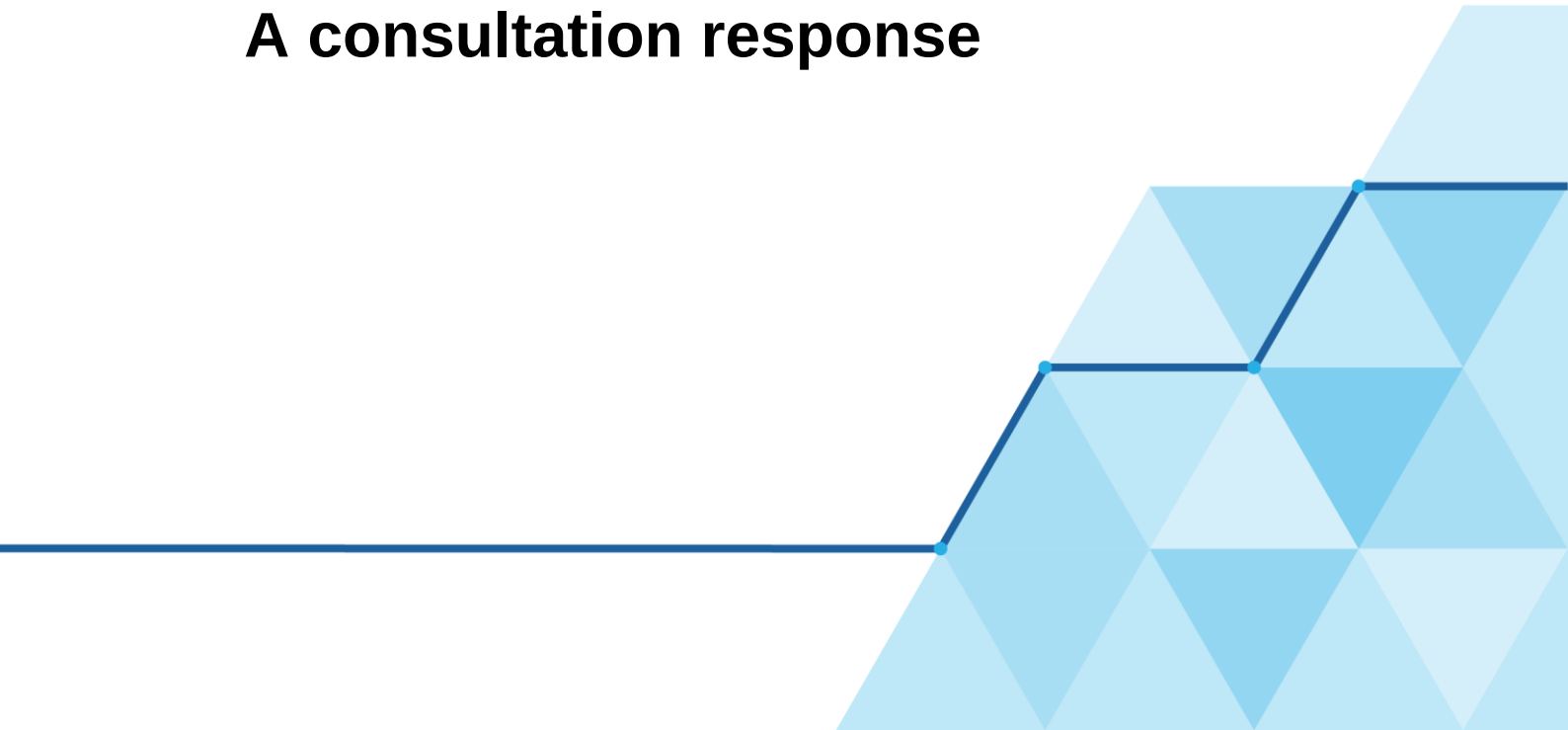
Ministry of Justice

An update to the review of the Taking Control of Goods (Fees) Regulations and the response to a consultation about The Taking Control of Goods Regulations

A consultation response



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Ministry of Justice

An update to the Review of the Taking Control of Goods (Fees) Regulations and the response to a consultation about the Taking Control of Goods Regulations

Response to consultation carried out by the Ministry of Justice.

This information is also available at https://consult.justice.gov.uk/

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Introduction and contact details

This document is an update to the Enforcement Agent Fee Review 2023[1] which was published by the previous Government about the fees that Enforcement Agents (EAs) and High Court Enforcement Officers (HCEOs) can recover when they are enforcing debts and fines using the Taking Control of Goods procedure. It is also the response to the consultation[2] about the Taking Control of Goods Regulations that was published on 10 October 2023 and was open for 12 weeks.

This document sets out the Government's next steps following the findings of the 2023 review regarding the level that the fees should be set at. It also summarises the responses received to that consultation and the Government's response to them. We have not repeated the full policy rationale for each consultation proposal. Readers should refer to the consultation paper about the Taking Control of Goods Regulations for comprehensive descriptions of the proposals considered in this response. This document sets out the next steps that will be taken by the Government.

This document contains:

- an executive summary
- the background to the report
- an update about the 2023 fee review
- a summary of the responses to the 2023 consultation
- the next steps following this consultation

Further copies of this response document can be obtained by contacting:

Email: TCG.Regulation@justice.gov.uk

Or writing to:

Civil Enforcement Policy Team (PP7.37)

Ministry of Justice

102 Petty France

London SW1H 9AJ

This report is also available at https://consult.justice.gov.uk/.

[1] Enforcement Agent Fee Review 2023 - GOV.UK
[2] Taking control of goods regulations consultation

On request, copies in Welsh language and alternative formats (large print, audio and Braille) of this publication can be obtained from: TCG.Regulations@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Ministry of Justice at the above address.

Executive summary

The Government recognises that an effective and sustainable enforcement industry is important to ensure that businesses and creditors can effectively collect money owed to them, and central and local government can recover taxes and fines. The ability to enforce a judgment of the court is a fundamental part of access to justice, the economy, and the rule of law.

This paper sets out the Government's next steps following the outcome of the 2023 review of enforcement agent fees, including our intention to uplift the fees by 5%.

It also sets out our response to the consultation on reforms to the Taking Control of Goods Regulations which was held between October and December 2023.

The Ministry of Justice received 30 responses to that consultation, which considered a package of measures aimed at incentivising earlier and cheaper settlement of debt. Details of the respondents can be found at Annex A. We are grateful for the invaluable engagement, both throughout the consultation period and during the earlier review, from a range of interested parties including: the enforcement sector, debt advice organisations, creditors and the Enforcement Conduct Board (ECB).

Following analysis of the responses to the consultation, we have revised some of the original proposals that were consulted on. This paper sets out the summary of the responses, the Government's response to them and the reforms that we intend to take forward, which can be summarised as follows:

- to amend the law to extend the minimum period of notice that must be given before EAs and HCEOs move from the compliance stage to the enforcement stage to a minimum of 14 clear days in all cases, with a maximum period of 28 clear days if requested by a debt advisor.

- to amend the law to clarify that EAs and HCEOs can agree to payments by instalments at the compliance stage.

- to amend the law to make it clearer when the fee for enforcement stage two can be recovered under the High Court enforcement fee scale.

- to amend the "Taking Control of Goods: National Standards"[3] (National Standards) to prohibit creditors from receiving extra payment or profit-sharing from the use of EAs and the charging of fees.

[3] Taking Control of Goods: National Standards

The Government intends to lay a Statutory Instrument in Parliament to implement the uplifts and legislative reforms as soon as parliamentary time allows.

Background

The fees that HCEOs and EAs can recover from those facing enforcement action are set out in the Taking Control of Goods (Fees) Regulations 2014 (the Fees Regulations)[4] and the processes that EAs must follow when taking control of goods are further set out in Schedule 12 of the Tribunals, Courts and Enforcement Act 2007[5] (the TCEA) and the Taking Control of Goods Regulations 2013 (the TCG Regulations)[6].

The fee structure and fee levels were informed by extensive research, including a review by a consultant economist[7] and a public consultation in 2012.[8] The fee structure was designed to provide clarity for both the enforcement sector and those facing enforcement action, who pay the fees. The fee that can be recovered at each stage was set at a level to balance the need to provide the enforcement sector with sufficient remuneration for the work they do to ensure the sustainability of the sector, while also being a fair amount for those facing enforcement action to pay.

The fee structure was based around three stages: the compliance stage, the enforcement stage(s); and the sale (or disposal) stage.

- The compliance stage includes all activities from the receipt of instructions up to and not including the commencement of the enforcement stage. This may include activities such as background checks on the debtor or sending a letter to them.

- The enforcement stage(s) comprises of all activities from the first attendance at the premises up to but not including the sale or disposal stage. During this stage the EA and debtor may enter into a repayment agreement.

- The sale or disposal stage includes all activities relating to enforcement, from the first attendance at the property for the purpose of transporting goods to the place of sale, or from commencing preparation for sale if the sale is to be held on the premises, until the completion of the sale or disposal.

The fees payable at each stage are set out at annex B. The intention behind the fee structure was to incentivise settlement at the earliest stage, the compliance stage, before a visit and taking control of goods became necessary. A compliance fee is recovered from the debtor, but by agreeing to a sustainable repayment plan or by settling the debt in full at

[4] The Taking Control of Goods (Fees) Regulations 2014
[5] Tribunals, Courts and Enforcement Act 2007
[6] The Taking Control of Goods Regulations 2013
[7] Enforcement Agent Fee structure review 2009
[8] Transforming bailiff action consultation paper (justice.gov.uk)

the compliance stage, the fees are kept to a minimum. Payment at the compliance stage avoids the need for a visit by an EA to take control of goods, or to remove any property to sell.

When the fee structure was developed, it was generally accepted that the enforcement of High Court writs by EAs working under the authority of HCEOs was more complex because, for example, they can be higher value than non-High Court debts. Combined with the HCEO's personal responsibility to the creditor and their duty to the court, a different fee structure for High Court enforcement was considered justified.

In 2019, the Justice Select Committee conducted an inquiry into the impact of the 2014 Taking Control of Goods reforms.[9] They recommended, amongst other things, that the fees should be set as low as possible while ensuring the sustainability of the enforcement industry and recommended that the fees should be reviewed by an independent regulator.

The previous Government undertook and published a review of the fees in July 2023. The review covered the following themes:

- whether more could be done to encourage early payment to reduce the number of cases where an enforcement agent needs to attend a debtor's property;
- whether the fees remained set at an appropriate level to adequately remunerate EAs for the activities undertaken at each enforcement stage;
- the fee recovered at Enforcement Stage 2 of the High Court Enforcement fee scale; and
- the impact of the Fees Regulations on creditors.

In light of the evidence received, the previous Government announced that it intended to uplift the fixed fees that EAs and HCEOs can recover from judgment debtors by 5%. In addition, the previous government announced that it intended to uplift the threshold above which an EA and HCEO can charge an additional percentage fee by 24%.

Following that review, the previous Government consulted on the following proposals:

- To amend the TCG Regulations to extend the minimum period of notice that must be given before EAs and HCEOs move from the compliance stage to the enforcement stage from a minimum period of 7 days to 28 days for individual debtors but not for debts owed by businesses.

- To amend the Fees Regulations to clarify that EAs and HCEOs enforcing High Court writs can agree to payments by instalments at the compliance stage.

[9] https://committees.parliament.uk/publications/33273/documents/180099/default/

- To amend the TCG Regulations to set out the tasks that should be carried out as part of the compliance stage.
- To amend the statutory requirements for information that must be sent to debtors to signpost advice and encourage engagement with EAs and HCEOs.
- To amend the Fees Regulations and the TCG Regulations to make it clearer when the fee for enforcement stage two (ES2) can be recovered under the High Court enforcement fee scale.
- To amend the Fees Regulations that apply to High Court enforcement to prevent a higher fee being applied to low value debts.
- To amend the National Standards to prohibit creditors from receiving extra payment or profit-sharing from the use of EAs and the charging of fees.

Fee Review 2023 – update and next steps

To support the sustainability of the enforcement sector, this Government has accepted the recommendations of the 2023 review to uplift the fees that EAs and HCEOs can recover from those facing enforcement action using the Taking Control of Goods procedure. The Government will, therefore, uplift those fees by 5%. This will be the first uplift to the fees since they were introduced in 2014. The increase seeks to ensure that enforcement firms are appropriately renumerated for their work, as without appropriate remuneration, enforcement firms may struggle to operate, which could undermine the ability of creditors to recover debts and fines.

In addition, and to protect those who pay the fees, the Government will also implement the recommendation of the 2023 review to uplift, by 24%, the value of the thresholds above which EAs and HCEOs can recover an additional percentage fee. The Fees Regulations specify that debts over the prescribed thresholds, that reach the enforcement stage, will attract an additional percentage fee of 7.5% of the value of the debt that is above the threshold. Uplifting the value of the thresholds, will reduce the proportion of cases that will incur an additional percentage fee. Once implemented, the new threshold for the non-High Court will be £1,900 and the threshold for the High Court will be £1,200.

Consultation Response and Next Steps

Proposal A

To amend the TCG Regulations to extend the minimum period of notice that must be given before EAs and HCEOs move from the compliance stage to the enforcement stage from a minimum of 7 days to 28 days for individual debtors, but not for debts owed by businesses.

To reduce the number of cases that require a visit from an EA or HCEO, it was proposed that the minimum notice period be extended from 7 clear days to 28 calendar days in all cases other than cases where the debtor is a business. The intention behind this proposal was to give people in debt more time to seek and receive debt advice, assess their ability to pay and to agree a repayment plan with the EA or HCEO. We understood that many creditors and enforcement firms already give people in debt a longer period than the minimum 7 days to engage with them at the compliance period.

An extended notice period was not proposed for businesses because concerns had been expressed to the review that businesses were more likely than individuals to vacate premises upon receipt of a Notice of Enforcement. It was not proposed to amend the notice period of 14 days that must be given when enforcing Commercial Rent Arrears Recovery (CRAR) in cases where the notice is served on a sub-tenant.

Summary of responses

Q1. Do you agree that the minimum period of notice that must be given to a debtor before the EA or HCEO is able to take control of goods should be increased from 7 clear days to 28 calendar days.

Most respondents agreed that it would be beneficial to provide a longer compliance period than 7 days, but some felt that 28 days was too long. Some suggested a period of 14 days or, alternatively, 21 days. Respondents also expressed concern that there was potential for confusion by referring to “calendar” and “clear” days in the regulations and that the reference should be consistent.

Some respondents expressed concern that allowing for 28 days would increase delays in securing repayment and would reduce the number of people who engage and pay. They suggested that the 28 days may be suitable for those who need debt advice but not for those who choose not to pay. The enforcement sector pointed to their own research which suggested that engagement improved when there was a marginal increase to the time

afforded at compliance, but that allowing for a longer compliance period actually reduced collection rates.

Respondents from the enforcement sector were also concerned that extending the period for the compliance stage would be more expensive for firms and would reduce the time available to enforce the debt, within the 12-month life span of a writ or warrant.

Several respondents stated that many creditors under contracts with enforcement agencies required enforcement agencies to provide for additional time beyond the statutory minimum 7 days provided in the TCG Regulations. Some creditors agreed that extending the compliance stage would accord with the good practice of encouraging earlier settlement at the compliance stage and protecting the debtor from the higher fees associated with the later stages of enforcement.

Some respondents, however, stated that giving extra time to people in debt was unfair to creditors who had already pursued the debt and were using enforcement as a last resort. It was noted that most creditors already have to comply with pre-action protocols or collection requirements, and that delays may already have been encountered due to the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (Breathing Space Regulations).[10]

The debt advice sector agreed that giving people in debt more notice would reduce the number of cases that move to the enforcement (visit) stage, which would significantly reduce the enforcement fees paid by people in debt. They did, however, express concern that 28 days may be insufficient time to receive advice and reach a debt solution in some areas of the country.

The Taking Control Group of debt advice charities[11] suggested that there could be rules and guidance that allow for an extension of the initial compliance period in certain circumstances before the EA is allowed to take further action; for example, where a debtor is waiting for an appointment with a debt adviser, or there is a delay in obtaining medical evidence of vulnerability such as mental health problems.

Q2. Do you agree that the minimum period of notice that must be given to a debtor that is not an individual, but is for example, a company, a corporation or a partnership, should remain at 7 clear days.

A number of respondents raised significant concerns about the proposal to have different compliance periods for individuals and businesses. It was noted that the purpose of the Taking Control of Goods reforms was to replace the different and confusing rules that were

[10] The Debt Respite Scheme Regulations 2020

[11] AdviceUK; Citizens Advice; Community Money Advice; Debt Justice; Institute of Money Advisers; Money Advice Trust; StepChange Debt Charity

previously in place for different debt and debtor types. Enforcement businesses and their associations were also concerned about the additional costs and difficulties associated with accurately identifying debtor types and operating different notice periods.

Q3. Do you agree that the reference to an individual should include a sole trader?

A number of respondents stated that it would be very difficult to differentiate between a sole trader and another type of business, and that it would be unfair to give them a longer compliance period than other businesses. There was also concern that there may be a conflict with the enforcement procedure for National Non-Domestic Rates, where sole traders are not treated as individuals.

Those who stated that sole traders should be given a longer notice period than other businesses highlighted concerns that many sole traders are trading as micro-businesses, with extremely limited means and they may not have separate trade premises. They considered that with no differentiation between personal and business finances, that they would need more support than a limited company.

Q4. Do you agree that where it is not clear whether the debt is owed by an individual that the longer period of 28 calendar days should apply.

As set out above, many respondents disagreed that individuals and businesses should have different notice periods because of the difficulty in distinguishing between the two. Some respondents said that in traffic or parking enforcement cases it would be very difficult to identify whether the respondent was an individual or a business, which would mean that by default, 28 days would apply to most cases. Concern was also raised that the potential for mistakes to be made in distinguishing between individuals and businesses could disadvantage those facing enforcement action and lead to an increase in complaints against enforcement firms. Concern was also expressed about the practicalities of applying the rules against an individual who may be resident in a business property, for example, a tenant landlord in a public house.

Debt advice providers stated that the longer period of 28 days would be appropriate for all debt types.

Government response to proposal A

The Government wants to increase the proportion of cases that settle at the compliance stage without the need for an enforcement visit. This should reduce the costs incurred by the enforcement sector and the fees payable by those facing enforcement action. Reducing the proportion of cases that lead to a doorstep visit by an EA would also lessen the negative impacts of enforcement on people who owe money. We agree that extending the minimum amount of notice that must be provided ahead of an enforcement visit could increase the settlement rate at the compliance stage and will give people more time to

seek debt advice. We acknowledge, however, that there were practical problems with the proposal that was consulted upon. We have decided, therefore, to amend this reform. Instead of extending the notice period for individuals from a minimum of 7 days to a minimum of 28 days, we will extend the notice period for individuals and businesses to 14 clear days.

We have decided not to take forward reforms that would provide for different compliance periods for individuals and businesses as we understand that it may be difficult to differentiate between individuals and businesses at this early stage of the enforcement process. Similarly, the Government acknowledges the concerns expressed about identifying sole traders and about giving them a longer compliance period than other businesses.

The Government did not think that it would be appropriate to extend the compliance period to 28 days for all those facing enforcement action. We do, however, understand the concerns expressed by the debt advice sector about the need to provide enough time for people in debt to obtain debt advice and/or agree a repayment plan. The Government, therefore, intends to require EAs and HCEOs to extend the compliance period for up to a minimum of 28 clear days from the date that the Notice of Enforcement is sent, where someone has sought advice from a debt advice provider and the debt advisor contacts the enforcement agent or their firm to request an extension of the compliance period. That would mean, for example, that if the enforcement firm gives 14 days' notice of a visit, then the debt advisor could request an extra 14 days. If, however, the enforcement firm gives the debtor 28 days' notice, the Regulations would not require them to extend the notice period beyond 28 days, although they could choose to do so.

We intend to use the same definition of debt advice providers as is set out in the Breathing Space Regulations 2020. We also intend to amend the statutory Notice of Enforcement to reflect the possibility of debt advisors being able to request a longer compliance period.

Proposal B

To amend the Fees Regulations to clarify that EAs and HCEOs enforcing High Court writs can agree to payment plans by instalments at the compliance stage.

The aim of this proposal was to increase the proportion of High Court cases that settle at the compliance stage without an enforcement visit being necessary. The 2023 fee review found that in 2022, 24% of High Court cases settled at the compliance stage, compared to nearly 40% of non-High Court cases. The High Court enforcement sector reported that the reason for this disparity is because HCEOs are obliged by the command on a writ of control to take control of goods if payment is not made in full at the compliance stage. An amendment to the Fees Regulations was proposed to clarify that that obligation does not prevent acceptance of payment at the compliance stage via instalments. We sought views on the following amendment to the Fees Regulations:

“Activities to be completed before moving to the enforcement stage:

EAs and HCEOs must consider whether the debt could be paid in instalments, over a longer time period than the minimum period of notice stipulated at Regulation 6(1) of the Taking Control of Goods Regulations 2013, without the need to move to the enforcement stage.”

Summary of responses

Q5. Do you agree that the proposed amendment to the Fees Regulations makes it clear that HCEOs will be able to agree at the compliance stage to payment in instalments over a longer timeframe than the minimum notice period (currently 7 days), meaning that they do not have to visit the property if payment is not made in a single payment at the compliance stage?

Most respondents to this question agreed that the proposal would allow HCEOs to agree to payment by instalments, although some disagreed.

Those who agreed thought the proposed amendment would reduce the number of cases that result in a doorstep visit and thereby reduce the fees paid by those facing enforcement action. A respondent from the debt advice sector thought it would also reduce the pressure placed on those facing enforcement action to pay the debt in one go, which can often lead to continued financial hardship.

One respondent from the enforcement sector thought that clarification would help to ensure a more consistent and fairer practice across the sector. It was reported that some HCEOs currently do not accept repayment offers at the compliance stage unless a creditor insists upon it and provides an undertaking that they will not hold the HCEO liable for not moving to the enforcement stage despite payment not being made in full at the compliance stage.

A number of respondents from the enforcement and creditor sectors said that whilst they agreed with the proposal in principle, any new regulation must refer to the right of the creditor to decide whether a proposed repayment plan is acceptable to them.

In contrast, some respondents from the debt advice sector did not think that the proposed regulation would improve the likelihood of HCEOs accepting affordable payment plans at the compliance stage. It was suggested that regulations should require HCEOs to consider affordability and vulnerability.

Another respondent from the debt advice sector was concerned that there would still be a risk of agents adding interest charges to instalment payments and charging additional fees if their client’s circumstances change and they were no longer able to continue paying the instalments.

Q6: Do you have any concerns about the proposal to require HCEOs to consider whether debts could be repaid in instalments before moving to the enforcement stage?

As set out above, some respondents from the enforcement and creditor sectors thought that the proposal should be amended to reflect the rights of the creditor. Some had stronger concerns and thought that an enforcement visit must always be made if a High Court writ of control is not paid in full within the compliance period. It was argued that the wording on the writ of control from the court requires HCEOs to seek payment in full and that any delay in doing so would be detrimental to creditors, many of whom would have already waited a long time to obtain a judgment and enforcement order.

The trade association CIVEA noted that its members' experience of non-High Court enforcement, where it is more common to have payment arrangements at the compliance stage with the agreement of the creditor, showed that this was not a straightforward matter. They reported that the decision to allow payment in instalments may depend on the nature of the debt and whether the individual has broken payment arrangements previously.

Concerns were raised that creating a new requirement for HCEOs and EAs to consider payment arrangements would dilute their powers to enforce court orders promptly. It was noted that it is not always possible to assess whether those facing enforcement action cannot or will not pay without making a visit. Some respondents said it would never be appropriate to offer repayment plans at the compliance stage to business debtors, as they may have sufficient assets to satisfy the debt, which cannot be assessed without making a visit.

The High Court enforcement sector raised concern about the cost impact on the sector of having to administer instalment arrangements at the compliance stage. We were told, for example, that credit card merchant fees can in some cases be higher than the compliance fee. It was also noted that the compliance fee is lower than the fee payable to HMCTS[12] for issuing a warrant of control to a county court bailiff.

Government response to proposal B

The Government will move forward with implementing this proposal which seeks to increase the proportion of cases which settle at the compliance stage without an enforcement visit being necessary.

[12] The current court fee for a warrant of control is £94 - Civil court fees (EX50) - GOV.UK (www.gov.uk)

We are pleased to note that most respondents agreed with the principle of legislating to clarify that HCEOs can accept payment by instalments at the compliance stage.

There were differing views, however, about what impact the wording of the proposed regulation would have. We note the concerns expressed by some in the enforcement and creditor sectors that this amendment could dilute the powers of HCEOs under the TCG Regulations to enforce court orders promptly and effectively. However, as noted by respondents from the debt advice sector, the proposal does not require HCEOs to accept repayment offers. Instead, it is intended to remove any misunderstanding that has arisen about whether it is possible to agree to payment by instalments at the compliance stage without having to ask creditors not to hold an HCEO liable for not moving to the enforcement stage to take control of goods.

Some respondents suggested that it would be necessary to clarify in the Regulations that creditors have a role to play when considering whether a debt can be paid in instalments without moving to the enforcement stage. We do not consider, however, that the original proposal precludes HCEOs from consulting creditors about whether they want to accept a payment plan, or from refusing to accept such a plan.

We also intend to set out in Regulations that this requirement also applies to the enforcement of non-High Court debts, as set out at Proposal C to ensure that the Regulations are consistent for both High Court and non-High Court debts.

We acknowledge the concerns raised by the debt advice sector regarding the lack of any guidance or regulation around how HCEOs and EAs should assess affordability. The ECB has since announced that it plans to consult on standards for its members about the ability to pay of people subject to enforcement. The Government strongly supports the establishment of the ECB, and we do not propose to duplicate the work that they are doing in this area.

Proposal C

To amend the TCG Regulations to set out the tasks that should be carried out as part of the compliance stage.

The 2023 fee review found that some EAs and HCEOs took different steps at the compliance stage which resulted in different approaches being adopted when deciding when to move to the enforcement stage. The review also found that different creditor types had different expectations about how an EA or HCEO should handle a case at the compliance stage and the steps that should be taken before a case progressed to the enforcement stage.

The consultation sought views on whether the TCG regulations should be amended to prescribe the tasks undertaken at the compliance stage to provide more clarity to all parties and to reduce the number of cases that proceed to a doorstep visit.

Summary of responses

Q7. Do you think that it would be beneficial to set out in guidance and/or legislation that the steps set out in the section about proposal C, at points C(a) to C(i) should be undertaken at the compliance stage before moving to the enforcement stage?

Just over two thirds of respondents agreed that it would be beneficial to set this out in guidance and/or legislation. The Taking Control Group and other respondents from the debt advice sector were supportive of the proposals and suggested that prescribing the tasks at the compliance stage would make any failure by an EA or HCEO to adhere to the proposed steps more readily identifiable. They suggested that there should also be a pre-action checklist to ensure that the prescribed actions were undertaken before an EA can move from the compliance stage to the enforcement stage.

While a number of respondents from the enforcement sector were supportive of the proposals in principle, they raised concerns about the practicalities and costs of applying some of them. Some respondents thought that some of the proposals were unnecessarily bureaucratic and prescriptive which could lead to delays and may stifle innovation.

Some respondents suggested that the National Standards needed to be reviewed in light of these proposals and noted that this proposal might best be considered by the ECB who could assess best practice in this area.

Summary of responses to the proposals

Proposal C(a)

To set out in guidance that enforcement agencies or agents must act on any notification that the debt is exempt from enforcement action, for example because the debt is in a Breathing Space or has been consolidated into a Debt Resolution Order. This reflects legislation elsewhere, for example in the Breathing Space Regulations.

Respondents largely supported this proposal. One respondent expressed a preference for the reference to the Breathing Space moratorium to be put into the TCG Regulations. However, another noted that putting this requirement in guidance was not necessary as it was already set out in Breathing Space Regulations. The Taking Control Group suggested the guidance should go further, by providing for sanctions to apply where enforcement action continues following notification of a Breathing Space.

Proposal C(b)

To set out in guidance that where the debtor is vulnerable, that the debtor has been given an opportunity to seek advice. This is required by Regulation 12 of the TCG Regulations.

A number of respondents supported this proposal. The Taking Control Group, however, questioned whether Regulation 12 applied to the compliance stage and suggested that it should be amended to do so. It was noted that the ECB is planning to consult on its own standards about vulnerability.

Proposal C(c)

To set out in guidance that a dated Notice of Enforcement must be sent to the debtor. The requirement to send a Notice of Enforcement is set out in the TCG Regulations.

Proposal C(d)

To prescribe in Regulations that an Information Sheet containing specific information for debtors about their rights and responsibilities and signposting them to advice, must be enclosed with the Notice of Enforcement.

Please refer to **Proposal D on page 28** for responses to these two proposals.

Proposal C(e)

To prescribe in Regulations, that if the debtor is an individual and no response or contact has been received to the Notice of Enforcement after 14 days, the Notice of Enforcement and Information Sheet must be resent.

Several respondents from the enforcement sector and a local authority disagreed with this proposal, noting that sending a second letter would be an additional cost to the enforcement firm which was not accounted for when setting the compliance fee. They reported that while firms do send reminders to encourage engagement, it should be for the enforcement firm to decide which method of communication to use, and this proposal might, therefore, stifle innovation. It was also noted that there was no evidence to suggest that an additional letter would encourage engagement and could in fact lead to message fatigue.

Proposal C(f)

To prescribe in Regulations that following the issue of a Notice of Enforcement, if it becomes apparent that the debtor has moved to a different address, that a new Notice of Enforcement must be sent to that address and the notice period must start again.

The debt advice sector welcomed clarification that the notice period should start again if it becomes evident that someone has moved address. Some respondents, however, argued that regulation 8 of the TCG Regulations already prescribes that the Notice of Enforcement must be given to the address where the debtor usually lives or carries on a trade or business and that this amendment is unnecessary. Some respondents also had concerns that making it a requirement to send a new Notice of Enforcement when a debtor moves could risk being abused by people who claim to move multiple times without ever receiving a Notice of Enforcement. It was also suggested that guidance should be provided in the National Standards about the appropriate evidence that would be required to demonstrate that someone had moved address.

Proposal C(g)

To prescribe in Regulations that where vulnerability has been reported that the EA or HCEO must consider whether it is appropriate to proceed with enforcement action and must contact the creditor for any relevant information they have and to canvass their view. This reflects guidance in the National Standards.

Respondents from the enforcement sector suggested that setting out this requirement in the Regulations would not be practical. It was reported that councils relay any information they have about an individual when passing on the case in the first place, and that in most cases they are likely to revert to the enforcement agency to verify and assess vulnerability. Furthermore, it was reported that welfare teams in enforcement firms are empowered to make decisions and signpost individuals for additional care and support. They were concerned that putting a requirement into the Regulations for agencies to refer back to the creditor in all cases would make the expertise of welfare teams redundant. Similarly, local authorities reported that it was unnecessary for cases to be referred back to them on each occasion because there are agreements in place with agencies on how to manage cases where vulnerability was identified.

Concern was also expressed that a definition of vulnerability had not been set out in the consultation. One respondent stated that putting this requirement into regulations was unnecessary as it was already provided for in the National Standards.

Proposal C(h)

To prescribe in Regulations that EAs and HCEOs must consider whether the debt could be paid in instalments, over a longer period than the minimum period of notice stipulated in the TCG Regulations, without the need to move to the enforcement stage.

This mirrors the proposal at Proposal B and responses to it are summarised at that section of this paper.

Proposal C(i)

To prescribe in Regulations that in cases where an agreement to pay by instalments is broken, a warning must be sent that payment is due before moving to the enforcement stage.

Respondents from the enforcement sector stated that most councils require firms to send a breach warning at the compliance stage, which advises of the consequences of not keeping up payments. They questioned how many times a warning must be sent when a debtor consistently breaches an arrangement. A local authority questioned whether the reminder would in effect become a monthly reminder for repeat defaulters of payment arrangements. Concern was expressed that allowing debtors to repeatedly breach repayments, where the only consequence was a reminder letter, would undermine the significance of the court order.

Another issue raised was that the proposal would increase costs at the compliance stage. One respondent said that the proposal may lead to unintended consequences where instalment arrangements are not encouraged by enforcement firms to avoid the additional administrative costs associated with managing payment by instalments.

Respondents from the debt advice sector agreed with this proposal and suggested that Regulations should set out the steps that should be taken, the methods of communicating warnings and how much extra time should be given.

Q8. Do you agree that the steps set out in the section about proposal C, at points d to i, should be prescribed in the TCG or Fees Regulations?

Some respondents were concerned that the proposals would create additional bureaucratic burdens and costs on enforcement agencies at the compliance stage, which had not been considered when setting the compliance fee or considering whether to uplift it.

The Taking Control Group said that prescribing the steps to be completed at the compliance stage would help protect consumers, limit their costs and deter further enforcement activity.

Q9. Are there other steps you think should be prescribed in the TCG or Fees Regulations and/or in guidance?

Debt advice providers suggested that the National Standards should include guidance for debtors about their rights and what steps they can take where enforcement agents do not comply with the proposed steps set out either in Regulations or the National Standards.

An enforcement firm also suggested that the industry would benefit from additional guidance on the identification of vulnerability, signposting and engagement with the debt advice sector. They suggested that this would be an area that the ECB may be best placed to produce best practice on in due course and following consultation with both the industry and debt advice sector. The ECB's response stated that they were planning to provide more detailed rules around vulnerability and ability to pay.

Government response to proposal C

The ECB's response to this consultation set out that they planned to produce guidance about some of the issues covered in this proposal. Since the 2023 consultation was published, the ECB has consulted upon and produced its first set of standards and guidance for ECB accredited enforcement firms and those who work for them. They intend to consult upon and publish further standards later this year in relation to vulnerability, the ability to pay of people subject to enforcement, and creditors.

The Government strongly supports the work of the ECB and does not, at this stage, propose to duplicate the work that they are doing in this area. Therefore, we do not intend to implement proposal C.

As set out at Proposal B, we intend to amend the Regulations to require EAs to consider whether payment may be made in instalments at the compliance stage, as proposed at Proposal C(h).

Proposal D

To amend the statutory requirements for information that must be sent to debtors to signpost advice and encourage engagement with EAs and HCEOs.

To encourage engagement with enforcement agents at the compliance stage, we sought views on the content of a new draft Information Sheet. This contained information for those facing enforcement action on their rights and responsibilities and signposting them to

advice. We also sought views on amending the Regulations to specify that this sheet should be sent alongside the Notice of Enforcement.

Q10.Do you agree that the TCG regulations should be amended to require EAs and HCEOs to send a statutory information sheet with a Notice of Enforcement?

The majority of respondents from the enforcement sector disagreed that a prescribed information sheet should be sent and suggested instead that the existing Notice of Enforcement could be improved. They questioned whether there was any evidence to suggest that an additional document would encourage better engagement. There was concern that the amount of information might be overwhelming, thereby discouraging the recipient from engaging with the EA.

Concerns were raised about the cost of sending an additional sheet and that these additional costs had not been accounted for in the original fee schedule or in the proposed fee uplift.

In contrast, debt advice providers supported the proposal, agreeing that that the draft document set out clearly what options were available to the debtor and the process that the EA should follow. One local authority noted that some enforcement firms already provide further information alongside the Notice of Enforcement and agreed that prescribing the information would lead to greater consistency.

Q11: Do you agree with the information provided on the draft Information Sheet?

Q12: Is there any other information that you would want to be included in the Information Sheet?

The majority of respondents from the enforcement sector did not agree that the information on the draft Information Sheet would encourage engagement by the debtor. Some improvements were suggested, for example by providing different information sheets about different types of debts, to avoid people having to read unnecessary or confusing information about procedures that were not relevant to their situation.

Debt advisors endorsed the use of more inclusive language which provided information and advice, rather than threatening debtors about the repercussions of not complying with the Notice of Enforcement. They suggested that the Information Sheet could include information about the different advice available for different types of debt and contact details for mental health charities. It was also suggested that there should be more specific information about debtors' rights, particularly in relation to an EA's right to enter property, how to complain about an EA and how to check if an enforcement firm is accredited with the ECB. It was also suggested that information should be provided warning people about the risks of scams, paid debt advice and Individual Voluntary Agreement (IVA) offers.

Q13: Given the proposal to require EAs and HCEOs to send the debtors the Information Sheet with a Notice of Enforcement, do you think it is additionally necessary to amend the Notice?

The debt advice sector raised concerns about terminology in the Notice of Enforcement, which they suggested could be confusing and overwhelming. They suggested that it should be redrafted as a standard notice letter containing accessible, engaging and informative language.

A number of respondents suggested that improving the Notice of Enforcement might remove the need for a separate information sheet to be sent. It was also suggested that the ECB should be invited to consider how to improve the Notice to achieve better engagement and earlier resolution of the debt, in consultation with the enforcement and debt advice sectors.

The ECB stated that they agreed in principle with the proposal to provide more information to those facing enforcement action and would like to work with the MoJ to develop the proposal further.

Government response to proposal D

The Government supports the principle of improving the information that is provided to those experiencing enforcement action by setting out the enforcement process and how to access advice.

The ECB has now published standards for firms which contain a requirement for them to ensure that early communications sent to those subject to enforcement action contain specific information, including:

- the fact that the recipient has the right to seek free debt advice.
- details of debt advice organisations.
- an explanation of where to find further information on the enforcement process, for example the Government or ECB websites.
- the fact that the recipient has the right to complain to the enforcement firm

The standards also require firms to ensure that, as far as possible, any information given to a person subject to enforcement is clear and accessible.

The ECB's response to its consultation about its standards set out that it plans to review what information should be provided in the Notice of Enforcement, working with people experiencing enforcement action and enforcement firms. Following that review they will consider whether to advise the government to make any changes to the statutory Notice of

Enforcement to ensure that it contains the appropriate level of information in a clear and accessible way.

In light of these developments, the Government does not plan to take forward th

proposed reforms about the information that must be provided to those facing enforcement action. We will, however, consider any proposals that the ECB may make in the future about amending the statutory Notice of Enforcement.

Proposal E

To amend the Fees Regulations to make it clearer when the fee for enforcement stage 2 (ES2) can be recovered under the High Court enforcement fee scale.

The consultation sought views on two changes to the Fees Regulations: (a) to be clearer about what must take place in enforcement stage 1 (ES1), and (b) to provide a clearer point at which ES2 begins. These changes were proposed following earlier post-implementation reviews which had found that the regulations about when the ES2 fee should be recovered were being interpreted inconsistently.

Summary of responses

Q14: Do you agree with the proposals setting out the circumstances when the ES2 fee can be recovered?

The vast majority of responses from the High Court enforcement sector agreed with the principle of providing greater clarity about actions that can be undertaken at each stage of the fee scale, though they thought that making significant changes to the High Court fee scale could pose a risk to the sustainability of the sector, and/or inadvertently incentivise agents to move more frequently to the sale and removal stage in order to recover fees to compensate them for the work done.

Most respondents who agreed with this proposal were from the debt advice sector, although a small number of creditors and High Court and non-High Court enforcement firms also supported it. They argued that reform was needed to correct the uncertainty and lack of clarity in this area, which they reported was allowing some HCEOs to move too quickly from ES1 to ES2, thereby greatly increasing the fees that those facing enforcement action have to pay.

Proposal E(a)

Views were sought on amendments to the Fees Regulations to say that the following steps must take place in ES1:

- ES1 will begin with the first visit and contain all steps up to but not including physically securing the goods prior to the sale stage; and
- That HCEOs must take all reasonable steps to secure payment or a controlled goods agreements (CGA), or a combination of both, in ES1 and to act reasonably with respect to any CGA that is entered into.

An amendment to the National Standards was also proposed, setting out additional guidance about what reasonable steps an HCEO must take at ES1 before moving to ES2:

- A first visit to a property without meeting the person facing enforcement action will not in itself satisfy the requirements before moving to ES2.
- In the case of a late payment under a payment arrangement, the HCEO will be required to offer a further reasonable opportunity to pay and will only be able to move to ES2 if they get confirmation that payment will not be made, irrespective of minor changes to it, or fail to make 2 scheduled payments in a row.

Where no contact is made on a first visit

The HCEOA and some other respondents from the High Court sector agreed ES2 should not be automatically triggered in cases where an agent has attended an address and made no contact on a first visit. Some High Court firms, however, disagreed and raised concerns about the cost implications of this proposal. One firm reported that multiple visits are often required before goods can be taken control of, with an average of two and a half attendances per writ. They said that the costs of making multiple visits and entering a CGA would not be covered by the ES1 fee. Another firm suggested that the ES2 fee should be recoverable if more than two visits are required.

Several respondents from the High Court sector said that it was essential that ES1 be triggered from the first visit to the property, regardless of whether contact is made with the debtor. The Government agrees that this should remain the trigger for ES1 but notes that in practice a fee will not be recovered unless contact is made.

Breach of payment arrangements

Concerns were raised by respondents from the High Court sector about the proposed guidance setting out the circumstances in which ES2 could be triggered following the breach of a payment arrangement. It was noted that the Regulations currently require HCEOs to provide debtors with at least two clear days' notice of intention to re-enter following breach of a CGA.[13] Concerns were raised that the proposal was too complex and that the requirement for the agreement to have been breached on two consecutive occasions could undermine the judgment creditor's right to have their judgments enforced

[13] Taking Control of Goods Regulations 2013, Regulation 25

and erode the 12-month time-limit of the writ. Some respondents cautioned that restricting how payments by instalments could be enforced might lead to HCEOs being more reluctant to agree to payment by instalments at the enforcement stage and instead take action to remove and sell goods.

One firm noted that, in practice, agents will give extra time to pay if a debtor contacts the firm to request a short extension and that firms also renegotiate payment arrangements if requested by the debtor and agreed by the creditor. However, they felt that firms should be able to apply further fees if the debtor fails to keep up with payments and does not engage with the firm.

Concern was also raised that the ES1 fee alone would not cover the costs of the work that would be required to deal with multiple defaults to a payment arrangement. It was reported that some payment instalments last for several years.

One firm thought that business debtors should not be given any more grace than the current requirement to provide two days' notice of re-entry if a CGA is breached. They reported that business debtors would be more likely than individuals to remove goods or enter insolvency if enforcement action was not taken promptly.

Whilst many High Court enforcement firms disagreed with the detail of this proposal, several thought that it would be helpful in principle for the regulations or guidance to stipulate what steps should be taken if a debtor breaches an arrangement at ES1 before moving to ES2. Suggestions included: requiring documented warnings to be provided about the financial consequences of escalation to ES2; and providing very short grace periods of less than a week.

Proposal E(b) – when payment is made in full during a visit

Views were sought on proposals to set out in the Fees Regulations that ES2 can only begin when goods are physically secured, either at the property or by removal for storage elsewhere. This was considered to be a reasonable point at which ES2 can be said to have started as it also reflects the next practical stage in the work to enforce the debt where a settlement can be achieved. This proposal was intended to remove the confusion that had arisen about which fees should be recovered if a debt is paid in full during a visit. Evidence provided to our earlier review revealed that some firms recover the ES2 fee when the debt is paid in full, on the grounds that ES1 only applies to cases which are settled via a CGA.

The HCEOA said that whilst they agree with the principle of clarifying this point, in practice recovering the ES2 fee in cases where payment is made in full happens rarely and that guidance is provided in their Code of Best Practice[14]. They raised concerns that only

[14] HCEOA Best Practice

allowing ES2 to commence when goods are physically secured will mean that the ES2 stage runs too quickly into the Sale and Disposal Stage and ignores the fact that sometimes there appears to be no goods to take into control. Instead, they suggested that any amendment to the Regulations should mirror their Code of Best Practice, by stating that ES2 can commence following: “failure from the debtor to either pay, enter a CGA or make a payment arrangement acceptable to the creditor following a visit where either during that visit, or subsequently to it, contact has been made and warnings of escalation and the consequences have been issued.” They suggested that evidence that these warnings had been given could be documented by body-worn camera footage.

The HCEOA and some High Court firms stated that they felt more evidence should be collected before going further than their existing Best Practice guidance in this area and suggested that the application of the ES2 fee could be monitored through the quarterly data returns submitted to the ECB. It was also proposed that the Regulations should list the core activities that should be undertaken at the different enforcement stages.

Q15: Do you think the proposals could go further?

Respondents from the High Court enforcement and debt advice sectors said that they would like any changes to refer to the possibility of entering informal arrangements at ES1, and not just controlled goods agreements. It was argued that this would encourage greater flexibility by firms and engagement by those facing enforcement action.

Respondents from the debt advice sector thought that the ES2 fee should be abolished completely and the fee structures for High Court and non-High Court cases should be aligned. They did not believe that HCEOs incur sufficient extra costs to justify it and suggested there should be a regular review undertaken to assess whether the costs of enforcing High Court cases are higher than non-High Court ones.

Respondents from the debt advice sector said they would like more detail about what should be deemed to be ‘reasonable’ enforcement action, as well as a requirement for firms to consider the affordability of payment arrangements to minimise the risk of defaults and imposing hardship on those facing enforcement action.

Government response to proposal E

Where no contact is made on a first visit

The Government notes that there was widespread support for the proposal to set out that the HCEO should not move automatically to ES2 stage when they have attended the address and made no contact on a first visit and will, therefore, proceed to implement it.

Breach of payment arrangements

A number of concerns were raised about the proposed guidance which was intended to reduce the risk of HCEOs moving too quickly to ES2 in cases where a payment arrangement is breached. This included requiring them to provide a warning to debtors, which would alert those who were not aware of the breach due to a banking delay or other delay outside of their control, and to provide more forbearance for those who are struggling to keep up with the arrangement. Many respondents from the High Court enforcement and creditor sectors were concerned that the proposed wording would add too much delay into the process and dilute their enforcement powers. We acknowledge those concerns but still think there is merit in providing greater safeguards to those in debt from their case progressing to ES2 either due to error or a change in financial circumstance.

Following concern that the proposal would have added too much delay into the process, we will not seek to regulate the length of time that a debtor should be given before a visit is made following the breach of a payment arrangement, beyond the current requirement that at least two calendar days be given. We will, however, make it clear that documented warnings must be provided and HCEOs must consider, upon request, whether the payment arrangement could be amended to avoid having to make a further visit.

The government notes the response from the Taking Control for Good coalition who argued that there should be a requirement for firms to consider the affordability of payment arrangements to minimise the risk of defaults and imposing hardship on those facing enforcement action. As set out earlier in this response, the ECB plans to consult on standards for enforcement firms and agents about the ability to pay and we do not, at this stage, propose to duplicate any work in this area.

When payment is made in full during a visit

We have considered whether to incorporate parts of the HCEOA Best Practice Guidance into the Regulations. This sets out that EAs may only move from ES1 to ES2 following contact after a visit, in cases where there has been a failure to either pay or enter into an arrangement, and documented warnings have been made about the consequences of not making payment. However, we are concerned that this could still allow ES2 to be triggered in cases where payment in full is made following a relatively short discussion. The original proposal sought to be more prescriptive to avoid that happening, but concerns were raised that this could incentivise HCEOs instead to move more quickly to the sale and removal stage.

We have decided instead to set out in Regulations that the ES2 fee cannot be recovered in cases where the debt is paid in full or an instalment agreement is agreed, during or following the first contact with the debtor at their address. Whilst we understand that there

may be concern that this could have an adverse impact on enforcement rates - as agents may not spend as long at a property if they can only recover the ES1 fee - the proposal will not remove the right of an HCEO to move to the sale and disposal stage, if there are sufficient goods at the premises.

This proposal should ensure that someone in debt will not pay a higher fee if they pay the debt in full, than they would have done if they had paid the debt in instalments.

Proposal F

To seek views on amending the Fees Regulations that apply to High Court enforcement to prevent a higher fee being applied to low value debts.

Views were sought on whether the non-High Court fee scale should be applied to lower value debts enforced in the High Court and if so, whether the threshold should be set at £800 or £1,200.

Q16: Do you think that the Regulations should be amended to require the non-High Court fee scale to be used for low value High Court cases? If not, please explain why.

There were mixed views about this proposal. Respondents from the High Court enforcement sector, including the HCEOA, were concerned about its cost impact and warned that it could have a disproportionate impact on smaller firms who may be forced out of the industry.

Concern was raised about the difference between the ‘sale or disposal’ fees in the High Court and non-High Court fee scales, which are £525 and £125 respectively. It was noted that writs of control command HCEOs to take control of goods if payment is not made in full and it was argued that it would not be financially viable for HCEOs to remove goods in return for a fee of £125. The HCEOA suggested that an alternative proposal would be to continue to allow for HCEOs to recover the High Court sale fee in all cases, but to use the non-High Court enforcement fee for debts below a certain threshold.

Some respondents argued that this proposal would be less necessary if Proposal E were to be implemented, because that would reduce the number of cases where the High Court ES2 fee is recovered. It was also noted that in cases where only the ES1 fee is recovered at the enforcement stage, the enforcement fee for High Court enforcement may be lower than the non-High Court enforcement fee: £190 compared to £235.

Some respondents also disagreed with the rationale behind the proposal. They felt that any argument that those in debt should not pay more in fees than the original debt was flawed and pointed to the low value of traffic Penalty Charge Notices which are enforced in large volumes under the fee scale for non-High Court debts. Some felt that the proposal

was contrary to one of the original aims of the Fees Regulations which was to align the fees for different types of debt. It was also argued by some High Court enforcement firms that the cost of enforcement was not linked to the value of the debt but to the cost of the enforcement action and that the High Court sector had higher costs than the non-High Court one.

The HCEOA argued that if the government legislated to allow HCEOs to enforce a higher volume of debts, by amending the High Court and County Courts Jurisdiction Order 1991 to allow creditors to transfer debts below the value of £600 to the High Court for enforcement, it would provide the sector with the economies of scale to allow them to sustainably enforce debts below £600 using the non-High Court fee scale.

In contrast, respondents from the debt advice sector and some respondents from the non-High Court enforcement sector agreed with the proposal. The Taking Control Group argued it was not justified for the High Court fee scale to be so much higher than the non-High Court one. They said that the government should go further by preventing consumer utility debts from being transferred to the High Court for enforcement, because of the concern that it is penalising vulnerable people who cannot afford their energy bills with higher enforcement fees. They also reported wider concerns about difficulties that their clients and advisors report in dealing with HCEO action, including the process for applying to suspend a High Court writ.

One respondent noted that if the government implemented this proposal the thresholds below which the non-High Court fee scale must be used should be uprated periodically.

Q17: Do you think that the threshold below which the non-High Court fee scale should be used should be set at: £800 or £1,200: or do you think the threshold should be set at a different amount. If you think the threshold should be set at a different amount, please set out why.

There was no clear consensus about the level the threshold should be set at. Some respondents from the debt advice sector thought that it should be set at a much higher level, up to £5,000.

Government response to proposal F

The Government notes the concerns raised about the impact of this proposal on the High Court enforcement sector. We also note the concerns expressed by the debt advice sector about the impact of High Court enforcement fees on consumers, particularly those with utility debts.

Given the Government's decision to proceed with the reforms at proposal E, which will limit the circumstances in which the ES2 fee can be recovered by HCEOs, we do not intend to proceed with this proposal at this time.

Proposal G

Amend the National Standards to prohibit creditors from receiving extra payment or profit-sharing from the use of EAs and the charging of fees.

Views were sought on proposed amendments to the National Standards to make it clear that creditors should not request that firms remit to them a percentage of their fee income.

Evidence submitted to the 2023 fee review had revealed a practice whereby some creditors request a percentage of fee income from enforcement firms. These requests were different from, and sometimes in addition to, social value requests under the terms of the Public Services (Social Value) Act 2013 (the Social Value Act).

We proposed adding the following paragraph to the section about creditors' responsibilities in the National Standards:

> "It is inappropriate for creditors to receive extra payment or profit-sharing from the use of Enforcement Agents and the charging of fees. Contracts should not involve rewards or penalties which incentivise the use of Enforcement Agents where it would not otherwise be justified."

Respondents from all sectors agreed with the proposal in principle. Some said that it did not go far enough and suggested that the language be strengthened to say that creditors "must not" receive extra payment or seek to share profits, rather than it just being "inappropriate" for them to do so. It was also suggested that the proposal should be in regulations rather than guidance.

Some respondents expressed concern that local authorities may use requests for "social value" to get around any restriction that might be imposed. The Social Value Act requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Guidance on the definition of social value is provided by the Cabinet Office for public authorities to consider overall value, including social value in the provision of services. [15]

One respondent agreed that firms should be free to offer value added services and appropriate social value (as defined by Lord Young in his 2015 Review of the Social Value Act - as "something that would benefit from being thought about in a wider way [as an element in the optimum design of a service], rather than buying something completely unrelated", but that any other form of direct or indirect repayment should be barred.

[15] Social Value Act: information and resources - GOV.UK

Concern was expressed that larger firms were winning bids by making high value social value commitments. Some suggested that what constitutes social value, under the terms of the Social Value Act, should be defined in the guidance and should, for example limit the social value component of a contract to no more than 10% of the value of the total bid. A respondent from the enforcement sector said that demands for added value threatened the viability of smaller firms who could not match the added value bids offered by larger firms.

It was noted that the fee structure was designed to reimburse firms for the work done and that preventing creditors from including rewards or penalties in contracts would protect the fee structure and ensure that firms could continue to invest in improving standards for both those in debt and the enforcement sector.

One respondent stated that public sector shared services companies should be able to retain and distribute fees within a shared service partnership with a local authority.

Another respondent raised concern that some procurement platforms require enforcement firms to make payments to the platforms. They said that this practice could threaten the sustainability of the industry and risks introducing perverse incentives to recover the lost fee income. They suggested that procurement platforms should, instead be paid for by the creditor and not by enforcement firms.

Government response to proposal G

We note the concern that the inclusion of extra payments and profit-sharing requirements in some contracts between major creditors and enforcement firms is having an impact on the ability of some firms, particularly smaller ones, to compete with other firms. They represent an additional business cost, which could have an adverse impact on the ability of firms to invest and provide a good service.

We will proceed to amend the National Standards to state that it is inappropriate for creditors to require extra payments or profit-sharing from the use of EAs and the charging of fees. Future contracts should not involve rewards or penalties which incentivise the use of EAs where it would not otherwise be justified.

We note that some respondents would prefer for this proposal to be put into legislation. However, the TCG Regs and the Fees Regs are not suitable platforms for containing such provisions as they primarily focus on the behaviour of enforcement agents, prescribing the entire process to be followed by them when taking control of and selling goods, and specifying the fees charged by them for taking control of goods.

We do not intend for the new guidance in this area to prevent the recovery of enforcement fees by local authorities who employ enforcement agents either directly or via a company that is owned by the local authority.

Proposal H

Review mechanism

In the consultation, it was proposed that a review of the impacts of any of the reforms implemented be conducted three years after they come into force. In addition, the consultation also proposed a review of the levels that the fees are set at and the percentage thresholds, three years after the uplifted levels come into force, and that they are reviewed every three years thereafter. This was intended to replace the commitment in the Explanatory Memorandum (EM) to the Fees Regulations to review the fees annually with reference to the latest Consumer Price Index (CPI).

Q19: Do you agree with the proposal to review these reforms and the fee levels after three years, and to review the fee levels every three years thereafter?

There was a range of views about this proposal. A number of respondents argued that the Government needed to put a review clause into legislation, given that the earlier commitment in the EM had not yet led to the fees being uplifted to reflect rising inflation.

Some respondents representing the enforcement sector argued that it was necessary to conduct annual, index-linked reviews. Concern was raised that the cost of implementing the reforms in this paper, coupled with inflation, would erode the new fee level over the next three years, which could have an impact on the viability and sustainability of the market.

In addition, they also thought that it was necessary to review the fee levels sooner than three years because the proposed increases were insufficient. The HCEOA reported that the combined impact of the proposed 5% fee uplift and 24% increase in fee thresholds would only lead to a 2% - 3% uplift in the fees recovered by the High Court sector. They also suggested that the proposed uplift to the taking control of goods fees and this proposal seemed inconsistent with the Ministry of Justice's separately published proposals to uplift court fees by 10% and to make full or partial inflation-based increases to selected fees every two years.[16]

[16] https://www.gov.uk/government/consultations/implementing-increases-to-selected-court-and-tribunal-fees/implementing-increases-to-selected-court-and-tribunal-fees

Some respondents representing the enforcement sector also raised a concern that a failure to uplift fees in the future may prevent the ECB from increasing its levy to fund industry supervision at a sufficient pace to prevent standards from dropping.

Other respondents requested that the government should be more transparent and consistent about the criteria it is going to base the review on, to avoid the need for consultation about every review. The Taking Control Group also argued that clear criteria for future fee reviews should be set out in the regulations, to clarify the government's role in setting fees and the policy considerations that should flow from that.

The Taking Control Group argued that there is an inherent tension between the Government's policy aim of setting the fees at a level that allow firms to make a sustainable profit whilst seeking to protect those facing enforcement action from disproportionate costs. They felt that future reviews must ensure that the regulations only allow for fees that recover reasonable enforcement costs. To ensure that the fees recovered are reasonable they argue that the Government should review the current enforcement market structure and consider whether effective enforcement might be delivered at a lower cost, for example, through the public sector, or through setting fees at a level that drives greater efficiency. Further, they suggested that future reviews should consider whether differences in the costs and revenues for different debt types makes a single fee model for all debts unreasonable.

The Taking Control Group also suggested that consideration should be given to other policy interventions to lower the overall cost of enforcement, such as setting targets to reduce the number of unenforceable cases passed by creditors to enforcement firms. They said that future reviews must be more transparent, and that the government should publish data about firms' aggregate costs, revenues, and profitability.

Government response to proposal H

The Government has considered whether it is necessary to hold the next fee review sooner than three years after the 5% fee uplift is uplifted. We acknowledge the delay in implementing that uplift following the publication of the 2023 review and we note the concerns raised by the enforcement sector about the impact of not uplifting the fees more frequently to reflect inflation.

Some respondents from the enforcement sector have suggested that the Government should legislate to allow for the fees to be automatically uprated each year to account for inflation. On the other hand, we note the concerns raised by respondents from the debt advice sector about the need to take a wider range of factors into account when reviewing the fees to ensure that they are set at a reasonable level. The Government believes that

the future reviews of the fees should not just consider inflation when deciding whether an uplift is necessary.

The Government’s consultation about statutory independent regulation of the enforcement sector asks questions about whether a statutory independent body should play a role in reviewing the fees. The Government wants to wait for the outcome of that consultation before holding the next fee review. Our current intention is for the fees to be reviewed in 3 years' time.

Assessment of Impact, Equalities and Welsh Language

Impact Assessment

We asked a number of questions about the impact of these proposals on the enforcement industry, the debt advice sector and other civil enforcement users.

The enforcement sector identified that some of the proposals would incur costs to businesses, require them to amend their IT systems and provide training for their staff.

Creditors did not identify any significant costs associated with any of the proposals.

The debt advice sector stated that a likely increase in demand for debt advice is not a regulatory burden.

A full impact assessment has not been undertaken because the recommendations are not classed as regulatory. Any net burden imposed on businesses by amending existing or introducing new fees will not exceed the de minimis of £5m equivalent annual net direct cost to business. There is no significant impact on the public sector.

Equalities Statement

The Equality Statement has been updated to reflect responses received during the consultation.

Welsh Language Impact Test

These changes will impact those who speak the Welsh language. A Welsh language copy of this paper can be provided on request.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachmentdata/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

Association of Consumer Support Organisation

Bristow & Sutor

CDER Group

Centre for Social Justice (CJS)

Cerberus HCE Ltd

Christians Against Poverty (CAPUK)

City of Bradford Metropolitan Council

Civil Court Users Association (CCUA)

Civil Enforcement Association (CIVEA)

Civil Enforcement Services Ltd

Enforcement Conduct Board (ECB)

Excel Civil Enforcement Ltd

Greater Manchester Money and Pension Service

His Majesty's Revenue and Customs (HMRC)

An individual HCEO

High Court Enforcement Group Ltd

High Court Enforcement Officers Association (HCEOA)

Institute of Revenue Ratings and Valuation (IRRV)

Just

Marston Holdings

Mental Health and Money Advice

Newlyn plc

North Norfolk District Council

One Source Debt Resolutions Services

Quality Bailiffs

Rundles

Stockton & District Citizens Advice

Stockton-on-Tees Borough Council

Taking Control Group

The Sheriffs Office

ANNEX B

TABLE 1

FEES UNDER THE TAKING CONTROL OF GOODS (FEES) REGULATIONS 2014 AND UPLIFT FOR NON-HIGH COURT

NON-HIGH COURT		
STAGE	**CURRENT FEE**	**5% UPLIFT**
COMPLIANCE STAGE	**£75**	**£79**
ENFORCEMENT STAGE	**£235**	**£247**
SALE OR DISPOSAL STAGE	**£110**	**£116**

TABLE 2

FEES UNDER THE TAKING CONTROL OF GOODS (FEES) REGULATIONS 2014 AND UPLIFT FOR HIGH COURT

HIGH COURT

STAGE	**CURRENT FEE**	**5% UPLIFT**
COMPLIANCE STAGE	**£75**	**£79**
FIRST ENFORCEMENT STAGE (ES1)	**£190**	**£200**
SECOND ENFORCEMENT STAGE (ES2)	**£495**	**£520**
SALE OR DISPOSAL STAGE	**£525**	**£550**

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