single piece of enforcement agent law, there may be an impact on small enforcement firms. The new legislation would mean that all enforcement agents would be trained to the same standards and would have to be certificated. The Small Business Service commented that, taken as a whole, the new legislation would assist small businesses that are unable to settle their debts, as they would be treated in a more balanced and fair manner. The new legislation would also help small businesses to collect debts that are owed to them, because enforcement methods would be more effective and efficient as a result of these reforms.

7. COMPETITION ASSESSMENT

2.103 The establishment of regulatory powers to ensure that enforcement is carried out by licensed enforcement agents, introduced by whatever means, should not have a significant effect on competition within the enforcement industry. The industry currently comprises 5,200 enforcement agents, about 2,200 of whom are crown employees, 200 of whom are local authority employees, and 2,800 of whom are private employees, spread between approximately 150 business entities.

2.104 The enforcement industry consists of a number of different market segments, which consist of High Court and county court writs and warrants, magistrates' court fines, parking charges, local and national taxes and duties, maintenance and child support. Each debt stream has its own characteristics in terms of the nature of competition, number of firms operating and the nature of competition. In some sectors e.g. enforcement of county court warrants of execution, the work is wholly within the public sector, whilst in others, such as High Court writs, the work is wholly contained within the private sector and is divided between approximately 70 High Court

Enforcement Officers. But looking across the industry as a whole, it is estimated that there are generally five firms with larger market shares within each debt stream open to the private sector, holding a combined market share of at least 50%.

2.105 Certification fees would be payable by individual enforcement agents. However, the anticipated level of such fees is sufficiently low that it is considered unlikely to affect significantly either the number of individual enforcement agents, or the number of businesses, operating in the market. The increase in costs would not represent any significant increase in barriers to entry, although it is possible that those firms entering the industry for the first time may find that they face some additional training costs. All their enforcement agent employees would need the training required to meet the necessary standard for certification, whereas for existing firms many of their employees would already be certificated, and only those that are currently not certificated would need this extra training required to reach the necessary standard.

2.106 If enforcement agencies choose to cover these costs for the individual enforcement agents employed by them, this could potentially create significant new costs for those employing large numbers of enforcement agents. However, such costs would be proportionate to the size of the firms involved and would, nevertheless, represent a very small part of agencies' total costs of retaining the enforcement agents employed by them.

2.107 The new fee structure may limit what firms can charge for their services, but this would affect all firms within the industry (and indeed the public sector) in the same way, so no firm or sector would gain a significant advantage over another by this reform. Likewise, the Government does not expect that any of the options on Distress for Rent would have a significant impact on competition.

2.108 Option 1, retaining the use of distress for rent warrants, would maintain the status quo and would not therefore result in any change to existing levels of competition or market structure.

2.109 Option 2 would abolish the use of distress for rent warrants and create additional court costs for commercial landlords in the region of £15 million (the costs involved in bringing 60,000 cases before the courts rather than using an out of court remedy such as distress for rent or an equivalent), as well as resulting in a loss of around £4 million in fees income to enforcement agents. The commercial sector comprises many different segments according to the size and location of the properties.

It is unlikely, however, that implementation of this proposal would have any significant effect on competition within any of these markets.

2.110 Option 3, retaining the existing use of distress for rent with some amendments, would result in additional staff training costs for enforcement agents. This should constitute a one-off cost and would be unlikely to have a significant, disproportionate impact on smaller firms or on new firms looking to enter the market. It is not anticipated this would have any significant effect on competition.

2.111 The proposals to include in primary legislation the power for the Lord Chancellor to set fees for enforcement agencies in England and Wales could have a significant impact within the enforcement industry. However, it is difficult to assess with any certainty the scale of the impact of the reform prior to the fee levels being set. We anticipate the main affect arising from the new fee regime is that fewer warrants may be issued, due to creditors having to pay an up-front fee. As a consequence, there may be a reduction in the workload of enforcement agents within the industry, leading to a reduction in the numbers of enforcement firms operating, thus further increasing the level of concentration.

2.112 At present, a significant number of warrants are unenforceable, possibly due to incorrect address details but it may also be because enforcers have insufficient incentive in the current charging structure to strive for maximum recovery. Improvements in the charging structure should promote competition on recovery rates, particularly when this is tied to improvements in the availability of information on debtors.

8. ENFORCEMENT, SANCTIONS AND MONITORING

2.113 Under primary legislation, it would be an offence for non-exempt enforcement agents to operate without a certificate. The punishment would be a fine not exceeding level one on the standard scale.

2.114 In addition, there would now be a unified set of remedies available against enforcement agents who take illegal or irregular action:

- If an enforcement agent committed an illegal action, i.e. an action that had no basis or justification in law from the outset, then from the moment he sets foot on the property concerned he would be deemed a trespasser, and the aggrieved party could seek restitution through the courts under the existing laws of tort as they could against any other trespasser.
- If an enforcement agent committed an irregular action i.e. he had the right to be on the premises, but then committed an act that was in breach of the new single piece of enforcement agent law, the debtor could bring proceedings against the enforcement agent through the courts for a breach of the code.
- In addition, a complaint could also continue as at present to be made to the court that issued the enforcement agent's certificate, regarding that person's fitness to continue holding a certificate. The court would have the power to cancel or suspend a certificate in these circumstances if the complaint is upheld.

2.115 Disputes regarding fees charged would continue to be matters for professional bodies representing enforcement agents or under regulations, possibly by way of assessment after reference to the courts.

9. IMPLEMENTATION AND DELIVERY PLAN

A single piece of Enforcement Agent Law, enforcement agent fees, and CRAR:

2.116 It is anticipated that all elements of what currently might be termed "bailiff law", including the new single piece of enforcement agent law, the abolition of distress for rent and its replacement with CRAR, the new remedies and the new single, simplified fee structure, would be introduced simultaneously. It makes sense to do it this way – to, say, introduce a new single piece of enforcement agent law without a new fee structure would not be a sensible way to proceed.

2.117 Following Royal Assent, there would then need to be a suitable period of time to draft the underpinning regulations, and, particularly in areas such as fees, a further three-month consultation period. Once passed, it is estimated that there would need to be a minimum run-in period of three months before the regulations came into effect. It is therefore most unlikely that implementation proper would occur until two years after introduction of the Bill, at the earliest.

Regulation of enforcement services

2.118 It would be necessary to give a fair period of time to enable existing enforcement agents to attain the standards required to qualify for a certificate under the new regime. The time taken to draft the regulations and get them approved by Parliament would be similar to above. But it is anticipated that at least a year would be required before all existing enforcement agents were at a level that they could be certificated under the new regime. It is therefore suggested that full implementation would not happen until three years after introduction of the Bill.

2.119 Looking to a more long-term implementation timetable for regulation would also fit better with the current review of NDPBs, announced under the Hampton Review (March 2005), and the SIA's current regulation programme. The Hampton Review, which has looked at the current number and structure of NDPBs, has given the SIA two years before it will be reviewed again, and its future structure and role will be looked at then. The SIA will also have finished its current programme for taking on board regulation of all other sectors it is due to regulate, such as event stewards, security consultants, key holders etc. by then.

2.120 This all means that by this time, the long term future of the SIA post-Hampton report will be a lot clearer. It is even possible that this department may already be negotiating full scale regulation of all civil enforcement agents (private and public) by the SIA (or its successor) by that stage. This all being the case, a more long-term approach to implementing regulating of enforcement agents by way of an enhanced and extended certification process seems the most sensible approach.

10. POST IMPLEMENTATION REVIEW

2.121 Our delivery plan must involve securing primary legislation, developing and implementing the secondary and operational mechanisms, and at the same time as the operational mechanisms are being developed, putting in place any post implementation review arrangements.

2.122 With some of these policies, notably CRAR, having come as a result of recommendations from the Law Commission, a structured and successful post implementation review programme becomes even more important.

2.123 This process would be conducted in a similar way to our post implementation reviews of the High Court enforcement reforms contained in the Courts Act 2003. This mainly involved holding a series of meetings with key stakeholders to discuss the impact of the changes and if / why things have / have not improved as a result of these reforms, at a period of 6 months and 1 year after implementation. Further reviews could be held at six monthly intervals thereafter if it were thought to be necessary.

2.124 Contributions to the debate by way of written responses from stakeholders and the general public would also be encouraged.

11. PUBLIC SECTOR IMPACT TEST

2.125 It is not envisaged that the introduction of a single piece of enforcement agent law would result in any significant changes in the number of public sector enforcement agents. There may be an initial increase in overall workload until the changes have bedded in. However, in the longer term, workloads should decrease as a consequence of unification, simplification and clarity in terms of the law of distress.

Cost	*Benefit*
Regulation of enforcement services – Option 1 ***Private Sector*** – None. Public Sector – None.	***Private Sector*** – None. ***Public Sector*** – None.
Regulation of enforcement services – Option 2 ***Private Sector*** – Not known. The cost of voluntary debt advice sector training is estimated at £1,500,000 – funded from the Money Advice Trust. ***Public Sector*** – £1.1m implementation costs and £1.7m running costs per annum.	***Private Sector*** – Not quantifiable in financial terms. ***Public Sector*** – Not quantifiable in financial terms.

Cost	*Benefit*
Regulation of enforcement services – Option 3 ***Private Sector*** – £176,000 ***Public Sector*** – £310,000 (although we would expect any costs to be met through the fees charged to applicants)	***Private Sector*** – Not quantifiable in financial terms. ***Public Sector*** – Not quantifiable in financial terms. **THIS IS THE RECOMMENDED OPTION**
Single Piece of Enforcement Agent Law – Option 1 ***Private Sector*** – None. ***Public Sector*** – None.	***Private Sector*** – None. ***Public Sector*** – None.
Single Piece of Enforcement Agent Law – Option 2 ***Private Sector*** – £308,000 ***Public Sector*** – £307,000	***Private Sector*** – Not quantifiable in financial terms. ***Public Sector*** – Not quantifiable in financial terms. **THIS IS THE RECOMMENDED OPTION**
Distress for Rent – Option 1 ***Private Sector*** – None. ***Public Sector*** – None.	***Private Sector*** – None. ***Public Sector*** – None.
Distress for Rent – Option 2 ***Private Sector*** – None. ***Public Sector*** – None.	***Private Sector*** – Not quantifiable in financial terms. ***Public Sector*** – Not quantifiable in financial terms.

Cost	*Benefit*
Distress for Rent – Option 3 ***Private Sector*** – None. ***Public Sector*** – None.	***Private Sector*** – Not quantifiable in financial terms. ***Public Sector*** – Not quantifiable in financial terms. **THIS IS THE RECOMMENDED OPTION**
Enforcement Agent Fees – Option 1 ***Private Sector*** – None, although inefficiencies would remain. ***Public Sector*** – None.	***Private Sector*** – None. ***Public Sector*** – None.
Enforcement Agent Fees – Option 2 ***Private Sector*** – None. ***Public Sector*** – None.	***Private Sector*** – Not quantifiable in financial terms. ***Public Sector*** – Not quantifiable in financial terms. **THIS IS THE RECOMMENDED OPTION**

12. SUMMARY AND RECOMMENDATION

	Total benefit per annum: Economic, environmental, social and administrative	**Total cost per annum: economic, environmental, social and administrative**
Regulation of enforcement services		
Option 1 – no change	Status quo would remain so no extra cost to business	No additional costs to debtors and creditors but system would remain unregulated and open to abuse
Option 2 – Commission	Regulatory body would apply uniform standards across the enforcement profession.	Regulation through Enforcement Services Commission would incur the following costs through the establishment and running of a new NDPB: Set up costs of £1.1 million; Staff costs of £1.2 million per annum; Accommodation costs of £300,000 per annum; and IT, support services, T & S, £200,000 per annum.
Option 3 – Certification	Certification would apply uniform standards across the enforcement profession.	Public sector costs £310,000 Private sector costs £176,000 **THIS IS THE RECOMMENDED OPTION**

	Total benefit per annum: Economic, environmental, social and administrative	**Total cost per annum: economic, environmental, social and administrative**
Single Piece of Enforcement Agent Law		
Option 1 – no change	No extra costs to businesses. Enforcement agents and legal/voluntary sector are familiar with the system	Exploitation of the vulnerable by unscrupulous enforcement agents
Option 2 – single piece of enforcement agent law	Legislation would be significantly easier for all parties to understand	Public sector implementation costs consist of: One-off training for Court Service: £64,000; NVQ training costs £25,000 Training costs for enforcement agents: IR, C&E, CEOs £176,000 Leaflets £20,000; Local Authorities: £22,000. Private sector implementation costs consist of: Private sector (employed) £165,000 Private sector (self employed) £143,000 **THIS IS THE RECOMMENDED OPTION**
Distress for rent		
Option 1 – no change	Quick and effective remedy for the collection of arrears – £167m worth of debt (93% of warrants) is successfully collected	Distress for rent is felt to be a disproportionate remedy and it could be challenged under the HRA 1998

	Total benefit per annum: Economic, environmental, social and administrative	**Total cost per annum: economic, environmental, social and administrative**
Option 2 – abolish	Recovery of rent arrears would be placed on the same footing as the recovery of other debts	£15m in additional court costs to landlords, which may not all be recoverable from debtors. £4m loss of income from
Option 3 – retain and modify	Improve access to justice by making procedures clear to both commercial landlords and business tenants	Many of the suggested amendments are already features that many commercial landlords already undertake. **THIS IS THE RECOMMENDED OPTION**
Fees		
Option 1 – No change	Creditors who currently have enforcement work undertaken free of charge or who receive a fee would continue to receive this service. No additional training costs incurred	Continuing financial cost to private sector enforcement agents and agencies undertaking enforcement work for free or paying to undertake work which proves unsuccessful
Option 2 – unified fee regime	Enforcement agents would receive remuneration for work undertaken, regardless of their eventual enforcement success	Training costs in the new fee structure would be included in training for the new single piece of enforcement agent law. **THIS IS THE RECOMMENDED OPTION**

III. REFORM OF COURT-BASED METHODS OF ENFORCEMENT – FULL RIA

1. TITLE OF THE PROPOSAL:

3.1 Reform of court-based methods of enforcement provisions in the Bill covering: widening the scope of Charging Orders, Attachment of Earnings Order (fixed rates for deductions and finding a debtor's current employer) and Information Requests and Orders.

2. PURPOSE AND INTENDED EFFECT OF MEASURE:

i) Objectives:

3.2 To reform court-based methods of enforcement by ensuring that the rights of creditors to receive payment of judgment debts is met and to balance this against the need to protect debtors from unreasonable action by creditors even where they are complying with the debt judgment.

ii) Devolution:

3.3 These proposals apply to England and Wales.

iii) Background:

3.4 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.

3.5 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 are all undermined.

3.6 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 (AEO), charging orders, third party debt orders, judgment summonses, or warrants of execution.

3.7 Whilst offering protection to debtors who are genuinely unable to pay, the package of legislative proposals aims to improve the effectiveness of the current court based enforcement methods.

iv) Rationale for Government Intervention:

What are the identified problems?

3.8 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 those debtors who genuinely wish to honour their judgement debts. The main weaknesses relate to a lack of accurate and up to date information about debtors.

What is the scale of the problems?

3.9 We do not have specific statistical information on the scale of the problems. Anecdotal evidence is contained in the White Paper Effective Enforcement, published in March 2003. Much of the basis for the proposed changes is based on anecdotal evidence provided by stakeholders involved in civil enforcement, such as: creditors, debtors, or people involved in the enforcement process. Information has been obtained from the results of consultation, activities of working groups, and only after extensive liaison and discussion with external stakeholder groups.

Will the problems identified worsen without government intervention? If so, how?

3.10 If the Government does nothing then the court based enforcement methods can still be employed to apply and enforce judgment debts. However this will not address the present failings for both creditor and debtor. Repayment will continue to be

sporadic and easy to evade, and confidence in the justice system will not improve. We cannot say whether or not the problem will worsen, since this would require predicting future behavioural changes between disparate groups involved in court processes. We feel safe to assume that the problems will not rectify themselves, since this would have happened over the course of time.

3.11 By making the proposed changes, the Government believes that it can provide a simpler, consistent and more effective process of enforcement by:

- Improving the ability of responsible creditors to recoup monies owed to them;
- Protecting genuine debtors complying with judgment debts from the aggressive pursuit of their debts even when they are paying those debts; and
- Assisting creditors in tracking down defaulting debtors and improving enforcement of court orders and the administration of civil justice.

3.12 By allowing, the creditor to take responsible and appropriate action to gain payment of debts the Government will improve confidence in civil justice. By making changes that mean both the courts and creditors make a distinction between debtors who deliberately default on debt and those who make every effort to pay, the Government can ensure vulnerable groups are given the protection they need whilst meeting debt obligations.

3.13 With regard to charging orders (a means of securing a debt by placing a charge onto a debtor's property), the main risk associated with the proposals concerns unsecured loans effectively becoming secured by a charging order and potentially leading to the loss of the family home. The Government believes this is unlikely. Members of the debt advice sector suggested the introduction of a lower limit on the size of debt for which a charging order or an order for sale could be sought. There were also calls for debts arising from credit agreements under the Consumer Credit Act 1974 to be exempted from enforcement by way of charging orders and orders for sale. However, our proposals aim to balance the interests of the creditor with those of the debtor and his family. Similarly the judge needs some discretion when considering an application.

3.14 Responsible creditors who are owed money and have gained valid judgments through the county court must retain the right to enforce that judgment by the most appropriate means. After consultation with the British Banking Association and the Finance and Leasing Association, it is clear that the vast majority of financial institutions and their trade organisations are committed to sensible lending and enforcement practises.

On the whole, they make use of charging orders as a way of securing their position, but do not resort to the use of orders for sale except in extreme circumstances. Orders for sale are rare, partly as a consequence of existing judicial discretion. Lenders believe that judges make great use of their discretionary powers, and avoid granting orders for sale except in the most extreme circumstances. Many lenders have already adopted a policy of minimum debt levels below which they do not pursue debtors by way of charging order. The cost of a successful charging order and order for sale (in terms of lawyers time etc. rather than the application fees payable) is not justified for such relatively small sums.

3.15 Without increased access to information, debtors who can pay (but refuse) will continue to evade their responsibilities, safe in the knowledge that their details will not be accessible. Additionally, creditors will continue to use the easiest enforcement method available, rather than the most appropriate.

3.16 The impact on individual businesses of the Attachment of Earnings Orders (AEO) fixed deductions scheme will vary depending on payroll systems and prior experience of administering fixed tables. If the present system continues, there is a risk that the use of Attachment of earnings orders as a method of enforcement will be undermined, and less effective enforcement methods may be chosen (for example, warrants of execution).

Have other methods been considered/used? If so, why do they fail to resolve the issues?

3.17 Other changes to court based enforcement methods have already been introduced to the Civil Procedure/Rules 1998. In March 2002, new court processes were introduced: Third Party Debt Orders replaced Garnishee orders, Orders to Obtain Information replaced oral examinations, and new procedures governing charging orders and orders for sale were introduced. The March 2002 changes represented the initial outcome of the 1st Phase of the Enforcement Review, and those changes which could be introduced by way of secondary legislation. Primary legislation would be required to ensure that the full range of court based procedural reforms could be introduced. The Enforcement Review examined the further development of processes which could be achieved via primary legislation after March 2002, culminating in the proposals in the White Paper Effective Enforcement in March 2003.

3.18 All of the proposals covered by this regulatory impact assessment have been derived after extensive public consultation, and working groups involving stakeholders both internal to and external to Government.

3. CONSULTATION

List of public consultations:

- How can the enforcement of civil court judgments be made more effective – June 1998 – consultation included consideration of charging orders and attachment of earnings processes;
- Key principles for a new system of enforcement in civil courts – May 1999 – consultation included consideration of information gathering in the enforcement process;
- Attachment of Earnings Orders, Charging Orders and Garnishee Orders – October 1999 – consultation included further consideration of proposals to reform attachment of earnings orders and charging orders;
- Warrants and writs, oral examinations, and judgment summons – January 2000 – consultation included consideration of data disclosure orders;
- A report of the First Phase of the Enforcement Review – July 2000 – summarised the findings for attachment of earnings and charging orders;
- Towards Effective Enforcement – July 2001 – Green Paper which dealt with information sharing proposals; and
- Effective Enforcement – March 2003 – White Paper which stated the Governments chosen options for reform in attachment of earnings, charging orders and to introduce data disclosure orders.

Key stakeholders involved in court-based process consultation:

- The Judiciary;
- Enforcement Agents and Agencies;
- The advice sector (e.g. Citizens Advice, the Money Advice Association, the Federation of Independent Advice Centres);
- Organisations that represent court users (e.g. the Civil Court Users Association);
- Other Government departments (e.g. HMRC, DWP, DTI, ODPM, Home Office, Treasury);
- The unions that represent court staff; and
- Employers organisations (e.g. Institute of Professional Payroll Management, Federation of Small Business).

3.19 The internal and external stakeholders have generally been supportive of the proposals. For example: regarding our proposals for attachment of earnings deductions by fixed rates – a separate consultation conducted with employers, through the Chamber of Commerce (on advice from the Federation of Small Businesses) and through payroll organisations, showed that out of 155 responses, 148 were in favour of the proposed change. Further, responses to the First Phase of the Review identified that confidence in the attachment of earnings process was low and a tracing process to find details of the new employer would be beneficial. Fifty-three of 67 responses were in favour of a tracking procedure.

Where policy has changed as a result of consultations:

3.20 The White Paper Effective Enforcement included proposals for a partial Data Disclosure Order, involving regulated enforcement agents seeking information to assist with enforcement as part of the data sharing gateway with Government departments or other nominated organisations. This element of the overall data disclosure order proposal has been dropped. In light of the decision to not proceed with regulation of enforcement services through the Security Industry Authority, the partial data disclosure order provision has been dropped.

4. OPTIONS

3.21 The White Paper Effective Enforcement outlined the options that were derived as a consequence of extensive public consultation. The options represent the sum of all views expressed as to how Government can improve the methods of court enforcement on debt. The regulatory impact assessment, therefore, only considers the options of "no change" or the specific option derived at as a consequence of consultation.

3.22 Much of the court based procedural reform for charging orders has already been introduced to the Civil Procedure/Rules 1998. The Civil Procedure/Rules, Part 73 was introduced in March 2002 and contains procedural changes that could be introduced as secondary legislation.

3.23 Attachment of earnings orders can only be modelled on two distinct systems:

i) fixed deduction rates – similar to those operating in Council Tax; or
ii) individually calculated rates – currently in operation for civil debts.

A. To widen the Scope of Charging Orders

Option 1 – To do nothing and leave the application of charging orders unchanged.

3.24 A charging order is a means of securing a debt by placing a charge onto the debtor's property (usually land or securities such as shares). A charging order can be made absolute or subject to conditions. However, once an order is in place a creditor can subsequently apply to court seeking an order for sale of the charged property.

3.25 At present, a 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. It leaves a major barrier to the recovery of a judgment debt because debtors with large judgment debts, paying off their debt in small instalments which are not reviewed regularly if the debtor's circumstances change, are able to benefit from the sale of a property without paying off the debt. The debtor thereby obtains a capital sum and is under no obligation to make any payments towards the judgment debt.

3.26 If the Government does not amend the scope and application of charging orders, creditors would still be able to apply to the court for them. However, it would not address some of the shortcomings in the present system of charging orders which allow debtors to avoid their commitments to repay debts.

Option 2 – To widen the Scope of Charging Orders.

3.27 If a charging order is in place before the debtor defaults, this would provide the creditor with some security that the proceeds of the sale would go towards paying off the judgment debt. Although the debtor, if he became aware of the sale, could apply to the court for a review of the instalment order, the money from the sale could already have been disposed of and an opportunity to settle the debt more quickly would have been lost.

3.28 The policy should achieve the following:

- Widened access to charging orders so that it should be possible for a creditor to obtain a charging order against an asset even where the debtor is subject to an instalment order with which he is complying.
- The extension of access to charging orders will be counter-balanced by the creation of additional safeguards to protect the debtor. The Bill contains provision to set financial thresholds regarding the making of charging orders and orders for sale.
- Creditors would not be able to seek an order for sale to enforce the charging order in circumstances where the debtor had not defaulted on an instalment order.

B. To introduce Attachment of Earnings Orders deductions at fixed rates:

Option 1 – To do nothing and leave the Attachment of Earnings Order process unchanged.

3.29 An Attachment of Earnings Order (AEO) allows a creditor to secure payment of a debt by ordering the debtor's employer to make regular deductions from a debtor's salary, until the debt is paid in full. The outstanding debt must be over £50 and deductions can be made from earnings, pensions and Statutory Sick Pay but only after tax and National Insurance contributions have been made. Benefits and tax credits are exempt from an AEO. An AEO is not available if the debtor is self-employed.

3.30 Under the current system for judgment debts in the county court, the court relies on the debtor's completion of a means form (N56) to calculate a Protected Earnings Rate (PER) and a Normal Deduction Rate (NDR). Our consultation identified that this often leads to unnecessary delay; some debtors do not return the means form when asked to do so. If it is not returned after 14 days, a county court bailiff must serve the documents personally on the debtor and this may require several visits to the debtor's address before service can be achieved. There are also questions about the reliability of the information supplied by debtors.

3.31 If the Government does not amend the AEO process, creditors would still suffer undue delay with recovery of judgment debts by AEO. The existing shortcomings in the present system of Attachment of earnings orders would remain.

Option 2 Introduce deductions at fixed rates for Attachment of earnings orders

3.32 Fixed Tables setting out deductions at fixed rates for AEOs made by the county court to secure a judgment debt would remove the need for a means form to be completed; once the court has made an order the employer would be instructed to apply the deduction rate specified in the tables. The debtor would still have 14 days to respond when the order is made, but after that time the deductions would automatically begin. The aim is to make the process more straightforward at the court end. Additionally employers would have a system that provides more certainty and is more consistent with other deduction schemes they operate for Council Tax and unpaid fines.

3.33 Fixed tables would specify, given the debtor's net pay over a certain pay period, the percentage of their salary that would be deducted each period to pay for the debt. There would be a lower limit (to be determined in secondary legislation) meaning those who earn under a certain amount per pay period would have a 0% rate. This is very similar to how deductions under Council Tax AEOs work.

3.34 There would continue to be provision for any party to request a review of the fixed table deductions, meaning those who genuinely cannot pay would be protected.

3.35 The policy would achieve the following:

- Reduced delay in attachment of earnings cases through use of fixed tables.
- Greater certainty for creditor and debtor
- More detailed and clearer guidance to be issued to supplement the new procedures.

C. TO INTRODUCE A MEANS OF TRACING THE DEBTOR'S EMPLOYER IN ATTACHMENT OF EARNINGS CASES.

Option 1 – To do nothing and leave the Attachment of Earnings Order process unchanged.

3.36 Currently, if a debtor changes employment and fails to notify the court of the new employer's details, the AEO lapses and recovery of the debt ceases.

If the Government does not amend the AEO process, creditors would still suffer undue delay with recovery of judgment debts by AEO. The existing shortcomings in the present system of Attachment of earnings orders would remain.

Option 2 – Attachment of Earnings Orders: finding the debtor's current employer.

3.37 The opening of an information gateway between the relevant court and Her Majesty's Revenue and Customs should enable lapsed AEOs to be redirected to the current employer. The policy should ensure fewer AEOs would fail due to the debtor failing in their responsibilities.

3.38 The procedure would only occur if the debtor has failed to provide the court with new employment details when, and if, they change employment whilst an order is in place. Provisions in the Bill would allow us to open the information gateway for all kinds of AEOs covered by the 1971 Attachment of Earnings Act, and AEOs made for fines collection under Schedule 5 to the Courts Act 2003 (made by fines officers). We estimate this would provide the opportunity for approximately 9,050 more lapsed AEOs to be re-directed, thereby supporting the Government's focus on recovering money from criminal fine defaulters.

3.39 Magistrates' courts have estimated that up to half of Attachment of Earnings Orders fail because of poor information about employers, i.e. 18,100 (36,150.)[2]. If the interrogation of Her Majesty's Revenue and Customs information returns a similar success rate as currently occurs with information exchanges between the magistrates' courts and DWP (mainly for the purpose of enforcing payment of fines), we could expect that an extra 9,050 (18,075) cases per year would result in a redirected AEO and continued recovery of the fine.

D. INFORMATION REQUESTS AND ORDERS

Option 1 – To do nothing.

3.40 A key finding outlined in the White Paper is that enforcement can be made more effective by improving the quality and quantity of information available on which to base informed and responsible decisions about enforcement. More and better

2 A court in Hertfordshire reported that of the 17 AEOs imposed since July 2003, nine were stopped because the offender changed employer and the new employer could not be traced. Another court told us 'employers are not very forthcoming; when the defendant leaves their employment 9 times out if 10 we have to chase them.'

information would allow enforcement efforts to be targeted towards the procedure that is most likely to produce results for the creditor and make it possible to identify, at an earlier stage, debtors who do not have the resources with which to pay the debt.

3.41 Under option 1, the current failings of the system would persist.

Option 2 – Introduce Information Requests and Orders

3.42 The introduction of information requests and orders would be a new proposal for the civil courts. This would be a court-based scheme to seek information on the judgment debtor who has failed to respond to the judgment or comply with court-based methods of enforcement. Information would be sought from relevant third parties in both the public (HMRC and DWP) and private (for example banks and credit reference agencies) sectors, to help the creditor make an informed choice about how to enforce a judgment.

3.43 The policy would achieve the following:

- Widened access to relevant information about the debtor.
- Increased confidence in that information.
- More effective use of information held by different Government Departments.

3.44 Any personal data obtained and used under statutory powers would only be used and stored for the purposes specified in the Bill. Information obtained via an information order or request would be used to enforce civil judgments, which are orders of the court. Clear constraints would be imposed on the use of data.

3.45 The judgment creditor would have to apply for information to be provided via this scheme, and there would be a fee for this service.

Compatibility of the provisions with the European Convention on Human Rights

Attachment of earnings: finding the debtor's current employer

3.46 The Department considers that the proposal engages Article 8 (respect for the private and family life of individuals, home and correspondence) and is compatible with the Convention. Information provided pursuant to the clause would be in accordance with Article 8(2), as such information disclosure would be in the pursuit of a legitimate

aim (to protect the rights and freedoms of the creditor and to ensure that the attachment of earnings order is enforced) and necessary in a democratic society as proportionate to the legitimate aim, as an information request would only be made if the debtor has failed to comply with his obligations in section 15 of the Attachment of Earnings Act 1971.

3.47 We would provide safeguards to protect an individual's Article 8 rights, and impose a criminal sanction where information obtained pursuant to the proposal, is disclosed for a purpose that is not connected with enforcement of the relevant attachment of earnings order.

Charging orders: payment by instalments: making and enforcing charging orders

3.48 The Department 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.

Information requests and orders

3.49 The Department considers that the proposal engages Article 8, (respect for the private and family life of individuals, home and correspondence), and that these clauses are compatible with the Convention. Information disclosure pursuant to these clauses is in accordance with Article 8(2), as such information disclosure would be in the pursuit of a legitimate aim, (to protect the rights and freedoms of the creditor, enabling him to seek to enforce his judgment debt). Various safeguards would be imposed to ensure that the information disclosure is necessary in a democratic society and proportionate:

- The application for information would be served on the judgment debtor and the debtor would be able to challenge the making of an information order/request or be able to apply to have the information order/request set aside once it has been made.

- Regulations made by the Lord Chancellor would specify the circumstances in which an application for information can be made.
- Criminal sanctions would be imposed where a person uses or discloses information obtained via an information order and/or request for a purpose that is not connected with taking action in court to recover the debt.

3.50 The Department considers that the proposal engages Article 6, (the right to a fair and public hearing), and considers that the clauses are compliant, as the debtor would be able to object to the information request/order being made or will be able to apply to the court for the information request/order to be set aside.

5. COSTS AND BENEFITS

A. Charging Orders:

Option 1 – No change

Costs

3.51 There would be no direct financial cost, though the cost of not putting safeguards in place to support debtors might mean erosion in public confidence in the civil justice system. Creditors may, as a result, choose to make more use of bankruptcy procedures.

Benefit

3.52 Creditors would continue to apply for charging orders as at present.

Option 2 – Introduce proposed change

Costs

3.53 The government does not envisage any new costs would be incurred by creditors since the existing court administered process would continue to be available, with no changes to court fees. The courts would incur negligible costs. Debtors would not incur any new costs.

Benefit

3.54 We would create safeguards for debtors with the Lord Chancellor having the power to set financial limits for charging orders and orders for sale. The financial safeguard would prevent creditors pursuing either a charging order or a subsequent order for sale, unless the financial value of the debt exceeded a set threshold.

B. Attachment of Earnings Orders deductions at fixed rates:

Option 1- No change

Costs

3.55 There would be no direct financial cost, or improved recovery of judgment debts.

Benefit

3.56 There would be no implementation costs, as the existing process would continue.

Option 2 – Introduce proposed change

Costs

3.57 The proposal is unlikely to affect charities or voluntary organisations except in cases where they have salaried staff subject to an AEO. An employer would only be required to apply fixed tables if an employee receives an order following implementation. There would be set up costs for those businesses that have staff with an AEO made following the introduction of fixed tables. Quantification of the implementation costs for business is not possible. We estimate the majority of training costs would be under £100 per individual. The courts would require a minor update to IT systems and leaflets. We estimate that the costs would not exceed £250,000.

Benefit

3.58 The proposed change should reduce the time taken from applying for an Attachment of Earnings Order to the making of a full order, as the court would no longer have to wait for the debtor to supply a means form. The need to engage in bailiff activity to serve means forms would be reduced significantly, thereby freeing up bailiff resources for warrant enforcement. Creditors should benefit from more consistent levels of payment.

C. Attachment of Earnings Orders finding the debtor's employer:

Option 1 – No change

Costs

3.59 There would be no direct financial costs, though lapsed orders due to changes in employer would continue to lead to cessation of enforcement action, in cases where the debtor did not provide details of the new employer to the court.

Benefit

3.60 Any improvement in recovery of judgment debt would not materialise, as the existing process would continue to rely on the judgment debtor complying with their obligation to keep the court informed of changes in employment. Creditors would not be required to pay an additional fee for the service.

Option 2 – Introduce proposed change

Costs

3.61 DCA would pay for the implementation costs of the new system. The estimated costs to set up a link between the court system and HMRC would be £500,000. Additional running costs, estimated at £500,000 per annum over 3 years would be met from fees charged to service users[3]. There would be additional court costs for revisions to leaflets. The IT change would not involve major procurement and could be implemented via a central site to ensure implementation costs are as low as possible. Our estimates suggest that overall costs would be a maximum of £500,000 to implement, with a further £1.5 million additional running costs.

3.62 Creditors would be required to pay a fee to make use of the process.

Benefit

3.63 Court users will be provided with, if they choose, a more effective AEO procedure, resulting in higher levels of debt recovery and reducing the amount of unpaid bills.

3 The estimate is based on an HMRC Business Planning Estimate.

D. Information requests and orders:

Option 1 – No change

Costs

3.64 Creditors would continue to suffer difficulties recovering judgment debts where enforcement fails through lack of information or wilful non-compliance by the debtor. The credibility of the justice system would continue to be undermined if judgments are seen as unenforceable.

Benefit

3.65 Creditors would not be required to pay the new fee for the data disclosure service. No re-training costs would be incurred for the judiciary, enforcement agents and advice sector workers.

Option 2 – Introduce proposed change

Costs

3.66 DCA would pay for the implementation costs of the new system. Estimated costs to set up a link between the court system and the Department for Work and Pensions (DWP) would be £500,000. Additional running costs are estimated at £500,000 per annum for 3 years, which would be met from fees charged to service users. It is estimated that costs to extend the process to a Credit Reference Agency or the banking/financial sector would cost a further £500,000. The courts would incur minor costs for new leaflets, which would not exceed £10,000. Total estimate set up costs are £1.5 million, the additional running costs over the initial 3 years after implementation are estimated at between £1.5-2 million.

3.67 The additional running costs would be met from fees charged to service users.

Benefit

3.68 Creditors would be better informed about effective means to recover their debt. There would be a net financial benefit for creditors who obtain new information from the use of the new process which leads to successful enforcement.

Social Impacts

3.69 We consider that these policies would not have an adverse impact on different groups of people, including minority groups.

6. SIMPLIFICATION AND REDUCING ADMINISTRATIVE BURDENS

3.70 Proposals for charging orders, Information Requests and Orders, and Attachment of Earnings orders attempt to make enforcement more effective, whilst ensuring debtors are not pursued for unrecoverable debts.

3.71 The AEO fixed deductions scheme should simplify the calculation of how much can be recovered from a debtor based on their earnings. We have considered the potential administrative burden that might be imposed on employers and have consulted with employers' groups. Consultation conducted with employers, through the Chamber of Commerce (on advice from the Federation of Small Businesses) and through payroll organisations, showed that out of 155 responses, 148 were in favour of the proposed change. We have acted to reduce the potential burden, by modelling the fixed deductions scheme on the existing Council Tax system. We would also ensure that implementation would coincide with annual provision of software to employers' payroll teams for other AEO schemes, in order to minimise the impact of the change.

7. SMALL FIRMS IMPACT TEST

3.72 The introduction of a fixed deductions scheme should not immediately increase the existing likelihood of a small business receiving an AEO. However, if the proposed changes improved the effectiveness of the procedure, the use of AEOs could increase over time, as more court users choose the process over other enforcement methods. The provision relating to AEOs (finding the debtor's employer) would not directly impact on small business. Small businesses as court users would benefit if they chose to enforce a judgment by way of an AEO.

3.73 Although small business creditors would incur costs in the short term (the application fee estimated at between £100-£200 in each case), they would be able to recover their costs of the enforcement action enabled by the information request or order if successful. The choice to take the risk of not recovering the fee by future enforcement action would remain a decision for each small business creditor as at present.

3.74 No specific comments were received from the Small Business Service on the impact of information orders and request proposals.

8. COMPETITION ASSESSMENT

3.75 With regard to AEOs (finding the debtor's employer and deductions at fixed rates), neither option will have an impact on competition. Tracing via the information gateway established to find the debtor's employer is not a service that can be provided by the private sector since they do not have access to Her Majesty's Revenue and Customs information. The attachment of earnings system as a whole is provided directly for the creditor's benefit and therefore does not cut across any commercial interest in the enforcement sector. Similarly the fixed deductions scheme provisions simply replace an existing way of establishing the deductions to be made under an AEO. This process does not, and never has, involved any commercial interest amongst enforcement service providers.

3.76 The Bill will widen access to charging orders and introduce safeguards to protect debtors. This should not have any significant impact on competition. However, the introduction of financial limits on the making of charging orders or orders for sale may have an impact on some creditors if the limit prevents them from taking enforcement action of this nature. We recognise that the setting of financial limits will require careful consideration and believe it is difficult to accurately assess the impact on creditors and debtors at this stage. Before any limits are set, we would need to consult more widely.

3.77 The information requests and orders proposals may, however, result in a reduction in the workload of enforcement agents. This is because creditors would have improved access to data on debtors, thereby leading to greater use of alternative measures like Third Party Debt Orders, which may then result in fewer warrants of execution being passed onto enforcement agents.

9. ENFORCEMENT, SANCTIONS AND MONITORING

3.78 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 creditor should they wish to continue pursuing recovery of a particular judgement debt.

3.79 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 a judgment debtor default, the creditor may apply to the court for an order for sale.

3.80 With regard to AEOs, compliance would remain the responsibility of employers bound to make deductions in accordance with the provisions of the section 6 of the Attachment of Earnings Act 1971.

3.81 As to compliance for information requests or orders, where information is requested from government departments service-level standards would be established between Her Majesty's Court Service and the respective government departments. Compliance by non-government bodies would be ensured by an order of the court. All organisations that intend to handle the personal data released by the information request or order procedure, would need to be compliant with the regulatory structures.

3.82 DCA will monitor the impact of the court-based enforcement methods once they are implemented.

10. IMPLEMENTATION AND DELIVERY PLAN:

3.83 Implementation and delivery will occur in two distinct phases:

i) obtaining the legislative requirement to implement – both primary and secondary; and
ii) actual operational delivery.

3.84 Following Royal Assent, work would need to begin on the underpinning regulations and court rule changes that would be needed to actually put some flesh on the bare bones of the powers outlined in the Bill. In some circumstances further consultation would take place before the secondary legislation could be developed and finalised.

3.85 Additionally, some regulations would be placed before Parliament for consideration and approval before they could be implemented.

Charging orders:

3.86 There are two measures set out in the Bill: i) widened access to charging orders, and ii) financial limitations. Neither measure would be implemented until such time as

the Department of Trade and Industry (DTI) introduce regulated credit lending provisions (see the Consumer Credit Act 1974). Implementation activity on the widened access provisions should be minor. The financial limitations provision, however, would require public consultation. Any supporting secondary legislation and operational implementation details should take a maximum of 6 months to arrange, once all consultation has concluded.

Attachment of Earnings – deductions at fixed rates:

3.87 Work to overcome any implementation issues has been considered by reference to the DCA Attachment of Earnings Expert Panel, comprising representatives from small business, employers organisations, creditor organisations, money advisors, and the Judiciary. Based on the information considered by that Expert Panel, we consider that a minimum of 18 months would be required from Royal Assent and the skeletal secondary legislation before implementation can occur. All legislative and operational provisions must be finalised nine months prior to the implementation date, to enable software development for employers which would enable the system to be introduced smoothly. We have also agreed that fixed deductions scheme would be introduced from a convenient April date, whenever Council Tax earnings deduction uprating occurs. We envisage developing regulations with further input from the Expert Panel.

Attachment of Earnings – finding the debtor's employer:

3.88 We intend to work up any secondary legislation, a workable operational model, that capture all types of AEO, agree codes of practice, guidance and training. It is estimated that the earliest the above tasks could be completed is within 2 years of Royal Assent.

Information Requests and Orders:

3.89 Our intention is to introduce information requests and orders, initially, between the courts and the Department for Work and Pensions and Her Majesty's Revenue and Customs. The work required to make the process operational should take a minimum of 2-3 years from Royal Assent. We would need to work up any secondary legislation, a workable operational model, codes of practice, guidance and training. Our longer term goal, to include credit reference agencies and the financial sector, would take longer to deliver. We are not at present, able to quantify a potential implementation date for sharing information with non-government departments.

11. POST IMPLEMENTATION REVIEW:

3.90 Our delivery plan involves securing primary legislation, developing and implementing the secondary and operational mechanisms, and at the same time as the operational mechanisms are being developed, putting in place any post implementation review arrangements.

3.91 On the AEO fixed deductions scheme, the DCA would conduct monitoring with organisations representing employers and more specifically payroll staff would be asked for feedback. DCA would work with the DTI to monitor the effectiveness of the changes for charging orders. We would review the evidence to decide whether there is a need to bring in financial limits by way of secondary legislation.

3.92 We anticipate four main customer service benefits to be realised by the implementation of the court-based enforcement proposals, which are:

- 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, provided by a combination of the AEO, charging order and information request or order proposals.
- Improved safeguard for debtors against disproportionate pursuit of amounts owed (the charging order proposals should assist with this element).

3.93 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. For information requests or orders and the AEO (finding the debtor's current employer) proposals, we shall consider any information provided by other government departments. 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.

12. PUBLIC SECTOR IMPACT TEST

3.94 The impact on the public sector would be experienced mainly by court staff, enforcement agents, the Department for Work and Pensions and Her Majesty's Revenue and Customs. For example, it is staff at these Departments who would operate the information requests or orders gateway. We anticipate that all of the proposals should be absorbed within existing staffing levels. It is possible that a small number of posts would be created to operate the information requests or orders or AEO finding the debtor's employer information gateway – though we expect the numbers to be as low as single figures.

Cost	Benefit
Charging Orders – Option 1 ***Private Sector*** – None, though recovery of debt may take longer in some cases or not happen at all. ***Public Sector*** – None.	***Private Sector*** – None. ***Public Sector*** – None.
Charging Orders – Option 2 ***Private Sector*** – None. ***Public Sector*** – Negligible costs.	***Private Sector*** – Not quantifiable, though reforms should lead to more reliable payments. ***Public Sector*** – None. **THIS IS THE RECOMMENDED OPTION**
Attachment of Earning Orders – Deductions at Fixed rates – Option 1 ***Private Sector*** – None. ***Public Sector*** – None.	***Private Sector*** – None. ***Public Sector*** – None.

Cost	Benefit
Attachment of Earning Orders – Deductions at Fixed rates – Option 2 ***Private Sector*** – costs reduced by utilising the same commercial software products to implement the new system, when Council Tax is uprated. ***Public Sector*** – Minor costs for training, new forms and leaflets – estimated at up to £250,000.	***Private Sector*** – Not quantifiable, but fixed tables would improve effectiveness. ***Public Sector*** – None. **THIS IS THE RECOMMENDED OPTION**
Attachment of Earning Orders – Finding the current debtor's employer – Option 1 ***Private Sector*** – None, though recovery of debt may no occur if an order lapses. ***Public Sector*** – None.	***Private Sector*** – None. ***Public Sector*** – None.
Attachment of Earning Orders – Finding the debtor's current employer – Option 2 ***Private Sector*** – None. ***Public Sector*** – set up costs of £500,000, additional running costs £1.5m to be absorbed within existing allocations and met by fees charged from service users.	***Private Sector*** – improved judgment debt recovery in cases where an AEO can be redirected. ***Public Sector*** – None financial – may lead to improved confidence in the justice system. **THIS IS THE RECOMMENDED OPTION**
Information request or orders – Option 1 ***Private Sector*** – None, though the benefits of more effective enforcement would not be gained. ***Public Sector*** – None.	***Private Sector*** – None. ***Public Sector*** – None.

Cost	Benefit
Information request or orders – introduce – Option 2 ***Private Sector*** – None, implementation costs for any extension to credit reference agencies or financial institutions would be met by DCA and recovered by fees from service users. ***Public Sector*** – estimated set-up costs of £1.5m, with additional running costs which would be absorbed within existing allocations and met by fees charged from service user of £1.5-2m.	***Private Sector*** – Not possible to quantify the financial benefits for creditors, though the process should lead to more judgment debts recovered. ***Public Sector*** – None. **THIS IS THE RECOMMENDED OPTION**

13. SUMMARY AND RECOMMENDATIONS

	Total benefit per annum: Economic, environmental, social and administrative	**Total cost per annum: economic, environmental, social and administrative**
Charging Orders		
Option 1 – To Do Nothing	Creditors would continue to apply for charging orders as at present	Erosion of confidence in the justice system
Option 2 – Introduce change	By securing the debt, creditors and debtors negotiate more appropriate instalment payments	We do not envisage any new costs to be incurred by creditors since the court administered process would still continue to be available, though access to the initial charging order would be widened. Judgment debtors should not incur any additional costs over and above those which would have accrued previously. **THIS IS THE RECOMMENDED OPTION**

13. SUMMARY AND RECOMMENDATIONS

	Total benefit per annum: Economic, environmental, social and administrative	**Total cost per annum: economic, environmental, social and administrative**
Attachment of Earnings Orders – Finding the debtor's current employer		
Option 1 – To Do Nothing	Setting up costs to DCA would not be incurred	Cost of non-recovered debt following the failure of an AEO when a debtor changes employment and does not inform the court.
Option 2 – Introduce change	***Private sector*** – improved judgment debt recovery ***Public sector*** – improved confidence in the justice system	Creditors would pay an application fee which is recoverable upon successful enforcement. Initial implementation costs for Intra-Government Data Sharing estimated at up to £500,000. Further support funding over subsequent 3 years estimated at up to £1.5 million. Recovery of running costs would be achieved through the application fee. **THIS IS THE RECOMMENDED OPTION**
Attachment of Earnings Orders – deductions at fixed rates		
Option 1 – To Do Nothing	No additional implementation costs as existing process would continue	Those employers with automated payroll systems would not be required to make changes
Option 2 – Introduce change	***Private sector*** – not quantifiable: should result in improved effectiveness with fixed tables ***Public sector*** – none	Public sector costs should be limited to running new software and training – our initial estimate is a maximum of £0.25 million. **THIS IS THE RECOMMENDED OPTION**

	Total benefit per annum: Economic, environmental, social and administrative	**Total cost per annum: economic, environmental, social and administrative**
Information requests or orders		
Option 1 – To Do Nothing	No additional regulatory burdens or re-training costs	Creditors continue to suffer significant losses on unrecovered debts where enforcement has failed through lack of information
Option 2 – Introduce change	Net financial benefit to those creditors who obtain new information from the use of the new process which leads to successful enforcement	Creditors pay application fee (£100-£200) which is recoverable upon successful enforcement. Initial implementation costs for Intra-Government Data Sharing up to £1.5 million, further funding support funding over subsequent 3 years estimated at £1.5-2 million. When extended outside Government to Credit Reference Agencies or financial sectors, additional running costs of up to £500,000 would be incurred. Recovery of running costs would be achieved through the application fee, estimated to be between £100-200. **THIS IS THE RECOMMENDED OPTION**

IV. Administration Orders, Enforcement Restriction Orders and Non-Court Based Debt Management Schemes – full RIA

1. TITLE OF PROPOSAL

4.1 Administration Orders, Enforcement Restriction Orders and Non-Court Based Debt Management Schemes.

2. PURPOSE AND INTENDED EFFECT OF MEASURE

(i) The objective:

4.2 Proposals in the Bill are intended in part to support the Government's Action Plan for Tackling Over-indebtedness published in July 2004 and its policies on tackling social exclusion. The measures in the Bill covered by this RIA are intended to provide more and better-targeted options for assisting those with multiple debts and the over-indebted in England and Wales thus promoting social inclusion, while recognising the economic needs of creditors to recover their debts.

(ii) The background

4.3 Meeting credit commitments does not present problems for the vast majority of people but repayments are often a problem for those with a large amount of debt or a number of creditors. Research has shown that this is particularly true for those who are socially excluded and living on a low income. It is people in this group that these measures are intended to assist.

4.4 The Administration Order (AO) scheme, a re-payment plan originally designed to help multiple debtors avoid imprisonment, is the only court-based scheme that assists those that are over-indebted and those in multiple debt. The scheme helps to organise their affairs and repay, at least in part, their creditors without the stress of and additional costs incurred when enforcement action is taken.

4.5 The scheme is currently restricted to those with debts totalling no more than £5,000, one of which must be a judgment debt, but has no statutory provision to consider income or assets. Once an order is made creditors cannot enforce their debt

without the court's permission, providing debtors with respite from the stress of enforcement action whilst paying their debts.

4.6 Other procedures governed by the Insolvency Act 1986 can provide the debtor with relief from enforcement. Bankruptcy proceedings free the debtor from his debts and ensure that such assets as there are (including any surplus income), are shared out fairly amongst the creditors. Individual Voluntary Arrangements provide a way for the debtor to come to a binding agreement with his creditors to pay some or all of his debt, using either income, assets or a combination of both, over a specified time period. The arrangement is supervised by an authorised insolvency practitioner (or in some cases following bankruptcy, by the official receiver). Unlike the AO scheme, there is no requirement for a judgment debt and no limit on the amount of debt that may be included under either scheme.

4.7 Independent research commissioned by DCA helped identify three types of debtors' (i) 'could pays': (ii) 'can't pays', and (iii) 'won't pays'. These groups are separated by two underlying aspects (1) those with the ability to pay and (2) those with the commitment to pay[4]. These are discussed below:

- 'Could pay' debtors are those with some income who are able to repay their debts over time but may require help to negotiate repayments with their creditors. This group includes those who may, due to a sudden change in circumstances, be unable to meet all of their repayment commitments in the short-term. However, it also includes those with debt problems caused by their own disorganisation or failure to face up to their problems.
- 'Can't pays' are identified as those debtors with every intention of paying their debts but are unable to do so, as they have no or very low disposable income.
- 'Won't pays' are those debtors who have a genuine dispute or who have the means to repay their debts but choose not too.

4.8 The current AO scheme does not differentiate between these groups resulting in the inclusion of a large number of debtors who fall into the "can't pay" group, for whom repayment schemes are generally recognised to be inappropriate. This makes the scheme largely ineffective in meeting its objectives of providing help to many of those

4 Can't Pay or Won't Pay? A review of creditor and debtor approaches to the non-payment of bills Nicola Dominy and Elaine Kempson – Personal Finance Research Centre February 2002

in multiple debt and securing reasonable returns for creditors leading to increased costs of operation of the scheme and creditor dissatisfaction.

(iii) Rationale for government intervention

4.9 The Government's Tackling Over-Indebtedness Annual Report for 2005 found that a minority of the population is experiencing difficulty due to problem debt. For example, 4% of the population above the age of 18 are in arrears for more than 3 months on either consumer credit or utility bills, and 5% of borrowers consider the repayments to be a "heavy burden".

4.10 Over recent years debt has changed considerably. Consumer borrowing has drastically increased. For example, 25.7 million credit cards were issued in 1994 rising to 55 million[5] in 2001. In England and Wales 5.1 Million[6] people have debts that require over 40% of their income to service.

4.11 Costs to the credit industry of pursuing and recovering bad debts are high. Bank of England figures suggest that UK resident banks wrote off £1,570 million of credit lending to individuals (in 2003) and the banking and credit card industry is estimated to spend £3.4 billion[7] every year chasing, recovering and writing off debts.

4.12 The lack or ineffectiveness of state sponsored/supported remedies for the minority who are in arrears or finding payment to be "a heavy burden" is a cause for concern. This does not help the problems of social exclusion, promote inclusion or help to reduce the burdens and cost to business of bad debt.

4.13 There are costs to the debtor in relation to both bankruptcy and Individual Voluntary Arrangements (IVAs). In order to obtain a bankruptcy order, the debtor must pay a deposit of £325 and court fees of £150 although in some circumstances the fee can be remitted in part or in full.

4.14 There are also fees to be paid to the supervisor of an individual voluntary arrangement. These vary depending on the size of the debtor's contribution to the

5 Over-indebtedness in Britain: A report to the Department of Trade and Industry. Personal Finance Research Centre, November 2002 (www.dti.gov.uk/ccp/topics1/overindebtedness)

6 Wealth & Portfolio Choice (2002) B& W Deliote

7 Action on Debt – Social Exclusion Unit of the Office of the Deputy Prime Minister – Business and Debt. Taken from Evaluation of Money Advice Debtline pilot (Deloitte and Touche 2003) p 44.

arrangement. These procedures may therefore be inappropriate for those people with relatively low levels of debt who do not have the financial means to access them.

4.15 AOs are not widely used, almost certainly because the total amount of debt that can be included in an order is limited to £5,000. The number of orders granted has slowly decreased over the years from 8,720 in 1998 to 3,894 by 2003. In comparison the latest figures show that bankruptcy orders continue to rise. In 2002 the total number of bankruptcy petitions (debtor and creditor) issued was 22,682, an increase of 7% from 2001.

4.16 We believe that new or revised court-based schemes, not reliant on creditor goodwill, are needed to address the issues faced by people who fall into the "could pay" group and whose total unsecured debts are less than £15,000.

3. CONSULTATION

4.17 The consultation paper 'A Choice of Paths' was published on 20 July 2004. It invited comments on options to help deal with over-indebtedness and in particular people with multiple debt. The consultation period closed on 20 October 2004. 91 responses were received. The majority of the responses came from the consumer credit industry and debt advice sectors. Responses were also received from utility companies, local councils, various trade associations, the Association for District Judges and the Law Reform Committee.

4.18 Responses received were broadly supportive of the proposals to reform court-based AO provisions and the introduction of an Enforcement Restriction Order and have been used to further develop the options discussed later in this paper.

4. OPTIONS

4.19 Over the course of this review various options, including the implementation of Section 13 of the Courts and Legal Services Act 1990 as it stood, have been considered to provide assistance to the 'can't pay' and 'could pay' groups ' identified earlier in this paper.

4.20 We believe that the proposals in the Bill would provide the assistance debtors need because they specify the type of debt that can be included. They also include the practical elements of Section 13 and allow assistance to be targeted more specifically to

the different groups. The proposals also take account of creditors' desire to recover their debt. The options for assisting the "can't and could pay" groups are discussed below.

Option 1 – Do Nothing

4.21 The AO scheme would remain the same and the current conditions of entry would remain. This would continue to fail to differentiate between different types of debtors treating them all the same regardless of whether they can afford to pay their debts. As such, 'can't pay' debtors would continue to be included in the scheme hence detracting from its overall performance and attracting criticism from creditors. Additionally, it is generally agreed that in the current climate the £5,000 debt limit is artificially low and restricts entry to the scheme for a significant number of debtors leaving their only options as IVAs or bankruptcy.

THE 'CAN'T PAY' GROUP

Option 2– Court- Based Debt Relief

4.22 The introduction of a court-based debt relief order that would release debtors from their debts (i.e. they would be written off) after 12 months unless a creditor had evidence of non-declared assets. In these circumstances the order would be revoked and creditors would be free to recover their debts in any way that they wished. A total debt limit of £10 – £15,000, more in line with current indebtedness profiles, would be set and debtors would be charged a fee to enter this scheme. Unlike bankruptcy, a deposit would not be needed as there would not be an investigation of their means or conduct and no realisation of assets. The normal rules covering remission of fees would also apply in hardship cases or where the debtor is in receipt of benefits.

Option 3– Debt Relief Order (DRO)

4.23 This option would be operated by the Insolvency Service (INSS) and utilise existing experience in this area. (See the separate RIA below produced by the Insolvency Service.) The non-court based debt relief order would be available to individuals who meet certain criteria as regards levels of assets, income and debts. The official receiver would make an order administratively that would provide relief from enforcement of the debts which would then be discharged after one year. The debtor would need to pay an up front fee to cover the costs of administration but it would be

significantly less than the deposit required for bankruptcy (currently £325). This option would offer support for those 'can't pays' who cannot afford the bankruptcy deposit and who often inappropriately enter the AO scheme despite being unable to maintain regular payments to their creditors.

THE 'COULD PAY' GROUP

Option 4 – Enforcement Restriction

4.24 Research has shown the main benefit of the current AO scheme is respite from enforcement. This option would put this benefit on a more formal footing.

4.25 The power to introduce an ERO was included in Section 13 of the Courts and Legal Service Act 1990 but this has never been enacted. In the case of the ERO potential problems included no definition of debts that could be included, no time limits and possibly most damaging, no entry criteria. All of these issues have been addressed in these proposals.

4.26 The revised ERO scheme would target those in the 'could pay' group who have a temporary change in their circumstances and may be on the verge of becoming 'can't pays' if orders are enforced. This group would benefit from the same temporary enforcement relief that is available via IVAs, where creditors are willing to enter into them, or time orders[8] but these need to be done on an individual basis. The aim of the ERO is to formalise this process and to make the order all encompassing.

4.27 Under the proposed scheme the court would have to be satisfied that the debtor had experienced a sudden unforeseeable short-term deterioration in his financial circumstances and that there were realistic prospects for improvement within a relatively short period.

4.28 An order could be made for any period up to the maximum (12 months). Where the term of the order is less than the maximum it would be open for the debtor to apply for an extension (up to the maximum). However, there would need to be evidence that the conditions relied on in the original application were continuing.

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8 For more information see paragraph 5.75 The Consumer Credit Market in the 21st Century -White Paper December 2003

4.29 An ERO would include all consumer debts (including those debts not yet in the court system). Debtors with debts incurred in the course of a business or with mixed business and consumer debt would not be eligible for the scheme because to date it has been the Government's policy to treat the issues of consumer and business indebtedness as separate issues. This is due to the availability of other assistance for dealing with business debt and the need to keep the costs business borrowing down.

4.30 Creditors would have the right to object to an order being made if they felt that the reasons put forward by the debtor were unrealistic or that they were being disadvantaged but would be restricted from taking any action to recover their debt once the order was made. They would, however, be able to apply for the order to be revoked if:

- there was non-compliance with the order;
- the debtor gave false information;
- there was no realistic prospect of improvement in the debtor's circumstances; or
- it would for any other reason not be fair and equitable for the order to remain in force.

4.31 During the life of an order the debtor would have a duty to notify the court of the disposal of assets in excess of a set value. Both the assets and the value would be defined in regulations.

4.32 If an ERO were successful the debtor would be in a position to start repaying their debts in line with their original commitments at its conclusion. However, if their circumstances did not change significantly it would be up to them to consider other ways of paying their debts or seeking other relief whilst creditors would be free to take appropriate enforcement.

Option 5 – Reform the court based administration order scheme

4.33 As discussed earlier in this paper, the AO scheme does not meet the needs of the 'can't pay' group and, because of the current total debt threshold (£5,000), is of little assistance to the majority in the "could pay" group.

4.34 The debt ceiling is unrealistic in the current climate and means that generally these orders cater for those with very little, if any, disposable income who have a number of small value debts. Due to these factors repayment rates set by the court are

normally quite low (the current average is around £29 per month). Orders are therefore currently unsuccessful in delivering reasonable repayment rates and attract criticism from creditors.

4.35 We believe that the existing scheme needs to be revised and replaced with a more effective service addressing all the existing problems. We believe that restricting access to 'could pay' debtors who have only consumer debts, raising the threshold of debt that could be included in an order, and fixing a maximum term would provide a viable alternative to bankruptcy/IVAs for the long-term assistance of a debtor group who are not currently adequately catered for.

4.36 The proposals for updating information about a debtor's means would ensure the highest possible returns for creditors whilst ensuring that repayment terms reflected the maximum that a debtor could affordably pay. This would also reduce creditors' costs in monitoring and enforcing judgments.

4.37 Automatic revocation on non-compliance would make it clear to debtors that they must commit to the scheme and ensure that creditors are not delayed in taking further action when necessary. Making composition available only at the end of an order, subject to compliance, would provide a visible incentive for the debtor to maintain repayments. It would also save the time and cost of arranging review hearings.

Option 6 – Non-court based debt management schemes

4.38 A number of organisations already operate long-term debt management plans. A further option would therefore be to stop court involvement in this area and rely solely on these outside schemes. We believe that because creditor participation is voluntary this approach would not meet the objective of providing assistance for multiple debtors and the over-indebted and would therefore not promote social inclusion.

4.39 The results of consultation showed that the advice sector generally were unhappy with the suggestion that there would be no court involvement while creditors were not prepared to accept any form of compulsion to participate in schemes or to have composition of their debts without the involvement of the court.

Option 7 – Debt management schemes delivered by approved operators

4.40 A further option, in view of the comments received about non-court based schemes, would be for the Lord Chancellor to approve/licence operators of schemes that would then be able to offer compulsion to participate and composition. Schemes currently operating without these conditions would be allowed to continue to do so.

4.41 Under this proposal there would also be the ability for disputes to be resolved by the court, thus alleviating a lot of the concerns expressed by both the advice and business sectors.

5. COSTS AND BENEFITS

(i) Sectors and groups affected

4.42 The banking and credit sector, businesses offering credit terms and service providers, including utilities, would be affected, since any of these businesses can incur bad debts. However, the proposed improvements to the AO scheme should result in creditors receiving a better return than under the current scheme. Additionally the proposed measures may help to encourage more responsible lending.

4.43 The ERO would help those in temporary difficulties by providing time, free from the stress of enforcement, to recover sufficiently to meet their original commitments. The revised AO scheme would help those seeking to rehabilitate themselves by allowing a higher amount of debt to be included in the order and restricting enforcement whilst payments are being maintained.

4.44 The 2002 survey of AOs and bankruptcy orders undertaken by DCA revealed the following characteristics of those using the current AO scheme and those involved in bankruptcy:

Characteristics	Administration order	Bankruptcy order
Gender: **Male** **Female**	 **35%** **65%**	 **68%** **32%**
Employment Status: **Unemployed** **Employed** **Not Known**	 **71%** **29%**	 **38%** **53%** **9%**
Average debt:	**£3,000**	**£37,028 (unsecured)** **£14,165 (secured)**
Most common types of debt	**1) Bank** **2) Finance company** **3) Catalogue** **4) Retail/store card** **5) Utility**	**1) Bank** **2) Credit card** **3) Finance company** **4) Retail/store card** **5) Utility**

Social Impacts

4.45 We currently have no data linking any court-based debt recovery action to specific social groups or information about ethnicity. In the majority of cases debtors do not engage even after court action has been started and simply allow judgment to be obtained by default.

4.46 However, we intend to include questions about ethnicity on a revised AO application form and in the ERO application process to allow this to be monitored in the future. The requirement to provide accurate financial data in a generally accepted format (similar to the Common Financial Statement used by advice agencies and large parts of the credit industry) would assist in providing information about social groups affected.

Other Sectors

4.47 The proposals would also impact on the advice sector. There would be a limited training need to ensure that advisors were aware of the new procedures and had the knowledge to advise on a particular course. Additionally the need for debtors to

produce statements of means on an ongoing basis would be likely to result in more people seeking advice. However, the work involved would not differ significantly from that involved currently when advising debtors e.g. about IVAs or negotiating voluntary moratoria. In addition the long-term nature of the proposals could reduce workload in total with reduced need to advise about ongoing problems that have arisen in individual cases.

4.48 There could be minor savings for charities. A survey undertaken by the Insolvency Service indicates that in March 2004, 2.6% of those presenting their own petition for bankruptcy obtained the deposit from a charity. On 2004 figures this equates to about £114,000 (based on the deposit being £250 at the time). The deposit went up to £310 in April 2004 and then to £325 in April 2006. Even assuming that all of those whose total debts were under £15,000 applied for AOs (26%) rather than a bankruptcy order and all received the deposit from a charity this would only produce a saving of £29,640.

4.49 There might also be an impact on the NHS as there are links between the consequences of debt-related stress and illness leading to lost working days and the need for health care provision. Although these proposals are aimed at a small portion of the population who have debt problems, they may go some way to alleviating these problems for some. However, detailed figures are not available.

(ii) Benefits

4.50 There are various social and economic impacts of these proposals. The social impacts are intended to help low-income groups, and the financial rehabilitation of debtors. The impacts to the economy are to address the issue of debt and responsible lending.

4.51 There are no environmental impacts of these proposals. The proposals could be a major boost to utility companies, particularly water companies, as they do not have the option to discontinue domestic supplies. Ofwat data suggests that for the year 2003/04 water companies wrote off £93 million and spent a further £58 million on outstanding revenue collection.

4.52 The proposals would also make it easier for creditors to identify those "playing the system", the "won't pays", and better target their resources to recover these debts.

Option 1 – Do Nothing

4.53 Although it would be a cost neutral option for the State, this option would not deliver any perceivable benefits to either debtors or creditors. Without any changes to the AO scheme the cost of the scheme and the profile of the existing client group are unlikely to change. Low-income debtors would continue to be disproportionately affected as there would be no effective remedy for 'can't pay' debtors and those in multiple debt.

THE 'CAN'T PAY' GROUP

Option 2 – Court-Based Debt Relief

4.54 This option would provide debt relief targeted specifically at those debtors who are often the most vulnerable and socially excluded, providing them with the chance for financial rehabilitation. This would be achieved by releasing them from their debts giving them a chance for a "fresh start" albeit with the possibility that they would have difficulty obtaining credit due to their history.

4.55 It would include those debtors who cannot afford to enter bankruptcy of their own choice because of the £325 petition deposit and targets service provision to the 'can't pay' client group, the largest group in the current AO.

4.56 This option may reduce the number of people entering bankruptcy and would potentially be open to abuse as Her Majesty's Courts Service (HMCS) would not have the necessary expertise to investigate alleged misconduct, so creditors could experience more debts being written off.

4.57 There may be a negative impact on the credit industry initially as more debts would be written off but this should have positive benefits in encouraging more responsible lending in the longer-term.

4.58 A small fee would be payable to cover administration costs. This should be manageable for debtors but the normal rules on fee exemption and remission would apply in any event. There would however be significant costs to the State through the HMCS start up costs for introducing a new scheme as well as associated IT and training costs.

4.59 Of the 75 replies to the consultation, 75% agreed that repayment schemes are not appropriate for the "can't pay" group and that a form of debt relief was needed. It was also clear however that there was general agreement that the administration of a debt relief scheme was not an appropriate role for the court.

4.60 Due to the costs involved and the fact that the INSS is seeking to use its expertise to introduce a Debt Relief Order scheme (the subject of a separate RIA) this option has been rejected.

Option 3 –Non- Court Based Debt Relief Order (DRO) Scheme

4.61 This option has all of the benefits of the court-based scheme but there would be lower start up costs for this option as the INSS would not need extensive staff training as the scheme would draw on existing expertise. The INSS has consulted on this proposal and is seeking to take it forward in the Tribunals, Courts and Enforcement Bill. The details are covered by the separate RIA specific to the proposal.

THE 'COULD PAY' GROUP

Option 4 – Enforcement Restriction Order

4.62 This option could impact particularly on small businesses and individual creditors as it looks to provide time for a debtor's circumstances to change. However the scheme's aims are to enable all commitments to be met and safeguards all non-secured creditors from the actions of other, more aggressive creditors which would benefit all.

4.63 It would provide those in the 'could pay' group, who encounter short-term difficulties, with formal enforcement relief. It would allow debtors a stay of proceedings and provide an opportunity for them to meet their commitments when their circumstances change, improving creditor recovery rates although over a longer period than creditors may have envisaged.

4.64 If the anticipated change of circumstances does not occur during the life of the order creditors would then be free to enforce their debt using existing procedures. The effect being that creditors lose time but their chances of recovering their debt increases.

4.65 This option fits in strategically with the primary role of the courts as a dispute resolution forum of last resort and allows 'could pay' debtors short-term respite from enforcement, which may otherwise tip them into the 'can't pay' group.

4.66 Creditors' concerns about disposal of assets would be addressed by making it necessary to include assets in the Statement of Means and by placing a duty on the debtor to notify the court of changes to circumstances or disposal of assets above an amount to be defined in regulations. Where this duty is not complied with the court would have the power to revoke the order and/or fine or imprison the debtor.

Option 5 – Reform the court based administration order scheme

4.67 This option would be beneficial in reducing the cost burden of the current AO scheme on other court users and the taxpayer. It would also provide additional options and support for those with debts in excess of £5,000 and therefore help to alleviate the problems of social exclusion.

4.68 It would refine and improve the current scheme. By increasing the current debt ceiling it would provide assistance to those in the 'can pay' group whose debts are over £5,000 and for whom options are currently limited to IVAs or bankruptcy.

4.69 The proposals would benefit debtors by ensuring that the order only exists for a relatively short fixed term and that only those who are seeking to rehabilitate themselves and have the means to do so would be included in the scheme.

4.70 The proposed system would however place a new onus on the debtor to "buy in" to the scheme by ensuring that composition could only occur at the end of the order's life and upon the debtor's compliance with its terms throughout. This would be a new incentive. Debtors would also be expected to supply more comprehensive information about their financial position than they do at present and to update this information regularly, probably half-yearly, to ensure that the order remains as appropriate, for both debtors and creditors, as possible throughout its life.

4.71 Debtors would also face the prospect of the order being dismissed if two payments were missed without good reason, or if they fail to comply with certain other aspects of the order. In these circumstances they would be unable to apply for a further order within 12 months leaving creditors free to recover/enforce their debt. This is a further incentive to comply.

4.72 This would also assist in keeping the operating costs of the scheme and creditors' costs at as low a level as possible. The current need to arrange review hearings, where creditors' representations are considered, before an order is revoked are both time consuming and costly.

4.73 Creditors would also benefit in that they would be more likely to see a greater return against their debt than they do at present due to ensuring that only the 'can pay' group are included and from the incentives for debtor compliance that are built into the scheme. They would have more comprehensive financial information about the debtor when an application is made, allowing them to consider their position in regard to the order more fully and receive regular updates. They would not need to monitor the orders performance or attend as many hearings as orders would automatically cease in certain circumstances on non-compliance or be varied to take account of changing circumstances.

4.74 This proposal could also lead to a reduction in the number of bankruptcies. Indications are that up to 26% of debtors bankruptcy petitions involve debts totalling less than £15,000.

Option 6 – Non-court based debt management schemes

4.75 Non-court based schemes are currently being operated by both the advice and private sectors but rely on creditor agreement. The costs of the schemes are met by either creditors or debtors depending on the scheme. We accept that there is a place for these "independent" schemes, perhaps to provide assistance for those who cannot enter court-based schemes due to the level of debt being too high or there being insufficient surplus income but still have the desire to repay their debts.

4.76 The lack of support from either the advice or business sectors during consultation has led to the conclusion that court involvement in this area should not be discontinued in favour of simply strengthening non-court based schemes to include compulsion and composition.

Option 7 – Debt management schemes delivered by approved operators

4.77 A further option, in view of the comments received about non-court based schemes, would be the introduction of a procedure where operators of schemes,

offering compulsion to participate and composition, would be approved/authorised by the Lord Chancellor.

4.78 Under this proposal there would also be the ability for disputes to be resolved by the court, thus alleviating a lot of the concerns expressed by both the advice and business sectors. We believe that there may be some merit to this approach but would need to consider it in more detail to establish a need and to detail the schemes operation. Consequently, the Bill includes an enabling power to allow the Lord Chancellor to instigate such schemes in the future if they prove both necessary and appropriate. However, a further round of public consultation would be undertaken and a RIA specific to the proposals would be produced before the Lord Chancellor would exercise this power.

(iii) Costs

General

4.79 Overall the costs of the proposals, as opposed to the effect of having debts written off generally or as a result of bankruptcy or under the Debt Relief Order (DRO) scheme, are likely to be small to businesses that undertake thorough credit referencing and encourage early engagement between themselves and debtors.

4.80 Costs would be higher for those businesses that do not routinely engage with debtors or check credit ratings. This would be particularly true of small businesses and individual creditors who are unlikely to have the time, experience or expertise to either engage debtors or undertake credit referencing. Improving access to information held on the Register of Judgments, Orders and Fines to assist in these circumstances is being taken forward by HMCS under a different project.

4.81 However, all businesses are likely to benefit from the introduction of these proposals as they are designed to assist and encourage the "buy in" of those debtors who are seeking to rehabilitate themselves. This would increase returns to creditors, perhaps in the medium to long rather than the short-term, and reduce their costs by ensuring better compliance and therefore less abortive enforcement.

Option 1 – Do Nothing

4.82 This option would not increase costs to any of the sectors involved as it retains the current system.

THE 'CAN'T PAY' GROUP

Option 2 – Court-Based Debt Relief

4.83 As mentioned in the benefits section of this assessment, this option has been rejected because of the costs involved to HMCS in training and IT in favour of the INSS proposal to introduce and administer a non-court based DRO scheme (see below).

Option 3 – Non- Court Based Debt Relief Order Scheme

4.84 This option is being taken forward by the INSS and is the subject of a separate RIA.

THE 'COULD PAY' GROUP

Option 4 – Enforcement Restriction Order

4.85 We are unable to estimate the numbers that would use this new form of relief and assistance because of the strict entry criteria and there being no upper limit on the level of debt. It is not possible to forecast how many people in debt:

- would experience a major detrimental change to their circumstances in any year;
- would meet the need to be able to show realistic prospects of improvement within a relatively short period; or
- would choose to seek this assistance.

4.86 However, due to the deliberately stringent entry criteria, designed to stop misuse of the scheme, recognising the other options available to those who encounter problems over a longer period and the fact that anyone with a business debt is to be excluded, we anticipate a very small amount of applications.

4.87 There would be some limited start up costs for HMCS for the introduction of this new form of relief and assistance but these would be met from within existing provision. Applications for EROs would attract a fee set at a level to ensure that ongoing costs of the scheme would be met.

4.88 We estimate the cost of the introduction of the scheme to be similar to the average unit cost of dealing with an application for an AO but we anticipate that hearings would take longer because of the potentially higher sums involved and the short-term nature of orders.

4.89 However, hearings will only be arranged where they are specifically requested by creditors wishing to object to an order after viewing and considering the evidence provided by the debtor, or debtors seeking to vary the terms of an order.

Set up costs

Training

4.90 HMCS would need to meet the costs of developing and delivering training. The costs for developing training, the only new cost, for the ERO and the revised AO scheme, are assessed at £2,250. These would be met from existing provision.

4.91 Staff training would be delivered by expanding current AO training course and would therefore not attract further displacement costs for delegates. Advice workers already routinely negotiate with creditors to seek agreement on voluntary moratoria on enforcement. Therefore, we do not expect that there would be any significant additional training requirements for that sector.

Information technology

4.92 Current IT systems would need to be updated to deal with this new function. From experience of other similar changes to systems we anticipate a cost of around £150,000 which could be met from existing provision.

Publicity/Information

4.93 The scheme would need to be publicised and explanatory leaflets would need to be produced. We anticipate that the costs of printing, translation and distribution of

100,000 leaflets to be in the region of £40,000. Again these costs would be met from existing provision.

Ongoing administration costs

4.94 The processes and procedures for the ERO would be identical to those for the current AO scheme except that there would be no requirement to deal with miscellaneous applications from the debtor or any need to deal with payments/ dividends. We have therefore used the AO Process Model to assess staff costs, including overheads at £40.70 per application.

4.95 However, this process differs from that of the AO when considering judicial involvement, in that an application would immediately be referred to a Judge to consider. Although this takes place without the parties present, it is fair to assume that a reasonable amount of time would be required because of the amount of information that needs to be considered.

4.96 As mentioned above, hearings will only be arranged on request but it can be assumed that in view of the potentially higher sums involved and the information available, these are likely to attract more attention from creditors with more either attending or giving there views in writing leading to longer hearings than those to consider AO applications. The table below considers these factors using a standard cost of £1.94 per minute (inclusive of overheads) for hearings, derived from the AO process model.

	Cost per Minute	10	30	45	60
Full Hearing	**1.94**	**19.40**	**38.80**	**58.20**	**77.60**

4.97 Using the worst case scenario this shows that the total cost for judicial involvement could be as high as £77.60. Adding staff costs of £40.70 indicates that the fee for dealing with these applications needs to be around £118.30 but this would be reviewed as a part of the ongoing fee review process and post implementation evaluation exercise.

4.98 As mentioned earlier, it is not possible to predict accurately the numbers who would seek to use this scheme, or the numbers of applications that would result in

hearings, but the following table gives an indication of total costs and fee income that would be received using a range of numbers for applications.

Application Numbers	500	1,000	1,500	2,000	2,500
	£	£	£	£	£
Staff Cost	**20,350**	**40,700**	**61,500**	**81,400**	**101,750**
Judicial Cost	**38,800**	**77,600**	**116,400**	**155,200**	**194,000**
Total	**59,150**	**118,300**	**177,450**	**236,600**	**295,750**
Fee Income	**60,000**	**120,000**	**180,000**	**240,000**	**300,000**
Costs per Case	**118.30**	**118.30**	**118.30**	**118.30**	**118.30**

Costs to Creditors

4.99 Again it is only possible to give indicative costs because of uncertainty about the number of applications that would be received, the level and pay rates of staff dealing with them and whether creditors would prefer to give written views or to attend hearings. The fact that not all applications would in effect be "new business" (i.e. some may seek to take this option rather than pursue other forms of relief) further clouds the picture.

4.100 We do not envisage that dealing with these applications would require additional training for staff within the credit industry nor take a great deal of time as they are well versed in scrutinising Statements of Means.

4.101 There could be an increased cost to business for considering proposals and/or attendance at hearings but this might be offset by reductions in the number of general applications to the court, bankruptcies and IVA proposals needing to be considered.

4.102 For these purposes we have assumed a maximum hourly staff cost rate, including overheads, of £50. It is also possible that some organisations would want the views of their legal team in some cases. Assuming this is the case we would anticipate costs of around £100 per hour. There would also be advocates costs for either attending hearings, which we assess to be £250 per hour inclusive of expenses, or in putting their views in writing which we assess to be £100 inclusive of overheads.

4.103 Addressing the "worst case scenario", we assume an average of one hour per application of staff time plus 30 minutes of legal oversight, a total of £100 based on the figures above. A further £150 would need to be added per case if representation is to be made in writing making a total of £250 per case.

4.104 Where there is attendance at a hearing we believe that an average of 4 hours is warranted to cover travelling and delays, a total of £1,000 giving a total for dealing with a case in this way of £1,100 per case.

4.105 The table below details these assumptions against possible workload based on a range of between 10 and 50 applications per week (nationally) or roughly between 2 and 10 applications per annum per court.

Attendance in Writing	500	1,000	1,500	2,000	2,500
	£	£	£	£	£
25%	**31.250**	**62,500**	**93,750**	**125,000**	**156,250**
50%	**62,500**	**125,000**	**187,500**	**250,000**	**312,500**
75%	**93,750**	**187,500**	**281,250**	**375,000**	**468,750**
100%	**125,000**	**250,000**	**375,000**	**500,000**	**625,000**
Attendance By Advocate					
25%	**137,500**	**275,000**	**412,500**	**550,000**	**687,500**
50%	**275,000**	**550,000**	**825,000**	**1,100,000**	**1,375,000**
75%	**412,500**	**825,000**	**1,237,500**	**1,650,000**	**2,062,500**
100%	**550,000**	**1,100,000**	**1,650,000**	**2,200,000**	**2,750,000**

4.106 These costs can only be indicative and must, however, be balanced against current creditor expenditure in trying to recover debt (£3.4 billion), the amount of debt written off, the potential raised returns and the fact that creditors already incur at least some of these costs in negotiating with debtors and or advisors about proposed voluntary moratoria.

Option 5 – Reform the court based administration order scheme

4.107 Throughout this section the current figure for the number of orders made (3,894) has been rounded up to 4,000 for ease. A sample of 550 AOs in 2001 showed that 71% of debtors were recorded as unemployed and receiving state benefits. Lack of disposable income within the 71% unemployed included in the AO scheme means that the majority probably should not be included in the scheme; they are likely to fall into the "can't pay" group for whom repayment schemes are inappropriate.

4.108 Even assuming that only 50% of those currently applying for orders would be ineligible because of lack of surplus income would see the current figure reduced to 2,000 orders per year. The latest figures show that 18,000 debtors issued petitions for bankruptcy but, as mentioned earlier, as many as 26% of these petitions may have been for less than £15,000, the current proposed limit for this scheme. Assuming that 25% of these meet the other requirements to enter this scheme, and that these debtors choose to do so, there would be an increase of 4,500 orders.

4.109 Additionally we could expect a rise in the number of orders generally due to the increased limit of debt that can be included. This would rise from £5,000 to £15,000, an increase of 300%. Applying this to the current figures for those eligible to enter the scheme would see the number of orders rise to 6,000. A total of 10,500 when all those who would no longer need to take the bankruptcy option are included. This figure has been used as the baseline for the ranges used within this section.

Set up costs

Training

4.110 There would be no additional training costs for HMCS other than to revise the current training brief. The costs for this (and for producing a brief to cover the ERO) are anticipated to be £2,250 and would be met from existing provision.

4.111 As with EROs, we do not anticipate any significant additional training costs in view of the experience of debt advisors generally in negotiating with creditors and preparing documents for use by the court.

Information technology

4.112 There are no additional IT costs. Current systems would continue to operate without the need for them to be updated.

Publicity/Information

4.113 The scheme would need to be publicised and explanatory leaflets would need to be produced. We anticipate that the costs of printing, translation and distribution of 100,000 leaflets to be in the region of £40,000. Again these costs would be met from existing provision.

Ongoing administration costs

4.114 HMCS cost of operating the current scheme is £290 per order (unit cost) and should be met from the administration fee, currently 10% (of total debt included in the order) which is collected from payments made by debtors. However, if an order is refused, no payments are made and therefore HMCS costs of dealing with the application and hearing are not recovered.

4.115 Additionally, the poor success rate of the current scheme (19% of orders are fully paid, a further 66% receive some payments and 15% receive no payments at all) means that the scheme costs HMCS around £500,000 per annum to operate.

4.116 Under the revised scheme, we anticipate a rise in the costs of dealing with the application (pre-order costs) due to increased creditor involvement in hearings. The likelihood is that more creditors would want to be heard due to the increased debt ceiling. However, this would be offset by reductions in the following areas:

- the number of dividends declared (under the proposed scheme there would be a maximum of 10 on a 5 year order);
- there would be no ability to apply for a revoked order to be reinstated; and
- the number of applications for debts to be added would be reduced.

4.117 This would mean a reduction in the overall unit cost to £175, allowing HMCS to recover its costs and providing potential to reduce the administration fee from the current level of 10%, perhaps to a sliding scale based on the number of debts to be included in the order. This benefits both debtors and creditors by ensuring that a higher percentage of payments made are used to help clear debts rather than meeting the court costs.

Costs to Creditors

4.118 There would be little in increased costs to creditors as this option would simply revise a current scheme in which creditors already play a full part. We believe that it is likely that creditors would be eager to have their views heard because of the higher

levels of debt that would be included in the new scheme. This would give rise to increases in costs but these would be substantially less that those described in the ERO section of this paper.

4.119 Balancing this increase there would be the potential for a substantial rise in creditors' returns. At present the average repayment rate is around £29 per month and the average amount recovered is in the region of £440. This represents 18.33% based on the average debt included in an order (c. £2,400) and only 8.8% of the maximum (£5,000) that could be included in an order.

4.120 The intention to restrict entry to those who have sufficient disposable income would ensure that far greater returns are achieved. The table below illustrates the amounts that would be recovered from various payment rates assuming a total debt of £15,000 in each case.

Rate per Month	£50	£100	£150	£200	£250	£300
Years						
3	**£1,800 (12%)**	**£3,600 (24%)**	**£5,400 (36%)**	**£7,200 (48%)**	**£9,000 (60%)**	**£10,800 (72%)**
4	**£2,400 (16%)**	**£4,800 (32%)**	**£7,200 (48%)**	**£9,600 (64%)**	**£12,000 (80%)**	**£14,400 (96%)**
5	**£3,000 (20%)**	**£6,000 (40%)**	**£9,000 (60%)**	**£12,000 (80%)**	**£15,000 (100%)**	**£18,000 (120%)**

Option 6 – Non-court based debt management schemes

4.121 Non-court based schemes are currently being operated by both the advice and private sectors but it is not possible at this stage to assess what costs would be incurred if these schemes were to take the place of the court based scheme or to say who would meet them. Debtors meet the costs of some current schemes while the creditors meet the costs of others.

Option 7 – Debt management schemes delivered by approved operators

4.122 This option would need to be much more defined before any assessment of costs could be made. As mentioned in the benefits section of this paper we believe that there may be some merit to this approach but would need to consider it in more detail to establish a need and to detail the schemes operation.

4.123 This would be achieved by a further round of public consultation and development of a RIA specific to the proposals. This would be produced before the Lord Chancellor would exercise this power.

6. COMPENSATORY/SIMPLIFICATION MEASURES

4.124 The proposals would not increase the regulatory burden on businesses. Although the ERO procedure would revise existing legislation it would also introduce parameters for the scheme to operate in. The limited increased impact on business would be more than balanced by the introduction of the parameters and a reduction in the amount of work currently undertaken in other areas e.g. considering IVA proposals and dealing with applications for suspension of enforcement, variation of orders or in bankruptcy proceedings.

4.125 The greater range of more appropriate and targeted options for debt recovery would also more than compensate business for the need to become familiar with the new procedure.

7. SMALL FIRMS IMPACT TEST

4.126 The Small Business Service (SBS) indicated that they would be unhappy if commercial debts were to be included in either the ERO or the AO schemes. The SBS pointed out that to date it has been the Government's policy to treat the issues of consumer and business indebtedness as separate issues. The Consumer Credit Act 1974 currently provides the self-employed with some protection where the debt is less than £25,000. Their view was that any attempts to introduce consumer protections to business lending could affect the price of that debt and its availability. Businesses need to access appropriate finance that is not made more expensive or difficult to obtain because of inappropriate levels of protection if they were to thrive in a competitive environment. These views were supported by the Finance and Leasing Association and the Association of District Judges.

4.127 As a result of the comments and the potential impact of the original proposals debtors with commercial debts have been specifically excluded from both schemes.

8. COMPETITION ASSESSMENT

4.128 Completion of the competition assessment does not lead us to conclude that there would be any significant competition issues raised as a result of these proposals. The administration of DRO scheme would be undertaken only by the INSS. The effect of these proposals on the business sector and a competition assessment are set out in a separate Regulatory Impact Assessment. The operation of the ERO is purely court-based. Some firms offer services where they reach agreements with creditors on behalf of clients but none of these can guarantee that enforcement action is not taken.

4.129 The AO scheme is a court-based scheme. Similar schemes are currently operated by the advice and private sectors but these schemes cannot ensure creditor compliance, they cannot make reluctant creditors enter schemes and they cannot offer composition of debts without creditor agreement.

4.130 Debt recovery problems are not limited to any particular section of the market but there may be higher costs for firms who traditionally lend to those with poor credit records. These proposals should encourage more responsible lending.

4.131 The proposals would not lead to higher set-up or ongoing costs for new firms compared to existing firms nor would they restrict the ability of firms to choose the range of the products that they offer.

4.132 The payment system of the proposed re-structured AO scheme could be put out to a private service provider in order to improve the range of options available. However delivery of the service would be put out to tender on a fair basis.

9. ENFORCEMENT, SANCTIONS AND MONITORING

4.133 Court based options would continue to be delivered and enforced by HMCS. Particular emphasis would be placed on monitoring creditors' behaviour once orders have been made. There is evidence of creditors continuing to illegally contact debtors after AOs have been made to "demand" payment. This should not be necessary under the new scheme as non-payment is a ground for having an AO (and an ERO where there is a payment provision) revoked.

4.134 Should it become necessary in the future to authorise external providers to run the AO or similar schemes, mechanisms would be developed to ensure that compliance monitoring and enforcement would be undertaken by HMCS or other bodies authorised by the Lord Chancellor. However, these issues would be addressed in a further dedicated RIA if that proves necessary.

10. IMPLEMENTATION AND DELIVERY PLAN

4.135 These proposals do not introduce new schemes. Instead they fine tune existing schemes to make them more accessible for debtors and practical for creditors. As such there is no need for these schemes to be "launched" in the traditional sense.

4.136 We anticipate that it would take about one year for the passage of the Bill and that we would need a further year from Royal Assent to implementation. This period would allow sufficient time for amendments to be made to HMCS IT systems, for forms and information leaflets to be produced and for staff training. It would also provide creditors and the advice sector with sufficient time to make any changes necessary to their systems and deal with training issues.

4.137 Court staff would be trained and available to help with any problems that arise and HMCS HQ staff would be available to discuss policy intentions with any groups that need this level of input.

11. POST-IMPLEMENTATION REVIEW

4.138 A monitoring exercise would be undertaken within 2 years of implementation. This would be a comprehensive review that would assess the impacts of these proposals. The intention to improve data collection on ethnicity and income would allow an assessment to be made of the effects on various social and ethnic groups.

4.139 The review would also consider whether changes are needed at that stage to the debt ceiling and the minimum surplus income levels. Any shortcomings or unexpected/unwelcome consequences would be addressed and alterations made where necessary.

12. SUMMARY AND RECOMMENDATION

4.140 Based on the findings of the review of AOs, the client group that is not adequately catered for is the 'can't pay' group who cannot afford to petition for bankruptcy. However, it would not be cost effective for HMCS to deliver a scheme to meet their needs, as it can only do so at huge expense.

4.141 The most viable solution for reform to help this group is a non-court based DRO scheme (Option 3) which would offer relief from enforcement for those individuals who are unable to access any of the other debt solutions because they do not have the financial means to do so. This proposal forms part of our recommended options.

4.142 After considering all of the proposals (discussed earlier in his paper) we recommend the following options:

I. Reform of the AO scheme offering assistance to the "could pay" group (Options 5)
II. Introduction of targeted schemes to assist current debtors groups namely;
    - the DRO scheme providing assistance to the "can't pays" (Option 3)
    - the ERO providing assistance to "could pay" debtors (Option 4)
III. An enabling power to allow the Lord Chancellor to approve non-court based service providers if it is apparent that there is a need and/or that the service could be provided more cheaply.

4.143 These options would be more beneficial to the client groups than the other proposals mentioned in this paper. The table below highlights the advantages and disadvantages for our recommended options.

Option	Total Cost per annum	Advantages	Disadvantages
Option 5. **Reform of the court-based AO scheme**	• A reduction in costs from the current scheme – the scheme would no longer "cost" HMCS to operate	**Court based** • Would deliver benefits to those in multiple debt • Would provide relief from enforcement for the debtor and repayment to the creditor • Increased access to the scheme • A higher limit of indebtedness would accurately reflect the over-indebted profile • Little if any additional cost to creditors • Higher returns • Debtors would potentially pay less in court fees	**Court based** • There might be a small cost to the state. • If the scheme is not self-financing HMCS could be criticised but the added benefits to debtors of compulsion and composition (not offered by current non-court based schemes) needs to be taken into account.
Option 3 **Debt Relief Order scheme**	• See separate RIA		

Option	Total Cost per annum	Advantages	Disadvantages
Option 4 Enforcement Restriction Order	• £200,000 set up costs for HMCS • Ongoing administration costs covered by fee income • Depending on the number of applications, the amounts paid to staff and the method of representation at hearings, creditors costs could, in a worst case scenario, be £2.75 million	• Would give debtors 'breathing space' to sort out their problems • Would not include secured debts • Would not apply to business debt • Would apply to all consumer debts • Would encourage negotiation between debtors and creditors • Creditors taking aggressive action to enforce their judgment would not disadvantage other creditors • Improve chances of creditors recovering their debts	• Possible increase in work for court staff • Possibly very small take up because of strict entry controls
Option 7 Debt management schemes delivered by approved operators	• Could not be established until a RIA specific to the proposal is produced.	• Operators would need to satisfy approval criteria • Would deliver the same benefits (as the court-based scheme) in helping those in multiple debt. • Would provide relief from enforcement for the debtor and repayment to the creditor • Would provide potential to widen access to the scheme with a higher limit of indebtedness	• Limited court fees would need to be retained if any court involvement remained.

V. DEBT RELIEF ORDERS: FULL RIA

1. TITLE OF PROPOSAL

5.1 Debt Relief Orders

2. PURPOSE AND INTENDED EFFECT OF MEASURE

(i) The objective

5.2 The proposal is designed to provide debt relief for the financially excluded who have no income and no assets and are therefore unable to avail themselves of any of the remedies currently available to people with serious debt problems.

(ii) Devolution

5.3 Any legislation in this area would apply only to England and Wales. Scotland has its own personal insolvency regime, as does Northern Ireland.

(iii) The background

5.4 There is a category of person for whom none of the current remedies for those with serious debt problems apply: this group has insufficient disposable income to make monthly payments, no assets that can be sold to defray even some of the debt and they cannot afford the petition deposit required to go bankrupt. We think there is a need to plug this gap, and provide a form of relief for people who have fallen into debt, who do not owe a great a deal but who have no reasonable prospect of ever being able to pay off even part of the debt. The government is committed to contributing to social justice and working to create the conditions for business success by tackling over-indebtedness and financial exclusion. Part of this commitment includes access to help for those in financial difficulty, and improving the support and processes for those who have fallen into debt.

5.5 It is proposed that debtors who have total liabilities of less than £15,000, surplus income of no more than £50 per month, and no realisable assets over £300, be eligible for the Debt Relief Orders scheme. The Order, which would be made

administratively by the official receiver, would provide relief from enforcement of the debts, which would then be fully discharged after twelve months.

5.6 At present, if people fall into debt, there are a number of remedies available to them. They can try to formulate a debt management plan, whereby they come to an agreement to pay their creditors a specified amount at regular intervals – usually every month. This requires the person concerned to have an amount of money over and above what he needs to live on to set aside to pay off his debts. Similarly if the debtor applies for an individual voluntary arrangement under the provisions of the Insolvency Act 1986, or a county court administration order, he or she needs to have funds with which to pay monthly instalments, or in the case of an individual voluntary arrangement, assets that can be sold to raise money to repay the debts either in part or in full.

5.7 There is also the option of bankruptcy. However, this is an arguably disproportionate response for someone who has a relatively low level of debt, no assets, no income, and no apparent conduct issues that need to be investigated by the official receiver. Additionally, the debtor has to find the petition deposit (currently £325) and in many cases court fees too.

5.8 In 2004 a partnership between the voluntary sector, the credit industry, the Government and consumers drew up a strategy for dealing with over-indebtedness and this was published in July 2004.[9] The Action Plan arising out of that strategy included a commitment that, depending on the results of a consultation by the Department for Constitutional Affairs[10], the Insolvency Service would consult on the detail of a proposed non-court based system of providing debt relief for the socially excluded.

5.9 The DCA's consultation closed on 20th October 2004, and responses to it led us to believe that there should be further consultation on the detail of a proposed debt relief scheme. The Insolvency Service subsequently issued a further consultation in March 2005, entitled "Relief for the Indebted – an alternative to bankruptcy"[11] which set out the detail of how such a scheme might operate. That consultation closed on 30 June 2005, and responses to it indicated that our proposals were generally thought to be appropriate.

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9 Available at www.dti.gov.uk/ccp/topics1/pdf1/overdebt0704.pdf

10 "A Choice of Paths – proposals for providing better assistance to the over-indebted and those in multiple debt",

5.10 Further detail of how the Debt Relief Order proposals will work can be found on the Insolvency Service website at: http://www.insolvency.gov.uk/.

(iv) Rationale for Government intervention

5.11 As evidenced in the White Paper published in December 2003 "Fair Clear and Competitive; the Consumer Credit Market in the 21st Century"[12], the consequences of over-indebtedness are often worst for people in the lowest income groups. Such people are more likely to have priority debts (rent, utility bills, council tax and mortgage arrears). In serious cases, that can lead to eviction, imprisonment, disconnection or repossession. Being in debt can lead to increased stress and associated medical conditions. There is also a clear link between stress and absenteeism from work. This leads to additional costs on government, businesses and on the economy generally through lower productivity and growth.

5.12 Because of the nature of the problem, it is very difficult to quantify the number of people who are unable to access any of the debt relief solutions currently available. However, many people who get into financial difficulty do try and seek help from a debt advisor, and Citizens Advice is one major organisation that gives such advice.

5.13 During February 2004 the Insolvency Service conducted a survey of people who attended a sample of 63 Citizens Advice Bureaux for help with their debt problems and has used that survey to try and estimate how many people nationally would meet the criteria for entry to the proposed scheme. The survey results and other sources of information[13] have been used to estimate a take-up rate for the scheme. The conclusions take account not only of people who seek advice about their difficulties but also those who have problem debt but do not seek help – for example because they think that nothing can be done – and also people who currently present a bankruptcy petition but would possibly apply for a debt relief order if it was available.

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11 Available at www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/closedindex.htm

12 Available at www.dti.gov.uk/ccp/topics1/consumer_finance.htm#review

13 (i) The Distribution of Unsecured Debt in the United Kingdom; survey evidence, by Merxe Tudela and Garry Young of the Bank of England's Domestic Finance Division available at: www/bankofengland.co.uk/qb/qb030402.pdf
(ii) "In Too Deep" CAB Clients' experience of debt", by Sue Edwards, Citizens Advice. www.citizensadvice.org.uk/in-too-deep.pdf

5.14 Although we have made use of a variety of sources of information and looked at published research in trying to establish how many people might want to use the scheme, clearly we can do no more than estimate the number of people who get into financial difficulty but do not seek help, and also those who do seek help but would not wish to apply for a debt relief order.

5.15 We think that if a scheme such as the one we are proposing were put in place, the number of people wishing to obtain a debt relief order would plateau at between 34,000 and 36,000 a year after two years, but would then increase (or decrease) in line with the number of bankruptcies, which is largely driven by economic factors such as outstanding unsecured credit.

5.16 Consultees to the Insolvency Service consultation were asked if they had any further information that would help to estimate the likely numbers of people who might want to use the proposed scheme. Although there were 70 responses to the consultation generally, very few of the respondents had any comment to make on the questions relating to this Regulatory Impact Assessment. We received 16 answers on this question and little further information was provided that would enable us to refine our estimates.

5.17 It seems that Debt Relief Orders would apply to a substantial proportion of those seeking advice for debt related problems who owe less than the proposed liability cap of £15,000 and/or are not homeowners. Approximately 50% of callers to National Debtline have debts under £15,000 and 60% are in some form of accommodation where they are not a homeowner. National Debtline expect to help in the region of 60,000 clients in the next year. Advice UK also made the point that nearly 60% of their clients were not homeowners. However, without further information concerning their incomes and overall asset levels we cannot ascertain how many would meet the criteria for entry to the scheme.

3. CONSULTATION

(i) Within government

5.18 We have consulted with the following government departments and associated bodies:

- Department of Trade and Industry
- Department for Work and Pensions
- Department for Environment, Food and Rural Affairs
- HM Customs and Excise
- Inland Revenue
- Department for Culture, Media and Sport
- Legal Services Commission (Executive Non-Departmental Public Body)
- Financial Services Authority (FSA)
- Home Office
- Scottish Executive
- HM Treasury
- Office of the Deputy Prime Minister
- Office of the First Minister and Deputy First Minister Northern Ireland
- Office of Fair Trading (OFT)
- Department for Education and Skills
- Welsh Assembly Government

(ii) Public consultation

5.19 Prior to issuing a formal consultation paper the Insolvency Service consulted on an informal basis with representatives from the advice sector and business.

5.20 The consultation paper was sent to approximately 350 people consisting of representatives from the debt advice sector, the credit industry, business, insolvency practitioners and the general public. The consultation was open for twelve weeks and 70 responses were received.

4. OPTIONS

Option 1: Do nothing.

5.21 This would maintain the status quo but would leave vulnerable people without any protection from their creditors.

Option 2: Remove the requirement for those people without assets or surplus income to pay a deposit when presenting their own petition for bankruptcy.

5.22 Each bankruptcy currently costs in the region of £1,625 to administer, and part of that cost is met from payment of the deposit of £325. If the petition deposit were waived then it would mean that all the costs of case administration in such bankruptcies would have to be met from other sources. It would not be fair on creditors in other cases to require them to further cover those costs by way of cross-subsidy, and neither do we believe that it is appropriate that it should be met out of general taxation.

Option 3: Try to persuade creditors to use a voluntary code of practice whereby in cases where there is clearly no prospect that the debt will be repaid within a reasonable timescale because the debtor is just too poor, the debt is written off.

5.23 We have consulted with the OFT and they are firmly of the view that a code of practice is not a substitute for legislation. It is an entirely voluntary process and even in an ideal situation, not everyone would be signed up to it. It is simply a tool for consumers to identify better traders.

5.24 Even if it were possible to persuade creditors to sign up to a voluntary code on responsible collection practices, the people at whom the debt relief order scheme is aimed are unlikely to make their borrowing decisions based on which entities had signed up to it: many in this group of debtors would be desperate to borrow money from whoever was willing to lend it, with some made even more vulnerable by literacy and numeracy problems.

5.25 Even if an information campaign publicised how to make informed choices on sources of credit, a voluntary code is unlikely to secure an adequate level of help for debtors. It is possible that not enough lenders would sign up to the code, rendering it ineffective, and that there would be insufficient levels of code compliance to make it a

worthwhile exercise. Whilst there are many responsible creditors who will write a debt off when it becomes clear that the debtor is unable to pay it, there are some who would not act so responsibly, and who would take steps to enforce their debts even when the legislation does not allow it. Research funded by the Department for Constitutional Affairs and the Insolvency Service[14] found that a third of people who were interviewed reported being contacted by one or more of their creditors after a county court administration order was in force, demanding full or part payment of their arrears. Only half the debtors were able to stop this unwanted (and illegal) action by writing to the creditors, seeking the help of the court or re-contacting the debt advisor who had helped them originally.

5.26 As the objective is to provide debt relief for the socially and financially excluded, we do not think that the use of a code of practice would be a suitable way to proceed.

Option 4: Introduce legislation to enable people who are financially excluded to access a system of debt relief

5.27 We think that if the object is to provide debt relief, it can be only achieved on an equitable basis if there is legislation in place to determine the manner in which the debt relief is granted and policed.

5. COSTS & BENEFITS

Business sectors affected

5.28 There may be risks associated with implementation of the debt relief order scheme. For example, it is possible that the provision of accessible debt relief might mean that the people at whom the scheme is aimed, or who might qualify for entry to the scheme, would find it more difficult to obtain credit or that the cost of credit might rise.

5.29 We think it unlikely that there will be an adverse effect on the credit and lending sector as a whole. What we are proposing does offer relief from enforcement but it does not alter the fact that the relief would be offered to people who are in debt

14 Managing Multiple Debts –Experiences of County Court Administration Orders among debtors, creditors and advisors, Elaine Kempson and Sharon Collard, DCA Research series 1 /04. July 2004. www. Dca.gov.uk/research/2004/1_2004.htm

and who have no reasonable prospect of paying that debt, whether there is a mechanism to provide formal relief from enforcement or not.

The credit and lending sector

5.30 We expect that most people wishing to apply for an order will be "consumer" debtors rather than business failures and that the majority of debt included with a debt relief order will be of the type that is owed to large institutions and lenders.

5.31 We asked consultees if they thought that the existence of the proposed scheme would reduce lenders' willingness to lend to people who may qualify for entry to the scheme and if so, how might this risk be mitigated. Of those that replied (16 in all) there was a significant variation in views. Many of the advice workers felt that there would be no effect, since, for example, "the existence of other debt remedies e.g. bankruptcy, IVAs [Individual Voluntary Arrangements] or DMPs [Debt Management Plans] does not seem to reduce creditors willingness to lend," and one or two expressed the hope that it would encourage more responsible lending. One expressed the view that "if a person's circumstances were such that they would be likely to qualify for a DRO scheme it is probably desirable that they are not provided credit on commercial terms".

5.32 The Institute of Credit Management felt that the existence of the proposed scheme would reduce lenders' willingness to lend to people who qualify for entry to the scheme, and that this risk cannot be mitigated. The CBI expressed the view that if the scheme attracted large numbers of applicants causing lenders or creditors to write off unacceptable levels of debt, it could also reduce their willingness to lend to people who may qualify for entry.

5.33 One respondent stated that lenders would not lend where the risks of not recovering are unacceptable, which would occur if the proposed scheme were used inappropriately.

5.34 There are a number of initiatives across government departments to tackle the issues arising out of debt and the causes of it. "Tackling Over-indebtedness: Action Plan 2004" brings together this work and joins together departments in combating over-indebtedness. Government is particularly keen to ensure that the most vulnerable customers have access to affordable forms of credit. The Government is working with the Credit Union movement and others to ensure that the framework in which they

operate has the flexibility to allow them to focus on tackling issues of financial exclusion including affordable credit and support for the most vulnerable.

5.35 As mentioned in "Tackling Over-indebtedness: Annual Report 2005"[15] – which sets out how Government and partners in the independent regulators, credit industry, voluntary sector and consumer groups are addressing the issue of problem debt – Government is working hard to ensure responsible lending. Responsible lending should mean that a realistic assessment of the consumer's ability to repay is made, and this should mean that consumers who are lent to responsibly should not find it necessary to apply for a Debt Relief Order. The credit sector has continued to work towards raising standards of responsible lending through self regulation and collaborative action.

5.36 At this point, and in the absence of any evidence to the contrary, we think that moves towards more responsible lending and greater access to affordable credit for low income households, coupled with robust entry criteria for our proposed scheme should mean that the existence of the scheme would not, of itself, adversely affect either the credit market or the ability of low income households to obtain credit when it is desirable for them to do so.

The banking and credit card sector

5.37 According to figures from the Bank of England, in 2003 UK resident banks wrote off credit card lending to individuals of £1,570 million[16], some of which is owed by people who would potentially use the proposed scheme. In 2004 the amount was £1601 million. The banking and credit card sector is estimated to spend over £3.4 billion every year chasing, recovering and writing off debts[17]. There could in fact be savings to the credit industry in terms of decreased recovery costs.

5.38 According to research conducted by Citizens Advice[18] about 70% of the amounts owed by their clients constitute credit card/consumer type debt. If every applicant for a debt relief order owed the full permitted amount of, say, £15,000 and there was an uptake of the scheme of 36,000 cases a year, then this would amount to an annual debt write off of £378 million (70% X £15,000 X 36,000).

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15 Available http://www.dti.gov.uk/ccp/topics1/overindebtedness.htm

16 www.bankofengland.co.uk/Links/setframe.html

17 Action on Debt- Social Exclusion Unit Office of the Deputy Prime Minister – Business and Debt. Taken from Evaluation of Money Advice Debtline pilot (Deloitte and Touche 2003) p44

18 "In Too Deep" CAB Clients' Experience of Debt, by Sue Edwards, May 2003

Utility companies

5.39 A continuing feature of household debt is the amount owed to utilities. This is problematic for water companies especially, as they do not have the option to discontinue domestic supplies to non-payers. Data obtained from Ofwat suggests that in the year 2003/2004, water companies wrote off revenue of £93 million and that the water companies spent operating expenditure of £58 million on outstanding revenue collection.

5.40 Generally water companies will only write off outstanding revenue when all attempts to recover the debt have been exhausted, for example where a customer has absconded and agents cannot successfully locate them or where it is uneconomic to pursue the debt.[19]

5.41 The survey we conducted with Citizens Advice during February 2004 included questions on amounts owed to utilities. Of the people participating in the survey who were eligible for the scheme, only 2 people (1% of the total) were recorded as owing money in respect of unpaid gas charges, in the total sum of £392, 1 person owed money in respect of unpaid electricity (£296) and that same person together with one other owed monies in respect of water or other utility charges (total £1045). So overall, 4 people who participated in the survey and who would be eligible for our proposed debt relief scheme, owed monies to utilities. This is just over 2% of the total eligible people.

5.42 On a straightforward extrapolation basis, and using £500 as guide for the amounts owed, this would indicate that in the region of £378,000 (.021 X 36,000 x £500) would need to be written off annually in respect of amounts due to utility companies. Set against an annual write-off by water companies of £93 million, we think this is a negligible impact. If 36,000 people obtained an order, and every single person who did so owed £500 in respect of unpaid water charges, which we do not think is likely, the total write-off would be £18,000,000 (36,000 X £500).

19 Letter to Directors of all water and sewage companies and water only companies – Industry Information on the level of Household Revenue Outstanding. www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/Content/rd1804

Other business impacts

5.43 We asked consultees if they thought there would be impacts on business in addition to those outlined above and if so, what were they and whether it was possible to quantify the impact. No significant additional impacts were identified, although two respondents suggested that small businesses might suffer disproportionately because they could carry losses less well than larger organisations, and one or two respondents commented that it might adversely affect those small tradesmen who are generally paid after they have supplied goods or services.

5.44 We do not have any evidence to substantiate this and we do not think that the scheme will have a noticeable impact on small business. It should be reiterated that the people at whom the scheme is aimed are genuine "Can't Pays" and as such the facility of offering debt relief should make no overall difference as it is unlikely that they would pay anyway. It is likely that the write-offs arising as a result of a debt relief order relate to debts that would have to be written off irrespective of whether or not there is a formal order.

Advice Sector

5.45 There will be an impact on the advice sector through the need to familiarise staff with the new procedure, and the time taken to deal with clients wanting to apply for the order. However, we feel that this will potentially be offset by the fact that such advisors would not have to spend time entering into protracted correspondence with creditors on behalf of their clients, and also that they will be able to offer a solution that is not currently available.

5.46 Clearly if a debt advisor deals with an individual in good faith who then turns out to have provided false or misleading information, then no liability would attach to the advisor.

5.47 Many of the respondents were strongly of the view that there would be an impact on the advice sector. We are therefore giving careful consideration to how best to ensure that debtor advisors are adequately funded for any work they would need to undertake whilst at the same time protecting their independence and keeping the scheme financially viable.

5.48 No other significant impacts on the advice sector were identified.

Social Impacts – Racial Equality Impact Assessment

5.49 We are uncertain as to whether or not the new procedure will have a different impact on ethnic minorities when compared to the white population.

5.50 Debt Relief Orders are aimed at socially and financially excluded individuals, and, as with bankruptcy, there is no immediately obvious reason to suppose that there would be any differences in their effect on any particular ethnic group. However, data held by the Insolvency Service indicates that ethnic minority bankrupts are less likely to present their own bankruptcy petition (65% of ethnic minority bankrupts present a debtor's petitions) when compared to white bankrupts (84% of whom present a debtor's petition). In addition, following the making of the bankruptcy order in debtors petition cases, people from ethnic minorities are less likely to obtain an early discharge to their bankruptcy.

5.51 Early discharge in the bankruptcy process is granted if before the end of the twelve month period prior to automatic discharge, the official receiver files a notice in court to state that an investigation into the conduct and affairs of the bankrupt is unnecessary or concluded. If there are delays at the start of the proceedings, for example by failing to surrender to the first appointment or provide information requested by the official receiver, the whole process is lengthened and therefore the chance of an early discharge is reduced.

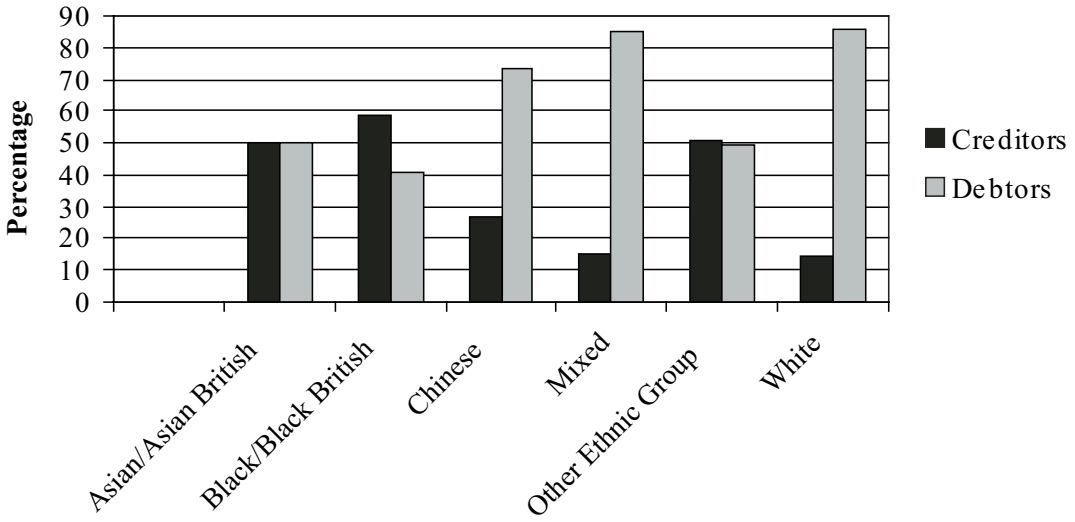
5.52 We have found that following a bankruptcy order, there are differences in behaviour between the ethnic groups, with a significantly higher proportion of bankrupts from ethnic minorities failing to attend their first appointment, and also provide on a timely basis subsequent information about income, and this has led to their being less likely to receive an early discharge.

5.53 We do not know the reasons why people from ethnic minorities are less likely to present their own bankruptcy petition, or why, following the making of the bankruptcy order, they are less likely to co-operate with the proceedings. Therefore we cannot say with any certainty whether those reasons might also impact on the way people from ethnic minorities would access the debt relief order, which requires a positive act to go an seek the advice of an approved intermediary.

5.54 An analysis of the people who were made bankrupt in the period 1 April 2005 to 31 March 2006 and who would have met the financial criteria for a debt relief order

had the procedure been available shows a marked difference in the number of creditors' and debtors' petitions presented for each ethnic group.

Comparison of debtors' and creditors' petitions by ethnic group



5.55 We need to build on our current levels of knowledge and try and understand why these differences are occurring. We are therefore commissioning some research which we hope will help to explain why ethnic minorities are less likely to petition for their own bankruptcy (as opposed to being the subject of a creditors petition); and why, once in the bankruptcy process, marked differences exist in the behaviour of white and ethnic minority groups in relation to surrendering to and co-operating within the bankruptcy proceedings.

5.56 We hope that this will give us some insight into why these differences occur and enable us to ensure that if they are likely to impact on the debt relief order process then we can address them prior to implementation.

5.57 The results of the research are expected towards the end of 2006 or early 2007, and we are confident that should the research highlight any areas that may impact on the debt relief order process we will be able to address them before they become operational

Benefits

Option 1: No change

5.58 There is no discernible benefit for the indebted or for society as a whole in doing nothing, aside from the fact that there would be no additional costs to government in initiating the new scheme.

5.59 There may be a marginal benefit for some creditors who find in a few cases that they are able to recover their debt after some years should the debtor experience a change in circumstances that meant (s)he was able to meet his liabilities.

Option 2: Removal of the need for a petition deposit

5.60 There would be a benefit to the indebted individual in that he would be able to obtain debt relief at no cost to himself, and there would be benefits to debt advisors in that they would not need to familiarise themselves with a new regime. There would also be an indirect benefit to charitable organisations in that they would not have to fund the petition in hardship cases. Any benefit to creditors in not having to familiarise themselves with the new procedures would in our view be more than offset by the resulting increased administration fee, that would be funded by cases with assets, so leading to reduced returns to creditors.

Option 3: Introduce a code of practice

5.61 It is likely that reputable lenders would be prepared to discuss voluntary codes of practice. The advantages of this option would be that it would not require legislative change and would offer a cheaper alternative to regulation, with few direct costs to Government. The courts would be excluded and so this would be cheaper for society. However, since it is unlikely that all lenders would sign up to it, the relief from enforcement offered would be at best sketchy, and therefore would not achieve the aim of the provision of relief from enforcement action for those who most need it.

5.62 Many debtors would owe amounts in addition to those owed to the credit industry, for example utility bills, council tax and rent as well as to other creditors outside these main categories.

5.63 We do not think a voluntary code of practice is a viable option.

Option 4: Legislation for a new scheme

5.64 Clearly not everyone who is over indebted would benefit from a debt relief order, nor would everyone qualify. However, the type of consumer at whom such orders are aimed are amongst the most financially and socially excluded members of society.

5.65 We think that although amounts are difficult to quantify, the benefits of providing debt relief to those people would include the following:

Benefits to the individual

5.66 The Consumer Credit white paper "Fair, Clear and Competitive" sets out very clearly the effects on the individual of too much debt, and we think our proposals would benefit the indebted individual in terms of reduced stress and the effect on health that accompanies it. It would also provide an opportunity for the individual to make a fresh start and learn to manage their finances in more favourable circumstances.

Benefits to business

5.67 There may be a reduction in costs associated with chasing unpaid debt that is never going to be paid. There would be a register of people subject to a debt relief order, so allowing lenders to make an informed choice about whether to grant further credit.

Benefits to charities and debt advisors

5.68 A recent Insolvency Service survey of people who applied for a bankruptcy order during March 2004 indicated that roughly 2.6% of people who present their own bankruptcy petition obtain the deposit from a charity. A simple extrapolation would indicate that based on the year to April 2004 figures of 17,624 debtors own petitions, charities made grants in the region of £114,556 (.026 X 17,624 X £250)[20] to help people petition to make themselves bankrupt. Although our proposed scheme will need to have an entry fee, it will be far smaller than the £325 deposit that is now required for bankruptcy. Even if the fee was £100 and every person who applied for an order received a full charitable grant (which we do not think is likely) and there was an

20 Although the current deposit is £325, in the year to April 2004, it was £250.

anticipated uptake of the scheme of 36,000 a year then the charitable grants would total no more than £93,600 annually and this would represent a saving to charities of £20,965.

5.69 In addition there would be savings on the time spent with debtors and benefits to the advisor in that they would be able to offer a solution to the debtor not currently available.

5.70 The previously mentioned research into county court administration orders found that some debt advisors who assist people applying for a county court administration order see their ability to help people in this way as positive because it enables them to help more people – once an order has been set up, a case can effectively be closed. In contrast, other multiple debt cases involve negotiations with a number of creditors and can remain open for a year or more.

Benefits to Government and the taxpayer

5.71 We think the scheme should free up court time in those cases where enforcement action is being taken by creditors but where there is no hope of repayment.

5.72 We estimate that 11% of people who currently present their own bankruptcy petition would be eligible for a debt relief order. Assuming everyone who was eligible chose to apply for a debt relief order rather than a bankruptcy order, there would be in the region of 11% fewer debtors' petitions. This would also free up bankruptcy court time and also time spent by the official receiver on administering the cases once the order has been made. Clearly the official receiver would need to deal with the debt relief order cases instead, but we anticipate that the time spent administering these would be very considerably less.

Benefits to society

5.73 Debt is linked to both poverty and social exclusion, and insurmountable debt can only compound that. Around 1 in 8 Citizens Advice Bureaux debt clients have started treatment for stress, depression or anxiety since their debt problem started[21]

21 Action on Debt – An Introduction p 4, Social Exclusion Unit, Office of the Deputy Prime Minister, Social Exclusion Unit.

5.74 The consequences of debt related stress and mental health problems and eviction can contribute to crime and re-offending. Debt can also lead to tensions in family relationships, leading to breakdown of the family unit.

5.75 Although our proposed scheme is aimed at a small proportion of the over indebted, we envisage that it should go some way at least to alleviating debt related stress and its associated problems.

5.76 We asked consultees if they thought there would be benefits associated with our proposal in addition to those outlined above and whether or not they would be able to assist us in quantifying the benefits we have identified. One respondent made the point that "larger credit companies may be forced to be more responsible in their lending for their own benefit due to the risk of not recovering the debt" and another suggested it might encourage more responsible borrowing. Aside from this, no additional benefits were identified.

Costs

Option 1: Do nothing

5.77 There are no new costs associated with doing nothing.

Option 2: Abolish the requirement for the poorest debtors to pay a deposit when presenting their own petition for bankruptcy.

5.78 As mentioned earlier, each bankruptcy currently costs in the region of £1,625 to administer, and part of that cost is met from payment of the deposit of £325. If the petition deposit were waived then it would mean that all the costs of case administration in such bankruptcies would have to be met from other sources.

5.79 Our research suggests that there would be an initial plateau after two years, with approximately 34,000-36,000 people a year wanting to use the scheme. The numbers of people who would apply for a debt relief order would, we think, then increase or decrease in line with increases and decreases of the number of people who go bankrupt. If the petition deposit were waived in these cases, and such people were offered the opportunity to present a bankruptcy petition without any cost to themselves then in order to offset part of this cost, the fees charged in cases where there are assets would need to rise substantially.

5.80 The principle of the Insolvency Service's financial regime is that creditors will pay for the full costs of the official receiver's administration via a single administration fee funded in part from the petition deposit and also a general Secretary of State's administration fee (chargeable only in bankruptcies and compulsory liquidations). This involves some cross-subsidy between case administrations.

5.81 At present, all cases have a deposit, and a proportion of cases have sufficient assets to pay all of or part of the "administration" fee, currently fixed at £1,625. Cases which have assets of over £2,000 are used to pay for those cases that have few or no assets and this is done by charging a "Secretary of State" fee. This fee is currently set at 17% of all chargeable receipts over £2,000 relating to the bankruptcy.

5.82 The additional debt relief order cases would have no assets, no income and no deposit to defray any of the costs. We would therefore need to increase greatly the Secretary of State fee on those cases that did have assets to cross-subsidise the extra "no asset" cases. Under the current fees regime, we estimate that the Secretary of State fee would have to increase to between 35% and 40% of chargeable receipts to pay for these cases if dealt with through the current bankruptcy proceedings with a deposit waiver.

5.83 There is an additional risk that the overall costs of case administration would rise because of the need to add in a further process of means testing. This would identify which debtors ought to pay a deposit and those entitled to an exemption.

Option 3: introduce a code of practice

5.84 The costs associated with introducing a code of practice would include consultation with the various trade bodies, training and advertising. We have not taken steps to quantify these in detail. However, the consultation process for such a code is likely to be lengthy and therefore costly. Since we do not think 100% take-up of the code by lenders is likely, we would therefore not expect to achieve our objective of debt relief for those unable to pay. We do not therefore think the costs of introducing a code of practice can be justified.

Option 4: legislation for a new scheme of debt relief

5.85 There will be costs to set up the scheme initially, but if the debtor pays an upfront fee (substantially less than the current bankruptcy deposit) then we think it will

be possible for the ongoing administration costs to be met from the fee and for the scheme to therefore be effectively self-funding.

Set up costs

Information Technology

5.86 The Insolvency Service has recently developed a system to enable debtors to complete a bankruptcy petition online. We believe that it will be possible to adapt this system to receive debt relief applications from the intermediary.

5.87 Expenses associated with IT and the supply of equipment and services can be apportioned out over the terms of the contract rather than paid at the start.

Training costs

5.88 There will need to be a be significant amount of training prior to the scheme being operational, particularly in relation to the use of debt advisors.

5.89 The Insolvency Service has experience of the training required for the implementation of new insolvency legislation. It designed and ran extensive training courses when the insolvency provisions of the Enterprise Act 2002 came into force during 2004. On that occasion, we ran 32 courses of 3 days each and each course required eight man days. This meant that in the region of 1,000 people received training, and we think that a comparable number of debt advisors would need to receive training on the legislation and their role as intermediaries.

5.90 There was also the cost and time of designing the course, which took approximately 10 days. This involved a large number of people but we think it should be possible to reduce the number of people involved in the design of the course to two or three.

5.91 It would be possible to use Insolvency Service premises throughout the regions and therefore the major cost would be in terms of staff time.

5.92 If the training was designed and carried out by Insolvency Service staff and Insolvency Service premises were used wherever possible, then based on the time spent for the Enterprise Act training, the overall cost would be in the region of £150,000.

Publicity/information

5.93 There would be a need to produce explanatory leaflets and provide information about the scheme.

5.94 If leaflets are produced that are similar to those used for bankruptcy – "A Guide to Bankruptcy"[22] – the costs would be as follows:

To produce 100,000 leaflets:

Printing (£6,000 per 25,000 copies)	£24,000
Plain language translation (Urdu, Chinese £3000 per translation)	£6,000
Distribution	£5,200
Total	£35,200

5.95 There would be additional costs in terms of time taken to write the leaflet and obtain lawyers' clearance.

Ongoing costs of administering the scheme

5.96 We think that the way we have devised the scheme means that if the debtor pays an up front fee to cover the costs of administration, it would be possible for it to be self funding.

5.97 We need to be sure that we set the fee at a level sufficient to cover the costs of running the scheme. The grid below sets out a number of possible cost scenarios and the fee that would be needed to cover those costs. It should be possible for us to be able to alter the fee should the level at which it is set initially prove to be too high or too low. We would wish to avoid setting the fee at an unrealistic level only to raise it shortly after commencement.

5.98 The staffing model we have used for our assumptions is based on that of The Insolvency Service's Redundancy Payments Offices, where each office deals with in the region of 30,000 applications a year.

22 A Guide to Bankruptcy" The Insolvency Service. www.insolvency.gov.uk/pdfs/gtbweb.pdf

Annual number of cases	20,000	25,000	30,000	35,000	40,000	45,000	50,000
	£	£	£	£	£	£	£
Salaries	1,000,000	1,000,000	1,250,000	1,250,000	1,500,000	1,500,000	1,750,000
Overheads	500,000	500,000	625,000	625,000	750,000	750,000	875,000
IT	150,000	150,000	150,000	150,000	150,000	150,000	150,000
Miscellaneous	200,000	250,000	300,000	350,000	400,000	450,000	500,000
Total	1,850,000	1,900,000	2,325,000	2,375,000	2,800,000	2,850,000	3,275,000
Cost per case	92.5	76	77.5	67.85	70	63.33	65.5
Fee	95	80	80	70	70	65	65

6. COMPENSATORY/SIMPLIFICATION MEASURES

5.99 Debt Relief Orders are aimed at assisting those in debt who cannot access the currently available remedies and who have no way to pay what they owe. However, they are part of a wider package of proposals aimed at tackling the overall way that debt is dealt with in the court system and which also introduce new measures to help creditors enforce debts where the debtor is actually able to pay and has chosen not to.

5.100 We believe that the introduction of debt relief orders will lead to a reduction (estimated to be 11%) in overall numbers of people presenting their own bankruptcy petition. This reduction will free up court time.

5.101 Each debtor's petition bankruptcy case takes the court an average of 68.5 minutes to administer, including time spent on the order itself. In the year April 2004 –March 2005, there were 29,338 debtor's petitions. If 11% of those orders had not been made that would represent an approximate saving in time spent by the court system of 3684 hours. There would also be savings in terms of time spent administering those cases by the official receiver, although clearly some of that would be offset by time spent administering the debt relief orders, and it should also be noted that the remaining cases left with the official receiver would be more time consuming and therefore more expensive to administer.

7. SMALL FIRMS' IMPACT TEST

5.102 On the advice of the Small Business Service, we have taken soundings from the federation of small business and small firms, and we do not think that the scheme will have a noticeable impact on small business.

5.103 The majority of debt included with a debt relief order is of the type that is owed to large institutions and lenders, and we expect that most people wishing to apply for an order will be "consumer" debtors rather than business failures.

5.104 We asked consultees if they agreed with this assessment. Overall there was agreement, but one respondent suggested that "small traders who usually operate on a credit basis could suffer heavy losses if a number of customers opted for a debt relief order and they may seek to protect themselves by getting payment up front from high risk customers." The same respondent also suggested that smaller licensed credit providers could be driven out of business if the scheme had a significant impact on their bad debts.

8. COMPETITION ASSESSMENT

5.105 Not all regulations will affect the competitive process, and it is our view that the introduction of this proposal will not have an adverse effect on any particular market.

5.106 There may be some lenders who lend disproportionately to the financially excluded – particularly, for example, in the "home collected" credit market. Since our proposal is aimed at people who are not likely ever to be in a position to pay what they owe, with or without the provision of debt relief, we do not think that introduction of the proposal should have an adverse effect.

5.107 We sought views from consultees on this competition assessment, and in particular on whether they had any information that would help to clarify the effect of the proposal on lenders (if any) who lend disproportionately to the financially excluded.

5.108 No significant issues were raised, but two respondents suggested that lenders who lend disproportionately to the financially excluded would be more reluctant to give credit.

9. ENFORCEMENT, SANCTIONS AND MONITORING

5.109 These proposals do not impose an obligation on individuals or businesses to take any action. Obtaining a debt relief order is an entirely voluntary process and we do not consider that there is a need to make separate provision for enforcement, sanctions and monitoring.

10. IMPLEMENTATION AND DELIVERY PLAN

5.110 A delivery plan accompanies this Regulatory Impact Assessment and is available at Annex A. Once legislation is in place to enable the Debt Relief Order scheme to exist, substantial further secondary legislation will be required before the scheme can become operational.

11. POST-IMPLEMENTATION REVIEW

5.111 We propose to keep under review the effectiveness and impact of these proposals and report three years after commencement on whether or not they achieve the objective of assisting the financially excluded to obtain debt relief within a system that provides proper recourse and appropriate sanctions where the debtor's conduct has been culpable and creditors have suffered as a result.

5.112 We will at the same time monitor the effect of the proposals on the business sector. We will also keep under review the levels at which the entry criteria are set.

5.113 An evaluation and planning paper accompanies this Regulatory Impact Assessment and is attached at Annex B.

12. SUMMARY AND RECOMMENDATION

5.114 A summary of the various options and their advantages and disadvantages is contained in the table below.

Option	Monetary Costs	Benefits	Disadvantages
Do nothing	• No new costs would be incurred	• There would be no need to legislate • Some creditors may eventually recover their debts	• There would be no provision of debt relief for those that need it
Removal of the need to pay a deposit to petition for bankruptcy in certain "hardship" cases	• Losses to creditors in terms of reduced returns in insolvency cases and increased Secretary of State fee. • Costs associated with introduction of means testing	• Provision of debt relief at no cost to the debtor • Aside from the means testing, no need for debt advisors or creditors to familiarise themselves with a new procedure • Less legislation required than would be the case if option 4 were introduced • Benefits to society from the reduction of stress associated with being in debt • Benefits to charities who would not need to make grants for bankruptcy deposits	• There would be a large increase in the number of bankruptcy orders in case where that was not the most appropriate remedy • Bankruptcy is disproportionate
Introduce a code of practice for creditors	• Consultation with the various interested parties • Training • Advertising and information campaign	• There would be no need to legislate • The creditors involved would be voluntary participants	• There would be no statutory protection offered to the debtor • The scheme is not compulsory and not everyone will sign up to it

Option	Monetary Costs	Benefits	Disadvantages
Legislation for a new scheme of debt relief	• Once the scheme is implemented we expect it to be self funding • There would be initial costs in terms of training (£150,000) and publicity (in the region of £40,000) • Fee to debtor	• Statutory provision of debt relief to those that need it • Far lower cost than bankruptcy • Register of people who obtain an order will enable creditors to make informed choices about lending • Benefits to society from the reduction of stress associated with being in debt	• The debtor will need to pay a fee

5.115 We think that in order for the provision of debt relief to be fair and equitable to all parties, it will be necessary to legislate. The options outlined above that would require legislation include waiving the bankruptcy petition deposit requirement in hardship cases, and the proposed new scheme. Waiving the deposit would cost a great deal and would not offer a solution that was proportionate to the problem.
We therefore recommend introduction of the new scheme of debt relief.

ANNEX A: DEBT RELIEF ORDERS: DELIVERY PLAN

A.1 We envisage that the passage of the Bill will take in the region of 9 months and, following that, further detailed secondary legislation will be needed before the proposals become operational.

A.2 This delivery plan therefore looks in outline at the steps that will be taken following Royal Assent, but it should be borne in mind that a considerable quantity of preparatory work to be undertaken prior to the passage of the Bill will not form part of the delivery plan.

Success Criteria:

A.3 We consider that our proposals will have been effectively implemented if: it becomes possible for eligible individuals to successfully obtain a debt relief order without difficulty; for creditors to understand the process and how it affects them; and for the system to have sufficient integrity to detect and tackle any misconduct by the debtor concerning his insolvency.

A.4 Measures that will enable us to ascertain whether our objectives have been achieved will include:

- Number of orders made in line with expectations (as set out in the main body of the Regulatory Impact Assessment)
- Number of objections from creditors does not exceed 10% of the number of orders made[23]
- Number of cases where the debtor is found to be guilty of misconduct (including failure to disclose facts concerning the debtor's eligibility for a debt relief order) does not exceed 1% of orders made[24]

23 Based on the approximate expectation of numbers of bankruptcies where misconduct might be suspected (7%) and the fact that there are likely to be more complaints than cases of actual misconduct.

24 Based (with an added margin of error) on what we know about people who currently have a bankruptcy order and who are suspected of misconduct and who would meet the profile of someone who could seek a debt relief order.

Plan for implementation following Royal Assent. Much of the preliminary work will be undertaken prior to Royal Assent. Further substantial secondary legislation will be necessary before the scheme becomes operational.

No later than 1 month – Finalise discussions with debt advice sector on the role and responsibilities of the intermediaries. Until we have done this we cannot determine what will go in the secondary legislation (the Rules).

After 2 months – Grant provisional recognition to the body/bodies providing accreditation to the intermediaries so that they can begin putting systems in place in time for commencement.

After 10 months – complete alterations to IT systems using in-house consultants and commence testing. Complete installation and commence testing of Paypoint system for receipt of the fee.

2 months prior to introduction of secondary legislation commence publicity/awareness campaign.

After 12 months (nearest October or April) introduce secondary legislation. Determine staffing and accommodation requirements by date of introduction of secondary legislation.

ANNEX B

DEBT RELIEF ORDERS: EVALUATION PLANNING PAPER

PURPOSE OF THE PAPER

B.1 To recommend an evaluation plan for Debt Relief Orders (DROs) that encompasses the capture of benchmark information.

BACKGROUND

B.2 In July 2004, the Government published its Action Plan for tackling over-indebtedness[25]. It was considered that to address over-indebtedness effectively, both prevention and cure needed to be considered. Therefore, in addition to maintaining macro-economic stability, Government and regulators are working in partnership with industry, consumer groups and the voluntary sector to:

- Minimise the number of people who become over-indebted by promoting affordable credit and responsible lending and borrowing, e.g. through better financial education and access to advice on handling money; and
- Improve services for those who have fallen into debt and their creditors. This includes promoting financial rehabilitation for debtors, e.g. through debt relief in appropriate cases; and ensuring that debt problems are resolved fairly, effectively and speedily, e.g. through promoting creditor best practice and access to information, advice and assistance for debtors, and through providing efficient court services and effective enforcement.

B.3 Responses to a consultation paper issued by the Department of Constitutional Affairs entitled 'A Choice of Paths – Better options to manage over-indebtedness and multiple debt' indicated that the debt relief regimes available were not appropriate for some debtors. As a result, in March 2005, The Insolvency Service issued a consultation paper entitled "Relief for the indebted –an alternative to bankruptcy[26]", proposing the introduction of DROs. Overall the responses were in favour of our proposals and it is The Insolvency Service's intention to take them forward when parliamentary time permits.

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25 DTI and DWP, July 2004, "Tackling Over-indebtedness – Action Plan 2004"

26 Available at www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultation paperwithnewannex1.pdf

B.4 It is proposed that DROs will provide debt relief via a scheme administered by the Insolvency Service to assist 'can't pay' debtors – these debtors are defined as those with no disposable income or assets and little prospect of getting any in the foreseeable future (especially those on long-term low income).

B.5 The Insolvency Service intends to complete the evaluation of the DRO provisions within 3 years of commencement of the provisions, which are due to come into force no sooner than April 2009. The evaluation plan is based on the DRO provisions as currently proposed, but the provisions may be subject to change during the legislative-making process. Therefore, the evaluation plan will be kept under review and amended if necessary.

AIM AND KEY FEATURES OF THE EVALUATION

B.6 The principal aim of the proposed evaluation is to provide a comprehensive assessment of whether, to what extent and how the provisions relating to DROs meet the policy objectives. The evaluation will also provide information and data that can be used to inform future policy decisions.

B.7 The evaluation also seeks to capture benchmark information regarding the effect of the existing legislation, i.e. before the implementation of the DRO provisions. We have considered a mixture of internal benchmarking, i.e. looking inside The Service at its own historical performance and process benchmarking, i.e. looking at processes both within and outside The Service. The Insolvency Service will also undertake evaluation of new internal processes introduced as a result of DROs.

Main Evaluation issues

B.8 The main issues to be considered in determining whether, to what extent and how the provisions relating to DROs meet the policy objectives are covered in more detail in the paragraphs below.

B.9 The introduction of the DRO regime is intended to contribute to the Government's overall objective of improving the services for those who have fallen into debt and their creditors. Flowing from this, the objective of the DRO regime can be described as:

- To provide a statutory form of debt relief for some who are currently unable to access such existing processes, which provides financial rehabilitation for the debtor and protects creditors' interests.

B.10 The evaluation of the DRO regime will focus on the three key elements of this objective, which are:

- The accessibility of DROs;
- The financial rehabilitation of debtors subject to a DRO; and
- The integrity of the DRO system.

B.11 Currently, the only debt relief system available to debtors who have no assets and no surplus income with which to come to an arrangement to pay their creditors is bankruptcy; such debtors are unable to access debt relief systems that require re-payment of creditors, such as Individual Voluntary Arrangements, Debt Management Plans and Administration Orders. Therefore, the benchmark information will mainly relate to bankruptcy as being, prior to the introduction of the DRO regime, the only option available to such debtors (if they could meet the entry costs of bankruptcy). Further, unless indicated otherwise, the benchmark information will relate to the 3 years prior to the implementation of the DRO provisions.

The accessibility of DROs

B.12 The accessibility of DROs will, in the main, depend on the following factors:

- The entry criteria: There are no entry criteria as regards asset and debt levels for a debtor to petition for his/her own bankruptcy; in contrast, a debtor can only apply for a DRO if his/her:
  - Gross debts do not exceed £15,000
  - Gross assets do not exceed £300
  - Surplus monthly income does not exceed £50

- Further, whilst there is no limit on how often or when a debtor can apply for bankruptcy, a debtor cannot apply for another DRO within 6 years of a previous order.

- The entry costs: As regards bankruptcy, a debtor must pay £325 petition costs and, if they are not in receipt of benefits, £150 court fees. These costs are seen as a barrier to entry. There are some charities that will assist with these bankruptcy costs, but the availability of such charities is not widespread and a recent Insolvency Service survey of debtors who applied for a bankruptcy order during March 2004 indicated that only 2.6% of such debtors obtain the deposit from a charity. As regards DROs, a debtor will only need to pay a nominal fee (yet to be fixed) to cover the administrative costs of the DRO.
- The application process: In order to access bankruptcy, a debtor must complete bankruptcy petition forms, which can be completed either electronically (under the on-line petition service administered by The Insolvency Service), or by hand. The debtor then must present the bankruptcy petition to his/her local court that has jurisdiction to deal with insolvency matters. The DRO regime will be administered in a very different way. The Court will not be involved in the making of a DRO. Instead, an approved intermediary (such as one of the not-for-profit debt advice organisations or Citizen's Advice Bureau) will obtain the relevant information about the debtor's affairs and then, where appropriate, assist the debtor to make an online application to the official receiver for a DRO. On receipt of the application, the official receiver will check that the debtor meets the criteria for entry to the DRO scheme and if so, make a DRO.

B.13 Therefore, in order to evaluate the accessibility of DROs, we need to look at the following:

- Are the DRO provisions being used? Is the level of DROs in line with the anticipated level?
- Have DROs impacted on bankruptcies? It is probable that debtors who meet the DRO entry criteria who currently apply for bankruptcy will apply for a DRO instead. Further, the existence of the DRO regime may cause debtors to apply for debt relief via the DRO system at an earlier stage, i.e. while their debts still meet the DRO entry criteria, than they would have when bankruptcy was the only option.
- Are the DRO entry criteria appropriate? Is the 6-year rule regarding applying for another DRO fair?
- Is the DRO regime being exploited by debtors who could make meaningful repayments to creditors? Because of the low entry cost, it is possible that debtors who do not fulfil the entry criteria may try to apply for a DRO. The Official Receiver will have the power to revoke a DRO where it subsequently transpires that the debtor does not meet the DRO entry criteria.

- Are the financial costs involved in applying for a DRO less than bankruptcy?
- Are there sufficient recognised intermediaries available? The accessibility of DROs depends on both the number of intermediaries and their geographical spread. It should also be noted that consideration is being given to intermediaries being contacted by telephone. Therefore, the geographical location of intermediaries may have no impact.
- Do intermediaries have sufficient time to deal with all potential DRO applications? Currently, some debt advisors feel that they will not have sufficient time to deal with the extra work involved in making a DRO application. However, others believe that they may save time as currently, in such cases, the debt advisor may well end up writing to creditors to seek some sort of informal arrangement and hence become embroiled in on-going correspondence.
- Do the recognised intermediaries have sufficient resources? Given the mode of application, the intermediaries need adequate IT equipment and access to both IT equipment and the internet.
- Are debtors and debtor advisers aware of the DRO regime? As not all debt advice organisations will be recognised intermediaries, non-recognised intermediaries will need sufficient knowledge regarding the DRO regime to ensure referrals are made in all appropriate cases.
- Do all debt advisors (regardless of whether they are a recognised intermediary) understand the DRO regime? What is the public awareness of the DRO regime?
- What impact does the absence of the Court in the DRO application process have? As the court is not involved, the cost of applying for a DRO is reduced. However, consultation responses indicated that some felt that the court would add "gravitas" and would impress on the debtor the severity of the situation. This needs to be balanced against the 'face-to-face' contact provided by intermediaries that may improve the accessibility of DROs. Further, the timeliness between the application and making of a DRO should be looked at.
- Finally, are debtors satisfied with the accessibility of the DRO regime?

B.14 The suggested evaluation criteria are:

Measure	Definition	Benchmark information	Rationale
a) The level of DROs	i) The level of DROs	A forecast of the level of DROs based on: – The level of debtor petition bankruptcy orders obtained which meet the DRO entry criteria and a sampling exercise to ascertain whether bankrupts would have sought debt relief earlier – Regulatory Impact Assessment for DROs	To assess whether the DRO regime is utilised To assess whether the DRO regime provides debt relief in the appropriate level of cases
b) The impact of DROs on bankruptcies	i) The level of DROs compared to the level of bankruptcies	The level of bankruptcy orders prior to the introduction of the DRO regime	To assess the impact of the DRO regime on bankruptcies
	ii) The debt profile of bankrupts after the introduction of the DRO regime	The debt profile of bankrupts prior to the introduction of the DRO regime	
c) The appropriateness of the DRO entry criteria	i) Opinion of recognised intermediaries and debt advisors regarding the appropriateness of the DRO entry criteria (based on questionnaire response)	Not applicable, although views have been obtained as part of the consultation exercise	To assess whether the DRO entry criteria are appropriate based on debtors who cannot access DROs being dealt with by intermediaries
	ii) The level of 'second-time' DROs (no information will be available until at least 6 years after the implementation of the DRO regime)	The level of 'second-time' bankrupts	To assess whether the 'second-time' DRO entry criteria are appropriate

Measure	Definition	Benchmark information	Rationale
d) Abuse of the DRO regime	i) The level of DROs which are subsequently revoked iii) The level of prosecutions and restrictions orders based on providing misleading information in a DRO application iii) Case study material from recognised intermediaries regarding cases where a debtor has attempted to meet the DRO entry criteria, but information indicating non-suitability has come to light prior to a DRO application	Not applicable	To assess whether debtors are exploiting the DRO regime
e) Costs to the debtor to obtain a DRO	i) DRO fee payable	Costs involved in applying for a bankruptcy order, to cover the petition deposit (allowing for those paid by charitable institutions) and court costs (allowing for those waived)	To assess whether a DRO is cheaper to access than bankruptcy

Measure	Definition	Benchmark information	Rationale
f) Accessibility of recognised intermediaries (subject to change depending on whether intermediaries can be contacted by telephone)	i) Number of recognised intermediaries	Number of courts with insolvency jurisdiction	To assess whether there are sufficient recognised intermediaries
	ii) Geographical spread of recognised intermediaries in relation to: – Each other – The population	Geographical spread of courts with insolvency jurisdiction in relation to: – Each other – The population	
	iii) Opinion of recognised intermediaries regarding whether they have sufficient time to deal with all DRO applications (based on questionnaire response)	Not applicable, although views have been obtained through the DRO development process	To assess whether recognised intermediaries have sufficient time to deal with all DRO applications
	iv) Publicity of where recognised intermediaries can be located	Publicity of where courts with insolvency jurisdiction can be located	To assess whether the recognised intermediaries can be easily identified
g) Accessibility of DRO on-line application process	i) Level of computers with internet access held by the recognised intermediaries	The accessibility of bankruptcy forms	To assess whether the recognised intermediaries have sufficient IT equipment and access
	ii) Opinion of recognised intermediaries regarding the availability of on-line access in their office (based on questionnaire response)		

Measure	Definition	Benchmark information	Rationale
h) Awareness and understanding of the DRO regime	i) Awareness and understanding amongst debt advisors (based on questionnaire response)	Awareness and understanding of bankruptcy amongst debt advisors	To assess the awareness and understanding of the new DRO regime within the debt advice sector
	ii) Level of referrals from debt advisors to recognised intermediaries (depending on the level of accreditation)	Not applicable	
	iii) Level of DRO applications in correctly made, and reasons why	Not applicable	To assess the understanding of the new DRO regime by recognised intermediaries
	iv) The level of debtor petition bankruptcies meeting the DRO entry criteria post-DRO implementation	The level of debtor petition bankruptcies meeting the DRO entry criteria pre-DRO implementation	To assess debtor awareness of the DRO scheme
	v) Public awareness of the DRO regime (based on survey response)	Public awareness of the bankruptcy regime (based on survey response)	To assess the public awareness and understanding of the new DRO regime

Measure	Definition	Benchmark information	Rationale
i) Effect of a non-court based DRO application process	i) DRO fee payable	As estimate of the fees (including court fees) that would have been payable if the DRO application process was court-based	of an order
	ii) Opinion of DRO debtors as regards the potential effect of court involvement in the DRO process (to include potential increase in DRO fee) (based on questionnaire response)	Opinion of debtor petition bankrupts as regards the effect of the court being involved in bankruptcy process (based on questionnaire response)	
	iii) Opinion of DRO debtors as the effect of the recognised intermediaries in the DRO process (based on questionnaire response)		
	iv) Timeliness between DRO applications and making of the DRO	Timeliness between a debtor being ready to present a bankruptcy petition and making	

Measure	Definition	Benchmark information	Rationale
j) Customer satisfaction with accessibility of DROs	i) Satisfaction of DRO debtors with process of obtaining a DRO (based on a questionnaire response)	Satisfaction of debtor petition bankrupts with the process of entering into bankruptcy (based on a questionnaire response)	To assess customer satisfaction with accessibility of DROs
	ii) Complaints received by The Insolvency Service regarding the accessibility of DROs as recorded in the complaints register	Complaints received by The Insolvency Service regarding the accessibility of obtaining a bankruptcy order based on a debtor's petition as recorded in the complaints register	
	ii) Complaints received by recognised intermediaries regarding the accessibility of DROs	Complaints received by the Court Service regarding the accessibility of obtaining a bankruptcy order based on a debtor's petition	

The financial rehabilitation of debtors subject to a DRO

B.15 This objective relates to the impact of a DRO on a debtor, and the key issue is whether a debtor can successfully re-access the financial market.

B.16 Following the making of a DRO, all debtors will be subject to bankruptcy restrictions[27] for a minimum of twelve months. However, the re-entry of a DRO debtor into the financial market will also depend on what impact the DRO regime has had on

27 While the order is in force the debtor will be subject to the same restrictions as if he were bankrupt. For example, he will not be able to obtain credit above a prescribed amount without disclosing his status or engage in business under a name other that was disclosed in the application for the debt relief order.

financial stakeholder perceptions and processes, and whether the debtor has 'learnt' from DRO experience.

B.17 As detailed above, the only debt relief system currently available to debtors who have no assets and no surplus income with which to come to an arrangement to pay their creditors is bankruptcy. However, such debtors may well not been able to meet the entry costs of bankruptcy (as detailed at paragraph 13), and therefore, such debtors are effectively unable to access debt relief. Therefore, it is appropriate to use both bankruptcy and 'do nothing' options as benchmark information.

B.18 Therefore, in order to evaluate the financial rehabilitation offered under the DRO regime, we need to look at the following:

- What effect does the discharge period in DROs have compared if the debtor had done nothing, or entered into bankruptcy? We need to look at both the type of restrictions imposed and the time for which they are imposed.
- What restrictions are imposed on DRO debtors under non-insolvency legislation? In particular, which impact will this have on DRO debtors in PAYE employment?
- How will credit reference agencies and lenders treat DRO debtors? However, it should be noted that it is anticipated that many of the debtors who will apply for DROs will be 'financially excluded', i.e. they cannot access banking or mainstream credit facilities, regardless of their credit history, due to their lack of income[28].
- Will self-employed DRO debtors be able to recommence trading?
- Do the DRO debtors feel that the DRO regime offers financial rehabilitation? What obstacles have they met?
- Do creditors understand the DRO process and how it affects them? Part of the rehabilitation process is that debtors subject to DROs are given a 'breathing space' from creditor actions.
- Further, the existence of the DRO regime may cause debtors to apply for debt relief via the DRO system at an earlier stage, i.e. while their debts still meet the DRO entry criteria, than they would have when bankruptcy was the only option. This may contribute to the rehabilitation of debtors.

28 Financial exclusion can be described as 'the inability of individuals, households or groups to access necessary financial services in an appropriate form. Exclusion can come about as a result of problems with access, prices, marketing, financial literacy or self-exclusion in response to negative experiences or perceptions (Centre for Research into Socially Inclusive Services, 2003).

B.19 The suggested evaluation criteria are:

Measure	Definition	Benchmark information	Rationale
a) The affect of the DRO discharge period	i) A breakdown of the length of the DRO discharge period (fixed at 12 months unless windfall provisions apply) ii) The restrictions imposed under the DRO	A breakdown of bankruptcy discharge periods, and none (if the debtor had not sought any debt relief) The restrictions imposed under bankruptcy, and none (if the debtor had not sought any debt relief)	To assess the impact of insolvency legislation on DRO debtors
b) The affect of DROs on public and lender policies	i) Details of the non-insolvency legislation imposing restrictions on DRO debtors ii) Details of credit agencies' policies regarding the recording of DROs iii) Details of lenders' policies in dealing with DRO debtors	Details of the non-insolvency legislation imposing restrictions on bankrupts, and none (if the debtor had not sought any debt relief) Details of credit agencies' policies regarding the recording of bankruptcy orders and defaulting debtors Details of lenders' policies in dealing with bankrupts and defaulting debtors	To assess the impact of non-insolvency legislation on DRO debtors To assess the impact of the DRO regime on a debtor's ability to obtain credit To assess the impact of the DRO regime on a debtor's ability to obtain financial products
c) The affect of DROs on the self-employed	i) The percentage of trader DRO debtors who re-commence trading	i) The percentage of trader bankrupts who re-commence trading	To assess the impact of the DRO regime on entrepreneurial activity

Measure	Definition	Benchmark information	Rationale
d) Customer satisfaction with the DRO regime	i) DRO debtor satisfaction with the financial rehabilitation offered under the DRO regime (based on a questionnaire response)	Bankrupts' satisfaction with the financial rehabilitation offered under bankruptcy (based on a questionnaire response)	To assess the debtor views regarding the financial rehabilitation offered under the DRO regime
e) Creditor awareness and understanding of the DRO regime	i) Creditor awareness and understanding of the DRO regime (based on a questionnaire response) ii) Case study material where creditors have taken inappropriate action against a debtor subject to a DRO	Creditor awareness and understanding of the bankruptcy regime (based on a questionnaire response from specific frequent DRO creditors) Case study material where creditors have taken inappropriate action against a bankrupt	To assess whether creditors understand the DRO regime and how it affects them
f) Timeliness of seeking debt relief	i) Opinion of DRO debtors as regards whether DRO regime has encouraged debtors to seek debt relief at an earlier stage ii) The debt profile of bankrupts after the introduction of the DRO regime	Opinion of bankrupts as regards whether DRO regime would have encouraged them to seek debt relief at an earlier stage The debt profile of bankrupts prior to the introduction of the DRO regime	To assess whether DRO regime has encouraged debtors to seek debt relief at an earlier stage

The integrity of the DRO system

B.20 This objective relates to the protection of creditors' rights. There are various provisions proposed which aim to ensure the integrity of the system as follows:

Enforcement action

- When making a DRO application, the debtor will be informed that the statement is subject to the provisions of section 5 of the Perjury Act 1911. These forms will also clearly state the effect of the order and the consequences of failure to disclose full facts or give false information.
- If a debtor obtains a debt relief order and is found to have made misleading statements about eligibility, e.g. failure to disclose assets or liabilities, then that would, if deliberate, constitute a criminal offence. Further, unlike bankruptcy, if the debtor has made a misleading statement about his assets, liabilities or income to obtain an order, it will also be possible to revoke the order, thus leaving the debtor once again without protection from enforcement and at risk of action by his creditors. This would also apply after the order if the debtor comes into property during the period of the order, which he fails to disclose.
- The official receiver would be able to investigate suspicion of misconduct in exactly the same way as if the debtor had been adjudged bankrupt, and debtors whose conduct is found to be culpable and to have contributed to the insolvency would be subject to a regime of restrictions orders of between 2 and 15 years in the same way as in bankruptcy.
- There will be a range of offences aimed at tackling misconduct by the debtor, similar to those in bankruptcy such as failure to disclose information about his affairs, transfer of property out of the reach of creditors and destruction of books and papers.
- The proposed enforcement remedies are not mutually exclusive and in some cases, misconduct by the debtor may lead his being subject to a combination of (or indeed all of) the available enforcement actions.

Creditors' rights

- Only scheduled creditors are bound by the DRO and prohibited from taking any enforcement action. Any creditor not scheduled would not be bound and will be able to pursue enforcement action if appropriate. However, if it transpires that creditors who ought to have been scheduled have not been, the official receiver will be able to revoke the order (as above).
- Creditors will be able to object to the making of the order on a variety of specified grounds (for example that the debtor had failed to disclose assets, liabilities or income) and if the objection proves to be well founded following the official receiver's investigation, the order can be revoked and the debtor would then be open to enforcement action by his or her creditors.
- There will be a facility for creditors who are dissatisfied with the actions of the official receiver to apply to the court for the matter to be reviewed, and for the court to give directions or make such order as it thinks fit.

Action following a change in the debtor's financial situation

- It proposed that a debtor who experiences a windfall or an increase in income, irrespective of the sums involved, should disclose it to the official receiver. In cases where it appears that the debtor would be able to come to a sensible arrangement with his creditors, e.g. a county court administration order[29] or an individual voluntary arrangement, then s/he should be given a period of time in which to make appropriate arrangements after which the order would be revoked.
- Further, it is proposed that in cases where the debtor experiences a windfall or increase in income close to his discharge date, s/he should be permitted three months in which to make arrangements with his creditors, and that in some cases this will entail extension of the order until expiry of the three month period.

B.21 Therefore, in order to evaluate the integrity of the DRO regime, we need to look at the following:

- What arrangements does the Official Receiver have in place to ensure that misconduct will be identified?

29 The DCA proposals for the reform of County Court Administration Orders include raising the maximum permitted level of liabilities to £15,000, the debtor having a surplus income of greater than £50 per month

- What level of enforcement action is taken in DRO cases? And what type of enforcement action is taken?
- Are creditors satisfied with the Official Receiver's actions? How often do they object and what is the result? How often do they seek judicial review?
- How often are windfalls identified, and what action is taken?

B.22 The suggested evaluation criteria are:

Measure	Definition	Benchmark information	Rationale
a) Working practices of an Official Receiver as regards DRO investigations	i) Processes laid out for DRO investigation in any Casework Process Quality Standard, investigation process and management notices (as appropriate)	Processes laid out for bankruptcy investigation in any Casework Process Quality Standard, investigation process and management notices (as appropriate)	To assess the Official Receiver's approach to DRO investigations
b) The level of enforcement action	i) The level of prosecution action as regards DROs, to include: - reports submitted - action taken following submission of report	The level of bankruptcy prosecution action, to include: - reports submitted - action taken following submission of report	To assess the level of criminal activity and the protection offered to creditors as a result
	ii) The level of Restrictions Orders action as regards DROs, to include: - reports submitted - action taken following submission of report	The level of bankruptcy restrictions orders, to include: – reports submitted – action taken following submission of report	To assess the level of civil misconduct and the protection offered to creditors as a result
	iii) The level of DROs that are subsequently revoked	Not applicable	To assess the level of revocations and the protection offered to creditors as a result

Measure	Definition	Benchmark information	Rationale
c) Creditor satisfaction with the integrity of the DRO regime	i) Level of objections to DROs and action taken	Estimate as set out in the Regulatory Impact Assessment (to not exceed 10% of the orders made)	To assess whether creditors feel sufficiently protected by the DRO regime
	ii) Level of creditor applications for judicial review and reasons why	Level of creditor applications for judicial review in bankruptcy cases and reasons why	
	iii) Level of complaints recorded in The Insolvency Service's Complaints Register relating to DROs	Level of complaints recorded in The Insolvency Service's Complaints Register relating to bankruptcy	
	iv) Creditor satisfaction with the DRO enforcement regime (based on questionnaire response)	Creditor satisfaction with the bankruptcy enforcement regime (based on questionnaire response)	
d) The level of windfalls	i) The level of windfalls identified in DRO cases and action taken as a result	The level of windfalls identified in bankruptcy cases and action taken as a result	To assess whether all windfalls are being identified

Methodology and Sources of Information

B.23 The following paragraphs set out the general approach to the evaluation and the proposed sources of information to be used.

a) The Insolvency Service's internal IT system

B.24 An internal IT system will be developed to support the DRO processes. The Service will ensure that sufficient information is recorded to extract the evaluation information required where possible. Benchmarking information relating to bankruptcies will be extracted from The Service's existing IT system. Information regarding enforcement action will be taken from databases held by the Authorisations Team.

b) Communication (including meetings) with Insolvency Service personnel

B.25 Communication with appropriate staff will enable the approach of the evaluation to be explained and any necessary information or documentation to be obtained. Such communication will be important in ensuring that the evaluators fully understand the issues within the area under evaluation. Staff who assist the evaluators will be kept informed of the progress of the evaluation.

c) Review of files.

B.26 File research will be used to supplement information from other sources.

d) Contact with professionals within the insolvency sector

B.27 The evaluators will seek the views of professionals within the insolvency sector to obtain information regarding the impact of the DRO provisions.

e) Structured questionnaires

B.28 Surveys of debt advisors (including recognised intermediaries), DRO debtors and creditors will be carried out.

Timing

B.29 The estimated timetable for completion of the evaluation is as follows:

Present – March 2009	Obtain benchmark information
April 2009 – April 2012	Obtain post-implementation information
July 2010	1st interim report
July 2011	2nd interim evaluation report
October 2012	Final evaluation report

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