

## Prisons and Courts Bill

### Equalities Statement: Civil Enforcement

#### Policy change summary

1. The civil justice system exists to provide a proportionate and effective means of resolving disputes that delivers the legal security that businesses need in order to invest, regulators need to oversee markets, and citizens need to enforce their rights and that guarantees that authorities obey the rule of law. Currently the civil courts are responsible for handling civil disputes and issues across two main branches of operation: the County Court and the High Court, both dealing with a wide variety of cases.
2. There are currently a number of different ways that a creditor may enforce a debt in the civil courts. In the majority of cases, it is for the claimant (usually the creditor) to choose his preferred method of enforcement. These methods of enforcement fall into two broad categories: administrative enforcement and physical enforcement. Physical enforcement generally involves the issue of a warrant or writ, which entitles an enforcement agent to attend at an address of the debtor and physically to recover money, or goods and possessions which are then sold and the debt then can be recovered from the proceeds of sale. Administrative enforcement involves some form of administrative process, generally an order of the court restricting or directing the use of the debtor's assets. While some methods of enforcement are available in both the High Court and the County Court<sup>1</sup>, other forms are only available in one.
3. The present system of enforcement has a number of weaknesses which have been identified as failing both creditors and in some circumstances debtors. The MOJ is currently considering a range of proposals to improve the enforcement process including improvements to the choice of enforcement methods for the creditor when there is non-compliance with a judgment or order.

#### Equality duties

4. The Public Sector Equality Duty comprises three limbs, set out in section 149(1) of the Equality Act 2010 whereby a public authority must, in the exercise of its functions, have due regard of the need to:
  - i. Eliminate discrimination (both direct and indirect), harassment, victimisation and any other conduct that is prohibited by the Act;
  - ii. Advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not. This includes removing or minimising disadvantages suffered by people due to their protected characteristic (PC), taking steps to meet the needs of people who share a particular PC, and encouraging participation in public life.

---

<sup>1</sup> Charging orders and third party debt orders are available in both the High Court and the County Court.

- iii. Foster good relations between persons sharing a relevant protected characteristics and persons who do not. This includes tackling prejudice and promoting understanding.
5. Paying “due regard” needs to be considered against the nine “protected characteristics” under the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

### **Equality considerations**

6. Access to justice is essential to enable people and businesses to realise and protect their rights, and has long been recognised in the common law. The Government is committed to improving access to, and the efficiency of, civil justice. It is a key element of fair access to justice 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.
7. Two key issues have been identified in relation to enforcement by way of Attachment of Earnings Order (AEO)<sup>2</sup> which are explained below.
8. The first issue is that, while AEOs are one of the most commonly used methods of enforcement of a monetary judgment in the County Court, they are not directly available in the High Court for civil debts<sup>3</sup>. This means that if a creditor in the High Court wishes to enforce a judgment debt by way of an AEO, the matter must first be transferred to the County Court. This adds stages to the enforcement process, which results in delay and extra resource use by both the court and the creditor.
9. The second issue concerns the current method of calculation of the rate of deduction from earnings. At present, the rate of repayment is calculated by reference to the debtor’s income and necessary outgoings. This information can be obtained from the debtor by him completing a statement of means in the form of court form N56<sup>4</sup>. The statement of means form is designed to obtain certain key information about the debtor which is necessary to create a workable AEO. This information consists of a number of personal, employment and financial details about the debtor, which court staff use to calculate, on a case-by-case basis, the repayment rate required by the debtor in order to repay the debt at a manageable rate.

### *Policy Outline*

10. Ministers have agreed that the MoJ should proceed with proposals-
  - I. to extend the ability of the High Court to make AEOs, so that the High Court can make AEOs in relation to judgment debts as far as practicable on the same basis that the County Court can make such orders, and not just in relation to maintenance orders;

---

<sup>2</sup> Ability to deduct debt from the judgment debtor’s wages or salary

<sup>3</sup> Attachment of Earnings Act 1971 section 1(1) provides that the High Court can make an AEO to secure payments under a High Court maintenance order, but maintenance orders are only made in relation to family proceedings.

<sup>4</sup> Form N56: [http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\\_forms\\_id=611](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=611) .

- II. to commence the provisions that will enable the fixed deductions scheme to be used in the County Court to calculate the rates of deductions for AEOs; and
  - III. to enable the fixed deductions scheme to be used in the High Court to calculate the rates of deductions for AEOs in relation to judgment debts in the same way that that scheme will be able to be used in the County Court, once the County Court provisions have been commenced.
11. It is intended that aligning processes for AEOs in the County Court and High Court and introducing the fixed deductions scheme will:
- I. to extend the ability of the High Court to make AEOs, so that the High Court can make AEOs in relation to judgment debts as far as practicable on the same basis that the County Court can make such orders, and not just in relation to maintenance orders;
  - II. for creditors: significantly improve user experience and reduce user costs by making an effective form of enforcement more readily available. The introduction of the fixed deductions scheme will mean employers are instructed to deduct an amount as prescribed in a deduction table through automated processes. This will speed up the process and reduce the administrative cost. It will provide the ability of judgment creditors to recoup monies owed to them more quickly and provide increased certainty and consistency in the implementation of enforcement orders. Currently, the time from application to the making of an AEO takes an average of 12 weeks. With the fixed deductions scheme, the MOJ estimates that the process can be reduced to just over 14 days.
  - III. For debtors: If the process to determine the deduction rate is streamlined this may lead to the courts processing AEOs more quickly. If the process does become faster this may lead to debtors beginning to repay their debts earlier and could, in some instances, lead to debtors repaying their debts in full or repaying a higher percentage of their debt. Additionally it is hoped that a more efficient system will encourage a greater uptake of AEOs as a preferred method of enforcement so reducing the use of physical enforcement. Physical enforcement by way of warrant of control can be distressing for the debtor and the debtor's family in certain circumstances.
  - IV. For the courts: It is estimated that faster processing of claims may potentially reduce any backlog of AEO cases and lead to disputes being resolved quicker, which may also lead to greater confidence in the civil justice system generally.

#### Direct discrimination

12. Our assessment is that the proposal to increase the ability of the High Court to make AEOs, so that it may make AEO to secure the recovery of sums due under judgment

debts; and enable the rate of deductions from earnings to be calculated by way of a fixed deductions scheme, would not be directly discriminatory within the meaning of the Act.

#### Indirect discrimination

13. We do not believe that the proposal mentioned above will result in any indirect discrimination against users of the justice system. The approach is designed to make the process easier for all court users by offering other enforcement options to significantly improve user experience and reduce user costs by making an effective form of enforcement more readily available.

#### Discrimination arising from disability and duty to make reasonable adjustments

14. We do not believe that the proposal mentioned above will result in any discrimination arising from disability.

#### Harassment and victimisation

15. We do not consider there to be a risk of harassment or victimisation as a result of the proposal to extend the ability of the High Court to make AEOs, so that the High Court can make AEOs in relation to judgment debts as far as practicable on the same basis that the County Court can make such orders, and not just in relation to maintenance orders; and to enable the fixed deductions scheme to be used in the High Court to calculate the rates of deductions for AEOs in relation to judgment debts in the same way that that scheme will be able to be used in the County Court, once the County Court provisions have been commenced. Whilst some debtors may believe that their employment status may be affected by an AEO we consider that the risk to a debtor's employment status is outweighed by the benefit of reduction in use of other methods of enforcement which might have a bearing on their right of private and family life.

#### Advancing equality of opportunity

16. We do not consider that the proposal will affect equality of opportunity for protected characteristics.

#### Summary

17. Our assessment of equality impacts is that the implementation of proposal to - a. extend the ability of the High Court to make AEOs, so that the High Court can make AEOs in relation to judgment debts as far as practicable on the same basis that the County Court can make such orders, and not just in relation to maintenance orders; and b. to enable the fixed deductions scheme to be used in the High Court to calculate the rates of deductions for AEOs in relation to judgment debts as far as practicable in the same way that that scheme will be able to be used in the County Court, once the County Court provisions have been commenced, will not result in any direct or indirect discrimination of courts users, and in particular those with protected characteristics.