

# **TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

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## **EXPLANATORY NOTES**

### **PART 5: DEBT MANAGEMENT AND RELIEF**

#### *Summary*

447. **Part 5** of the Act makes changes to two statutory debt-management schemes, Administration Orders (Chapter 1) and Enforcement Restriction Orders (Chapter 2).
448. **Part 5**, Chapter 3, also amends the Insolvency Act 1986 to allow for the introduction of a new form of personal insolvency procedure that entails the making, administratively by the official receiver, of a debt relief order (DRO) on the application of an individual debtor who meets specified criteria as regards his assets, income and liabilities. The effect of the order is to stay enforcement of the debts by creditors, the debts being discharged after a period of one year. While the order is in force, the debtor will be subject to similar restrictions and obligations as if he had been adjudged bankrupt.
449. **Chapter 4** of Part 5 of the Act empowers the Lord Chancellor (or his delegate) to approve Debt Management Schemes (“DMSs”) operated by any body of persons. Approved schemes will be able to arrange Debt Repayment Plans (“DRPs”) for individual debtors. Subject to prescribed restrictions, schemes will in effect be able to compel creditor participation and plans will be able to compose (i.e. reduce or partially write off) debts. These schemes could be operated by a variety of service providers. Existing providers of debt management advice and assistance do not have the power of compulsion and composition. In future, they will be able to choose whether to offer an ‘approved scheme’ as part of their service.
450. It is intended that DRPs will sit alongside and complement statutory schemes, such as Administration Orders (“AOs”), DROs and Individual Voluntary Arrangements (“IVAs”). The intention is to provide a range of options giving more choice and flexibility to assist the rehabilitation of over-indebted people. The most appropriate scheme to use will depend on the particular circumstances.

#### *Background*

##### *Administration Orders and Enforcement Restriction Orders*

451. Administration Orders (“AOs”) are a court-administered debt management scheme for those with multiple debts totalling no more than £5,000, one of which must be a judgment debt. The provisions governing AOs are set out in sections 112-117 of the County Courts Act 1984.
452. The 1985 Civil Justice Review recommended a number of changes to the AO scheme and these were taken forward in section 13 of the Courts and Legal Services Act 1990 (“the CLSA 1990”). The changes included removal of the need for a judgment debt, an increase in the debt limit and the introduction of a strict three-year limit to the order. Section 13 also included, for the first time, an explicit power for the court to

grant an order restricting enforcement where it considered that this would be more appropriate than an AO. Such an order, once made, would provide temporary relief from enforcement for those unable to meet their commitments for a period to be defined by each order. However, as concerns were raised about the viability of section 13, it has never been brought into force.

453. So, in July 2004 the Government consulted on a range of targeted options to offer better assistance to people with multiple debts (the Choice of Paths Consultation), including reform to the existing AO scheme and a revised and targeted Enforcement Restriction Order (“ERO”) scheme. The Government’s response paper on the consultation, published in March 2005, committed to a number of changes to the AO scheme including an increase in the debt ceiling and a time limit to orders. The paper also committed to a revised and more workable version of the ERO to address the deficiencies identified in section 13 of the CLSA 1990. Part 5 of the Act takes forward these changes.

### ***Debt Relief Orders***

454. At present if an individual encounters difficulty paying his debts, the remedies that are available to him either require him to have assets or funds available to distribute to his creditors on a regular basis (for example IVA, county court AO or a non statutory debt management plan) or, as with bankruptcy, there is a fee to access the remedy. This means that the procedures that are currently available are inaccessible to some people, since they do not have the financial means to use them.
455. Such people often have relatively low levels of liabilities, no assets over and above a nominal amount and no surplus income with which to come to an arrangement with their creditors.
456. The DRO has been devised following the Choice of Paths consultation, which determined that there was a perceived need for a remedy for people who are financially excluded from the current debt solution procedures, and a further consultation by The Insolvency Service in 2005 (“Relief for the Indebted – an Alternative to Bankruptcy?”) on the detail of how it might operate. It is a procedure that will enable some individuals, who meet specified criteria as regards liabilities, assets and income, to seek relief from certain debts.
457. The DRO will be made administratively by official receivers (who will operate the scheme) and will not routinely require any judicial or other court intervention. The effect of the order will be to prevent creditors from enforcing their debts and the debtor will be discharged from the debts after a period of one year. Creditors will be notified of the making of an order and will have a right to make objections on certain grounds if they believe the order should not have been made.
458. The debtor will need to pay an up front entry fee to cover the administration costs but this will be significantly less than the deposit required for bankruptcy proceedings to be initiated. In order to keep costs to as low a level as possible, approved intermediaries from the debt advice sector will help an applicant decide if the DRO procedure is right for him before he applies to the official receiver, and assist the debtor in making his application. Again to maintain a low level of administrative costs (and therefore entry fee) the facility to apply for a DRO will be available only online.
459. To be eligible for an order the debtor will need to meet criteria as regards the level of liabilities, the level of assets and the level of surplus income, and these levels will be set in secondary legislation to enable them to be updated when necessary.
460. While the order is in force the debtor will be subject to the same restrictions and obligations as in bankruptcy, and will be subject to a similar regime of restrictions orders or prosecution if his conduct in relation to the insolvency is found to be culpable.

There will be a right of appeal to the court for both the debtor and creditors who are dissatisfied with the way the official receiver has dealt with the case.

461. There is a facility to account for windfalls and increases in income during the period when the order is in force.

### ***Debt Management Schemes***

462. Many organisations currently offer advice and assistance to debtors. This can include negotiation with creditors to agree an acceptable schedule of repayments and drawing up plans to help debtors manage their finances and make those repayments. It is estimated that over 25,000 such debt repayment plans were arranged in 2004 and there are currently around 70,000 active plans.
463. Such schemes depend on the voluntary participation of the debtor and creditors, and operate without any form of regulation. There is currently no power to compel creditors to adhere to the terms of a debt repayment plan (that is to accept the planned repayments without taking enforcement action). Therefore a single uncooperative creditor can effectively block the creation of a repayment plan that would benefit the debtor and all the other creditors in the long run. Nor is there any power to compose debts that cannot be repaid within a reasonable period as an incentive for the debtor to maintain the required repayments.
464. Measures in Part 5 of the Act make it clear that business and secured debts cannot be included in these schemes. The measures also enable scheme operators to exercise powers to compel creditor participation, by preventing enforcement action, and to write off a proportion of the debts where a debtor complies with a DRP but simply cannot repay the full amount in a reasonable timescale. Additionally, the measures give the Lord Chancellor power to prescribe in regulations the circumstances in and the extent to which these powers may be exercised. For example, regulations might define the minimum and total repayments for which plans must provide, thereby defining the maximum proportion of the total debts that could be written off. Within these limits, individual schemes could make greater or lesser use of such powers.
465. The Act also provides creditors with a right of appeal to a county court against the making, their inclusion and terms of a DRP.
466. Before making regulations to bring this Chapter into effect, the Government intends to undertake further research into existing statutory and non-statutory schemes for assisting the over-indebted and those in multiple debt situations (including the working of the reformed AO scheme). This would inform detailed proposals that would then be subject to a full public consultation exercise and regulatory impact assessment to confirm their benefits and cost effectiveness.
467. The Choice of Paths consultation sought views on whether it would be desirable in principle for a scheme similar to the court-based AO scheme to be operated in the private and voluntary sectors. A majority of respondents thought that a non-court scheme could offer advantages over the AO scheme. The paper did not discuss the details of such a scheme. The provisions in this Chapter are intended to take powers to give effect to such a scheme or schemes through regulations, subject to further consultation on the details.

### ***Commentary on Sections: Part 5***

#### ***Section 106: Administration orders***

468. Subsection (1) of this section replaces the existing Part 6 of the County Court Act 1984 (“CCA 1984”).

Section 112A – Administration orders

*These notes refer to the Tribunals, Courts and Enforcement Act  
2007 (c.15) which received Royal Assent on 19th July 2007*

469. Section 112A provides that an administration order (“AO”) is an order to which certain debts are scheduled, which imposes a requirement on the debtor and which imposes requirements on certain creditors. Debts are to be scheduled to the order in accordance with the provisions in sections 112C, 112D, 112Y(3) and 112Y(4). The requirement which must be imposed on the debtor is set out in section 112E and this is a requirement to make repayments towards scheduled debts whilst the AO is in force. The requirements which must be imposed on certain creditors are set out in sections 112F to 112I and these are all requirements which restrict the ability of those creditors to take enforcement action whilst an AO is in force.

Section 112B – Power to make order

470. This section sets out the conditions that must be met before the court can make an AO in relation to a debtor. This is a new test for making AOs which introduces the concept of “qualifying debts” together with other new requirements that must be met before an AO can be obtained. Section 112AB provides that a “qualifying debt” is any debt, except for a debt that is secured against an asset, such as a mortgage, or a debt that falls within a description specified in regulations. The conditions which must be met before an AO can be made are:

- the debtor must have at least two qualifying debts, and he must be unable to pay at least one of them;
- the debtor must not have any business debts;
- the debtor must not be excluded by the AO, voluntary arrangement or bankruptcy exclusions as defined by section 112AH;
- the debtor’s total qualifying debts must be less than the amount prescribed in regulations (“the prescribed maximum”);
- the debtor’s surplus income must be more than the amount prescribed in regulations (“the prescribed minimum”).

471. Section 112AE sets out how “surplus income” is to be calculated. It is to be calculated in accordance with regulations. Before making an AO, the court must have regard to any objections. The Civil Procedure Rules 1998 will govern the procedure for making the order.

Section 112C – Scheduling declared debts

472. Debtors will be required to declare all qualifying debts, including those which are not due at the time of applying for an order, to ensure that the court has a true picture of their indebtedness. This section provides that when making an AO, the court must schedule to the order all declared debts already due. Declared debts that become due after an AO is made must be scheduled to the order following an application by the debtor or creditor and after considering any objections made to the debt being scheduled (in accordance with section 112AG(5)).

Section 112D – Scheduling new debts

473. This section gives the court the power to schedule to an existing AO qualifying debts arising after an order is made and becoming due during the life of the order, on the application of the debtor or a qualifying creditor. A “qualifying creditor” is a creditor under a qualifying debt (see section 112AA(1)). However, this power is dependent on the total debt figure (including the new debt) not exceeding the prescribed maximum.

Section 112E – Repayment Requirement

474. This section imposes a requirement on the debtor to make repayments towards scheduled debts during the life of an AO. Debts may either be repaid in full or to the extent decided by the court and different debts may be repaid to different extents.

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475. Subsection (5) provides the court with the option to order that repayments are not to be made on debts arising after an order is made and scheduled to the order under section 112D, until all of the repayments required in respect of previously declared debts have been made. This provision is designed to discourage irresponsible lending and borrowing.

476. The section also provides that repayments must be made by instalments and the amount of instalments must be determined in accordance with regulations. The regulations must make provision for instalments to be determined by reference to the debtor's surplus income. The section also allows the court to order repayments to be made by other means, such as by lump sums, in addition to the regular instalments, for example, where the debtor disposes of property.

Section 112F – Presentation of bankruptcy petition

477. Sections 112F to 112I set out the requirements that must be imposed by an AO on certain creditors for as long as the AO is in force.

478. The first requirement, in section 112F, provides that any qualifying creditor of the debtor is to be prohibited from presenting a bankruptcy petition against that debtor, unless he has the court's permission. This is similar to the current provision under section 112(4) of the CCA 1984. However, unlike section 112(4), this new section does not include a prohibition on a creditor joining in a bankruptcy petition that has been presented by another creditor. So, if a qualifying creditor obtains the court's permission to present a bankruptcy petition (or if a non-qualifying creditor presents a petition without the court's permission), then all of the debtor's creditors will be able to join in those bankruptcy proceedings. If this leads to the making of a bankruptcy order against the debtor, then the court which made the AO will be required to revoke that AO (see section 112U(4)(b)).

Section 112G – Remedies other than bankruptcy

479. This section sets out the second requirement that must be imposed by an AO on certain creditors. This is similar to the current provision under section 114 of the CCA 1984. It prohibits qualifying creditors from seeking to recover their debt by pursuing any other remedy (that is, other than bankruptcy) without the court's permission. However, regulations may be made under this section to exempt certain creditors from this requirement in appropriate circumstances. For example, exemptions will apply in respect of debts that are a criminal fine, a student loan or that are due under an order made in family proceedings or maintenance assessments made under the Child Support Act 1991. In relation to these particular types of debt, it is appropriate that the creditor should be free to recover the debt from the debtor, even though an AO is in force. These exceptions will be in line with those categories of debt which are non-provable in bankruptcy proceedings. The revised ERO scheme and the new DRO and DRP schemes will have similar exemptions. This ensures a consistent approach, which is essential to facilitate movement between these schemes for those debtors who need it.

Section 112H – Charging of interest etc.

480. This section sets out the third requirement that must be imposed by an AO on certain creditors. Any creditor under a scheduled debt is prevented from charging any interest, fee or charge in respect of the scheduled debt during the life of an order.

Section 112I – Stopping supplies of gas or electricity

481. This section sets out the fourth requirement that must be imposed by an AO on certain creditors – in this case, creditors who are domestic utility suppliers. This largely replicates what would have been section 112A of the CCA 1984, had section 13(5) of the CLSA 1990 been commenced. However, these provisions are limited to imposing restrictions on electricity and gas suppliers because the Water Industry Act 1991 already restricts the powers of water suppliers in relation to domestic supply of water.

Section 112J – Application for an order

482. Unlike the current provisions, which allow the court to make an order on its own initiative, this new section provides that an AO can only be made on the application of the debtor. It also removes the current need for the debtor to have at least one court judgment in respect of any of his debts. This will ensure that a debtor who needs the protection of an AO is able to obtain an AO without first having to wait for one of his creditors to take him to court.

Section 112K – Duration

483. This section differs from the current legislation by setting a maximum overall limit of 5 years on the duration of an AO. At present, AOs are not time limited. Section 112(9) of the CCA 1984, which was to be inserted into that Act by section 13(4) of the CLSA 1990 had it been commenced, limited AOs to a maximum period of 3 years. An order will cease to have effect 5 years after the date on which it was made, unless the court has specified an earlier date in the order. If the court specifies an earlier date when it makes the AO, then it may subsequently extend the length of that order under section 112S (variation of duration), provided that the overall length remains within the 5 year time limit from the making of the order. The court may also revoke an AO before it is due to expire, under section 112U or section 112V (duty and power to revoke order), and in those cases the order will cease to have effect in accordance with the revocation.
484. The intention is to make the AO scheme more effective by providing certainty about the length of the order, as well as an opportunity for a debtor's rehabilitation (because of the fixed term), a reasonable return to creditors and an incentive to maintain the repayments.

Section 112L – Effect on other debt management arrangements

485. This new section defines the relationship between an AO and the other debt management arrangements set out in subsection (6), which are EROs, DROs and DRPs. It provides that when an AO is made, any other debt management arrangement which had effect in relation to the same debtor immediately before it was made will cease to have effect automatically when the AO is made. Provision is also made for the court to notify the provider of the other arrangements as soon as practicable, or as soon as it becomes aware of their existence, of the making of the AO. Similar provisions are incorporated into the revised ERO scheme and the new DRO and DRP schemes. This will ensure that no more than one debt management arrangement has effect in respect of the same debtor at the same time.

Section 112M – Duty to provide information

486. This new section applies as long as an AO is in force and requires a debtor, who is the subject of an AO, to supply information about his earnings and income (including, for example, any cash that he might win or receive as a gift) and his assets and expenditure at intervals to be specified in regulations. The information to be provided must include details of any anticipated changes that are likely to occur before the next statement is due, for example if the debtor knows that he is due to receive a bonus in his next pay. Additionally, debtors will be required to notify the court within a period, again to be specified in regulations (probably 7 – 14 days), before he disposes of any property (including cash) that is above a set value, to be specified in regulations.
487. This new provision is intended to facilitate the court's role in actively managing an AO, for example by exercising its powers to vary or revoke the order where appropriate.

Section 112N – Offence if information not provided

488. This section provides that any failure to provide information, as required under section 112M, is an offence which is punishable by a county court judge who may impose a fine of not more than £250 or imprisonment for not more than 14 days.

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This offence is not a criminal offence; instead it is treated as if it were a contempt of court. The penalty is equivalent to that which applies to a debtor who fails to provide the information required by section 15 of the Attachment of Earnings Act 1971 (see section 23 of that Act).

Section 112O – Existing county court proceedings to be stayed

489. This section provides that any county court proceedings that were pending against the debtor when the AO was made, must be stayed if the following conditions apply:

- the proceedings relate to one of the debtor's qualifying debts and they are not bankruptcy proceedings;
- following the making of the AO, the creditor under that debt is unable to enforce it because of the prohibition referred to in section 112G (remedies other than bankruptcy); and
- the county court, in the proceedings which are to be stayed, has notice of the AO.

490. Where proceedings are stayed under this section, the county court has discretion to allow the creditor any costs incurred in the stayed proceedings. Those costs may be added to the qualifying debt or, if the debt is scheduled to the AO, to the amount scheduled in respect of the debt but only if the court is not under a duty to revoke the order because the total qualifying debts, including the costs, exceeds the prescribed maximum (see section 112U(6)(b)).

Section 112P – Appropriation of money paid

491. This section provides that monies paid by a debtor under an AO will first be appropriated towards court fees and then towards the debts scheduled to the order. So, a debtor need not pay the court fees up front; instead, they can be paid from the monies the debtor pays to the court under the AO.

Section 112Q – Discharge from debts

492. This section places a duty on the court to discharge the debtor from a scheduled debt and to de-schedule the debt where the debt is repaid to the extent provided in the order, even if the debt is not repaid to its full extent. Once all of the scheduled debts have been repaid to the extent required by the order, then the court must revoke that order.

Section 112R – Variation

493. This section provides that the court may vary an AO on its own initiative or on the application of either the debtor or a qualifying creditor. This provision allows the court to take a more pro-active role in the management of the order by being able to react to information received from the debtor under section 112M.

Section 112S – Variation of duration

494. This section makes provision to allow the court to vary the duration of an AO. So, for example, an AO that was due to come to an end after 5 years from the day it was made can be shortened so that instead it comes to an end after 4 years from the day it was made. Similarly, an AO that was due to come to an end after 3 years, can be extended so that it continues to have effect for a further 2 years. But the overall duration of an AO (including any extensions under this section) must not exceed a period of 5 years from the day it was made.

Section 112T – De-scheduling debts

495. This new section enables the court to use its power of variation under section 112R to vary an administration order by de-scheduling the debt, if it appears to the court that it is just and equitable to do so. This will normally be when debts have been incorrectly scheduled to an order.

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Section 112U – Duty to revoke order

496. This section makes provision for the revocation of an order on specified grounds. It places a duty on the court to revoke an AO if it becomes apparent that at the time the order was made, or subsequently, the entry criteria in section 112B were not or are no longer met. That is where the debtor:

- did not have two or more qualifying debts/does not have any qualifying debts;
- had/has a business debt and in either case he is still a debtor under that debt;
- was excluded under the AO, voluntary arrangement or insolvency exclusions (as defined in section 112AH), is now excluded under the voluntary arrangement exclusion or is now the subject of a bankruptcy order;
- was/is now able to pay all of his qualifying debts;
- had/has total qualifying debts exceeding the prescribed maximum; and
- had/has surplus income less than or the same as the prescribed minimum.

Section 112V – Power to revoke order

497. This section gives the court, on its own motion or on the application of either the debtor or a qualifying creditor, a general power to revoke an AO in circumstances where it does not have a duty to do so. This power may be used particularly where a debtor fails to make two payments (whether consecutive or not) required by the order under section 112E or fails to provide information required under section 112M.

Section 112W – Effect of Revocation

498. This section confirms that if an order is revoked under a duty or power in this Part, then it ceases to have effect in accordance with the terms of the revocation.

Section 112X – Notice when order made, varied, revoked etc

499. This section imposes a duty on the court to send notice to all creditors with scheduled debts if and when the following things happen:

- when an AO is made, varied or revoked;
- when a debt is scheduled to the order at any time after it is made;
- when the court itself is given notice that another debt management arrangement has been made (with the consequence that the AO has ceased to have effect automatically).

Section 112Y – Failure to take account of all qualifying debts

500. This section places a duty on the court to schedule an undeclared debt to an AO if the following conditions apply:

- an AO has been made but because of an undeclared debt, the total amount of the debtor's qualifying debts was not properly calculated;
- the undeclared debt is due, whether or not it became due before or after the AO was made; and
- the total debt is less than or the same as the prescribed maximum.

501. If the undeclared debt is not yet due, the court must schedule the debt to the order when it becomes due. Where the inclusion of the debt would result in the total debt exceeding the prescribed maximum, the court must instead revoke the order.



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502. Under this section, the court must take account of any representations (including representations about why a debt should not be scheduled) in accordance with section 112AG(5).

Section 112AA – Main definitions

503. This section explains the meaning of key expressions used in this Part. In particular, it confirms that the terms “administration order” and “debtor” have the meanings given to them in new sections 112A and 112B, respectively. It also defines “qualifying creditor” as a creditor under a qualifying debt and confirms that, subject to the normal rules of court, “proper county court” refers to the court that made the order.

Section 112AB – Expressions relating to debts

504. This section defines a “qualifying debt” as any debt that is not secured against an asset or specified in regulations. A “business debt” is defined as a debt incurred in the course of a business. This section confirms that references to debts include only those debts that have arisen and therefore contingent debts are not included.

Section 112AC – Inability to pay debts

505. This section specifies that a debtor is considered to be unable to repay a debt if, when the debt is due, he fails to pay it (if the debt is repayable by a single payment) or, he fails to make one or more payments (if the debt is repayable by a number of instalments) and is unable to pay the single payment or all of the missed payments.

Section 112AD – Calculating the debtor’s qualifying debts

506. This section requires the court to calculate the total amount of a debtor’s qualifying debts by taking into account all qualifying debts that have arisen before the calculation, including those which are not due to be paid at the time of the calculation (that is, where payment is deferred). This ensures that the court is aware of the true extent of a debtor’s indebtedness. In addition, the section requires regulations to make further provision about how the total amount of a debtor’s qualifying debts is to be calculated and enables regulations to make provision about how the amount of any particular qualifying debt is to be calculated.

Section 112AE – Calculating the debtor’s surplus income

507. This section requires the debtor’s surplus income to be calculated in accordance with regulations which must make provision about what is surplus income (this is likely to be the difference between average income, over a specific period, and justifiable expenditure) and the period by reference to which the debtor’s surplus income is to be calculated. The regulations may allow the court to take into account the debtor’s assets, such as his savings, when calculating his surplus income.

Section 112AF – Debts becoming due

508. This section specifies when a debt, which is repayable by a single repayment or by a number of payments, becomes due. The debt becomes due when the time for making the single payment or the first of the payments is reached.

Section 112AG – Scheduling and de-scheduling debts

509. This section explains when a debt is scheduled to and de-scheduled from an AO. If the amount of the debt and the name of the creditor under the debt is included in a schedule to the order, the debt is scheduled to the order. The debt is de-scheduled when this information is removed from the schedule. The court must not schedule or de-schedule a debt without having regard to any representations from any person about why the debt should not be scheduled or de-scheduled. However, where an undeclared debt is scheduled under section 112Y, the court need not have regard to any representations made by a debtor about the scheduling of that debt. Also, where a debt is de-scheduled

because a debtor is discharged from his debt under section 112Q, the court need not have regard to any representations made by any person.

Section 112AH – The AO, voluntary arrangement and bankruptcy exclusions

510. This section defines the AO, voluntary arrangement and bankruptcy exclusions, which are relevant to the court's power to make an AO (see section 112B(4)). It specifies that a debtor is excluded under the:

- **AO Exclusion** if he currently has an AO, or he previously had an AO within the last 12 months. For this purpose, the 12-month period begins on the day that the previous AO ceased to have effect. But a debtor who has had an AO within the last 12 months is not excluded under this provision if the previous AO (a) ceased to have effect by virtue of another debt management arrangement listed in section 112K(7) coming into force, or (b) was revoked for the reason that the debtor no longer had any qualifying debts (see section 112U(1)(b));
- **Voluntary Arrangement Exclusion** if the debtor is the subject of an interim order under section 252 of the Insolvency Act 1986 (interim court order pending an individual voluntary arrangement) or where he is bound by an individual voluntary arrangement approved under Part 8 of that Act;
- **Bankruptcy Exclusion** if a petition under Part 9 of the Insolvency Act 1986 has been presented in respect of the debtor but has not yet been decided, or if the debtor is an undischarged bankrupt.

Section 112AI – Regulations under this Part

511. This section provides the Lord Chancellor with powers to make regulations under this Part.

512. Subsection (2) of this section enacts Schedule 16.

#### ***Schedule 16: Administration orders: consequential amendments***

513. This Schedule contains a number of amendments to numerous Acts which are consequential as result of the new provisions in Part 6 of the CCA 1984.

514. Subsection (3) of this section specifies that the application of the new provisions do not apply where an AO was made or an application for an AO was made before the day on which the new provisions come into force.

#### ***Section 107: Enforcement restriction orders***

515. Subsection (1) of this section inserts a new Part 6A into the CCA 1984.

Section 117A – Enforcement Restriction Orders

516. Section 117A provides that an enforcement restriction order (“ERO”) is an order which imposes requirements on certain creditors and which may also impose a requirement on the debtor. The requirements which must be imposed on certain creditors are set out in sections 117C to 117E and these are all requirements which restrict the ability of those creditors to take enforcement action whilst an ERO is in force. The requirement which may be imposed on the debtor is set out in section 117F and this is a requirement to make repayments towards certain debts whilst the ERO is in force.

Section 117B – Power to make order

517. This section sets out the conditions that must be met before the court can make an enforcement restriction order in relation to a debtor. This is a new test for making EROs, which introduces the concept of “qualifying debts” together with other new requirements that must be met before an ERO can be obtained. Section 117T provides that a “qualifying debt” is any debt, except for a debt that is secured against an asset,

such as a mortgage, or a debt that falls within a description specified in regulations. The conditions which must be met before an ERO can be made are:

- the debtor must have at least two qualifying debts, and he must be unable to pay at least one of them;
- the debtor must not have any business debts;
- the debtor must not be excluded by the ERO, voluntary arrangement or bankruptcy exclusions as defined by section 117W;
- the debtor must be suffering from a sudden and unforeseen deterioration in his financial circumstances from which there must be a realistic prospect of improvement in financial terms within 6 months from when the order is made.

518. The Civil Procedure Rules 1998 (“CPR”) will govern the procedure for making the order. It is intended that the court should be able to make the order without first giving notice to the creditors. For that reason, section 117B(10) allows the CPR to disapply the requirement for the court to consider any objections before making an order. However, the court will be required to have regard to any objections that a creditor may have after the order has been made and may vary or revoke the order if appropriate, in the light of those objections.

#### 117C – Presentation of bankruptcy petition

519. Sections 117C to 117E set out the requirements that must be imposed by an ERO on certain creditors for as long as the ERO is in force. The first requirement, in section 117C, provides that any qualifying creditor of the debtor is to be prohibited from presenting a bankruptcy petition against that debtor, unless he has the court’s permission. This is similar to the current provision under section 112(4) of the CCA 1984 which applies to administration orders (“AOs”). However, unlike section 112(4), this new section does not include a prohibition on a creditor joining in a bankruptcy petition that has been presented by another creditor. So if a qualifying creditor obtains the court’s permission to present a bankruptcy petition (or if a non-qualifying creditor presents a petition without the court’s permission), then all of the debtor’s creditors will be able to join in those bankruptcy proceedings. If this leads to the making of a bankruptcy order against the debtor, then the court which made the ERO will be required to revoke that ERO (see section 117O(4)(b)). A “qualifying creditor” is a creditor under a qualifying debt (see section 117T(1)).

#### Section 117D – Remedies other than bankruptcy

520. This section sets out the second requirement that must be imposed by an ERO on certain creditors. It re-enacts in part what would have been section 112A(2) of the CCA 1984, which was to be inserted by section 13(5) of the CLSA 1990 had it been commenced. This second requirement prohibits qualifying creditors from seeking to recover their debt by pursuing any other remedy (that is, other than bankruptcy) without the court’s permission. However, in contrast to section 112(4) of the CCA 1984, regulations may be made under this section to exempt certain creditors from this requirement in appropriate circumstances. For example, exemptions will apply in respect of debts that are a criminal fine, a student loan or that are due under an order made in family proceedings or maintenance assessments made under the Child Support Act 1991. In relation to these particular types of debt, it is appropriate that the creditor should be free to recover the debt from the debtor, even though an ERO is in force. These exceptions will be in line with those categories of debt which are non-provable in bankruptcy proceedings. The revised AO scheme and the new DRO and DRP schemes will have similar exemptions. This ensures a consistent approach, which is essential to facilitate movement between these schemes for those debtors who need it.

#### Section 117E – Stopping supplies of gas or electricity

521. This section sets out the third requirement that must be imposed by an ERO on certain creditors, in this case creditors who are domestic utility suppliers. Again this largely replicates what would have been section 112A of the County Court Act 1984, had section 13(5) of the CLSA 1990 been commenced. However, these provisions are limited to imposing restrictions on electricity and gas suppliers because the Water Industry Act 1991 already restricts the powers of water suppliers in relation to domestic supply of water.

Section 117F – Repayment requirement

522. This section sets out the requirement that may be imposed by an ERO on the debtor. This gives the court discretion to order the debtor to make payments towards one or more of his qualifying debts, whilst the ERO is in force, provided that the debtor has sufficient surplus income. Regulations will make provision about what is surplus income (which is likely to be the difference between average income and justifiable expenditure, in common with the AO provisions) and specifies that assets, such as the debtor's savings, may be taken into account when making this calculation. It also allows the court to vary the repayment requirement of its own initiative or on the application of the debtor or a qualifying creditor.

Section 117G – Application for an order

523. This section specifies that only a debtor can apply for an ERO and that a debtor can make an application regardless of whether any of his creditors has obtained a court judgment in respect of any of his debts. (Under the current provisions in the CCA 1984, a judgment debt is a precondition to the court making an AO or ERO). This will ensure that a debtor who needs the protection of an ERO is able to obtain an ERO without first having to wait for one of his creditors to take him to court.

Section 117H – Duration

524. This section provides for a maximum overall time limit of 12 months on the duration of an ERO. An order will cease to have effect 12 months after the date on which it was made, unless the court has specified an earlier date in the order. If the court specifies an earlier date when it makes the ERO, then it may subsequently extend the length of that order under section 117N (variation of duration), provided that the overall length remains within the 12 month time limit from the making of the order. The court may also revoke an ERO before it was due to expire, under section 117O or section 117P (duty and power to revoke order), and in those cases the order will cease to have effect in accordance with the revocation.

Section 117I – Effect on other debt management arrangements

525. This new section defines the relationship between an ERO and the other debt management arrangements set out in subsection (6), which are AOs, DROs and DRPs. It provides that, when an ERO is made, any other debt management arrangement which had effect in relation to the same debtor immediately before it was made will cease to have effect automatically when the ERO is made. Provision is also made for the court to notify the provider of the other arrangements as soon as practicable, or as soon as it becomes aware of their existence, of the making of the ERO. Similar provisions are incorporated into the revised AO scheme and the new DRO and DRP schemes. This will ensure that no more than one debt management arrangement has effect in respect of the same debtor at the same time.

Section 117J – Duty to provide information

526. This new section applies as long as an ERO is in force and requires a debtor, who is the subject of an ERO, to supply information about his earnings and income (including, for example, any cash that he might win or receive as a gift) and his assets and expenditure at intervals to be specified in regulations. The information to be provided must include details of any anticipated changes that are likely to occur before the next statement

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is due, for example if the debtor knows that he is due to receive a bonus in his next pay. Additionally, debtors will be required to notify the court within a period, again to be specified in regulations (probably 7 – 14 days), before he disposes of any property (including cash) that is above a set value, to be specified in regulations.

527. This new provision is intended to facilitate the court's role in actively managing an ERO, for example by exercising its powers to vary or revoke the order where appropriate.

Section 117K Offence if information not provided

528. This section provides that any failure to provide information, as required under section 117J, is an offence which is punishable by a county court judge who may impose a fine of not more than £250 or imprisonment for not more than 14 days. This offence is not a criminal offence; instead it is treated as if it were a contempt of court. The penalty is equivalent to that which applies to a debtor who fails to provide the information required by section 15 of the Attachment of Earnings Act 1971 (see section 23 of that Act).

Section 117L – Existing county court proceedings to be stayed

529. This section provides that any county court proceedings, that were pending against the debtor when the ERO was made, must be stayed if the following conditions apply:
- the proceedings relate to one of the debtor's qualifying debts and they are not bankruptcy proceedings;
  - following the making of the ERO, the creditor under that debt is unable to enforce it because of the prohibition referred to in section 117D (remedies other than bankruptcy); and
  - the county court, in the proceedings which are to be stayed, has notice of the ERO.
530. Where proceedings are stayed under this section, the county court has discretion to allow the creditor any costs incurred in the stayed proceedings and those costs may be added to the qualifying debt.

Section 117M – Charges

531. This new provision prohibits qualifying creditors from making any charge, other than interest or charges relating to issues before an ERO came into existence, for the period while an ERO is or was in force. So the prohibition remains in place even after the ERO has ceased to have effect. This provision is designed to prevent creditors, who are prohibited from enforcing their debts whilst an ERO has effect, from penalising the debtor under the ERO by imposing additional penalty charges or interest for his late payment of the relevant debt. If the creditor tries to impose any such charge, in breach of this section, then that charge will be unenforceable.

Section 117N – Variation of duration

532. This section makes provision to allow the court, on its own initiative or on the application of the debtor or a qualifying creditor, to vary the duration of an ERO. So, for example, an ERO that was due to come to an end after 12 months can be shortened so that instead it comes to an end after 8 months from the day it was made. Similarly, an ERO that was due to come to an end after 6 months, can be extended so that it continues to have effect for a further 3 months. But the overall duration of an ERO (including any extensions under this section) must not exceed a period of 12 months from the day it was made.

Section 117O – Duty to revoke order

533. This section makes provision for the revocation of an order on specified grounds. It places a duty on the court to revoke an ERO if it becomes apparent that at the time that

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the order was made, or subsequently, the entry criteria in section 117B were not or are no longer met. That is where the debtor:

- did not have two or more qualifying debts/does not have any qualifying debts;
- had/has a business debt and in either case he is still a debtor under that debt;
- was excluded under the ERO, voluntary arrangement or insolvency exclusions (as defined in section 117W), is now excluded under the voluntary arrangement exclusion or is now the subject of a bankruptcy order;
- was/ is now able to pay all of his qualifying debts;
- was not/is no longer suffering from a sudden and unforeseen deterioration in his financial circumstances; and
- did not have/no longer has realistic prospects of improvement in his financial circumstances.

534. Additionally, the court must revoke an ERO if it becomes apparent that at the time the order was made it was not in fact fair and equitable to make the order or where it is not now fair and equitable for the order to continue to have effect.

Section 117P – Power to revoke order

535. This section gives the court, on its own motion or on the application of either the debtor or a qualifying creditor, a general power to revoke an ERO in circumstances where it does not have a duty to do so. This power may be used particularly where a debtor fails to comply with a repayment requirement that is (or was) included in the order under section 117F or fails to provide information required under section 117J.

Section 117Q – Effect of revocation

536. This section confirms that if an order is revoked under a duty or power in this Part, then it ceases to have effect in accordance with the terms of the revocation.

Section 117R – Notice of order

537. This section imposes a duty on the court to send notice to all qualifying creditors if and when the following things happen:

- when an ERO is made, varied or revoked;
- when the court itself is given notice that another debt management arrangement has been made (with the consequence that the ERO has ceased to have effect automatically).

Section 117T – Main definitions

538. This section explains the meaning of key expressions used in this Part. In particular, it confirms that the terms “enforcement restriction order” and “debtor” have the meanings given to them in new sections 117A and 117B, respectively. It also defines “qualifying creditor” as a creditor under a qualifying debt and confirms that, subject to the normal rules of court, “proper county court” refers to the court that made the order.

Section 117U – Expressions relating to debts

539. This section defines a “qualifying debt” as any debt that is not secured against an asset or specified in regulations. A “business debt” is defined as a debt incurred in the course of a business. This section confirms that references to debts include only those debts that have arisen and therefore contingent debts are not included.

Section 117V – Inability to pay debts

540. This section specifies that a debtor is considered to be unable to repay a debt if, when the debt is due, he fails to pay it (if the debt is repayable by a single payment) or, he fails to make one or more payments (if the debt is repayable by a number of instalments) and is unable to pay the single payment or all of the missed payments.

Section 117W – The ERO, voluntary arrangement and bankruptcy exclusions

541. This section defines the ERO, voluntary arrangement and bankruptcy exclusions, which are relevant to the court's power to make an ERO (see section 117B(4)). It specifies that a debtor is excluded under the:

- **ERO Exclusion** if he currently has an ERO, or he previously had an ERO within the last 12 months. For this purpose, the 12-month period begins on the day that the previous ERO ceased to have effect. But a debtor who has had an ERO within the last 12 months is not excluded under this provision if the previous ERO (a) ceased to have effect by virtue of another debt management arrangement listed in section 117H(7) coming into force, or (b) was revoked for the reason that the debtor no longer had any qualifying debts (see section 117O(1)(b));
- **Voluntary Arrangement Exclusion** if the debtor is the subject of an interim order under section 252 of the Insolvency Act 1986 (interim court order pending an individual voluntary arrangement) or where he is bound by an individual voluntary arrangement approved under Part 8 of that Act;
- **Bankruptcy Exclusion** if a petition under Part 9 of the Insolvency Act 1986 has been presented in respect of the debtor but has not yet been decided, or if the debtor is an undischarged bankrupt.

Section 117X – Power to make regulations

542. This section empowers the Lord Chancellor to make regulations under this Part.

### ***Section 108: Debt relief orders and debt relief restrictions orders etc***

543. **Section 108** gives effect to Schedules 17, 18 and 19 and makes provision for the addition of a new Part 7A of the Insolvency Act 1986 and additional Schedules (Schedule 4ZA on the conditions to be met for a DRO and Schedule 4ZB relating to debt relief restrictions orders) to that Act. These provisions relate to the operation of a new individual insolvency procedure, the debt relief order (“DRO”).

### ***Schedule 17 – Part 7A to the Insolvency Act 1986***

544. **Schedule 17** contains the text of new Part 7A to be inserted into the Insolvency Act 1986.

Section 251A: Debt Relief Orders

545. Only individuals who are unable to pay their debts may apply for a debt relief order. The section also identifies the debts to which a DRO may apply - which are called "qualifying debts" in the Act. The debts must be for an identifiable amount of money and must not be secured or within any description of debt that may be prescribed by order as being excluded from being a qualifying debt.

Section 251B: Making of application

546. Section 251B provides for the way in which the debtor must apply to the official receiver for an order. The application must be made through an approved intermediary. The term “approved intermediary” is defined later in section 251U. The section sets out some of the detail about the individual's affairs that must be included in an application for a DRO, and makes provision for the individual insolvency rules made under section 412 to prescribe the form and manner in which the application should be made and the information that must be supplied in support of the application.

Section 251C: Duty of official receiver to consider and determine application

547. Once an application has been made the official receiver must decide whether to make, refuse or stay the application pending further enquiries. This section describes the steps the official receiver should take when an application for a DRO has been made. It allows the official receiver to stay his consideration of the application until he receives answers to any queries raised by him with the debtor.
548. The section sets out the circumstances in which the official receiver must refuse the application (if he is not satisfied that the debtor meets the criteria for a DRO) and also that he may refuse it if the application does not satisfy the requirements imposed by section 251B or if queries raised with the debtor have not been answered to the official receiver's satisfaction. If the official receiver refuses the application he must give reasons to the debtor. If he does not refuse the application then he must make the order.

Section 251D: Presumptions applicable to the determination of an application

549. In order to ensure that there is a uniform approach to the order making process and that the great majority of applications can be decided quickly, the official receiver must apply certain presumptions when determining an application for a DRO. This section requires him to presume that the debtor meets the requirements for a DRO if it appears to be the case from information supplied in the application and he has no reason to believe that the information supplied is inaccurate or that the debtor's circumstances have changed since the application date.
550. The official receiver must also presume that the debtor meets the conditions as to eligibility as set out in Schedule 4ZA providing he has no reason to believe that incomplete or inaccurate information has been supplied in the application or in support of it. The official receiver may also presume that the debts specified at the date of the application are qualifying debts unless he has reason to believe otherwise.
551. It is expected that the involvement of authorised intermediaries in filling in and submitting application forms means that most applications will be well-founded. This section allows the official receiver to make orders where the application appears to be in order without considering the case in any more detail. However, where an objection is made to the order or for any reason the official receiver discovers that the order arguably should not have been made, the official receiver will be expected to look into the case in far more detail. That is thought to provide adequate protection for creditors and will ensure that the administrative costs, and hence the application fees, can be kept as low as possible.

Section 251E: Making of debt relief orders

552. This section makes provision for the form of the DRO, including some of the matters that must be included in the order, for example a list of the debtor's qualifying debts and entry of its details on the individual insolvency register provided for by the Insolvency Act 1986. It also makes provision for the steps that the official receiver must take once the order has been made, including providing a copy of the order to the debtor, and allows for rules to prescribe other steps he must take in particular with regard to notifying creditors and informing them of the grounds on which they may object.

Section 251F: Effect of debt relief order on other debt management arrangements

553. This section provides that where a DRO is made, any debt management arrangements, as defined, that were in place at the time will cease to be in force.

Section 251G: Moratorium from qualifying debts

554. Section 251G further sets out the effect of a DRO. Once the order is entered onto the register, a moratorium in respect of the debts specified in the order takes effect. During



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the moratorium creditors specified in the order are prohibited from taking proceedings to enforce the debt or present a bankruptcy petition in relation to that debt, except with leave of the court.

Section 251H: The moratorium period

555. In most cases, the moratorium period is one year from the date of entry on the register. However, the order may be terminated early for example if the debtor's financial circumstances change such that he can make arrangements to pay his creditors, or if he has been found to have provided misleading information on his application.
556. The section makes provision for the moratorium period to be extended by the official receiver or the court and the circumstances in which an extension is permitted. Such circumstances include carrying out or completing an investigation into the debtor's affairs (only with the permission of the court) or providing the debtor with the opportunity to make arrangements to pay his creditors before revoking the order.

Section 251I: Discharge from qualifying debts

557. Section 251I provides for the debtor to be discharged from his qualifying debts specified in the order at the end of the moratorium period, and the circumstances in which the debtor will not be discharged from the debts – in particular if the moratorium period is terminated early. The debtor will not be discharged from any debts listed in the order that were incurred through fraud. The section also specifies that discharge of the debtor from the debts does not release any other person from their liability for the debts.

Section 251J: providing assistance to official receiver etc

558. This section sets out the requirements imposed on the debtor with regard to assisting the official receiver in carrying out his functions. It requires the debtor to provide the official receiver with information about his affairs and attend on the official receiver. The requirement extends so far as the official receiver may reasonably require in order to carry out his functions in relation to the application or the debt relief order made as a result of it. The debtor is also under a duty to notify the official receiver of changes in his circumstances during and before the moratorium period. He must also notify the official receiver if he becomes aware of any errors or omissions in his application.

Section 251K: Objections and Investigations

559. Creditors are permitted to object to the making of the order on specified grounds and this section makes provision for that. In particular, the section makes provision for any person specified in the order as a creditor to object to the making of the order or his inclusion in the order or to details of the debt specified. It also gives details of how the objection must be made and requires the official receiver to consider the objection. It allows the official receiver to carry out an investigation if it seems appropriate and gives a power to the official receiver to require any person to give him information and assistance.

Section 251L: Power of official receiver to revoke or amend a debt relief order

560. This section sets out the circumstances in which the official receiver may revoke the order and gives him a power to amend the order during the moratorium period to correct errors and omissions. Revocation may take place when information provided by the debtor to the official receiver turns out to be incomplete or misleading, or where the debtor fails to comply with his duties to provide information or attend on the official receiver. The order may also be revoked if the official receiver ought not have made the order because he ought not have been satisfied the criteria were met and also if the debtor's income and property levels change (for example following a windfall) after the order has been made and the debtor would no longer meet the criteria for obtaining an order.

Section 251M: Powers of court in relation to debt relief orders

561. This section enables persons who are dissatisfied with the actions of the official receiver to apply to the court and for the court to give directions or make any order it thinks fit. It also enables the official receiver to make an application for directions or an order in relation to any matter arising in connection with the DRO or an application for a DRO. An application to the court may, subject to anything contained in the rules, be made at any time.

Section 251N: Inquiry into debtor's dealings and property

562. This section enables the court, on the application of the official receiver, to require the debtor, the debtor's spouse, former spouse, civil partner or former civil partner or any person appearing to be able to give information or assistance to the court to appear before the court. There are sanctions for failure to appear without reasonable excuse – the court may issue a warrant for the person's arrest or order the seizure of books, papers and other items. It is not expected that there will be a frequent use of this power, which is aimed at a very small number of cases where misconduct – for example the hiding of assets – is suspected and the debtor has refused to provide information to the official receiver.

Section 251O: False representations and omissions

563. In order that the official receiver can determine whether a DRO should be made, the debtor must provide complete and accurate information about his affairs. Similarly, the debtor remains under an obligation to provide information to the Official Receiver once the DRO is made. This section provides that a debtor who deliberately provides false information or omits pertinent information commits an offence.

Section 251P: Concealment or falsification of documents

564. This section provides that a failure to produce books, papers or other documents to the official receiver is an offence. Similarly, preventing such records being produced, or their concealment, destruction or falsification will also be an offence. The offence may be committed before the application for the DRO has been made, and during both the application process and the moratorium period, and it is irrelevant that the order may have been revoked subsequent to an offence being committed.

Section 251Q: Fraudulent disposal of property

565. In order to meet the eligibility criteria for a DRO, the debtor must meet various conditions including a limit on the value of property he owns. A debtor who disposes of property, whether in an attempt to meet the eligibility criteria or to deny creditors access to that property, is clearly acting in an inappropriate manner. The section ensures that a debtor who obtains a DRO is guilty of an offence if he fraudulently disposes of any property during the two years before the application date or during the moratorium period. It is irrelevant that the order may have been revoked subsequent to an offence being committed.

Section 251R: Fraudulent dealing with property obtained on credit

566. This section makes it an offence if the debtor disposes of property obtained on credit for which he has not paid, and similarly penalises the knowing recipient of such property. No offence is committed if the disposal or acquisition was in the ordinary course of the debtor's business, but particular attention will be paid to the price paid for the property. The offence may be committed before the application for the DRO has been made, and during the application process.

Section 251S: Obtaining credit or engaging in business

567. This section makes it an offence for the debtor to obtain credit (either alone or jointly with another person) to the extent of a prescribed amount, or to trade in a name other than that which the DRO was made, without disclosing his status. His status is that there is a moratorium in force in relation to his qualifying debts by virtue of a DRO or that

there is a debt relief restrictions order in force in relation to him. Subsection (5) specifies that “obtaining credit” includes obtaining goods under a hire purchase agreement and also payment in advance for the supply of goods and services.

Section 251T: Offences: supplementary

568. This section sets out who may institute proceedings for an offence under this Part and the penalties imposed on a person who commits such an offence. The section also makes it clear it is not a defence that the conduct complained of was done outside England and Wales.

Section 251U: Approved intermediaries

569. In order to obtain a debt relief order, the debtor must make his application to the official receiver through an approved intermediary. This section defines an approved intermediary and makes provision for rules to specify the types of activities that should be undertaken by an intermediary.
570. It also states that authorisation will be granted by a competent authority designated by the Secretary of State to grant authorisations, and allows for regulations to make provision as to the procedure for designating persons to be competent authorities, the types of persons who may not be authorised to act as approved intermediaries, the procedure for dealing with applications to competent authorities for authorisation and the withdrawal of designation to act as a competent authority.

Section 251V: Debt relief restrictions orders and undertakings

571. This section gives effect to Schedule 4ZB, which makes provision about debt relief restrictions orders. Such orders will be very similar in operation and effect as the existing bankruptcy restriction orders.

Section 251W: Register of debt relief orders etc

572. Section 251W requires the Secretary of State to establish and maintain a register of DROs, debt relief restrictions orders and debt relief restriction undertakings.

Section 251X: Interpretation

573. This section defines the meaning of various expressions used in this Part of the Insolvency Act 1986.

### ***Schedule 18: Schedule 4ZA to the Insolvency Act 1986***

574. [Schedule 18](#) contains the text of new Schedule 4ZA to be inserted into the Insolvency Act 1986. Schedule 4ZA sets out the conditions for making a debt relief order.

#### **Part 1 - Conditions which must be met**

575. This part of the schedule sets out conditions that the debtor must meet in order to obtain a DRO. The debtor must be domiciled in England and Wales on the application date or at any time during the period of three years ending with that date have been ordinarily resident or carried on business in England and Wales. He must not be an undischarged bankrupt, subject to an individual voluntary arrangement or a bankruptcy restrictions order. Neither must he be subject to a debt relief restrictions order or have had a debt relief order made within the 6 years prior to the determination date. If the debtor is subject to a bankruptcy petition that petition must be disposed of before a debt relief order can be made. The schedule imposes limits on the permitted level of overall indebtedness (the amount of which is prescribed in an order), a limit on the debtor's permitted surplus monthly income (also prescribed in an order) and a limit on the value of the debtor's property (also to be prescribed in an order).

## **Part 2 - Other conditions**

576. This part of the schedule sets out other conditions which the debtor must meet in order to obtain a DRO, specifically that he must not have entered into a transaction at an undervalue or given a preference to another person within the two years prior to the application date, and the determination date. This is in order to avoid a situation where the debtor has disposed of his assets in order to meet the permitted criteria for obtaining a debt relief order, and to protect the position of creditors.

### ***Schedule 19: Schedule 4ZB to the Insolvency Act 1986***

577. Debtors who are guilty of misconduct that has in some way contributed to their insolvency will be subject to an enforcement regime that encompasses restrictions orders in the same way as bankruptcy. Schedule 19 sets out who may apply for a debt relief restrictions order or undertaking, possible grounds for obtaining one and gives details as to the timing of an application, the duration of the order or undertaking. Such orders may last from 2-15 years and will serve to protect the public from the culpable debtor. Whilst subject to a restrictions order, the debtor will remain subject the same disabilities as those imposed by the original order – for example he will not be able to obtain credit beyond the prescribed amount without disclosing his status.

### ***Section 109: Debt management schemes***

578. This section defines “debt management scheme” as used in this Chapter.
579. Subsections (2) to (4) set out conditions that must be met by all schemes that are seeking approval. Schemes must apply only to individual debtors (i.e. not companies or partnerships) who do not have any debts incurred in the course of business. Schemes may be open to all such individuals or to particular categories (as defined by the particular scheme). Schemes must also allow any debtor to whom the scheme applies to ask that a DRP be arranged. Where such a request is made, the scheme operator, (or an authorised person under the scheme), must decide whether a DRP is appropriate for the debtor (in accordance with the terms of the scheme, some of which may be prescribed under section 111), and if so, arrange the plan.
580. Subsection (5) specifies that the operator of an approved scheme must be a body of persons, (for example, a company or a partnership rather than an individual). Therefore it would be possible for a body such as Citizens Advice, or an existing repayment scheme provider such as the Consumer Credit Counselling Service or Payplan, or for a private company, to operate an approved scheme. But it would not be possible for an individual to do so.

### ***Section 110: Debt repayment plans***

581. This section defines “debt repayment plan” as used in this Chapter. Subsections (2) to (4) outline conditions that must be satisfied by a plan.
582. Subsection (2) introduces the concept of “qualifying debts” and provides that the plan must specify all of the debtors “qualifying debts”. Section 132 provides that a “qualifying debt” is any debt, except for a debt that is secured against an asset, such as a mortgage, or which cannot, by virtue of the terms of the DMS (i.e. terms set by the scheme operator), be included in the plan. (Regulations under section 111 could have the effect of prescribing other classes of debt that may not be included by any scheme, by making such terms a condition of approval).
583. Subsection (3) requires the plan to provide for full or partial payment of the debts specified in accordance with the plan.
584. Subsection (4) makes it clear that it does not matter if a plan requires different amounts to be paid in respect of a specified debt at different times or the payments are insufficient to satisfy the debt in full. (Section 114 provides that in these circumstances

the remainder of the debt would be written off provided that the debtor had complied with the terms of the plan).

### ***Section 111: Approval by supervising authority***

585. This section enables a supervising authority (see section 129) to approve DMSs. It also permits the Lord Chancellor to make regulations prescribing both the conditions that must be satisfied for a scheme to be approved and any considerations that the authority must or must not take into account when considering a request for approval. These conditions and considerations may, in particular, relate to any of the matters listed in Schedule 21. These include the constitution, governance, size and financial standing of the scheme operator, and the terms and operation of the DMS. Regulations could, for example, specify minimum levels or periods of repayment.

### ***Schedule 21 – Regulations under sections 111 and 113***

586. This Schedule specifies provisions that may be made in regulations as to conditions or considerations about the approval of a scheme under section 111, and as to the terms of approval of a DMS under section 113.

### ***Section 112: Applications for approval***

587. This section allows the Lord Chancellor to make regulations specifying an application procedure for the approval of DMSs, and provides that such regulations may enable a fee to be charged for an approval application.

### ***Section 113: Terms of approval***

588. This section provides that an approval will be subject to terms that may be specified in regulations or in the terms of the approval itself. Such terms might include the duration of the approval, (which could be given for a defined period, for example, for 5 years). Different types of schemes might be approved for different periods. On the expiry of an approval, a fresh approval could be sought. Such regulations might also make provision as to termination of an approval other than by expiry, (for example, termination of an approval if terms of the approval are breached). Other terms to be specified in regulations could include particular requirements that may be imposed on the scheme operator covering such matters as the continued operation of the scheme, and the provision of reports relating to the operation of a scheme.

### ***Section 114: Discharge from specified debts***

589. This section specifies that a debtor is discharged from the debts specified in the plan only when all of the payments required under the plan have been made. This allows debts to be partially written off, providing the terms of the plan have been complied with and all the necessary repayments made.

### ***Section 115: Presentation of bankruptcy petition***

590. **Sections 115 to 118** impose requirements on certain creditors during the currency of a DRP or during a period of protection. (Period of protection is defined at section 133). These sections are based on similar provisions for AOs and EROs (set out at Chapters 1 and 2 of Part 5 of the Act respectively).
591. The first requirement, in section 115, provides that any qualifying creditor of the debtor (section 131 defines “qualifying creditor”) is to be prohibited from presenting a bankruptcy petition against that debtor, during the currency of a DRP, unless regulations provide otherwise or he has the permission of a county court to do so. This section also defines the currency of the plan as beginning when the plan first has effect and ending when the plan ceases to have effect.

***Section 116: Remedies other than bankruptcy***

592. This section sets out the second requirement. It prohibits, during a period of protection, qualifying creditors from seeking to recover their debt by pursuing any other remedy (that is, other than bankruptcy), unless regulations provide otherwise or the creditor has permission of a county court.

***Section 117: Charging of interest etc.***

593. This section sets out the third requirement; during a period of protection, qualifying creditors are prohibited from charging any interest, fee or other charge in respect of a qualifying debt unless regulations provide otherwise or the creditor has permission of a county court.

***Section 118: Stopping supplies of gas or electricity***

594. This section sets out the fourth requirement. In this case, during a period of protection, domestic utility creditors (as defined in subsection (2)) must not stop the supply of gas or electricity or the supply of any associated services unless one of the exemptions mentioned in subsections (4) to (7) applies.

***Section 119: Existing county court proceedings to be stayed***

595. This section provides that any county court proceedings that were pending against the debtor when the DRP was arranged, must be stayed if the following conditions are met:

- the proceedings relate to a qualifying debt of the debtor's and they are not bankruptcy proceedings;
- the creditor under the debt is unable to enforce it because of the prohibition referred to in section 116 (remedies other than bankruptcy); and
- The county court, in the proceedings, which are to be stayed) has notice of the DRP.

596. Where proceedings are stayed under this section, the county court has discretion to allow the creditor any costs incurred in the stayed proceedings. A scheme operator may, if asked to do so by the debtor or creditor, add those costs to the amount specified in the plan in respect of that debt so long as the operator is not under a duty to terminate the plan (for example, because the new total debt exceeds the scheme's maximum).

***Section 120: Registration of plans***

597. This permits regulations to provide for the registration of either an application for a plan to be made or a plan coming into existence in the register of judgments, orders and fines, and enables section 98 of the Courts Act 2003 to be amended by such regulations for this purpose. Registration would provide a mechanism by which potential lenders could check whether a person had applied for a DRP or was currently subject to a DRP.

***Section 121: Other debt management arrangements in force***

598. This section defines the relationship between DRPs and the other debt management arrangements set out in subsection (7), which are AOs, EROs and DROs. It provides that when a DRP is arranged, it cannot come into effect unless any other debt management arrangement which had effect in relation to the same debtor immediately before the plan was arranged ceases to have effect.

599. Subsection (3) provides that any provision (whether in the plan or elsewhere) about when the plan is to come into effect is subject to the provisions of this section.

600. Provision is also made for the scheme operator to notify the provider of the other arrangements as soon as practicable, or as soon as it becomes aware of their existence, of the approval of the plan. Similar provisions are incorporated in the revised AO and

ERO schemes and in the new DRO scheme. This will ensure that no more than one debt management arrangement has effect in respect of the same debtor at the same time.

### ***Section 122: Right of appeal***

601. This section introduces the term “affected creditor” which is defined as a creditor with a debt that has been included in the DRP.
602. Subsection (2) allows affected creditors to appeal to a county court against the fact that a plan has been arranged, that their debt has been included in the plan or the terms of the plan but subsection (3) makes it clear that affected creditors may not appeal against the inclusion, in a DRP, of a debt owed to another creditor.

### ***Section 123: Dealing with appeals***

603. This section applies if an appeal is made to a county court under section 122. It provides that the court may order the scheme operator to:
- reconsider the decision to arrange a plan;
  - reconsider the terms of the plan;
  - modify the plan; or
  - revoke the plan.
604. Additionally, this section allows the court to make interim provisions in respect of the period before the appeal is determined.

### ***Section 124: Charges by operator of approved schemes***

605. This section allows the operator of an approved scheme to recover its costs from either debtors or affected creditors (defined in section 131(1)) or both. The definition of “costs” in subsection (2) will ensure that only reasonable costs are charged.

### ***Section 125: Procedure for termination***

606. This section allows regulations to specify a procedure for terminating the approval of a scheme. This procedure may require the supervising authority to give notice and reasons, conditions that must be met and a period that must elapse before the termination takes effect.

### ***Section 126: Terminating an approval***

607. This section provides that a scheme may only be terminated in accordance with the following:
- any terms which the approval is subject to under section 113;
  - any provisions made in regulations under section 125; or
  - any other provisions made under this Chapter.

### ***Section 127: Alternatives to termination***

608. This section allows regulations to provide for alternatives to termination of an approval. Such regulations may provide for the transfer of the operation of a scheme to another body (to include transfer of the scheme from the scheme operator to the supervising authority itself). Such a transfer might be appropriate in order to protect debtors and creditors where, for example, the operator of the scheme no longer meets the terms of approval, but the scheme itself does comply with any relevant terms.



***Section 128: Effects of end of approval***

609. Where the approval of a scheme comes to an end (for whatever reason), this section enables regulations to specify what effect this will have on existing DRPs under that scheme. The section provides an important safeguard for debtors by allowing such regulations to specify that plans can continue to operate, where appropriate, as though the scheme is still approved or as though the plan had been made under a different approved scheme.

***Section 129: The supervising authority***

610. This section defines the “supervising authority” (the person who approves DMSs), and specifies that that the supervising authority can be either the Lord Chancellor or a person authorised by the Lord Chancellor. This section therefore enables the Lord Chancellor to delegate his approval powers (for example, such powers might be delegated to a judicial or existing national advice body).

***Section 130: Regulations***

611. This section empowers the Lord Chancellor to make regulations under this Chapter. Regulations will be subject to the affirmative resolution parliamentary procedure on the first occasion they are made under any section or thereafter if regulations are made under section 118(6), if regulations under section 120 amend primary legislation or if regulations amend sections 122 or 123. Otherwise they will be subject to the negative procedure.

***Section 131: Main definitions***

612. The section sets out the main definitions for this Chapter.

***Section 132: Expressions relating to debts***

613. This section defines a “qualifying debt” as any debt that is not secured against an asset or which cannot, by virtue of the terms of the DMS, be included in the plan. A “business debt” is defined as a debt incurred in the course of a business.

***Section 133: Periods of protection***

614. This section defines a “period of protection” as a period beginning when a debtor asks for a plan to be arranged and, if a plan is not arranged, ending when the decision not to arrange the plan is made. Where a plan is made, the period of protection ends when the plan ceases to have effect. The definition is however subject to subsection (4) which provides that where other debt management arrangements are in force immediately preceding a debtor’s request for a plan to be arranged, the period of protection does not begin until the plan is both arranged and comes into effect. This prevents debtors being simultaneously subject to different schemes.