

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY PROCEEDINGS (MONETARY LIMITS)
(AMENDMENT) ORDER 2009

2009 No. 465

1. This explanatory memorandum has been prepared by Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The eligibility of an applicant for a Debt Relief Order is amongst other things dependent upon the level of debt to which he or she is subject; the level of monthly surplus income and the value of any property which he or she possesses. This Order prescribes these limits: £15,000 is the maximum amount of debt; £50 is the maximum amount of surplus monthly disposable income and £300 the maximum value of property.

- 2.2 The Order also prescribes £500 as the maximum amount of credit which a person in respect of whom a debt relief order is made may obtain without disclosure of his or her status.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument is one of a group of instruments which, in whole or in part, give effect to the introduction of Debt Relief Orders.

- 3.2 The other instruments are:

- The Tribunals, Courts and Enforcement Act 2007 (Commencement No.7) Order 2009
- The Tribunals, Courts and Enforcement Act 2007 (Transitional Provision) Order 2009
- The Debt Relief Orders (Designation of Competent Authorities) Regulations 2009
- The Insolvency (Amendment) Rules 2009
- The Insolvency Proceedings (Fees) (Amendment) Order 2009

4. **Legislative Context**

- 4.1 The Order forms part of a group of instruments which give effect to the introduction of Debt Relief Orders under a new Part 7A of, and various

Schedules to, the Insolvency Act 1986 (inserted into that Act by the Tribunals, Courts and Enforcement Act 2007).

4.2 The relevant sections of the Tribunals, Courts and Enforcement Act 2007 Act are commenced by the Tribunals, Courts and Enforcement Act 2007 (Commencement No.7) Order 2009. Applications for Debt Relief Orders must be made through approved intermediaries appointed by designated competent authorities.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 A Debt Relief Order is an individual insolvency solution aimed at those debtors with relatively low liabilities, no realisable assets and little or no disposable income with which to make contributions to creditors. Such a debtor is financially excluded from current debt relief solutions. It is intended that Debt Relief Orders will be cheaper to access than bankruptcy and therefore more accessible to this population. A person seeking a Debt Relief Order must apply via an approved intermediary, that is an experienced debt adviser and this ensures the applicant has had debt advice and that a Debt Relief Order is the most appropriate option. The Official Receiver considers the application and if the Order is made the applicant will be subject to the same restrictions as apply in bankruptcy and there may be civil and criminal proceedings if the process is abused. Further details are contained in the Explanatory Memorandum attached to The Insolvency (Amendment) Rules 2009.

7.2 If a person has more than £50 per month after essential household expenditure it is considered that they would be able make a monthly contribution to their creditors and therefore would be able to access other forms of debt relief, such as the revised County Court Administration Orders also introduced by the Tribunals Courts and Enforcement Act 2007. In bankruptcy, surplus income of more than £50 per month would result in the Official Receiver seeking a contribution towards debts.

7.3 It is intended that Debt Relief Orders are for those with low liabilities. Furthermore to set the liability limit at £15,000 aligns Debt Relief Orders with the revised County Court Administration Orders, also proposed to have a £15,000 liability limit.

7.4 Debt Relief Orders are aimed at those individuals who are unable to access other forms of debt relief including bankruptcy due to the entry fees. If a person has assets of more than £300 they would be able to consider bankruptcy as an option.

- **Consolidation**

7.5 Not applicable.

8. Consultation outcome

8.1 Whilst the primary legislation was being developed The Insolvency Service carried out a formal consultation in 2005 ‘Relief for the Indebted – an Alternative to Bankruptcy,’ Which can be accessed on http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultationpaperwithnewannex1.pdf

8.2 The consultation was sent to approximately 350 representatives from the advice sector, credit industry, business and the public. It was open for twelve weeks and 70 responses were received. The monetary limits were included within that consultation.

8.3 Of 62 respondents, 30 thought a liability limit of £15,000 or less was appropriate. This was the largest number of respondents for any of the options suggested.

8.4 Of 56 respondents, 54 felt there should be a limit on the amount of surplus income a person could have and still be eligible for a Debt Relief Order. Of 65 respondents, 37 considered that a surplus income limit of £50 was appropriate. This was the largest number of respondents for any of the options suggested.

8.5 Of 66 respondents, 28 considered that an asset limit of £300 was appropriate. This was the largest number of respondents for any of the options suggested.

8.6 Of 42 respondents, 34 felt that there was sufficient protection for creditors in the proposals. This includes the £500 limit on how much credit a person can obtain without disclosing their status.

9. Guidance

9.1 The monetary limits are part of the entry criteria that an individual must meet to be eligible for a Debt Relief Order. As such the limits have been mentioned in all guidance materials.

9.2 A ‘Frequently Asked Questions’ document has been on The Insolvency Service website for approximately one year.

9.3 A series of information documents will be published on The Insolvency Service website, including information for debtors, for creditors and about intermediaries. A formal guide for debtors has been produced similar to the Guide for Bankrupts. This will be available in printed and electronic copy before April 2009.

9.4 For intermediaries there will be an Intermediaries' Guide available on The Insolvency Service website.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the Debt Relief Order provisions generally, is beneficial. This is detailed in Explanatory Memorandum to The Insolvency (Amendment) Rules 2009.

10.2 The impact on the public sector of the Debt Relief Order provisions generally, is beneficial. This is detailed in Explanatory Memorandum to The Insolvency (Amendment) Rules 2009.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation will have a negligible impact on small business. This is detailed in Explanatory Memorandum to The Insolvency (Amendment) Rules 2009.

12. Monitoring & review

12.1 The success of the implementation of Debt Relief Orders will be measured by three main elements one of which is their accessibility. Evaluation of accessibility of the scheme will involve consideration of the entry criteria, entry costs and the application process. The monetary limits will therefore be considered as part of the evaluation of the appropriateness of the entry criteria. This will be carried out by The Insolvency Service after three years. Further information is contained at paragraphs 7.4 to 7.6 and at Annex 3 of the Impact Assessment attached to the Explanatory Memorandum to The Insolvency (Amendment) Rules 2009.

13. Contact

Sarah O'Sullivan at The Insolvency Service Tel: 020 7291 6766 or email: sarah.osullivan@insolvency.gsi.gov.uk can answer any queries regarding this instrument.