

<b>Title:</b> The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 <b>IA No:</b> BIS0293 <b>Lead department or agency:</b> The Insolvency Service <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 19/06/2012		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> muhunthan.vaithianathar@insolvency.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> AMBER

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-0.06m	£0m	£0m	Yes
			Zero Net Cost

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

Since Debt Relief Orders (DROs) were introduced in 2009, it has been the intention to make minor consequential amendments to an array of legislation which prevents individuals in formal insolvency from holding certain offices and board memberships (e.g. school governor or member of a local authority). The Tribunal, Courts and Enforcement Act 2007 which introduced DROs, specifically contained powers to introduce such consequential amendments to other legislation in order to give full effect to the provisions. The proposal will add the DRO to the existing list of formal insolvency procedures (primarily bankruptcy) in about 130 separate pieces of legislation. Government intervention is necessary as this can only be achieved by way of a Statutory Instrument.

**What are the policy objectives and the intended effects?**

Currently there is a wide range of legislation which places a disqualification on a person who is bankrupt, (or subject to bankruptcy restrictions or undertakings) from holding particular offices or positions. A DRO has similar effects to bankruptcy in providing statutory write-off of debts. Consequently it is important to ensure such persons are also disqualified if they are subject of a DRO, a debt relief restrictions order (or undertaking) or interim debt relief restrictions order. This statutory instrument will make such necessary changes and ensure that where it is inappropriate for particular public posts to have been personally insolvent the provisions cover both ways of achieving personal insolvency.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Other government departments are responsible for the legislation which establishes the Public boards, functions, positions, etc. We could have left it up to each policy owning department/public body to make the legislative changes themselves, but thought it more helpful to make the changes at the same time, and align the effects of being in a DRO with those of similar insolvency procedures. (Preferred Option)

Alternatively, we could have done nothing, but this would have resulted in those people subject to a DRO or DRRO being eligible to hold certain positions/offices, whilst others in a similar insolvency procedure would not be eligible, creating an inconsistency in the effects of personal insolvency legislation and a policy effect that is neither intended nor wanted.

Another option considered was to use the Individual Insolvency Register to identify those subject to a DRO and asking them to voluntarily step down from holding office. However, to be mandatory, need legislation.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:		Non-traded:

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister:

Norman Lamb

Date: 19/06/12

# Summary: Analysis & Evidence

## Policy Option 1

### Description:

#### FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.060	Optional	0.060
High	0.074	Optional	0.074
Best Estimate	0.06		0.06

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

We anticipate that costs would fall on a small number of bodies (possibly eleven, all of which are public sector) in respect of their enforcement role. The Gambling Commission have estimated one off costs of £60,000 in respect of updating the website, communicating to the industry, licence conditions and codes of practice changes, redesign of the licence template, and produce and reissue licences. The other enforcement bodies have fed back that costs would be negligible.

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

Other costs may include amending the application forms for certain offices and the cost of informing existing "members" such that should they be made subject of a DRO or DRRO, they need to bring this to the attention of the body in question. These costs should be negligible as forms are updated for many reasons of which this is one, and tend to be electronic, so very little effort would be required to change the forms. This cost would fall mostly on Government.

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

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

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

The key benefit is that this measure will remove the risk of having people in specific public positions who have needed statutory debt relief in circumstances where this is considered to be in conflict with that role. This risk is difficult to quantify, but is expected to be small for the reasons given below. It would remove the difference that currently exists between two debt relief procedures (bankruptcy and DROs) and the restrictions that apply to people subject to the procedures.

#### Key assumptions/sensitivities/risks

#### Discount rate (%)

It may be useful to have an idea of the type of individual who is likely to obtain a DRO. An initial evaluation report into DROs in November 2010, showed the typical profile of an individual subject to a DRO as low income, predominantly unemployed (i.e. those types of individual for whom the relief was intended). It is expected that not many people subject to a DRO will hold or want to hold the offices/positions affected by this order. The risk is therefore likely to be small.

#### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	Zero net cost

## Evidence Base (for summary sheets)

### Background/Problem under consideration:

1. In April 2009, a statutory alternative to bankruptcy was introduced, a debt relief order (DRO). There are strict qualifying conditions placed on a debtor before he or she can enter into a debt relief order and they include having total debts of less than £15,000, minimal assets (no more than £300) and disposable income of less than £50pcm. Once someone has entered into a DRO, the debtor is subject to a number of restrictions, similar to those imposed on persons who have entered bankruptcy.
2. Since then, it has always been the intention to make minor amendments to an array of legislation which prevents individuals in formal insolvency from holding certain offices and board memberships (e.g. school governor, member of a local authority). The full list of legislation and bodies affected are shown in a separate attachment, Annex A. The Tribunals, Courts and Enforcement Act 2007 which introduced DROs specifically contained powers to introduce such consequential amendments to other (around 130 pieces of) legislation in order to give full effect to the Act. These refer to 140 individual (mostly public sector) bodies by name, and more generally members of certain professions and company directors.
3. These changes are minor/technical amendments, which will align DROs with bankruptcy in relation to existing disqualifications. The proposal will add the DRO to the existing list of formal insolvency procedures (primarily bankruptcy) in approximately 130 separate pieces of legislation.

### Rationale for intervention:

4. Historically, bankruptcy stopped you from being deemed fit to take up certain posts/positions. The Insolvency Service looked at pieces of legislation where an individual is prevented from holding certain offices, memberships, etc, when subject to bankruptcy or on the granting of a trust deed. This SI seeks to mirror those provisions where the policy owning departments have confirmed this is desirable on public policy grounds when an individual is subject to a DRO or DRRO. Government intervention is necessary as this can only be achieved by way of legislation. Intervention is necessary to address the inconsistency of asymmetric treatment in that one personal insolvency measure, namely bankruptcy, prohibits an individual from holding certain offices, but another personal insolvency measure, DROs currently does not.

### Policy Objective:

5. Currently there is a range of legislation which places a disqualification on a person who is bankrupt, subject to a BRO (bankruptcy restrictions order (or undertaking) or subject to an interim bankruptcy restrictions order from holding office or similar position. A DRO has similar effect to bankruptcy in providing statutory write-off of debts. Consequently, it is important to also ensure such persons are also disqualified if they are subject to a DRO, debt relief restrictions order (or undertaking) or interim debt relief restrictions order. This statutory instrument will make such necessary changes and ensure that for public posts where it is inappropriate to have been personally insolvent, the provisions cover both ways of achieving personal insolvency.

### Description of options considered (including do nothing):

#### Option 0 – do nothing

6. We could have done nothing, but this would have resulted in those people subject to a DRO or DRRO being eligible to hold certain positions/offices, whilst others in a similar insolvency procedure would not be eligible, creating an inconsistency in the effects of personal insolvency legislation. The costs associated with this option are the reputational and financial risks of having people in specific public positions that have needed statutory debt relief in circumstances where this is considered to be in conflict with that role.

### Costs and Benefits

7. Initial evaluation shows that 80% of DRO debtors are not in any form of paid employment and have few, if any, assets and little, if any, surplus income. It is expected that not many people subject to a DRO will hold or want to hold the offices/positions affected by this order. (See page 11 of Initial Evaluation Report on DROs). The risk may therefore be expected to be small and has not been quantified.

[http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/DRO%20interim%20evaluation%20report%20-FINAL.pdf](http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con_doc_register/DRO%20interim%20evaluation%20report%20-FINAL.pdf).

## Option 1 – amend legislation to include DROs in disqualification criteria (preferred option)

8. Other government departments are responsible for the legislation which establishes the Public boards, functions, positions, etc, and we have sought their agreement to the amendments in the SI to include DROs in disqualification and/or eligibility provisions. This option involves making legislative changes to various acts and SIs to take account of DROs for eligibility to hold a position/office, and also for disqualification from holding a position/office.

9. We could have left it up to each policy owning department/public body to make the legislative changes themselves, but thought it more helpful to make the changes at the same time, and align the effects of being in a DRO with those of other insolvency procedures of similar effect.

### Costs and Benefits

10. Most of the changes refer to people's eligibility to serve as a member of a public office (e.g. as a member of the Low Pay Commission), as a member of a profession (e.g. solicitor), as a company director, or exercise certain public rights (e.g. the right to buy your council house). Affected bodies may no longer be able to consider applications from people subject to a DRO and any existing members who become subject to a DRO in the future may no longer be able to carry on that role.

11. Looking at the typical profile of a person subject to a DRO, being someone with low income and predominantly unemployed, it is unlikely that most people subject to a DRO would be in a position to hold or exercise the offices, positions or rights affected by this order and as such the talent pool of people who would like to carry out these roles is unlikely to diminish. We are not aware that any people are currently appointed to such positions, and it is unlikely that any more than a very small number of people would be affected. As such, costs to organisations no longer able to appoint someone subject to a DRO or to consider the position of an existing member who may apply for a DRO in the future are likely to be negligible. (See page 11 of Initial Evaluation Report on DROs for typical profile of a person subject to a DRO,

[http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/DRO%20interim%20evaluation%20report%20-FINAL.pdf](http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con_doc_register/DRO%20interim%20evaluation%20report%20-FINAL.pdf).)

12. In terms of direct impacts, costs may fall to bodies that may have to update their literature. For example, where currently there may be an entry in an application form asking 'Are you currently subject to a bankruptcy order?' this would have to be updated to read 'Are you currently subject to a bankruptcy order, or DRO?' Likewise, changes may need to be made to relevant websites, and there may be costs in informing existing 'members' that should they should they become subject of a DRO or DRRO in the future, they should bring it to the attention of the body in question and it may affect their eligibility to carry on with that role. For example, with regard to company directors, in the guidance on 'Incorporation and Names – Booklet GP1' - <http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#ch2>, there is a question in chapter 2, which asks 'Can anyone be a company director?' This would be updated to include if you are currently subject to a DRO. Likewise for the changes to the Solicitors Act 1974, guidance would also be updated on the law society website and publications so solicitors would be aware of the change.

13. However, we believe this would be a generic issue for people (e.g. who are interested in serving on the affected bodies) and the changes would not be a specific issue, but would be part of the wider application process to these bodies, and the change would be considered with any other changes. In many cases, we understand from our stakeholder engagement that existing organisational literature would be quite generic in terms of eligibility criteria (i.e. 'Please confirm you are eligible for this post under the terms of the Development of Tourism Act 1969'), and do not need to be updated to reflect the change we are making to the status of DROs.

14. Again this is a view shared by those that responded to our stakeholder engagements when we asked about this issue. The changes will be communicated by the order being placed on the Insolvency Service website, and any existing 'member', or person who was interested in making an application to an affected body, would look at the respective legislation to see if they met the eligibility criteria. From what responses we had from our stakeholders, there would be no detailed announcement of this minor change, dissemination would be via the order being placed on the Insolvency Service website and guidance updated consequentially to this as part of general updates.

15. As discussed above, the impact of this change is likely to be small. Any costs should be negligible as organisational literature is updated for many reasons, of which this is one, and tend to be in an electronic



format. This assessment has been discussed with various other stakeholders (i.e. government departments) who agreed with this estimate of minimal impact. Where costs do fall on affected bodies (e.g. because they have to change their organisational literature), we estimate one off implementation costs of no more than £100, and in most cases much lower than this. This is based on discussion with the various departments responsible for the legislation being amended by this measure, and has considered the time and seniority of the person likely to be involved in making the necessary changes.

16. To refine this estimate further, we would need to examine how each body would go about disseminating information regarding the change, and what exact changes to their organisational literature would need to be made. As discussed above, we believe the impact on affected bodies would be small (up to a one off maximum of £100). We have therefore taken the view that it would be disproportionate to gather and analyse the robust and detailed evidence that would be required to fully monetise the cost to affected bodies. As an illustrative example, the 130 pieces of legislation refer to 140 (mostly public sector) bodies by name. If all of these were required to make changes at the estimated ceiling of £100, the total cost would be £14,000. While the scope of affected organisations may be wider than this, costs would be one-off and negligible.

17. If there are any significant costs of adapting to this change, we anticipate these would fall on a small number of bodies (possibly eleven, all of which are public sector) in respect of their enforcement role. Costs might include updating the website, communicating to the industry, licence conditions and codes of practice changes, redesign of the licence template, and produce and reissue licences. The Gambling Commission has estimated one off costs of around £60,000 in respect of the above. However other bodies, such as the pensions regulator and the Vehicle and Operator Services Agency (VOSA) in relation to bus and coach operator licences have stated that the costs would be minimal as all guides and applications are on the internet and that exact figures are too low to be even quantifiable. There may also be an ongoing cost of monitoring compliance for those who are subject to a DRO, however evidence from stakeholders has indicated that these would mostly be absorbed into existing monitoring compliance costs for other bankruptcies, with negligible additional costs if DROs were also captured.

18. The key benefits are that this measure will remove the risk of having people in specific high profile positions of trust that have needed statutory debt relief in circumstances where this is considered to be in conflict with that role. This risk is difficult to quantify, but given the profile of most people subject to a DRO, it is expected to be small. It would also remove the difference that currently exists between two debt relief procedures (bankruptcy and DROs) and the restrictions that apply to people subject to the procedures.

19. Policy owning departments have previously considered that a person who is in a formal insolvency procedure (namely bankruptcy) should not hold certain positions or offices. This will likely to be because some form of financial judgement may be needed in a particular role, e.g. acting as a company director, being a solicitor, etc. It may be that they are involved in allocating budgets, spending public funds. Their bankruptcy may have been caused by some form of financial mismanagement and therefore it was considered prudent that they may not hold certain offices. Likewise, similar arguments apply to DROs as another form of a personal insolvency measure. However, in many cases, there is a power for the Secretary of State or Chief Executive of a particular board to decide if they would like the disqualification to apply.

#### Option 2 – use the Individual Insolvency Register to identify those subject to a DRO

20. Those people who are subject to a DRO are shown on the individual insolvency register which is a public register. An option could have been to use this register to identify those individuals who are subject to a DRO and asking them to voluntarily step down from holding office on the respective body. However as the bodies are established by legislation, only a legislative change would make this mandatory and have the desired effect of adding DROs to the eligibility criteria of those bodies.

#### **Costs and Benefits**

21. The public bodies can search the Individual Insolvency Register for free, but there would be a time cost and this would not be an efficient means of picking up such a case. Moreover, as there would be no

legal requirement to resign from the bodies, those subject to a DRO could still serve as a member/officer of the respective body, with associated risks.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach):

22. This measure has not been consulted on. It makes minor and technical amendments to legislation to align the effects of DROs so that they mirror those of bankruptcy, and have a minimal impact on society, therefore consultation would result in adding unnecessary cost and delay to the process. The level of analysis undertaken on the costs and benefits is proportionate to the small scale of the likely effects as described below in paragraph 23.

Risk and assumptions:

23. Looking at the typical profile of a person subject to a DRO, being someone with low income and predominantly unemployed, it is unlikely that many people subject to a DRO will hold or want to hold the offices/positions affected by this order. We are not aware that any people are currently appointed to such positions. It is more of a corporate governance and reduction of risk issue going forward.

(See page 11 of Initial Evaluation Report on DROs for typical profile of a person subject to a DRO)

[http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/DRO%20interim%20evaluation%20report%20-FINAL.pdf](http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con_doc_register/DRO%20interim%20evaluation%20report%20-FINAL.pdf).

Direct costs and benefits to business calculations (following OIOO methodology):

24. While the lion's share of the impacts are likely to fall on the public sector, this measure may have a negligible, non-monetised impact on business and civil societies. It is therefore classed as being within scope for 'One-in, One-out', but at a zero cost.

25. Therefore we do not believe that a sunset clause is appropriate. The order disqualifies individuals who are subject to a DRO in circumstances where individuals are disqualified by virtue of bankruptcy. There will be no consideration of the policy surrounding the disqualification of individuals disqualified by virtue of bankruptcy and as such there should be no review in relation to the position involving disqualification arising from DROs. The situation in respect of DRO and bankruptcy should be analogous.

26. Further, the order is not changing the DRO concept, which is being evaluated and reviewed separately, but simply making consequential amendments to align the effects of being in a DRO with bankruptcy. In addition, the Act which brought DROs into existence, the Tribunal Courts and Enforcement Act 2007 (TCE) identified consequential provisions that should be made (Part 2, Schedule 20 to the Act) but there was insufficient time to make all the consequential changes so a power was included to make the consequential changes in the future which are being used to make this order. The TCE Act does not contain a sunset or review clause and therefore it would seem incongruous to have one in this order when the Act which made DROs does not include such a provision.

27. There is no vires to insert a review clause into this order, and therefore one has not been included. Any monitoring or review of this order would be part of any overall evaluation into debt relief orders.

Wider impacts:

28. This measure may result in better governance of the bodies in question as it would reduce the risk that someone who has become insolvent would be appointed to one of the specified positions.

Summary and preferred option with description of implementation plan:

29. The preferred option is to make the legislative changes by way of an SI and thereby align the effects of being in a DRO with those of similar insolvency procedures, with regard to holding certain offices and board memberships.