

**EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (AMENDMENT) RULES 2009**

2009 No. 642

1. This explanatory memorandum has been prepared by the 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 Insolvency (Amendment) Rules 2009 (“the Rules”) provide the rules for giving effect to:

- (a) the introduction of Debt Relief Orders, Debt Relief Restrictions Orders and Debt Relief Restrictions Undertakings, and
- (b) the introduction of a better targeted and more efficient insolvency advertising regime.

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

- 3.1 None.

4. **Legislative Context - debt relief orders**

- 4.1 The Rules form part of a group of instruments giving effect to the introduction of Debt Relief Orders, Debt Relief Restrictions Orders and Debt Relief Restrictions Undertakings 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, for which provision is made in the Debt Relief Orders (Designation of Competent Authorities) Regulations 2009. The commencement of provisions relating to the making of Debt Relief Restrictions Orders is subject to a transitional provision in the Tribunals, Courts and Enforcement Act 2007 (Transitional Provision) Order 2009.

- 4.3 The Rules determine in detail amongst other things, the form and manner in which:- (a) applications are to be made for Debt Relief Orders; (b)

Debt Relief Orders are made by the official receiver; (c) notice is to be given of the making of such an Order; (d) objections may be made by creditors; (e) applications may be made by or on behalf of the Secretary of State for Debt Relief Restrictions Orders; (f) entries are to be made on the various insolvency registers upon the making or revocation of Debt Relief Orders.

4.4 The Rules also provide rules governing the activities of approved intermediaries.

4.5 Other orders prescribe fees (£90) payable upon the making of an application for a Debt Relief Order and various monetary limits to which the eligibility of the debtor is subject.

Legislative context – advertising changes

4.6 A review has been undertaken to modernise, simplify, clarify and consolidate the Insolvency Rules, which first came into force in 1986. That review is generating modernisation initiatives which will provide savings by reducing the costs of administering insolvencies. This instrument provides amendments to implement the first of those modernisation measures, relating to insolvency advertising. These amendments will allow administrative savings, which have been identified in the impact assessment of changes to the Insolvency Rules 1986 for the modernisation and streamlining of advertising procedure, to be generated from 6th April 2009 in advance of further modernising changes and the consolidation of the Insolvency Rules.

4.7 The advertising amendments to the Insolvency Rules form part of a wider package planned to come into force on 6th April 2009 relating to insolvency advertising. The other measures are contained in the draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009, which is expected to amend sections 95, 98 and 166 of the Insolvency Act 1986 to similar effect.

4.8 To better meet the needs of users of the legislation, the amendments will also clarify the drafting of the advertising provisions, introduce three new gazetting requirements and reduce the filing at court of insolvency advertisements to a minimum.

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 – debt relief orders

- *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.

7.2 The Rules provide detail on how the scheme will operate. The Order will be made administratively by the official receiver, following an application by the debtor via an approved intermediary, that is, an experienced debt adviser approved to act as such. This ensures that a person will have had debt advice before choosing to apply for a Debt Relief Order as the most suitable option. To qualify for a Debt Relief Order a person must meet certain criteria including limits on the levels of their assets, liabilities and surplus income.

7.3 Upon receipt of the application and full payment of the fee, the official receiver (not the court) will decide whether to grant the Order, based on whether the criteria have been met. If the Order is made the debtor and all qualifying creditors are notified. After a period of usually one year, the debtor is discharged from those liabilities.

7.4 Creditors are able to object to the making of the Order. Should a valid objection be raised, or should circumstances change resulting in the debtor being able to make a significant contribution towards their creditors, the official receiver can revoke the Order, leaving the debtor to negotiate repayments with their creditors.

7.5 The Rules also detail provisions in relation to Debt Relief Restrictions Orders and Undertakings. These are similar to the Bankruptcy Restrictions Orders and Undertakings, to allow action to be taken against those who abuse the scheme.

7.6 Debt Relief Orders provide debtors in most need with a chance for a fresh start. Although many are supportive there will be creditors unhappy at a new debt relief mechanism which requires debt write off on their part.

Policy background – advertising changes

- *What is being done and why*

7.7 The policy aim is to provide a better targeted and more efficient advertising regime for insolvency which will provide significant savings in the costs of administering insolvencies leading to better returns for creditors.

7.8 When a debtor enters formal insolvency proceedings they are required to disclose to the insolvency office-holder particulars of all creditors and any

assets. The office-holder sends out notices to creditors in the proceedings but is also required to give notice of certain insolvency events both in the Gazette and also by newspaper. These mandatory requirements to advertise exist regardless of the circumstances of a particular case and whether a full disclosure has already been made to the office-holder in the proceedings. The policy background for this advertising approach has always been to try to ensure that a full disclosure of all creditors and assets of the insolvent is made. However, in the majority of cases this level of advertising is now unnecessary and is paid for from monies that might otherwise be paid to creditors in the insolvency proceedings.

7.9 In recent years the nature of insolvencies has changed, as has the geographical profile of creditors who are no longer necessarily located close to the trading or residential address of a debtor. Technological developments now allow creditors to more easily access insolvency information published through the internet on The Insolvency Service website, on the Companies House public file, at The London Gazette and on the websites of companies themselves.

7.10 Consultation with users of the legislation has shown that insolvency notices placed in the Gazette are accessed and relied upon as a source of insolvency information by financial institutions, credit reference agencies, HM Revenue and Customs and other stakeholders. The Gazette also now offers an online search facility which can be accessed free of charge by the public. Newspaper advertising in addition to gazetting is therefore not needed as a matter of routine in insolvency cases. Nor is it right, where additional advertising may be of some benefit, that it is restricted to newspaper advertising. The changes made to the Rules in this instrument therefore provide insolvency office-holders with a new discretion to decide in the circumstances of each insolvency case if, and by what means, any advertising in addition to mandatory gazetting should be carried out.

7.11 As part of the measures providing a better targeted advertising regime, three new gazetting requirements have been introduced to provide information requested by stakeholders.

7.12 Rule 7.32 will cease to have effect thereby removing most requirements for the filing at court of advertisements in insolvency cases, the time and resources spent on this activity by the courts and by the placer of an advertisement will result in benefits for court users and creditors in insolvency proceedings. The court will also be relieved of the Rule 7.32(3) requirement for an officer to file, from time to time, a memorandum giving particulars of insolvency advertisements.

7.13 Legislative amendment is required to meet the objective stated in paragraph 2.1(b) and to achieve the reduction of administrative burdens. The only alternative currently available is to make no change, since non-statutory guidance to insolvency office-holders could not be used to override the statutory provisions made for publicity of insolvency events. The same applies to the removal of court filing requirements.

- ***Consolidation***

7.14 The Insolvency (Amendment) Rules 2009 amend The Insolvency Rules 1986. The Insolvency Service intends to consolidate these and numerous other amendments that have come in to force since 1986 and work is ongoing to achieve this.

8. Consultation outcome – debt relief orders

8.1 Whilst the Tribunals, Courts and Enforcement Act 2007 to introduce debt relief was being developed, the Insolvency Service carried out a formal consultation in 2005 ‘Relief for the Indebted – an Alternative to Bankruptcy’ and much of the detail which subsequently appears in the Rules was consulted upon or mentioned in that consultation. 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.

8.2 The three main areas of interest to the public that were not part of the 2005 consultation were; excluded debts, the treatment of vehicles and the definition of income. Of those, excluded debts and income are being treated consistently with bankruptcy.

8.3 Dialogue has been ongoing with interested parties. A working group made up from advice sector representatives to discuss the practical aspects of the scheme met on several occasions from 2005 to 2008. The minutes of those meetings were published on The Insolvency Service’s website concurrently until late 2008 when those minutes were replaced with a summary.

8.4 Presentations have been delivered at numerous national locations primarily to debt advisers but also to creditors. Information letters to raise awareness of Debt Relief Orders and their effects were sent to banks, trade bodies, charities and other interested parties from April 2008 to early 2009.

8.5 A draft version of this instrument as it related to debt relief orders was placed on The Insolvency Service website on 10 November 2008.

Consultation outcome – advertising changes

8.6 The Insolvency Rules have been amended many times since enactment in 1986 and a decision has therefore been taken to consolidate these Rules in the near future, to make them more accessible to users. At the same time, the opportunity is being taken to modernise some of the insolvency procedures and processes, particularly to take account of the different ways in which communication now takes place. The changes being proposed in this

amending statutory instrument to change the advertising requirements will contribute to this aim of modernising insolvency legislation and will achieve a reduction in financial burdens that currently exist.

8.7 Since 2005 stakeholders views have actively been sought on initiatives to modernise and improve the Insolvency Rules through extensive correspondence, published articles, internet updates , meetings and presentations. This informal consultation process has generated a very high level of response. One of the modernisation initiatives identified has been the need for a revised approach to insolvency advertising which has been expensive and not tailored to meet the circumstances of a particular insolvency case.

8.8 Further views were taken from key stakeholder groups in relation to the drafting of advertising amendments to the Rules and it became clear that the changes would extend to sections within the Insolvency Act, which would require amendment by Legislative Reform Order (“LRO”). A formal consultation was then undertaken from September 2007 in relation to a number of proposals for change to the Insolvency Act, including amendment of the statutory requirements in sections 95 and 98 of the Act to advertise creditors meetings in voluntary liquidations. The response to the LRO consultation was in favour of changes which would modernise the legislation and reduce administrative costs leading to better returns for creditors. The Newspaper Society objected to the new discretion to advertise and could not be persuaded of the case for moving away from a requirement for mandatory newspaper advertising. The decision to proceed with the advertising changes was taken in view of the support from other stakeholders who accepted that the existing requirements impose a financial burden which is borne by creditors and cannot be justified as a matter of routine in every insolvency case. Fuller particulars of the LRO consultation outcome are provided within the appended advertising impact assessment and are also published on The Insolvency Service website.

9. Guidance – debt relief orders

9.1 The Insolvency Service website has had a ‘Frequently Asked Questions’ document on its website for approximately one year, updated from time to time.

9.2 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 our guide for bankrupts. That will be available in printed and electronic copy before April 2009.

9.3 For intermediaries there will be an intermediaries’ guide available on The Insolvency Service website. This details how to complete the Debt Relief Order application form and also the considerations needed in advising the debtor whether a Debt Relief Order is suitable.

Guidance – advertising changes

9.4 The Insolvency Service has prepared guidance for stakeholders and the public on the new advertising provisions. The draft instrument will be published on The Insolvency Service website during March 2009 together with guidance material explaining how the Rules amendments will work and an explanation particularly in relation to the new advertising discretion. Insolvency office-holders will be provided with a March 2009 edition of the Insolvency Service Dear IP publication which will also carry guidance for them on the advertising changes. This material will build upon previous information published about the general nature of the planned advertising changes. The Ministry of Justice has been consulted with and provided with full particulars of the rules amendments which affect court procedure.

10. Impact – debt relief orders

10.1 The impact on business, charities or voluntary bodies is beneficial. There may be reduced costs to creditors chasing debts that will not be paid. Lenders can make informed choice by the availability of public register information. Charities that fund bankruptcy petitions could assist more people with this cheaper scheme. Voluntary bodies have indicated that, for someone with little to offer, it will be less time consuming to assist with a Debt Relief Order application than to negotiate with creditors. Further details are contained in paragraphs 4.40 to 4.45 of the attached Impact Assessment on debt relief orders.

10.2 The impact on the public sector is beneficial. Reduced bankruptcies will reduce the amount needed from taxes to subsidise the cost of court work. Increased access to debt relief for those unable to access bankruptcy will help to reduce social problems associated with debt. Further details are contained in paragraphs 4.46 to 4.53 of the attached Impact Assessment on debt relief orders.

10.3 An Impact Assessment on debt relief orders is attached to this memorandum.

Impact – advertising changes

10.4 The impact on business, charities or voluntary bodies is limited, although the marketplace as a whole will benefit from a reduction in the level of bad debt suffered by creditors of insolvent debtors.

10.5 The key impact will be improvement of returns for creditors in insolvency proceedings which is a major driver for the modernisation of the insolvency legislation. By introducing a better targeted and more efficient advertising regime for insolvency the costs of administering insolvency cases will be reduced. The savings made in payments for newspaper advertising can

be passed on to creditors in those proceedings. This reduced expenditure on insolvency advertising will reduce revenue flows for local newspapers.

10.6 The impact on the public sector is beneficial. The removal of the Rule 7.32 filing requirements will reduce burdens on the courts.

10.7 An Impact Assessment of changes to the Insolvency Rules 1986 for the modernisation and streamlining of advertising procedures is attached to this memorandum and provides more detailed particulars on the impact of these measures.

11. Regulating small business

11.1 The legislation will have a negligible impact on small business.

11.2 Further details concerning:

- (a) debt relief orders are contained in paragraphs 5.14 to 5.16 of the attached Impact Assessment on debt relief and
- (b) concerning the advertising changes are contained in paragraphs 41 and 42 of the attached advertising Impact Assessment.

12. Monitoring & review

12.1 The success of the implementation of Debt Relief Orders will be measured by three main elements; the accessibility of Debt Relief Orders; the financial rehabilitation of debtors subject to a Debt Relief Order and the integrity of the Debt Relief Order system. This will be evaluated by The Insolvency Service after three years. Further information is contained within the attached Impact Assessment on debt relief orders at paragraphs 7.4 to 7.6 and at Annex 3.

12.2 The success criteria for the advertising amendments are seen primarily as the provision of a workable, more flexible and better targeted advertising regime to be used by insolvency office-holders to meet the needs for publicity in every insolvency case. The Insolvency Service will review and evaluate the success of the implementation of the amendments contained within this instrument and will consider any necessary further revisions under the forthcoming Insolvency Rules consolidation.

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 the Debt Relief Order provisions of this instrument.

Neil.Ogilvie at The Insolvency Service Tel: 020 7637 6307 or email: Neil.Ogilvie@insolvency.gsi.gov.uk can answer any queries regarding the advertising rules provisions of this instrument.

Summary: Intervention & Options

Department /Agency: The Insolvency Service	Title: Impact Assessment of changes to the Insolvency Rules 1986 to provide a better targeted regime for the advertising insolvency events	
Stage: Final	Version: 1	Date: March 2009
Related Publications:		

Available to view or download at:

<http://www.insolvency.gov.uk>

Contact for enquiries: Stephen Parcej

Telephone: 020 7291

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

The mandatory requirement for office-holders to publicise insolvency events in a newspaper, as well as in the London Gazette (“the Gazette”) applies to all cases and consequently imposes a financial burden on all of those involved in the process. The existing provisions are also inflexible in that this additional publicity must be effected by newspaper advertisement, even if there may be better means of achieving this.

In addition, the requirement for a copy of the Gazette and newspaper advertisement to be placed on the relevant court file in every case, and to maintain a memorandum of such notices and advertisements in the relevant pending proceedings file, is unnecessary and should be removed.

As the requirements are set out in the Insolvency Rules, legislation will be needed to make the proposed changes.

What are the policy objectives and the intended effects?

The specific policy objective is to achieve better targeted publicity in insolvency proceedings, together with an overriding policy objective to ensure that insolvency procedures are fair, cost-effective and efficient. There will still be a requirement to Gazette insolvency events but the office-holder will be given discretion as to whether any additional publicity is needed and what form this should take.

By making the proposed changes, there will be savings in the cost of administering insolvencies which should be passed on to creditors by way of better returns. By removing the court filing requirements in the vast majority of cases, the time and resources spent on this activity by the courts and by the placer of an advertisement will result in benefits for court users and creditors in insolvency proceedings.

What policy options have been considered? Please justify any preferred option.

Using a Legislative Reform Order we propose that all reference to the newspaper advertising of insolvency events within the Insolvency Act or the Insolvency Rule be streamlined in order to reduce the cost of burden of advertising in a number of insolvency procedures. The reason this is the preferred option is that the alternative currently available is to make no change, since non-statutory guidance to insolvency office-holders could not be used to override the statutory provisions made for publicity of insolvency events. The same applies to the removal of court filing requirements.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

April 2012

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Pat McFadden

..... Date: 10
March 2009

Summary: Analysis & Evidence

Policy Option: Advertising	Description: To provide a better targetted advertising regime to reduce the costs of administering insolvency procedures under the Insolvency Rules
--------------------------------------	--

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' One-off familiarisation costs to assimilate the changes by users of the legislation. Average annual cost will be borne by the advertising industry less a small discretionary amount in cases that merit additional newspaper publicity. No specific costs are associated with the removal of filing requirements.
	One-off	Yr	
	£ Minimal		
	Average Annual Cost (excluding one-off)		
	£ 13.59 million	10	Total Cost (PV) £ 126.6 million

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

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The main beneficiaries will be creditors in insolvency proceedings, subject to these savings being passed on in full by insolvency office-holders. In the case of newspaper advertisement filing, the main benefit will be to the placer which should indirectly benefit the creditors in insolvency proceedings (see paragraph 2 below).
	One-off	Yr	
	£ Nil		
	Average Annual Benefit (excluding one-off)		
	£ 14.73 million	10	Total Benefit (PV) £ 137.2 million

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

More targeted advertising in appropriate cases may bring an insolvency event to attention of creditors otherwise unaware of the proceedings.

Key Assumptions/Sensitivities/Risks

The total annual number of insolvency events affected by the proposed change remains constant over the period covered by this assessment.

The percentage of cases in which additional publicity will be deemed necessary remains in step with the estimates provided in annex C .

Price Base Year 2005	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 10.6 million
----------------------	----------------------	----------------------------------	---

What is the geographic coverage of the policy/option?	England and			
On what date will the policy be implemented?	6 April 2009			
Which organisation(s) will enforce the policy?	The Insolvency Service			
What is the total annual cost of enforcement for these	£ Minimal			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					(Increase - Decrease)
			£14.31m		£14.31m decrease
Increase of	£13.69	Decrease of		Net Impact	

Key:

Annual costs and benefits: Constant Prices

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Summary

1. The proposed changes are designed to reduce the cost burden of advertising in a number of insolvency procedures, and are part of a longer-term project to update and modernise insolvency legislation in the form of the Insolvency Rules 1986("the Rules"). They run alongside similar changes being made to the Insolvency Act 1986("the Act") by Legislative Reform Order (changes which are the subject of a separate Impact Assessment).
2. Advertising of events in insolvency proceedings is classed as a cost and, as such, is afforded statutory priority in the order of payment of monies recovered during the course of those proceedings. This means that before any creditor can receive a dividend, these priority costs must first be met in full. If these costs can be reduced then the amount available to distribute to the creditors will increase accordingly.
3. The underlying policy is based upon an understanding that insolvency notices placed in the Gazette are accessed and relied upon as a source of insolvency information by financial institutions, credit reference agencies and other stakeholders. The Gazette can now be searched free of charge online but for those creditors who do not use the Gazette, developments in information technology mean that there are many other sources of information that can be consulted by creditors for information about the insolvency of businesses and individuals.
4. Although it is recognised that there will be cases where publicity over and above the Gazette notice may be necessary, changes in the nature of many insolvencies and the relatively high cost of insolvency advertisements mean that a mandatory requirement to advertise in a newspaper can no longer be justified for every case. Where additional publicity is required in specific cases, there is no reason why this should be restricted to the newspaper medium. For this reason the proposals allow for this to be decided by office holders on a case by case basis by exercising their discretion and professional judgement.

Introduction to the proposals

5. In 1982, the Insolvency Review Committee published its report (referred to generally as the Cork Report) and this led to new legislation in 1986, primarily the Act and the Rules .
6. The secondary legislation, the Rules, have been amended many times and a decision has therefore been taken to consolidate these Rules, to make them more accessible to users. At the same time, we are taking the opportunity to modernise some of the insolvency procedures and processes, particularly to take account of the different ways in which communication now takes place. The changes we propose in the amending statutory instrument to which this impact assessment relates will contribute to this aim of modernising insolvency legislation and will achieve a reduction in financial burdens that exist.
7. It is proposed that all references to the newspaper advertising of insolvency events within the Act or the Rules will be amended with effect from 6 April 2009. These changes as they affect the Rules will be made by this amending instrument, with those in the Act expected to be made by a Legislative Reform Order which is currently going through the parliamentary process. The amendments will have the effect that where there now

exists a legislative requirement to advertise an insolvency event, the requirement will be for that event to be gazetted in every case, whether or not the gazetting of that event is currently a mandatory requirement. This will have the advantage that in future any interested party will be able to check for insolvency events in one place. In addition, the existing mandatory requirement to advertise that event in one or more newspapers will be put onto a discretionary footing. That discretion will be exercised by the person(s) on whom the obligation to advertise the insolvency event in question falls. In most cases that will be the insolvency office-holder (e.g. liquidator, administrator etc.).

8. In response to a consultation that was published in September 2007 in relation to a number of proposals for change to the Act, including to two statutory requirements in sections 95 and 98 of the Act to advertise creditors meetings in voluntary liquidations, The Newspaper Society objected on the grounds that the effectiveness of local newspaper advertisements had been underestimated and that the proposal appeared to discourage liquidators from using newspapers as a method of publicity. Although their comments were made in response to only those two proposed changes to the Act, their comments were really aimed at the entire advertising regime, most of the requirements relating to which are to be found within the Rules.
9. The Insolvency Service held a meeting with representatives of The Newspaper Society to discuss their objections. Although they have not been fully persuaded of the case in favour of the proposed changes, the decision to proceed was taken in view of support from other stakeholders and based upon the fact that the existing requirements impose a financial burden that we consider delivers little value and which can therefore no longer be justified in every case. Legislation that requires newspaper advertisements to be placed in every single insolvency case, without considering the value derived from the significant expense, which necessarily falls upon the creditors, is not sustainable. We consider that the way in which creditors now obtain information about their debtors has changed markedly as technology has developed. It can no longer be assumed that a significant proportion of creditors will be local or will read local newspapers.
10. The amended provisions will provide for the exercise of judgement and use of flexibility that will substantially benefit creditors in insolvency proceedings. While the newspaper industry will inevitably lose a part of its income as a result, the increased returns to creditors, who by their nature cover a wide variety and size of business activity, will be of greater benefit to the business community as a whole.
11. It is important to stress that these changes are not intended to stop the advertisement of insolvency events within newspapers. It will simply give the person placing the advertisement, the opportunity to judge on a case-by-case basis whether there is value to be had in obtaining publicity over and above the Gazette notice and to provide them with the flexibility to judge how that may best be achieved.
12. The removal of the filing requirement under rule 7.32 covers three elements: Firstly, the requirement for the court to place issues of the Gazette on the relevant court file; secondly the requirement to send copies of newspaper advertisements placed in connection with insolvency proceedings for filing at court; and thirdly, the requirement to prepare and file a memorandum of Gazette notices and newspaper advertisements in the relevant files of pending proceedings at court.
13. The second element should result in savings in time taken up in making and sending annotated copies to the court and result in a greater proportion of funds being left for creditors. All three elements will involve some savings in court time which will be of indirect benefit to their users, in that fewer resources in time and cost will be taken up with unnecessary filing and administration.

How The Projected Savings Are Calculated

14. The table at Annex A shows how each of the Rules is affected by the proposals. Those Rules emboldened are the most commonly used, the remainder each occurring less than 100 times per year. Consequently although these Rules will also be amended, their monetary impact will be minimal. The table also illustrates how the costs and benefits calculation provided in the summary of analysis and evidence was arrived at. The more detailed assumptions made about the projected number of events for 2009/10 (the population figures) and the costs of advertising can be found at Annexes B and C respectively.
15. As a first illustration, under Rule 2.27 of the Insolvency Rules 1986, an administrator is required to give notice of his appointment in the Gazette and in such newspaper as he thinks appropriate. It is estimated that there will be 4000 administrator appointments in 2009/10 at an average cost of £300 for a newspaper advertisement. It is further estimated that in 80% of cases there will be no need to advertise except in the Gazette, since a prime purpose of further advertisement is to reach unknown creditors who may not have become aware of insolvency proceedings. It is expected that in most cases the directors would have delivered up the details of all known

creditors as well as the company's accounting records to enable this to be verified. The estimated time taken to enter the advertisement is half an hour at £100 per hour (a minimum charge-out rate for an insolvency administrator within a professional insolvency firm). Therefore the saving is calculated as: $(£300 + £50) \times 4000 \times 80\% = £1,120,000$.

16. In some cases where there is a requirement to advertise the relevant insolvency event in a newspaper, there will be no parallel requirement to place notice of that event in the Gazette. As a matter of policy, where that arises a mandatory gazetting requirement will be introduced by these Rules amendments. What this means in financial terms is that that additional burden of placing a Gazette notice (again the cost of the notice itself plus half an hour of administrative time) needs to be offset against the benefits that will be generated by moving the advertising requirement onto a discretionary basis.
17. The scenario in the last paragraph can be illustrated by way of a further example, that being the appointment of a trustee in bankruptcy, under Rule 6.124(1). It is estimated that for this insolvency event the discretion to advertise will be exercised in only about 5% of cases since around 85% of bankruptcy orders cases are made on the debtor's own petition which should result in full disclosure as the debtor will be presenting the petition, to obtain relief from their debts. However, unlike for the appointment of an administrator, there is currently no requirement for the notice of the trustee's appointment to be placed in the Gazette. Therefore the savings made on newspaper advertisements need to be discounted by the new costs for Gazetting, as follows: $(£300 + £50) \times 10200 \times 95\% - (10200 \times (£22.50 + £50)) = £2,652,000$.
18. The population numbers shown in Annex A (that is the figures shown for the number of advertisements placed) are based upon assumptions as to the number of insolvencies that are anticipated in 2009-10 and the number of statutory advertising requirements that exist per insolvency case. The assumptions as to case numbers for the different insolvency procedures are based upon our own projections and estimates for the next financial year. The assumptions as to the number of advertisements placed is based upon an understanding of the various advertising requirements relevant to each insolvency procedure, which will vary from procedure to procedure, and as to the proportion of cases in which those events will arise. As is indicated in paragraph 14 above, all of these assumptions are set out within the two tables in Annex B.
19. Annex C contains a summary of the cost data that has been applied and of assumptions that have been made to assess in what proportion of cases the discretion to advertise will be exercised. The estimates for the cost of gazette notices and advertisements is based upon data that has been provided by a members of professional insolvency practitioners firms and from our own Official Receivers and will vary according to the type of advertisement. The estimates for the proportion of cases in which the new discretion will be applied is based upon an understanding of the relevant provisions and the nature of the statutory requirement.
20. Annex D contains a summary of the cost data for rule 7.32(2) and therefore the projected savings that should result from the removal of the requirement to file copies of advertisements in the court. The potential savings that should result from the removal of rule 7.32(1) and (3) have not been quantified in the same way as the saving will fall upon the courts rather than business, but the time savings ought to be significant in view of the numbers involved.
21. It is estimated that 134,950 Gazette notices will be issued following these changes as compared with 90,850 now. However, it is estimated there will be a reduction in the number of newspaper advertisements which are published, of anything between 75% and 95%, depending on the nature of the advertising requirement.

22. Options for achieving policy intention

(a) Do nothing

To do nothing would not achieve the policy aim of reducing burdens on the users of the insolvency legislation, since the specific requirements to advertise in a newspaper would remain.

(b) Make changes to the Rules

To make changes to the Rules in relation to the requirement to advertise key insolvency events across all insolvency procedures. Similar changes are expected to be made at the same time to the Insolvency Act 1986, sections 95 and 98, requirements to advertise, subject to the successful passage of the draft Legislative Reform Order that is currently going through the parliamentary process. These latter changes to the Act are the subject of a separate impact assessment.

(c) Make changes by the issue of guidance to office-holders

Although guidance on expenses associated with newspaper advertising might be feasible, the mandatory requirement to advertise various events in local newspapers is statutory and could not be dealt with by non-legislative means. Therefore even if costs of advertising could be ameliorated in this way, this would have relatively little impact overall.

Costs

23. The cost of local newspaper advertising presently has to be incurred in all cases regardless of whether it serves any useful purpose and, since it has to be paid for from the assets of the company, it is effectively passed on to the body of creditors in each case.
24. The costs of the proposed change will fall on the newspaper industry and insolvency practitioners. The newspaper industry will see reduced revenues from advertising as fewer routine advertisements will be placed and this figure for costs will match that for the benefits accruing to the creditors in both individual and company insolvencies.
25. Insolvency practitioners and their staff will need to be made aware of the changes. We consider that the costs of familiarisation for the insolvency profession will be minimal for these reasons:
- The Insolvency Service will inform the insolvency profession of the changes through its regular “Dear IP” newsletter, which is sent to all insolvency practitioners, to notify them of the changes;
 - The insolvency profession regularly budget for staff training and development and the costs of absorbing the implications of these proposals could be incorporated into existing budgets without significant additional costs; and
 - Members of the insolvency profession are under an obligation to keep themselves up to date on developments in their specialist field for CPD (Continuing Professional Development).
26. Company directors and their advisers (if not insolvency practitioners) may also need to be informed. This can be achieved for a one-off cost to Government by changing publications that give guidance on the relevant insolvency processes.

Benefits

27. The benefits of the cost reduction incurred in insolvency processes should be passed to the creditors as set out in paragraph 2 above. Any remaining costs, where they are incurred, will only arise in those cases in which a business need for further advertisement can be identified. This should reduce the number of bad debts written off in their entirety by creditors, bringing benefits to the economy.
28. There may also be non-monetised benefits from this more flexible approach to advertising since the advertisement could, in principle, be in other than newspaper form, such as radio, television, website notice and so on. This should enable the form of advertisement to better suit the circumstances of the case and result in more effective use of discretionary advertising, where this is appropriate, for example where there is the need to reach unknown creditors due to lack of information available about them.

Benefits of the changes

29. We estimate that the removal of the mandatory requirement to advertise will provide a benefit of £13,594,400 for the year 2009/10. The following table is a summary of the information provided at Annex A and shows how the savings have been calculated:

Rule	Event	Number	Savings
2.27	Appointment of Administrator	4000	1,120,000.00
2.34(1)	Initial creditors meeting	2500	518,750.00
2.95(3)	Public advertisement of distribution	800	152,000.00
3.2	Administrative Receiver appointed	750	210,000.00
3.9	Meeting of creditors in Administrative Receivership	600	124,500.00
4.21	Making of WUO	5000	160,000.00
4.50	Public advertisement of first meetings	500	4,750.00
4.106	Appointment of liquidator	10000	2,800,000.00
4.182A	Distribution in MVL	2600	494,000.00
6.34 +			
6.46	Making of BO	68000	2,584,000.00
6.79	Public advertisement of first meeting	6800	105,400.00
6.124	Appointment of trustee	10200	2,652,000.00
11.2	Public advertisement of intended dividend	10000	750,000.00
		<u>10100</u>	<u>1,919,000.00</u>
TOTAL		131850	13,594,400.00

30. The table above shows the most frequent events across all insolvency processes containing a mandatory requirement for advertisement under the Rules, but there may also be savings from the less frequently occurring events as shown at Annex A. These have not been quantified in the table but they would not have a significant impact on the overall calculation of costs and benefits.

31. The estimated costs per advertisement shown in annex A have been provided by a number of insolvency practitioners who have experience of taking insolvency appointments. The estimate for the percentage of cases in which savings will be made is based upon an estimate of the number of cases that are likely to require a discretionary advertisement because of the nature of that case.

32. The benefits calculation also takes into account the extra Gazette costs which will arise from new obligations imposed by the amended rules. Rule 4.21B will require the dismissal of a winding-up petition to be gazetted in all cases and advertised in a newspaper if the court so orders. It is expected that the latter will occur in about 10% of cases at £300 per advertisement. The extra costs involved, offset against benefits of the changes, is calculated as the estimated number of petitions dismissed in 2009/10 = 5000 X £22.50 = £112,500 plus (£300 X 500 = £150,000) = £272,500.

33. Under rules 4.25A(2) and 4.31(2) it will become obligatory for a provisional liquidator to Gazette both his appointment and the termination of his appointment, which he may further advertise if he thinks fit. The numbers of provisional liquidations are estimated to be in the region of 50 a year, and we estimate that only about 5 of those appointments are dismissed each year. These additional requirements will therefore have no have no significant impact on the overall benefits calculation.

34. The estimate of the benefits arising from the removal of rule 7.32 is shown at Annex D and amounts to £1,405,521 based on 131,850 cases at £10.66 per case. The cost saving in this illustration will accrue mainly to insolvency office-holders and the benefit to the creditors in those cases in the form of enhanced dividends. The remaining non-quantified savings will mainly be in the form of court time and the indirect benefit to court users as a whole, with some of this additionally benefitting creditors.
35. The total projected annual benefit, shown at the beginning of this impact assessment, is therefore £14.73m (£13.59m plus £1.41m (rounded up) less £0.27m).
36. The impact on admin burdens baseline amounts to a decrease of £14.31m and represents an 85% reduction against the adjusted baseline, as shown in the detailed calculation at Annex E.

Specific Impact Tests

Competition filter and reasoning

37. The two affected markets are those of licensed insolvency practitioners, who take appointments as office holders in insolvency proceedings, and the newspaper industry. Dealing first with **insolvency practitioners**:

Question	Answer
In the market(s) affected by the new regulation, does any firm have more than 10 per cent market share? See footnote. ¹	Possibly
In the market(s) affected by the new regulation, does any firm have more than 20 per cent market share? See footnote. ²	No
In the market(s) affected by the new regulation, do the largest three firms together have at least 50 per cent market share? See footnote. ³	No
Would the costs of the regulation affect some firms substantially more than others? See footnote. ⁴	No
Is the regulation likely to affect the market structure, changing the number or size of firms? See footnote ⁵	No
Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Would the regulation lead to higher ongoing costs for new or potential	No

¹ In terms of “firms” it is possible but unlikely that any one firm would have more than a 10% market share if by market share we mean the number of cases (which must be the sensible approach) rather than the value of the assets they would deal with. The changes would apply regardless of the size of the case. So far as the 10% test is concerned, the best and most recent available data is contained in a report entitled *Report on Insolvency Outcomes* published by Dr Sandra Frisby, Baker and Mackenzie lecturer in Company and Commercial Law, University of Nottingham on 26 June 2006. In that report the author looks at appointment trends by firms in administration. They found that one firm (i.e. not an individual insolvency practitioner) had 9% of appointments and two other firms each had the next largest share of 5% each. So it is possible for one firm to have more than 10% market share.

² See comments concerning question 1. In light of the findings on the research referred to there, it seems unlikely that the answer to this question would be yes.

³ See comments concerning questions 1 and 2. In light of the findings on the research referred to there, it seems unlikely that the answer to this question would be yes.

⁴ We think not as the costs of familiarisation would be the same regardless of the size of the firm. There are no costs to firms as creditors.

⁵ We can see no reason why this would have an effect on the set up costs for new insolvency practitioners.

firms that existing firms do not have to meet?	
Is the market characterised by rapid technological change?	No
Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

38. All insolvency practitioners must be licensed to act as such; they may operate as sole practitioners or within firms of varying size dealing solely with insolvency work. Many also operate within firms of accountants or solicitors. A licensed insolvency practitioner can take appointments in any type of insolvency procedure, although some specialise, for example concentrating mainly on corporate insolvency work.
39. The market is characterised by lots of firms of varying size offering in essence the same product, which is the professional services of a licensed insolvency practitioner as an insolvency office-holder. There are no large firms serving a large proportion of the market, which is not characterised by rapid technological change and the professional services offered have remained constant over a relatively long period.
40. The costs of the regulations are not large and they are likely to be distributed evenly between those operating in the market.

Newspaper industry

41. This proposed change will reduce the advertising revenue for newspapers. How that reduction will be spread across the newspaper industry will depend on the location of the newspaper and the locality where the insolvent individual or company was located. For this reason, the effect on newspapers in particular parts of England and Wales or on newspapers of different sizes cannot be predicted with any degree of certainty.

Small Firms Impact Test

42. The Competition Assessment already explores whether the costs of these proposals would have a particular impact on small firms of insolvency practitioners and concludes that they would not. These proposals would bring no costs to small businesses or the voluntary sector as creditors. So far as the benefits of the proposals to creditors are concerned, they would all benefit from any increase in payment to the creditors in proportion to the amount they are owed.
43. The costs to the newspaper industry would depend on the location of the advertiser in relation to the place where the company operated. This rather than any other factor such as the size of the newspaper would drive the decision concerning where to advertise at present and, therefore, where the costs to newspapers by way of loss of advertising revenue will fall.

Legal aid impact test

44. We only have to carry out this impact test if we are thinking of introducing new criminal sanctions or civil penalties, which is not the case.

Sustainable Development

45. This proposal would appear to have no direct impacts so far as sustainable development is concerned.

Carbon Assessment

46. This proposal would appear to have no direct impacts for carbon assessment.

Other Environment

47. This proposal would appear to have no direct environmental impacts.

Health Assessment

48. There are no health implications to this proposal.

Equality Impact Assessments

49. After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

Human Rights

50. The proposals do not raise any human rights questions.

Rural Proofing

51. There are no direct implications for rural proofing tests.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

Annex A

Rule	Event	Number	Cost of advert	Cost of IP time	Total	Savings (%of total)	Total savings overall
1.40	Beginning of CVA moratorium						
1.42	End of CVA moratorium						
2.27	Appointment of Administrator	4000	300	50	1,400,000.00	80%	1,120,000
2.33(7)	Proposals to members by advert						
2.34(1)	Initial creditors meeting	2500	300	50	875,000.00	80%	518,750
2.45(4)	Revised proposals to members by advert						
2.95(3)	Public advertisement of distribution	800	300	50	280,000.00	75%	152,000
2.113(6)	Notice of end of administration to creditors, by advert						
2.126	Appointment of Replacement Administrator						
2.127	Appointment of Additional Administrator						
3.2(3)	Administrative Receiver appointed	750	300	50	262,500.00	80%	210,000
3.8	AR's report to creditors, by advert						
3.9(6)	Meeting of creditors in Administrative Receivership	600	300	50	210,000.00	80%	124,500
3.39	Non-Admin Receivers report to creditors on prescribed part, by advert						
4.11	Advertisement of wu petition in newspaper rather than gazette						
4.21(4)	Making of WUO	5000	40	≈0	200,000.00	80%	160,000
4.50(5)	Public advertisement of first meetings	500	40	≈0	20,000.00	80%	4,750
4.59	Notice of meeting by advert only						
4.106(1)	Appointment of liquidator	10000	300	50	3,500,000.00	80%	2,800,000
4.182A(1)	Distribution in MVL	2600	300	50	910,000.00	75%	494,000
4.212	Advertisement of PE						
5.6	Annulment of BO following IVA						
6.3	Substituted service of statutory demand						
6.34(2) +							
6.46(2)	Making of BO	68000	40	≈0	2,720,000.00	95%	2,584,000
6.35 +							
6.47	Amendment of title						
6.79(5)	Public advertisement of first meeting	6800	40	≈0	272,000.00	95%	105,400
6.124(1)	Appointment of trustee	10200	300	50	3,570,000.00	95%	2,652,000
6.172(4)	Advertisement of PE						
6.213	Annulment of BO						
6.220	Advertisement of Discharge						
11.2(1A)	Public advertisement of intended dividend	10000	130	≈0	1,300,000.00	75%	750,000
		10100	300	50	3,535,000.00	75%	1,919,000
12.22(5)	Notice of order under section 176A(5)						
TOTAL SAVINGS							13,594,400

Annex B

All calculations in this Impact Assessment are based on the following assumptions for case numbers in 2009/2010:

CVL	9,000	
Winding up Orders	5,000	
Insolvent Liquidations		14,000
Administrations	4,000	
Administrative Receiverships	750	
CVA	600	
Other Corporate Insolvencies		5,350
Bankruptcies	68,000	
IVAs	45,000	
Personal Insolvencies		113,000
Total Insolvencies		132,350
MVL		2,600
Total Insolvencies (incl MVL)		<u>134,950</u>

Rule	Population figure based on:	Actual Figure
2.27	Total number of administrations for 09/10	4,000
2.34	Initial creditors meeting will be required in 62.5% of total administration cases for 09/10	2500
2.95	Distribution arise in 20% of total administration cases for 09/10	800
3.2	Total number of administrative receiverships for 09/10	750
3.9	Creditors meeting will be summoned in 80% of total administrative receiverships for 09/10	600
4.21	Total number of winding up orders for 09/10	5000
4.50	First meeting summoned in 10% of total winding up orders for 09/10	500
4.106	Total number of Creditors Voluntary Liquidations for 09/10 (9,000) plus 20% of total number of compulsory liquidations (1,000)	10,000
4.182A	Total number of Members Voluntary Liquidations for 09/10	2600
6.34 and 6.46	Total number of bankruptcy cases (debtors and creditors) for 09/10	68,000
6.79	First meeting summoned in 10% of total bankruptcy cases for 09/10	6800
6.124	Trustee appointed in 15% of the total bankruptcy cases for 09/10	10,200
11.2	Estimates of a dividend being declared in the following number of cases: 16,120 - bankruptcies 3,400 admin/voluntary liquidations 600 compulsory liquidations TOTAL 20,100	20,100

Annex C

The savings are based on the following figures:

Cost per newspaper advertisement - £300. This figure represents the average cost of an advertisement as provided by figures supplied by the profession who have experience with dealing with such cases.

Cost per newspaper advertisement in Official Receiver cases – £40. This figure has been provided by Official Receivers offices and represents the average cost of each newspaper advertisement placed by them.

Cost of Gazette notice - £22.50. This cost has been provided by the insolvency profession and represents the average cost of each Gazette notice published.

Cost of newspaper advertisement of first dividend in Official Receiver cases - £130. This figure has been provided by Official Receiver offices and represents an average cost of placing such advertisements. The higher cost is as a result it being an extensively longer advertisement.

Cost of 1 hour of an Insolvency Practitioners time – £100. This is an average of cost of one hour of administrative time undertaken by an insolvency practitioner firm.

Cost of 1 hour of Official Receivers time – None. No time has been charged as it is likely to be minimal in Official Receiver cases.

Percentage Savings:

The estimated percentage savings in each case (i.e. the percentage of cases where a newspaper advertisement will no longer be placed) are calculated as follows:

- Rule 2.27 – 80%
- Rule 2.34(1) – 80%
- Rule 2.95(3) – 75%
- Rule 3.2 – 80%
- Rule 3.9 – 80%
- Rule 4.21 – 80%
- Rule 4.50 – 80%
- Rule 4.106 – 80%
- Rule 4.182A – 75%
- Rule 11.2 – 75%

Bankruptcy:

- Rule 6.34 and 6.46 (Making of bankruptcy order) – 95%
- Rule 6.79 (Advertisement of first meeting) – 95%
- Rule 6.124 (Advertisement of appointment of trustee) – 95%

The estimated 95% saving in bankruptcy cases is based upon debtors petition bankruptcy cases making up 85% of the total figure for bankruptcies each year. The 95% saving figure is based on the assumption that the principle reason for advertising the making of a bankruptcy order, a first meeting of creditors and appointment of a trustee would be to bring it to the attention of creditors who are not already aware of it. In debtor petition cases it is the debtor himself who presents the petition and therefore in their interest to provide a full disclosure of all creditors. In such cases an advertisement would therefore be unnecessary. The estimated figure of 95% represents savings to be made in a third of the remaining creditor petition bankruptcies.

The decision whether to advertise the making of the bankruptcy order and a first meeting of creditors will be within the control of the Insolvency Service. We intend to issue guidance to Official Receivers as to how and when they should exercise their discretion, highlighting that it will only be necessary in a small percentage of cases. The higher figure of 95% reflects this.

Administration:

- Rule 2.27 (Appointment of Administrator) – 80%
- Rule 2.34 (Initial creditors meeting) – 80%
- Rule 2.95 (Advertisement of a distribution) – 75%

The estimate of 80% savings for the appointment of an administrator and initial creditors meeting is based upon a large majority of administration cases being initiated by the directors of the company and therefore it is expected that a full disclosure of all known creditors will be made to the administrator and will also comply with the statutory requirement that exists to deliver up all of the company's accounting records which in most cases will provide full details of all known creditors. The estimate of 80% saving anticipates that there will be some cases where there has been a deliberate lack of disclosure or an inadequacy in the accounting records.

The lower estimate of 75% savings for advertisement of a distribution reflects a more cautious approach for provisions which provide notice of a dividend.

Administrative Receivership:

- Rule 3.2 (Administrative Receivers appointment) – 80%
- Rule 3.9 (Meeting of creditors in Administrative Receivership) – 80%

The estimate of 80% savings for the appointment of an administrative receiver and first meeting of creditors reflects the same percentage as have been provided for this requirement in administration and liquidation.

We have been working with the Regulated Professional Bodies and R3 to draft clear guidance as to how and in what circumstances the discretion to advertise should be exercised in all types of insolvency.

Liquidation:

- Rule 4.21 (Making of Winding up order) – 80%
- Rule 4.50 (Public advertisement of first meeting) – 80%
- Rule 4.106 (Appointment of liquidator) – 80%
- Rule 4.182A (Distribution in MVL) – 75%

The estimate of 80% savings for the making of a winding up order, the appointment of a liquidator and first meeting of creditors reflects the same percentage as have been provided for these requirements in administration and administrative receivership.

A slightly estimate of 75% savings for advertisement of a distribution in an MVL has been provided as the liquidator will want to ensure that all known creditors are made aware and may not be certain that a full disclosure has been provided.

Winding up and bankruptcy:

- Rule 11.2 (Public advertisement of intended dividend) – 75%

Again the estimate of 75% of cases in which a saving will be made in cases where a dividend is declared reflects the same approach as has been provided for administration and MVL. This reflects a more cautious approach and takes account of the number of non-surrender cases and those where a full disclosure will not be given.

Annex D

Cost of filing Advertisement under rule 7.32(2)

	Event Type	Number	Unit Cost/£*	Total Cost/£
2.27	Appointment of Administrator	4000	10.66	42,640
2.34(1)	Initial creditors meeting	2500	10.66	26,650
2.95(3)	Public advertisement of distribution	800	10.66	8,528
3.2(3)	Administrative Receiver appointed	750	10.66	7,995
3.9(6)	Meeting of creditors in Administrative Receivership	600	10.66	6,396
4.21(4)	Making of WUO	5000	10.66	53,300
4.50(5)	Public advertisement of first meetings	500	10.66	5,330
4.106(1)	Appointment of liquidator	10000	10.66	106,600
4.182A(1)	Distribution in MVL	2600	10.66	27,716
6.34(2) +				
6.46(2)	Making of BO	68000	10.66	724,880
6.79(5)	Public advertisement of first meeting	6800	10.66	72,488
6.124(1)	Appointment of trustee	10200	10.66	108,732
11.2(1A)	Public advertisement of intended dividend	10000	10.66	106,600
12.22(5)	Notice of order under section 176A(5)	10100	10.66	107,666

TOTAL COST

131850

10.66

1,405,521

* Cost data taken from Administrative Burdens Baseline(2005), for rule 7.32(2) Insolvency Rules(MUID 19036).

MUID(where Administrative Burdens baseline data available)	Insolvency Rule	Estimated total administrative burden(calculated by reference to PwC data where available)	Estimated saving	Administrative burden saving
18222	2.27(1)	1,276,964	80%	1,021,571
18538	2.34(1)	661,150	80%	528,920
20015	2.95(2) and (3)	211,568	75%	158,676
22142	3.2(4)	239,430	80%	191,544
22948	4.106(1) IR86	3,192,410	80%	2,553,928
25707	4.182A IR86	687,596	75%	515,697
21854	6.124(1) IR86	2,924,901	95%	2,778,656
20259	11.2(1A) IR86	3,653,326	75%	2,739,995
	R3.9(6)	158,676	80%	126,941
	r6.34(2)(creditors petitions and r6.46(2) (debtors petitions)	3,211,300	95%	3,050,735
	r6.79 IR86	205,523	95%	195,247
	r4.21(4) IR86	236,125	80%	188,900
	R4.50 (5) IR86	15,112	80%	12,090
Sub-total				14,062,899
19036	7.32	247,000	100%	247,000
Total		16,921,081		14,309,899

The estimated savings here of £14,309,899 represent a 84.57% reduction against the baseline.

Annex E

Summary: Intervention & Options

Department /Agency: The Insolvency Service	Title: Impact Assessment of Debt Relief Orders	
Stage: Final	Version: Final	Date:
Related Publications: "A Choice of Paths" a consultation issued by the then Dept of Constitutional Affairs and "Relief for the indebted" issued by The Insolvency Service		

Available to view or download at:

<http://www.dca.gov.uk/consult/debt/debt.htm> & <http://www.insolvency.gov.uk> htm

Contact for enquiries: Andy Woodhead

Telephone: 0207 291

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

Some persons with serious debt problems are currently unable to access a suitable debt solution.

The Government is committed to contributing to social justice and creating conditions for business success by tackling over-indebtedness and financial exclusion. This commitment includes providing access to help for those in financial difficulty, and improving the support and processes for those who have fallen into debt. The introduction of Debt Relief Orders (DRO) contributes to the achievement of this commitment.

What are the policy objectives and the intended effects?

DROs contribute to the Government's overall objective of improving services for those who have fallen into debt and their creditors. They provide a statutory form of debt relief for some debtors who are currently unable to access existing processes.

Access to a DRO is restricted to debtors who have total liabilities of less than £15,000, surplus income of no more than £50 per month, and no qualifying realisable assets over £300. A DRO will not be made by the court, instead it will be made administratively by the official receiver and will be cheaper than accessing bankruptcy.

What policy options have been considered? Please justify any preferred option.

Introduce legislation to enable people who are financially excluded to access a system of debt relief.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 3 years after implementation.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Pat McFadden

..... Date: 10
March 2009

Summary: Analysis & Evidence

Policy Option: 3	Description: Implement legislation to provide for Debt Relief Orders
-------------------------	---

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' See Annex 1 for full details
	One-off Yr	
	£ 1,471,364 1	
	Average Annual Cost (excluding one-off)	
£ 1,480,518	Total Cost (PV) £ 2,776,882	

Other **key non-monetised costs** by 'main affected groups'
None

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Debtors £2,448,189, through lower application fees and no court fees. see paragraph 4.57 The Court Service £2,376,174 through a reduction in debtor petition bankruptcies, see paragraph 4.57
	One-off Yr	
	£ Nil	
	Average Annual Benefit (excluding one-off)	
£ 4,824,363	Total Benefit (PV) £ 4,824,363	

Other **key non-monetised benefits** by 'main affected groups' Reduced debt related stress for individuals and more debtor rehabilitation will also benefit society in general. Charities will be able fund more debt relief. Debt advisors will be able to offer more debt solutions. Businesses will be able to identify those with debt problems earlier.

Key Assumptions/Sensitivities/Risks DRO applications in year 1 will be 13,951 and over 5 years will average 27,421 (see Annex 1) and that the application fee will be £90 to cover costs. However, if the level of DROs is higher or lower, the application fee will change accordingly. Debtor petition bankruptcies levels will reduce by 16%.

Price Base Year 2005	Time Period Years 10	Net Benefit Range (NPV) £ 19.56 m -£44.71 m	NET BENEFIT (NPV Best estimate) £ 25.15 m
----------------------	----------------------	--	--

What is the geographic coverage of the policy/option?	England & Wales
On what date will the policy be implemented?	6 April 2009
Which organisation(s) will enforce the policy?	Insolvency
What is the total annual cost of enforcement for these	£ Nil

Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£	Decreases	£	Net
				£

Key:

Annual costs and benefits: Constant Prices

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1. INTRODUCTION

1.1 The introduction of Debt Relief Orders is designed to provide debt relief for the financially excluded i.e. those who have little or no income and assets and are therefore unable to avail themselves of any of the remedies currently available to people with serious debt problems.

1.2 There is a category of person for whom none of the current remedies for those with serious debt problems apply. This group has insufficient disposable income to make monthly payments, no assets that can be sold to defray even some of the debt and they cannot afford the petition deposit required to go bankrupt. The Government thinks there is a need to plug this gap and provide a form of relief for people who have fallen into debt, who do not owe a great deal but who have no reasonable prospect of ever being able to pay off even part of the debt. The Government is committed to contributing to social justice and working to create the conditions for business success by tackling over-indebtedness and financial exclusion. Part of this commitment includes access to help for those in financial difficulty and improving the support and processes for those who have fallen into debt.

1.3 It is proposed that debtor's who have total liabilities of less than £15,000, surplus income of no more than £50 per month, and no (qualifying) realisable assets over £300, be eligible for the Debt Relief Order scheme. An application for such an order would be made through an approved debt advisor "an intermediary", the qualification being provided by a competent authority recognised as being fit for that purpose by the Secretary of State. The Debt Relief Order, which would be made administratively by the official receiver, would provide the debtor with relief from enforcement of the debts and would then be fully released from those debts (usually) after twelve months.

1.4 At present, if people fall into debt, there are a number of remedies available to them:

- They can try to formulate a debt management plan, whereby they come to an agreement to pay their creditors a specified amount at regular intervals – usually every month. This requires the person concerned to have an amount of money over and above what he or she needs to live on to set aside to pay off his debts.
- Similarly if the debtor applies for an individual voluntary arrangement under the provisions of the Insolvency Act 1986, or a county court administration order, he or she needs to have funds with which to pay monthly installments, or in the case of an individual voluntary arrangement, assets that might also be sold to raise money to repay the debts either in part or in full.
- There is also the option of bankruptcy. However, this is an arguably disproportionate response for someone who has a relatively low level of debt, no assets, no income, and no apparent conduct issues that need to be investigated by the official receiver.

Additionally, the debtor has to find the petition deposit (currently £345) and in many cases court fee too which is currently £150.

1.5 In 2004 a partnership between the voluntary sector, the credit industry, the Government and consumers drew up a strategy for dealing with over-indebtedness and this was published in July 2004⁶. The Action Plan arising out of that strategy included a commitment that, depending on the results of a consultation by the then Department for Constitutional Affairs (DCA)⁷, The Insolvency Service would consult on the detail of a proposed non-court based system of providing debt relief for the socially excluded.

1.6 The DCA's consultation closed on 20th October 2004, and responses to it led the Government to believe that there should be further consultation on the detail of a proposed debt relief scheme. The Insolvency Service subsequently issued a consultation in March 2005, entitled "*Relief for the Indebted – an alternative to bankruptcy*"⁸ which set out the detail of how such a scheme might operate. That consultation closed on 30 June 2005, and responses to it indicated that the proposals were generally thought to be appropriate.

1.7 As a result, the proposal to introduce Debt Relief Orders was included in the Tribunals, Courts and Enforcement Bill, which was published in draft on 25 July 2006 and introduced in the House of Lords on 16 November 2006. The Bill obtained Royal Assent on 19 July 2007. The Insolvency Service has also worked on the secondary legislation for the implementation of Debt Relief Orders.

1.8 A full Regulatory Impact Assessment for Debt Relief Orders was prepared when the Tribunals, Courts and Enforcement Bill was published. However, The Insolvency Service is now preparing to lay the legislation for the implementation of Debt Relief Orders and therefore, is publishing a revised Impact Assessment, incorporating further information gathered since the publication of the original Regulatory Impact Assessment. Further details on how the Debt Relief Order will work can be found on The Insolvency Service's website at: <http://www.insolvency.gov.uk>

2. RATIONALE FOR GOVERNMENT INTERVENTION

2.1 As evidenced in the White Paper published in December 2003 "*Fair Clear and Competitive; the Consumer Credit Market in the 21st Century*"⁹, the consequences of over-indebtedness are often worst for people in the lowest income groups. Such people are more likely to have priority debts (rent, utility bills, council tax and mortgage arrears). In serious cases, that can lead to eviction, imprisonment, disconnection or repossession. Being in debt can lead to increased stress and associated medical conditions. There is also a clear link between stress and absenteeism from work. This leads to additional costs on government, businesses and on the economy generally through lower productivity and growth.

2.2 Because of the nature of the problem, it is very difficult to quantify the number of people who are unable to access any of the debt relief solutions currently available. However, many people who get into financial difficulty do try and seek help from a debt advisor, and Citizens Advice is one major organisation that gives such advice.

2.3 During February 2004 the Insolvency Service conducted a survey of people who attended a sample of 63 Citizens Advice Bureaux for help with their debt problems and has used that survey to try and estimate how many people nationally would meet the criteria for entry to the

⁶ Available at www.dti.gov.uk/ccp/topics1/pdf1/overdebt0704.pdf

⁷ "A Choice of Paths – Better options to manage over-indebtedness and multiple debt", available at <http://www.dca.gov.uk/consult/debt/debt.pdf>

⁸ Available at www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/closedindex.htm

⁹ Available at www.dti.gov.uk/ccp/topics1/consumer_finance.htm#review

proposed scheme. The survey results and other sources of information¹⁰ have been used to estimate a take-up rate for the scheme. The conclusions take account not only of people who seek advice about their difficulties but also those who have problem debt but do not seek help – for example because they think that nothing can be done - and also people who currently present a bankruptcy petition but would possibly apply for a Debt Relief Order if it was available.

2.4 Although The Insolvency Service made use of a variety of sources of information and looked at published research in trying to establish how many people might want to use the scheme, clearly it can do no more than estimate the number of people who get into financial difficulty but do not seek help, and also those who do seek help but would not wish to apply for a Debt Relief Order.

2.5 It is thought that if a scheme such as the one that is proposed was put in place, the number of people wishing to obtain a Debt Relief Order in year 1 would be 13,951 and average 27,421 a year over the first five years but would then increase (or decrease) in line with the number of bankruptcies, which is largely driven by economic factors such as the general level of outstanding credit.

2.6 Consultees to the Insolvency Service's first consultation were asked if they had any further information that would help to estimate the likely numbers of people who might want to use the proposed scheme. Although there were 70 responses to the consultation generally, very few of the respondents had any comment to make on the questions relating to this Regulatory Impact Assessment. The Insolvency Service received 16 answers on this question and little further information was provided that enabled the estimates to be refined.

2.7 It seems that Debt Relief Orders would apply to a substantial proportion of those seeking advice for debt related problems, who owe less than the proposed liability cap of £15,000 and are not homeowners. Approximately 50% of callers to National Debtline have debts under £15,000 and 60% are in some form of accommodation where they are not a homeowner. National Debtline expect to help in the region of 60,000 clients in the next year. Advice UK also made the point that nearly 60% of their clients were not homeowners. However, without further information concerning their incomes and overall asset levels it is difficult to ascertain how many would meet the criteria for entry to the scheme.

3. CHOSEN OPTION

Introduce legislation to enable people who are financially excluded to access a system of debt relief

3.1 The object is to expand debt relief for those who are financially excluded, which can be only achieved on an equitable basis if there is legislation in place to determine the manner in which the debt relief is granted and policed.

4. COSTS & BENEFITS

Costs

Introduce legislation to enable people who are financially excluded to access a system of debt relief

¹⁰ (i) "The Distribution of Unsecured Debt in the United Kingdom"; survey evidence by Merxe Tudela and Garry Young of the Bank of England's Domestic Finance Division available at:

www.bankofengland.co.uk/qb/qb030402.pdf

(ii) "In Too Deep" CAB Clients' experience of debt", by Sue Edwards, Citizens Advice, available at: www.citizensadvice.org.uk/in-too-deep.pdf

4.1 There will be costs to set up the scheme initially, but if the debtor pays an up front fee (substantially less than the current bankruptcy deposit) then it is thought that it will be possible for the ongoing administration costs to be met from the fee and for the scheme to therefore be effectively self-funding.

Set up costs

Information Technology (IT)

4.2 The Insolvency Service has recently developed a system to enable debtors to complete a bankruptcy petition online. It has been possible to adapt this system to receive debt relief applications from the intermediary.

4.3 Expenses associated with IT set up costs will be apportioned out over 5 years. The initial IT set up costs are estimated as being in the region of £1,121,364, comprising development costs (including staff costs) and system testing. The supply of IT equipment, services and licences will be met under the terms of The Insolvency Service's existing IT leasing agreement.

Training and leaflet development costs

4.4 In addition there would be one off costs of approximately £175,000 made up £18,000 to drafting and clearance of leaflets on the new regime, £107,000 to paid to the Money Advice Trust to design and deliver training (in consultation with The Insolvency Service) to potential authorized intermediaries and £50,000 to be spent of training Insolvency Service staff and this amount has been included in the overall development costs.

4.5 Debt advisors who act as intermediaries in assisting debtors in their application for a Debt Relief Orders only need internet access. The Insolvency Service has carried out an IT audit in this respect, which showed that Debt Advisors/intermediaries already have sufficient internet access to deal with a Debt Relief Order application.

Debt Relief Order Centre

4.6 There should be no further substantial costs associated with setting up an administrative unit to deal with Debt Relief Order applications, as the Centre will operate from one of The Insolvency Service's existing offices at Plymouth. This office already has sufficient office furniture, although a new telephone line is required and the annual cost of that line is expected to be £10,000.

Publicity/information

4.7 There would be a need to produce explanatory leaflets and provide information about the scheme it has been estimated these leaflets would cost £18,000 to develop.

4.8 If leaflets are produced that are similar to those used for bankruptcy - "A Guide to Bankruptcy"¹¹, the costs would be as follows:

To produce 100,000 leaflets:

Printing (£6,000 per 25,000 copies)	£24,000
Plain language translation (Urdu, Chinese £3000 per translation)	£6,000
Distribution	£5,200

¹¹ "A Guide to Bankruptcy" The Insolvency Service, available at: www.insolvency.gov.uk/pdfs/gtbweb.pdf

4.9 Similar printing and distribution costs would be needed to produce and distribute guidance notes to intermediaries. There would be additional costs in terms of time taken to write the leaflets/guidance notes and obtain legal clearance. It is estimated that the total cost of printing and distributing leaflets to be in the region of £100,000.

Ongoing costs of administering the scheme

4.10 Because of the way the scheme has been devised, it means that if the debtor pays an up front fee to cover the costs of the development of the IT and its administration, it is possible for it to be self funding.

4.11. Based on the anticipated caseload, the fee has initially been set at £90.00. It will be possible to alter the fee should the level at which it has been set at initially proves to be too high or too low. However, there is a wish to avoid setting the fee at an unrealistic level only to raise it shortly after commencement.

Advice Sector

4.12 There will be an impact on the advice sector through the need to familiarise staff with the new procedure, and the time taken to deal with clients wanting to apply for the order. However, it is felt that this will potentially be offset by the fact that such advisors would not have to spend time entering into protracted correspondence with creditors on behalf of their clients, and also that they will be able to offer a solution that is not currently available.

4.13 Clearly if a debt advisor acting as an intermediary deals with an individual in good faith who then turns out to have provided false or misleading information, then no liability would attach to the advisor.

4.14 Many of the respondents were strongly of the view that there would be an impact on the advice sector. Therefore, The Insolvency Service has regularly consulted with advice agencies during the course of the development of the Debt Relief Order procedures and has given careful consideration to how best ensure that debtor advisors are adequately funded for any work they would need to undertake whilst at the same time protecting their independence and keeping the scheme financially viable. Consequently the initial fee has been designed to meet the annual costs of the official receiver and if sufficient, to provide for a contribution towards the costs of persons acting as approved intermediaries.

4.15 No other significant impacts on the advice sector were identified.

Other business sectors

4.16 It is thought unlikely that there will be an adverse effect on – or potential cost to - any business sectors, including the credit and lending sector as a whole. What is proposed does offer statutory relief from enforcement, but it does not alter the fact that relief would be offered to people who are in debt and who have no reasonable prospect of paying that debt, whether there is a mechanism to provide formal relief from enforcement or not.

The credit and lending sector

4.17 It is expected that most people wishing to apply for an order will be “consumer” debtors rather than business failures and that the majority of debt included with a Debt Relief Order will be of the type that is owed to large institutions and lenders.

4.18 There may be risks associated with implementation of the Debt Relief Order scheme. For example, it is possible that the provision of accessible debt relief might mean that the people at whom the scheme is aimed, or who might qualify for entry to the scheme, would find it more difficult to obtain credit or that the cost of credit might rise.

4.19 The Insolvency Service asked consultees if they thought that the existence of the proposed scheme would reduce lenders’ willingness to lend to people who may qualify for entry to the scheme and if so, how might this risk be mitigated. Of those that replied (16 in all) there was a significant variation in views. Many of the advice workers felt that there would be no effect, since, for example, *“the existence of other debt remedies e.g. bankruptcy, IVAs [Individual Voluntary Arrangements] or DMPs [Debt Management Plans] does not seem to reduce creditors willingness to lend,”* and one or two expressed the hope that it would encourage more responsible lending. One expressed the view that *“if a person’s circumstances were such that they would be likely to qualify for a Debt Relief Order scheme it is probably desirable that they are not provided credit on commercial terms”*.

4.20 The Institute of Credit Management felt that the existence of the proposed scheme would reduce lenders’ willingness to lend to people who qualify for entry to the scheme, and that this risk cannot be mitigated. The CBI expressed the view that if the scheme attracted large numbers of applicants causing lenders or creditors to write off unacceptable levels of debt, it could also reduce their willingness to lend to people who may qualify for entry.

4.21 One respondent stated that lenders would not lend where the risks of not recovering are unacceptable, which would occur if the proposed scheme were used inappropriately.

4.22 There are a number of initiatives across government departments to tackle the issues arising out of debt and the causes of it. *“Tackling Over-indebtedness: Action Plan 2004”* brought together this work and joins together departments in combating over-indebtedness. Government is particularly keen to ensure that the most vulnerable customers have access to affordable forms of credit. The Government is working with the Credit Union movement and others to ensure that the framework in which they operate has the flexibility to allow them to focus on tackling issues of financial exclusion including affordable credit and support for the most vulnerable.

4.23 As mentioned in *“Tackling Over-indebtedness: Annual Report 2005”*¹² - which sets out how Government and partners in the independent regulators, credit industry, voluntary sector and consumer groups are addressing the issue of problem debt and the Government is working hard to ensure responsible lending. Responsible lending should mean that a realistic assessment of the consumer's ability to repay is made, and this should mean that consumers who are lent to responsibly should not find it necessary to apply for a Debt Relief Order. The credit sector has continued to work towards raising standards of responsible lending through self-regulation and collaborative action. For example, Banking Code Guidance was revised in March 2006 to strengthen the way lenders assess a customer’s ability to repay before providing credit. It was revised further in March 2008 with an enhanced promise to treat customers fairly.

4.24 At this point, and in the absence of any evidence to the contrary, it is thought that moves towards more responsible lending and greater access to affordable credit for low income households, coupled with robust entry criteria for our proposed scheme should mean that the existence of the scheme would not, of itself, adversely affect either the credit market or the ability of low income households to obtain credit when it is desirable for them to do so.

¹² Available at: <http://www.dti.gov.uk/ccp/topics1/overindebtedness.htm>

4.25 As mentioned in the Action Plan of the “*Tackling Over-indebtedness: Annual Report 2007*” The Insolvency Service continues to work towards implementation of DROs.

The banking and credit card sector

4.26 According to figures from the Bank of England, in 2007 UK resident banks wrote off credit card lending to individuals of £3,113¹³, some of which is owed by people who would potentially use the proposed scheme. In 2003 it was estimated that the banking and credit card sector spent over £3.4 billion every year chasing, recovering and writing off debts¹⁴. There could in fact be savings to the credit industry in terms of decreased recovery costs.

4.27 According to research conducted by Citizens Advice¹⁵ about 70% of the amounts owed by their clients constitute credit card/consumer type debt. If every applicant for a debt relief order owed the full permitted amount of, say, £15,000 and there was an uptake of the scheme of 27,421 cases a year, then this would amount to an annual debt write off of £287.9 million (70% x £15,000 x 27,421).

Utility companies

4.28. A continuing feature of household debt is the amount owed to utilities. This is problematic for water companies especially, as they do not have the option to discontinue domestic supplies to non-payers. The latest available data obtained from Ofwat suggests that in the year 2007/08, water companies wrote off household revenue of £104 million (although there is no information to indicate the age of the debt written off). This amount shows an increase of 38% since 1998/9 however it shows a decline of 5% when compared with 2006/07. Information provided by Ofwat shows that in 2007/08 the water companies spent operating expenditure of £70 million on outstanding revenue collection.

4.29 Generally water companies will only write off outstanding revenue when all attempts to recover the debt have been exhausted, for example where a customer has absconded and agents cannot successfully locate them or where it is uneconomic to pursue the debt.

4.30 The survey The Insolvency Service conducted with Citizens Advice during February 2004 included questions on amounts owed to utilities. Of the people participating in the survey who were eligible for the scheme, only 2 people (1% of the total) were recorded as owing money in respect of unpaid gas charges, in the total sum of £392, 1 person owed money in respect of unpaid electricity (£296) and that same person together with one other owed monies in respect of water or other utility charges (total £1,045). So overall, 4 people who participated in the survey and who would be eligible for our proposed debt relief scheme, owed monies to utilities. This is just over 2% of the total eligible people.

4.31 On a straightforward extrapolation basis, and using £500 as guide for the amounts owed, this would indicate that in the region of £287,920 (.021 x 27,421 x £500) would need to be written off annually in respect of amounts due to utility companies. Set against an annual write-off by water companies of £114 million, we think this is a negligible impact. If 27,421 people obtained an order, and every single person who did so owed £500 in respect of unpaid water charges, which is not thought likely, the total write-off would be £13.7 million (27,421 X £500).

¹³ Available at:

<http://213.225.136.206/mfsd/iadb/fromshowcolumns.asp?Travel=NixAZx1xSCx&ShadowPage=1&SearchText=UK+Resident+Banks+credit+card+lending&SearchExclude=&SearchTextFields=&Thes=&SearchType=&Cats=&ActuaResNumPerPage=&TotalNumResults=5&C=4ZM&C=351&ShowData.x=36&ShowData.y=7>

¹⁴ Action on Debt- Social Exclusion Unit Office of the Deputy Prime Minister – Business and Debt. Taken from Evaluation of Money Advice Debtline pilot (Deloitte and Touche 2003) p44

¹⁵ “In Too Deep” CAB Clients’ experience of debt”, by Sue Edwards, Citizens Advice, available at: www.citizensadvice.org.uk/in-too-deep.pdf

Other business impacts

4.32 The Insolvency Service asked consultees if they thought there would be impacts on business in addition to those outlined above and if so, what were they and whether it was possible to quantify the impact. No significant additional impacts were identified, although two respondents suggested that small businesses might suffer disproportionately because they could carry losses less well than larger organisations, and one or two respondents commented that it might adversely affect those small tradesmen who are generally paid after they have supplied goods or services.

4.33 The Insolvency Service does not have any evidence to substantiate this and we do not think that the scheme will have a noticeable impact on small business. It should be reiterated that the people at whom the scheme is aimed are genuine “Can’t Pays” and as such the facility of offering debt relief should make no overall difference as it is unlikely that they would pay anyway. It is likely that the write-offs arising as a result of a Debt Relief Order relate to debts that would have to be written off irrespective of whether or not there is a formal order.

Benefits

Introduce legislation to enable people who are financially excluded to access a system of debt relief

4.34 Clearly not everyone who is over indebted would benefit from a Debt Relief Order, nor would everyone qualify. However, the type of consumer at whom such orders are aimed are amongst the most financially and socially excluded members of society.

4.35 It is thought that although amounts are difficult to quantify, the benefits of providing debt relief to those people would include the following:

Benefits to the individual:

4.36 The Debt Relief Order regime will provide a statutory form of debt relief for some who are currently unable to access such existing processes. The Consumer Credit White Paper “*Fair, Clear and Competitive*” sets out very clearly the effects on the individual of too much debt, and the proposal will benefit the indebted individual in terms of reduced stress and the effect on health that accompanies it. It would also provide an opportunity for the individual to make a fresh start and learn to manage their finances in more favorable circumstances.

4.37 The Insolvency Service conducted a survey of debtor petition bankrupts in 2007¹⁶. The results indicated that around 11% of bankrupts meet the Debt Relief Order criteria. The survey also showed that around 5% of bankrupts, who currently do not meet the Debt Relief Order criteria, indicated that its existence would make them seek debt relief earlier when they do meet the Debt Relief Order criteria. Therefore, assuming everyone who was eligible chose to apply for a Debt Relief Order rather than a bankruptcy order, around 16% of bankrupts would choose a Debt Relief Order rather than bankruptcy. Such debtors may benefit from the lower fee to apply for a Debt Relief Order compared to the current bankruptcy deposit of £345 and the fact that there will be no court fee payable for a Debt Relief Order. However, it should also be borne in mind that, although the court fee for each bankruptcy petition is £150 in each case, there are circumstances in which the courts are permitted to waive or remit the payment of the court fee¹⁷.

¹⁶ ‘Survey of Debtors Petitioning for Bankruptcy’ available at

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/BankruptcyPetitioningCreditors1.pdf>

¹⁷ The system for exemption and remission of fees is governed by article 4 of the Civil Proceedings Fees Order 2004 (2004 No 3121). The system operates by exempting all applicants from court fees if they receive either Income Support, Income-based Jobseeker’s Allowance or State Pension Guarantee Credit or if they receive Working Tax Credit with a Child Tax Credit or Disability element and their gross annual salary is £15,460 or less. In addition, the Order provides that fees can be reduced or remitted where it appears that the payment of the court fee would “owing to the exceptional circumstances of the particular case, involve undue financial hardship”. Court staff decide upon fee exemptions and remissions based on the

4.38 The survey of debtor petition bankrupts carried out by The Insolvency Service in 2007 shows that of the debtors who meet the Debt Relief Order entry criteria, around 6%¹⁸ of such bankrupts had obtained the bankruptcy deposit from a charity – the rest had funded their petition deposit either from their own resources (income, savings, sale of assets, etc.) or had borrowed the money from another. Therefore, a simple extrapolation would indicate that based on the year ended 31 March 2007 figures of 54,902 debtors own petitions, and assuming a Debt Relief Order application fee of £90, individuals – either the debtor themselves or another individual - would save £2,105,601.50 ($0.16 \times 54,902 \times [345-90] \times 0.94$).

4.39 As regards the court fee of £150 payable in bankruptcy, the survey of debtor petition bankrupts carried out by The Insolvency Service in 2007 shows that of the debtors who meet the Debt Relief Order entry criteria, 70% were exempt from the court fee and 22% paid the fee in whole, with the remainder paying part of the court fee. Therefore, a simple extrapolation would indicate that based on the year ended 31 March 2007 figures of 54,902 debtors own petitions, and assuming that part payment of the court fee equates to paying 50% of the court fee, debtors would save £342,588 ($0.16 \times 54,902 \times £150 \times [0.22+(0.5 \times 0.08)]$).

Benefits to business:

4.40 There may be a reduction in costs associated with chasing unpaid debt that is never going to be paid. There would be a register of people subject to a Debt Relief Order, so allowing lenders to make an informed choice about whether to grant further credit.

4.41 It should also be noted that Debt Relief Orders are aimed at assisting those in debt who cannot access the currently available remedies and who have no way to pay what they owe. However, they are part of a wider package of proposals aimed at tackling the overall way that debt is dealt with in the court system and which also introduce new measures to help creditors enforce debts where the debtor is actually able to pay and has chosen not to.

Benefits to charities and debt advisors:

4.42 As stated above, the survey of debtor petition bankrupts carried out by The Insolvency Service in 2007 indicates that if Debt Relief Orders are introduced, around 16% of bankrupts may obtain a Debt Relief Order instead of bankruptcy. The survey also shows that of the debtors who meet the Debt Relief Order entry criteria, around 6% of such bankrupts had obtained the deposit from a charity. Therefore, a simple extrapolation would indicate that based on the year ended 31 March 2007 figures of 54,902 debtors own petitions, charities made grants in the region of £171,294 ($0.06 \times 0.16 \times 54,902 \times £325$ ¹⁹) to help people petition to make themselves bankrupt who meet the Debt Relief Order entry criteria.

4.43 The charities that currently provide grants to meet the bankruptcy petition deposit have indicated that they will be willing to provide similar grants to meet the Debt Relief Order application fee. This will be far smaller than the £345 deposit that is now required for bankruptcy. We think that if a scheme such as the one we are proposing were put in place, the number of people wishing to obtain a Debt Relief Order would be in the region of 26,000 a year after two years and if so, the entry fee for a Debt Relief Order would be around £90 (see table above). Therefore, charities will be able to help far more people – a grant to meet the current bankruptcy petition deposit of £345 of one debtor would fund the Debt Relief Order application fees of five debtors.

circumstances of each individual case, taking account of internal guidance relating to the individual's income and expenditure.

¹⁸ An Insolvency Service survey of people who applied for a bankruptcy order during March 2004 indicated that roughly 2.6% of people who present their own bankruptcy petition obtain the deposit from a charity. The further survey of debtor petition bankrupts carried out by The Insolvency Service in 2007 showed that 3.3% of such bankrupts had obtained the deposit from a charity. Given the entry criteria for a Debt Relief Order, it is perhaps unsurprising that a greater proportion of bankrupts who meet the entry criteria for a Debt Relief Order would qualify for grant from a charity to fund their petition deposit.

¹⁹ On 1 April 2006, the bankruptcy debtor petition deposit increased from £310 to £325. The deposit subsequently increased to £335 and then to its current level £345 on 1 April 2007 and 1 April 2008 respectively.

4.44 In addition there would be savings on the time spent with debtors and benefits to the advisor in that they would be able to offer a solution to the debtor not currently available.

4.45 The previously mentioned research into county court administration orders found that some debt advisors who assist people applying for a county court administration order see their ability to help people in this way as positive because it enables them to help more people - once an order has been set up, a case can effectively be closed. In contrast, other multiple debt cases involve negotiations with a number of creditors and can remain open for a year or more.

Benefits to Government and the taxpayer:

4.46 The scheme should free up court time in those cases where enforcement action is being taken by creditors but where there is no hope of repayment.

4.47 As stated above, the survey of debtor petition bankrupts carried out by The Insolvency Service in 2007 indicates that if Debt Relief Orders are introduced, around 16% of bankrupts may obtain a Debt Relief Order instead of bankruptcy.

4.48 Her Majesty's Court Service (HMCS) has provided the following figures in order to calculate its average cost in dealing with a debtor petition bankruptcy case:

Court staff

Average time to deal with a debtor's petition – 75.45 minutes

Average time to make the bankruptcy order – 43.41 minutes

Court staff time is billed at £2.42 per minute, which includes overheads such as salaries, costs, IT and accommodation.

Therefore, total cost of court staff time in dealing with the issue of the debtor petition and making bankruptcy order - £2.42 x 118.86 mins = £287.64

Judiciary

District Judge's average time to make bankruptcy order – 10 minutes

Judicial time is billed at £2.78 per minute.

Therefore, the total cost for judicial time in dealing with the debtor bankruptcy is £2.78 x 10 mins = £27.80

4.49 Therefore, the total average cost per case to HMCS in dealing with a debtor petition and the making of the bankruptcy order is therefore £287.64 + £27.80 = £315.44.

4.50 Debtors are required to make a contribution to this cost, currently via payment of the court fee of £150. Based on the actual estimated cost to HMCS in dealing with each case being £315.44, there is a shortfall of £165.44, which HMCS makes provision for in its annual budget and which therefore is subsidised by the taxpayer in order to allow the courts to fulfil their current roles in the debtor petition process. However, as stated above, our survey of debtor petition bankrupts shows that 70% of the bankrupts who meet the Debt Relief Order criteria were exempt from paying the court fee.

4.51 Therefore, assuming everyone who was eligible chose to apply for a Debt Relief Order rather than a bankruptcy order, there would be in the region of 16% fewer debtors' petitions, and 70% of these bankrupts are exempt from paying the court fee. Based on the year ended 31

March 2007 where there were 54,902 debtor petition bankruptcies, if 16% of those orders had not been made that would represent an approximate saving by the court system of £2,376,174 (0.16 X 54,902 X 0.7 X 315.44] + [0.16 X 54,902 X 0.3 X £165.44).

4.52 There would also be savings in terms of time spent administering those cases by the official receiver, although clearly some of that would be offset by time spent administering the Debt Relief Orders, but we anticipate that the time spent administering these would be considerably less. However, it should also be noted that the remaining cases left with the official receiver would be more time consuming and therefore more expensive to administer.

Benefits to society:

4.53 Debt is linked to both poverty and social exclusion, and insurmountable debt can only compound that. Research has previously shown that around 1 in 8 Citizens Advice Bureaux debt clients have started treatment for stress, depression or anxiety since their debt problem started²⁰.

4.54 The consequences of debt related stress and mental health problems and eviction can contribute to crime and re-offending. Debt can also lead to tensions in family relationships, leading to breakdown of the family unit.

4.55 Although the proposed scheme is aimed at a small proportion of the over indebted, it is envisaged that it should go some way at least to alleviating debt related stress and its associated problems.

4.56 Consultees were asked if they thought there would be benefits associated with our proposal in addition to those outlined above and whether or not they would be able to assist in quantifying the benefits identified. One respondent made the point that “larger credit companies may be forced to be more responsible in their lending for their own benefit due to the risk of not recovering the debt” and another suggested it might encourage more responsible borrowing. Aside from this, no additional benefits were identified.

Summary table for benefits of legislation for a new scheme

4.57

Who is affected?		Monetary savings	Non-monetary savings
<i>Individuals</i>	<i>Reduction in payment on bankruptcy petition deposit</i>	2,105,601	<i>Possible reduction in the consequences of debt related-stress and mental health problems and rehabilitation of some debtors who are not able to currently access debt relief</i>
	<i>Reduction in payment of court fees</i>	342,588	
<i>Business</i>		-	<i>Earlier identification of some debtors who cannot repay debts</i>
<i>Charities</i>		-	<i>Ability to help more people</i>

²⁰ Action on Debt – An Introduction p 4, Social Exclusion Unit, Office of the Deputy Prime Minister, Social Exclusion Unit.

			<i>in funding debt relief application expenses</i>
<i>Debt Advisors</i>			<i>Ability to offer an alternative debt solution to some debtors</i>
<i>Government and the taxpayer</i>		<i>2,376,174</i>	
<i>Society</i>		<i>-</i>	Contribution to the alleviation of debt-related stress and its associated problems for society.
<i>Total</i>		<i>4,824,363</i>	

5. SPECIFIC IMPACT TESTS

Competition Assessment

5.1 Not all regulations will affect the competitive process, and the introduction of this proposal will not have an adverse effect on any particular market.

5.2 There may be some lenders who lend disproportionately to the financially excluded – particularly, for example, in the “home collected” credit market. Since the proposal is aimed at people who are not likely ever to be in a position to pay what they owe, with or without the provision of debt relief, we do not think that introduction of the proposal should have an adverse effect.

5.3 We previously sought views from consultees on a Competition Assessment, and in particular on whether they had any information that would help to clarify the effect of the proposal on lenders (if any) who lend disproportionately to the financially excluded.

5.4 No significant issues were raised, but two respondents suggested that lenders who lend disproportionately to the financially excluded would be more reluctant to give credit.

5.5 The Insolvency Service has conducted a Competition Assessment and is satisfied that the policy proposal will **not**

- Limit the ability of suppliers to compete, or
- Reduce suppliers' incentives to compete vigorously -

5.6 However, the proposal **will** have a direct impact on the number or range of suppliers. There may also possibly be an indirect limit on the range of authorized intermediaries depending on how competent authorities authorize such persons. In relation to any affected market, the answers to three of the four detailed questions relating to that aspect were affirmative, the three questions are:

- Is procurement from a single supplier or restricted group of suppliers?
- Is there a form of licensing scheme created? and
- In relation to controls/influences by setting minimum quality standards

5.7 In such cases the Office of Fair Trading (OFT) Guidance on Competition Assessments requires an explanation of the effect and the OFT have assisted in preparing this part of the Impact Assessment which attempts to quantify and objectively justify the costs of the impact on competition.

5.8 As a DRO will only be available to a debtor through an authorized intermediary, who is authorized by a competent authority, then there is a restricted group of suppliers i.e. those who are authorized through competent authorities. There is however no limit on the number of possible competent authorities and consequently the ability to apply is unrestricted.

5.9 Full details of the requirements imposed on Competent Authorities are set out in the draft Statutory Instrument "*The Debt Relief Orders (Designation of Competent Authorities) Regulations 2009*" (*the Regulations*) <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/DRORegulations2009final.doc>

5.10 Those Regulations impose a number of matters that need to be evidenced in the application, these include evidence that the applicant:

- Is a fit and proper body to be recognized as a competent authority,
- Provides the source of its current income and its financial status,
- Provides details of existing or proposed education, training and development programmes which will be available to those who it wishes to recognize as an approved intermediary, and
- Provides details of any consumer credit license, public liability and personal indemnity insurance arrangements.

5.11 The Regulations also make provision for the Secretary of State to modify or withdraw an existing designation, for example, where it appears that the Competent Authority is no longer a fit and proper body. These elements of quality control are deemed essential to ensure the effective operation of the scheme. Given the indispensable need to ensure applicants are fit and proper, the licensing arrangements impose a limit on the range of suppliers, we are satisfied it is the least restrictive of competition necessary in order to maintain effective delivery of the policy.

5.12 The range of suppliers due to be authorised when the Debt Relief Order regime comes into force on 6 April 2009 include six applications to be recognized as a Competent Authority from that date, all of which have been assessed and have met the requirements imposed by the Regulations.

5.13 The number of successful applications so far tentatively indicates that the limits on competition and range of suppliers are relatively low and that the approach to licensing imposes a small cost to competition whilst at the same time ensures that Competent Authorities are subject to a level of screening that ensures that they are "fit and proper" to carry out their function.

Small Firms' Impact Test

5.14 On the advice of the colleagues in BERR who deal with small businesses, soundings were taken from the Federation of Small Businesses and small firms, and it is thought the scheme will have a negligible impact on small business.

5.15 The majority of debt included with a Debt Relief Order is of the type that is owed to large institutions and lenders, and it is expected that most people wishing to apply for an order will be "consumer" debtors rather than business failures.

5.16 Consultees were asked if they agreed with this assessment. Overall there was agreement, but one respondent suggested that "*small traders who usually operate on a credit basis could suffer heavy losses if a number of customers opted for a debt relief order and they may seek to protect themselves by getting payment up front from high risk customers.*" The same respondent also suggested that smaller licensed credit providers could be driven out of business if the scheme had a significant impact on their bad debts.

Community Legal Service

5.17 As regards accessing debt relief, the proposed policy will have no impact on Community Legal Aid as it is not available to fund debtor petition bankruptcies and will not be available to fund an application for a Debt Relief Order.

5.18 The Debt Relief system does impose some criminal sanctions and civil penalties. If a debtor obtains a debt relief order and is found to have made misleading statements about eligibility, e.g. failure to disclose assets or liabilities, then that would, if deliberate, constitute a criminal offence. There will also be a range of offences aimed at tackling misconduct by the debtor, similar to those in bankruptcy such as failure to disclose information about his affairs, transfer of property out of the reach of creditors and destruction of books and papers. Further, the official receiver would be able to investigate suspicion of misconduct in exactly the same way as if the debtor had been adjudged bankrupt, and debtors whose conduct is found to be culpable and to have contributed to the insolvency would be subject to a regime of restrictions orders of between 2 and 15 years in the same way as in bankruptcy.

5.19 Community Legal Service and/or Community Defence Service is potentially available for debtors if such enforcement action was taken, but they would have to pass the strict income/asset test imposed. However, the expected number of cases where the debtor is found to be guilty of misconduct (including failure to disclose facts concerning the debtor's eligibility for a Debt Relief Order) is unlikely to exceed 1% of the total number of Debt Relief Orders made²¹, and not all of those debtors would qualify for Community Legal Service and/or Community Defence Service.

Sustainable Development

5.20 The proposed policy will have no direct impact on sustainable development.

Carbon Assessment

5.21 The proposed policy will have no direct impact on carbon assessments.

Other Environmental

5.22 The proposed policy will have no direct impact on any other environmental assessments.

Health

5.23 We anticipate that the proposed system will have beneficial effects on the health of debtors. The adverse psychological and physiological effects of stress relating to financial circumstances are well documented, but by introducing the Debt Relief Order regime, some debtors will be able to obtain debt relief, which they currently cannot do. In this way, debtors will be relieved of some of the stress of their financial situation.

Social Impacts – Ethnicity, gender, and disability

5.24 It is not considered that the introduction of Debt Relief Orders will have any direct equality impacts as it is aimed at all groups who fall within the criteria for entry. This will be set in terms of the financial situation of the debtor and should not therefore be determined by any other factors.

Ethnicity

5.25 Surveys undertaken by Citizens Advice indicate that the ethnic profile of people who seek their assistance for debt problems more or less mirrors that of the general population.

5.26 Further, based on an analysis of bankrupts in year ended 31 March 2006, the proportion of Black and Minority Ethnic (BME) bankrupts that meet the Debt Relief Order criteria is similar to the proportion of white bankrupts that meet the Debt Relief Order criteria.

²¹ Based (with an added margin of error) on what we know about people who currently have a bankruptcy order and who are suspected of misconduct and who would meet the profile of someone who could seek a Debt Relief Order.

5.27 However, data held by The Insolvency Service indicates that BME bankrupts are less likely to present their own bankruptcy petition - 65% of BME bankrupts presented their own petition compared to 84% of white bankrupts. An analysis of the people who were made bankrupt in the period 1 April 2005 to 31 March 2006 and who would have met the financial criteria for a Debt Relief Order had the procedure been available shows similar differences. In the year ended 31 March 2006, less than 5% of bankrupts meeting the Debt Relief Order criteria who had presented their own bankruptcy petition were BME. In contrast, 21% of bankrupts meeting the Debt Relief Order criteria where a creditor had petitioned for his/her bankruptcy were BME.

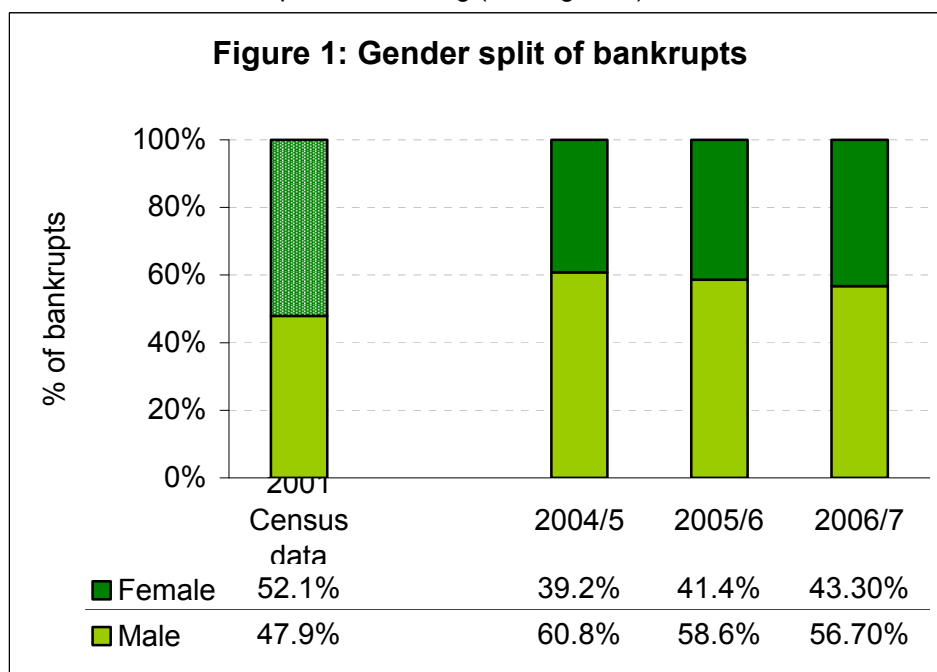
5.28 Research commissioned by The Insolvency Service²² shows that in many ethnic minority communities there are strong cultural and religious imperatives to settle debts and this can lead to a strong desire to resist at all costs the bankruptcy process. It is assumed that this unwillingness to voluntarily enter the bankruptcy process will extend to an unwillingness to enter the Debt Relief Order regime.

5.29 Therefore, the analysis of impact by ethnicity shows that there is the potential for differential impact, but that this is not associated with discrimination. Differential benefit (there is no adverse impact) will be felt by those whose religious belief, political opinion or racial group affects their willingness to enter formal debt relief proceedings.

5.30 As regards the process of Debt Relief Orders, research commissioned by The Insolvency Service shows that in some instances, problems were experienced by BMEs where debt advice was sought due to language/translation problems, and, to a lesser extent, the cultural competence of money advice workers. The Insolvency Service intends to publish Debt Relief Order publications in other languages (as is done for bankruptcy publications). Further, as an application for a Debt Relief Order is made through a recognised intermediary, The Insolvency Service intends to monitor the situation to ensure the accessibility of the Debt Relief Order process to BMEs.

Gender

5.31 The entry criteria for Debt Relief Orders are based principally on the financial circumstances of a debtor. Statistics available show that women are less likely to enter formal insolvency proceedings – a sample of IVAs in 2005 show that 38% of such debtors were male²³, and as regards bankruptcy, well over half of bankrupts are male, although the proportion of female bankrupts is increasing (see Figure 1).



²² **Ethnic Minorities and the Bankruptcy Process – research commissioned by The Insolvency Service and carried out by Centre for Enterprise and Economic Development Research, Middlesex University Business School, available at:**

<http://www.insolvency.gov.uk/otherinformation/usersurveys/ReporttoDB.pdf>

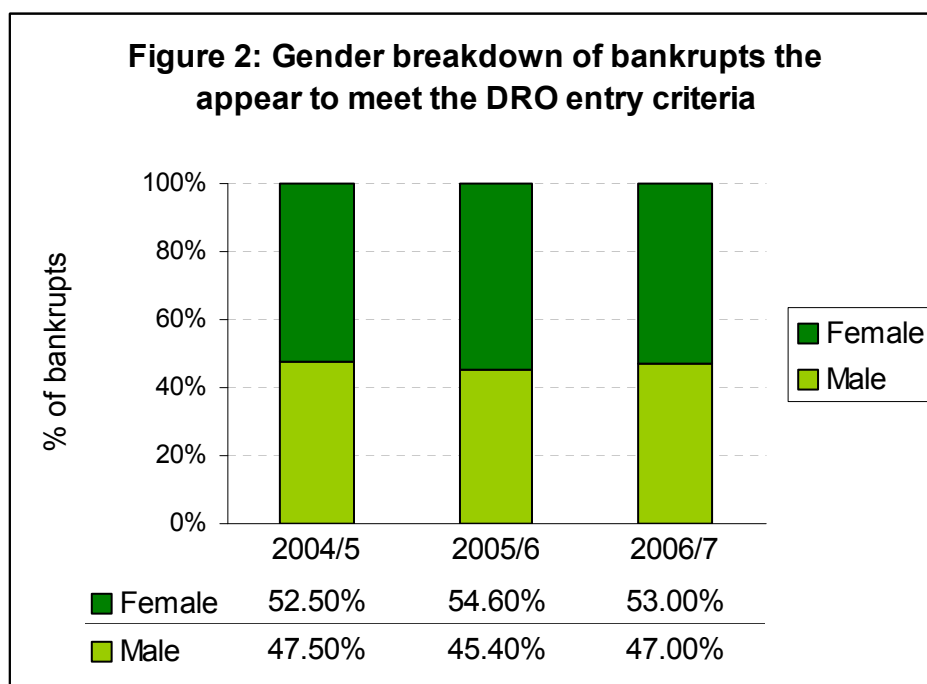
<http://www.insolvency.gov.uk/otherinformation/usersurveys/ReporttoDBannexa.pdf>

<http://www.insolvency.gov.uk/otherinformation/usersurveys/ReporttoDBannexb.pdf>

²³ PricewaterhouseCoopers, *Living on Tick: The Twenty-First Century Debtor* (2006) available at

<http://www.pwc.com/uk/eng/about/svcs/brs/PwC-IVARreport.pdf>

5.32 This may be as women are less economically active than men²⁴. However, as regards individuals that enter bankruptcy, women are more likely to have lower debts, no assets, and insufficient income for an IPO/A to be obtained. This suggests that the lower proportion of female IVA debtors may be due to the lower asset/income levels associated with females in debt. On the basis of this evidence, it appears that women are more likely to meet the Debt Relief Order criteria and this is borne out by the profile of bankrupts that meet the Debt Relief Order criteria (see Figure 2).



5.33 Statistics published by the CCCS²⁵ show that females are more likely to seek debt advice compared to males. Further, in 2006, 61% of CCCS clients where bankruptcy was recommended were females compared to only 55% of females in the whole CCCS population. The main reasons given for not entering bankruptcy were due to the stigma (36%), considering other options (23%) and not being able to afford the fees (18%).

5.34 This evidence cumulatively implies that there are women in financial difficulties who, although debt relief through bankruptcy appears to be the best option, are not willing, or are unable, to access bankruptcy. Further, women appear to be more likely to meet the Debt Relief Order entry criteria. Therefore, the Debt Relief Order regime could benefit women through providing alternative debt relief that does not have the stigma of bankruptcy and has lower entry costs.

5.35 As regards the process of Debt Relief Orders, although females are more likely to seek debt advice, a survey run by The Insolvency Service shows that men are as likely as women to seek advice prior to presenting a bankruptcy petition²⁶. This suggests that in cases where debt relief is sought, the process of Debt Relief Orders will have no specific impact on either gender (subject to comments above).

Disability

5.36 It is widely acknowledged that disability can be both a cause and consequence of financial difficulties. Currently, no statistics are held on any disabilities of those enter bankruptcy. However, statistics published by Leonard Cheshire in 2005²⁷ show that 63% of people with disabilities (including physical, sensory, learning and mental health problems) who had debt problems owed under £10,000, with an average of £8,750 being owed (with the vast majority of debts being unsecured). Additionally, 53% had an income of £10,000 or less.

²⁴ Information based on tables KS09b and KS09c (Economic activity in England & Wales) from the 2001 Census data, which shows that 73.8% of men aged 16 to 74 are economically active compared to 59.5% of women in the same age range. 'Economically active' is defined as people aged 16-74 who were working in the week before Census Day, those not working but looking for work and able to start within 2 weeks, including full-time students who are economically active.

²⁵ CCCS, *2006 Statistics Yearbook* available at:

<http://www.ccs.co.uk/research/2007/Stats%20Yearbook%202006.pdf>

²⁶ The Insolvency Service: Survey of Debtors Petitioning for Bankruptcy, is available at:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/surveyofdebtors.htm>

²⁷ Leonard Cheshire - In The Balance <http://www.lcdisability.org/download.php?id=249>

5.37 Further this research shows that almost half of adults aged 45 to 64 in the poorest fifth of the population have a limited long-standing illness or disability, twice the rate for those on average incomes. For many, the impact of this over a sustained period of time, combined with a reliance on welfare benefits²⁸ and the extra cost of disability, means that problem debt is the result of many years of barely making ends meet.

5.38 In contrast, CCCS report that in 2005, the average unsecured debt²⁹ of those debtors entering a DMP through CCCS was £29,400.

5.39 Although these statistics are incomplete to make a fully informed decision as to the proportion that would meet the Debt Relief Order entry criteria, these figures indicate that there may be a greater proportion of individuals with disabilities that meet the Debt Relief Order criteria compared to all individuals with debt problems, and that such debtors are mainly living on benefits.

5.40 Therefore, the introduction of the Debt Relief Order regime could benefit debtors with disabilities (assuming they meet the Debt Relief Order entry criteria) by providing appropriate debt relief with a lower entry cost.

5.41 As regards the Debt Relief Order process, application can be made either by a visit to a recognised intermediary or by telephone to a recognised intermediary. These options ensure that people with physical or sensory disabilities can access Debt Relief Orders. Further, the role of the intermediary ensures that individuals with learning and/or mental disabilities have assistance at hand. The Insolvency Service intends to monitor the situation to ensure the accessibility of the Debt Relief Order process to debtors with disabilities.

Equality Monitoring

5.42 The Insolvency Service has ensured that when Debt Relief Orders become operational, data can be captured on ethnicity, gender, disabilities, as well as age, of debtors who obtain a Debt Relief Order. Equality assessments will be made as part of the regular arrangements for monitoring, consulting upon and reviewing the regime.

Human Resources

5.43 The proposed system does not impact upon any human rights issues.

Rural Proofing

5.44 Under the proposed Debt Relief Order system, an application for a Debt Relief Order must be made through an approved intermediary (experienced money advisor). The proposal is that this includes money advisors who provide advice by telephone and therefore, the accessibility of the Debt Relief Order regime is not affected by the geographical location of a debtor.

5.45 However, there is an analysis of the geographical spread of bankrupts who possibly meet the Debt Relief Order entry criteria and the results are shown at Figure 3. The geographical spread of approved intermediaries will meet the possible demand for Debt Relief Orders as indicated by the geographical spread proposed location of bankrupts who possibly meet the Debt Relief Order entry criteria. Therefore, an approved intermediary will be available for those debtors who would prefer to meet with an intermediary face-to-face regardless of their geographical location.

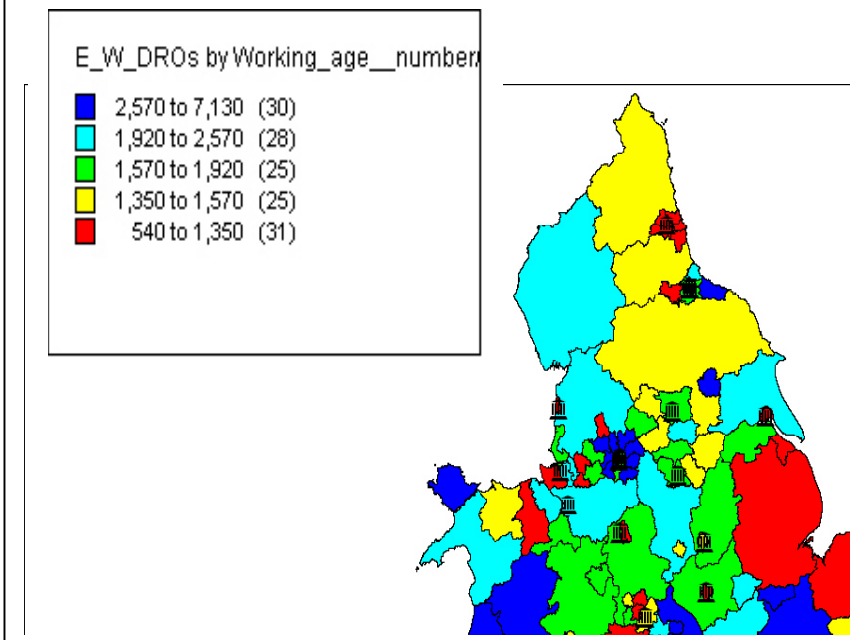
5.46 Further, it is proposed that a vehicle of up to the value of £1,000 will be an exempt asset when considering whether a debtor meets the Debt Relief Order entry criteria. This will ensure that debtors living in rural locations where public transport may not be readily available will have a means of transport to an approved intermediary.

²⁸ Individuals with a disability may be entitled to claim disability living allowance and/or incapacity benefit. Disability Living Allowance can be claimed whether or not you work and is not usually affected by any savings or income you may have. However, if an individual is unable to work because of illness or disability, they may be entitled to Incapacity Benefit, a weekly payment for people who become incapable of work while under State Pension age.

²⁹ CCCS Debt Dashboard Q4 2005 <http://www.ccs.co.uk/research/Article.aspx?ArtID=PR20060306>

Figure 3 – Geographical spread of bankrupts who meet the Debt

Relief Order entry criteria



Enforcement, sanctions and monitoring

5.47 These proposals do not impose an obligation on individuals or businesses to take any action. Obtaining a Debt Relief Order is an entirely voluntary process and we do not consider that there is a need to make separate provision for enforcement, sanctions and monitoring.

6. CONSULTATION

(i) Within government

6.1 During the project there has been extensive consultation among Whitehall colleagues and associated bodies and these included:

- Department of Trade and Industry (Now Business Enterprise and Regulatory Reform)
- Department for Work and Pensions
- Department for Environment, Food and Rural Affairs
- HM Revenue and Customs (formerly HM Customs and Excise and HM Inland Revenue)
- Department for Culture, Media and Sport
- Legal Services Commission (Executive Non-Departmental Public Body)
- Financial Services Authority (FSA)

- Home Office
- Scottish Executive
- HM Treasury
- The former Office of the Deputy Prime Minister
- Office of the First Minister and Deputy First Minister Northern Ireland
- Office of Fair Trading (OFT)
- Department for Education and Skills (now The Department for Children Schools and Families and the Department for Innovation Universities and Skills)
- Welsh Assembly Government

(ii) Public consultation

6.2 Prior to issuing a formal consultation paper the Insolvency Service consulted on an informal basis with representatives from the advice sector and business.

6.3 The consultation paper was sent to approximately 350 people consisting of representatives from the debt advice sector, the credit industry, business, insolvency practitioners and the general public. The consultation was open for twelve weeks and 70 responses were received.

7. IMPLEMENTATION AND DELIVERY PLAN

7.1 The Insolvency Service has worked on substantial further secondary legislation required before the scheme can become operational. The proposed date for implementation is 6 April 2009.

7.2 It is considered that the proposals will have been effectively implemented if: it becomes possible for eligible individuals to successfully obtain a Debt Relief Order without difficulty; for creditors to understand the process and how it affects them; and for the system to have sufficient integrity to detect and tackle any misconduct by the debtor concerning his insolvency.

7.3 Measures that will enable The Insolvency Service to ascertain whether our objectives have been achieved will include:

- Number of orders made in line with expectations (as set out in the main body of the Impact Assessment)
- Number of objections from creditors does not exceed 10% of the number of orders made³⁰
- Number of cases where the debtor is found to be guilty of misconduct (including failure to disclose facts concerning the debtor's eligibility for a Debt Relief Order) does not exceed 1% of orders made³¹

Post-implementation review

7.4 The Insolvency Service propose to keep under review the effectiveness and impact of these proposals and report three years after commencement on whether or not they achieve the objective of assisting the financially excluded to obtain debt relief within a system that provides

³⁰ Based on the approximate expectation of numbers of bankruptcies where misconduct might be suspected (7%) and the fact that there are likely to be more complaints than cases of actual misconduct.

³¹ Based (with an added margin of error) on what we know about people who currently have a bankruptcy order and who are suspected of misconduct and who would meet the profile of someone who could seek a Debt Relief Order.

proper recourse and appropriate sanctions where the debtor's conduct has been culpable and creditors have suffered as a result.

7.5 At the same time The Insolvency Service will monitor the effect of the proposals on the business sector and will also keep under review the levels at which the entry criteria are set.

7.6 An evaluation planning paper accompanies this Impact Assessment and is attached at Annex 3.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex 1

One off transition costs

The cost of developing the IT system used for delivering Debt Relief Orders has been estimated as £1,296,364. A further £175,000 has been allocated to cover training and preparing and distributing leaflets on the Debt Relief Order regime. This provides a total one off cost of **£1,471,364**

The DRO should be self funding.

The Operational Research Unit within BERR provided the following estimates of DRO applications:

	Lower Estimate	Middle Estimate	Upper Estimate	Year
	6,893	13,951	21,009	1
	9,048	26,061	43,074	2
	11,053	29,217	47,381	3
	12,524	32,322	52,119	4
	13,777	35,554	57,331	5
Average	10,659	27,421	44,183	

Setting the fee DRO case at £90.00 and using the **middle estimates** above, shows the following

	Case number	Income £	Operating cost £	Surplus £
Year 1	13,951	1,255,590	1,241,127	14,463
Year 2	26,061	1,547,091	1,547,091	798,399
Year 3	29,217	2,629,530	1,653,336	976,194
		Average operating cost over 3 years	1,480,518	Estimated surplus in year 3
				1,789,056

The projecting operating cost surplus of **£1,789,056**, less recovery of IT and training costs of **£1,471,364** equates to a projected net surplus of **£317,692** in year 3

If this was achieved it would be addressed by reducing the case fee so that the regime ran at a level which recovered the actual costs and was self funding.

Alternatively if case numbers are closer to the lower estimate then the surplus would be reduced or there may be a possible deficit, which can be addressed through increasing the case fee. Conversely if case numbers are closer to the upper estimate then the surplus would be larger which again can be addressed through reducing the case fee.

Annex 2 COMPETITION ASSESSMENT

In any affected market, would the proposal:

1. Directly limit the number or range of suppliers?

This is likely to be the case if the proposal involves:

- the award of exclusive rights to supply, or
- procurement from a single supplier or restricted group of suppliers, or
- the creation of a form of licensing scheme, or
- a fixed limit (quota) on the number of suppliers.

2. Indirectly limit the number or range of suppliers?

This is likely to be the case if the proposal significantly raises the costs:

- of new suppliers relative to existing suppliers,
- of some existing suppliers relative to others, or
- of entering or exiting an affected market.

3. Limit the ability of suppliers to compete?

This is likely to be the case if the proposal:

- controls or substantially influences
 - the price(s) a supplier may charge
 - the characteristics of the product(s) supplied, for example by setting minimum quality standards
- limits the scope for innovation to introduce new products or supply existing products in new ways,
- limits the sales channels a supplier can use, or the geographic area in which a supplier can operate,
- substantially restricts the ability of suppliers to advertise their products, or
- limits the suppliers' freedoms to organise their own production processes or their choice of organisational form.

4. Reduce suppliers' incentives to compete vigorously?

This may be the case where a proposal:

- exempts suppliers from general competition law,
- introduces or amends intellectual property regime,
- requires or encourages the exchange between suppliers, or publication, of information on prices, costs, sales or outputs, or
- increases the costs to customers of switching between suppliers.

Note: Suppliers or firms include any private entity, any local authority acting in a private capacity and any not-for-profit firm which is competing in the market

Annex 3 EVALUATION PLANNING PAPER – DEBT RELIEF ORDERS

Purpose of the paper

1. To recommend an evaluation plan for Debt Relief Orders (DROs) that encompasses the capture of benchmark information.

Background

2. In July 2004, the Government published its Action Plan for tackling over-indebtedness³². It was considered that to address over-indebtedness effectively, both prevention and cure needed to be considered. Therefore, in addition to maintaining macro-economic stability, Government and regulators are working in partnership with industry, consumer groups and the voluntary sector to:

- Minimise the number of people who become over-indebted by promoting affordable credit and responsible lending and borrowing, e.g. through better financial education and access to advice on handling money; and
- Improve services for those who have fallen into debt and their creditors. This includes promoting financial rehabilitation for debtors, e.g. through debt relief in appropriate cases; and ensuring that debt problems are resolved fairly, effectively and speedily, e.g. through promoting creditor best practice and access to information, advice and assistance for debtors, and through providing efficient court services and effective enforcement.

3. Responses to a consultation paper issued by the Department of Constitutional Affairs entitled 'A Choice of Paths - Better options to manage over-indebtedness and multiple debt' indicated that the debt relief regimes available were not appropriate for some debtors. As a result, in March 2005, The Insolvency Service issued a consultation paper entitled "Relief for the indebted –an alternative to bankruptcy³³", proposing the introduction of DROs. Overall the responses were in favour of our proposals and it is The Insolvency Service's intention to take them forward when parliamentary time permits.

4. It is proposed that DROs will provide debt relief via a scheme administered by the Insolvency Service to assist '*can't pay*' debtors – these debtors are defined as those with no disposable income or assets and little prospect of getting any in the foreseeable future (especially those on long-term low income).

5. The Insolvency Service intends to complete the evaluation of the DRO provisions within 3 years of commencement of the provisions, which are due to come into force no sooner than April 2009. The evaluation plan is based on the DRO provisions as currently proposed, but the provisions may be subject to change during the legislative-making process. Therefore, the evaluation plan will be kept under review and amended if necessary.

³² DTI and DWP, July 2004, "Tackling Over-indebtedness - Action Plan 2004"

³³ Available at :www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultationpaperwithnewannex1.pdf

Aim and key features of the evaluation

6. The principal aim of the proposed evaluation is to provide a comprehensive assessment of whether, to what extent and how the provisions relating to DROs meet the policy objectives. The evaluation will also provide information and data that can be used to inform future policy decisions.

7. The evaluation also seeks to capture benchmark information regarding the effect of the existing legislation, i.e. before the implementation of the DRO provisions. I have considered a mixture of internal benchmarking, i.e. looking inside The Service at its own historical performance and process benchmarking, i.e. looking at processes both within and outside The Service. The Insolvency Service will also undertake evaluation of new internal processes introduced as a result of DROs.

Main Evaluation issues

8. The main issues to be considered in determining whether, to what extent and how the provisions relating to DROs meet the policy objectives are covered in more detail in the paragraphs below.

9. The introduction of the DRO regime is intended to contribute to the Government's overall objective of improving the services for those who have fallen into debt and their creditors. Flowing from this, the objective of the DRO regime can be described as:

- To provide a statutory form of debt relief for some who are currently unable to access such existing processes, which provides financial rehabilitation for the debtor and protects creditors' interests.

10. The evaluation of the DRO regime will focus on the three key elements of this objective, which are:

- The accessibility of DROs;
- The financial rehabilitation of debtors subject to a DRO; and
- The integrity of the DRO system.

11. Currently, the only debt relief system available to debtors who have no assets and no surplus income with which to come to an arrangement to pay their creditors is bankruptcy; such debtors are unable to access debt relief systems that require re-payment of creditors, such as Individual Voluntary Arrangements, Debt Management Plans and Administration Orders. Therefore, the benchmark information will mainly relate to bankruptcy as being, prior to the introduction of the DRO regime, the only option available to such debtors (if they could meet the entry costs of bankruptcy). Further, unless indicated otherwise, the benchmark information will relate to the 3 years prior to the implementation of the DRO provisions.

12. A comparison between the bankruptcy regime and the proposed DRO regime is shown at Appendix A.

The accessibility of DROs

13. The accessibility of DROs will, in the main, depend on the following factors:

- The entry criteria: There is no entry criteria as regards asset and debt levels for a debtor to petition for his/her own bankruptcy; in contrast, a debtor can only apply for a DRO if his/her:
 - Gross debts do not exceed £15,000
 - Gross assets do not exceed £300
 - Surplus monthly income does not exceed £50Further, whilst there is no limit on how often or when a debtor can apply for bankruptcy, a debtor cannot apply for another DRO within 6 years of a previous order.
- The entry costs: As regards bankruptcy, a debtor must pay £325 petition costs and, if they are not in receipt of benefits, £150 court fees. These costs are seen as a barrier to entry. There are some charities that will assist with these bankruptcy costs, but the availability of such charities is not widespread and a recent Insolvency Service survey of debtors who applied for a bankruptcy order during March 2004 indicated that only 2.6% of such debtors obtain the deposit from a charity. As regards DROs, a debtor will only need to pay a nominal fee (yet to be fixed) to cover the administrative costs of the DRO.
- The application process: In order to access bankruptcy, a debtor must complete bankruptcy petition forms, which can be completed either electronically (under the on-line petition service administered by The Insolvency Service), or by hand. The debtor then must present the bankruptcy petition to his/her local court that has jurisdiction to deal with insolvency matters. The DRO regime will be administered in a very different way. The Court will not be involved in the making of a DRO. Instead, an approved intermediary (such as one of the not-for-profit debt advice organisations or Citizen's Advice Bureau) will obtain the relevant information about the debtor's affairs and then, where appropriate, assist the debtor to make an online application to the official receiver for a DRO. On receipt of the application, the official receiver will check that the debtor meets the criteria for entry to the DRO scheme and if so, make a DRO.

14. Therefore, in order to evaluate the accessibility of DROs, we need to look at the following:

- Are the DRO provisions being used? Is the level of DROs in line with the anticipated level?
- Have DROs impacted on bankruptcies? It is probable that debtors who meet the DRO entry criteria who currently apply for bankruptcy will apply for a DRO instead. Further, the existence of the DRO regime may cause debtors to apply for debt relief via the DRO system at an earlier stage, i.e. while their debts still meet the DRO entry criteria, than they would have when bankruptcy was the only option.
- Is the DRO entry criteria appropriate? Is the 6-year rule regarding applying for another DRO fair?
- Is the DRO regime being exploited by debtors who could make meaningful repayments to creditors? Because of the low entry cost, it is possible that debtors who do not fulfil the entry criteria may try to apply for a DRO. The Official Receiver will have the power to revoke a DRO where it subsequently transpires that the debtor does not meet the DRO entry criteria.
- Are the financial costs involved in applying for a DRO less than bankruptcy?
- Are there sufficient recognised intermediaries available? The accessibility of DROs depends on both the number of intermediaries and their geographical spread. It should also be noted that consideration is being given to intermediaries being contacted by telephone. Therefore, the geographical location of intermediaries may have no impact.
- Do intermediaries have sufficient time to deal with all potential DRO applications? Currently, some debt advisors feel that they will not have sufficient time to deal with the extra work involved in making a DRO application. However, others believe that they may save time as currently, in such cases, the debt advisor may well end up writing to creditors to seek some sort of informal arrangement and hence become embroiled in on-going correspondence.
- Do the recognised intermediaries have sufficient resources? Given the mode of application, the intermediaries need adequate IT equipment and access to both IT equipment and the internet.
- Are debtors and debtor advisers aware of the DRO regime? As not all debt advice organisations will be recognised intermediaries, non-recognised intermediaries will need sufficient knowledge regarding the DRO regime to ensure referrals are made in all appropriate cases.

- Do all debt advisors (regardless of whether they are a recognised intermediary) understand the DRO regime? What is the public awareness of the DRO regime?
- What impact does the absence of the Court in the DRO application process have? As the court is not involved, the cost of applying for a DRO is reduced. However, consultation responses indicated that some felt that the court would add “gravitas” and would impress on the debtor the severity of the situation. This needs to be balanced against the ‘face-to-face’ contact provided by intermediaries that may improve the accessibility of DROs. Further, the timeliness between the application and making of a DRO should be looked at.
- Finally, are debtors satisfied with the accessibility of the DRO regime?

15. The suggested evaluation criteria are:

Measure	Definition	Benchmark information	Rationale
a) The level of DROs	i) The level of DROs	A forecast of the level of DROs based on: - The level of debtor petition bankruptcy orders obtained which meet the DRO entry criteria and a sampling exercise to ascertain whether bankrupts would have sought debt relief earlier - Regulatory Impact Assessment for DROs	To assess whether the DRO regime is utilised and provides debt relief in the appropriate level of cases
b) The impact of DROs on bankruptcies	i) The level of DROs compared to the level of bankruptcies	The level of bankruptcy orders prior to the introduction of the DRO regime	To assess the impact of the DRO regime on bankruptcies
	ii) The debt profile of bankrupts after the introduction of the DRO regime	The debt profile of bankrupts prior to the introduction of the DRO regime	
c) The appropriateness of the DRO entry criteria	i) Opinion of recognised intermediaries and debt advisors regarding the appropriateness of the DRO entry criteria (based on questionnaire response)	Not applicable, although views have been obtained as part of the consultation exercise	To assess whether the DRO entry criteria is appropriate based on debtors who cannot access DROs being dealt with by intermediaries
	ii) The level of 'second-time' DROs (no information will be available until at least 6 years after the implementation of the DRO regime)	The level of 'second-time' bankrupts	To assess whether the 'second-time' DRO entry criteria is appropriate
d) Abuse of the DRO regime	i) The level of DROs which are subsequently revoked	Not applicable	To assess whether debtors are exploiting the DRO regime
	iii) The level of prosecutions and restrictions orders based on providing misleading information in a DRO application		
	iii) Case study material from recognised intermediaries regarding cases where a debtor has attempted to meet the DRO entry criteria, but information indicating non-suitability has come to light prior to a DRO application		

Measure	Definition	Benchmark information	Rationale
(e) Costs to the debtor to obtain a DRO	i) DRO fee payable	Costs involved in applying for a bankruptcy order, to cover the petition deposit (allowing for those paid by charitable institutions) and court costs (allowing for those waived)	To assess whether a DRO is cheaper to access than bankruptcy
(f) Accessibility of recognised intermediaries (subject to change depending on whether intermediaries can be contacted by telephone)	i) Number of recognised intermediaries	Number of courts with insolvency jurisdiction	To assess whether there are sufficient recognised intermediaries
	ii) Geographical spread of recognised intermediaries in relation to: - Each other - The population	Geographical spread of courts with insolvency jurisdiction in relation to: - Each other - The population	
	iii) Opinion of recognised intermediaries regarding whether they have sufficient time to deal with all DRO applications (based on questionnaire response)	Not applicable, although views have been obtained through the DRO development process	To assess whether recognised intermediaries have sufficient time to deal with all DRO applications
	iv) Publicity of where recognised intermediaries can be located	Publicity of where courts with insolvency jurisdiction can be located	To assess whether the recognised intermediaries can be easily identified
(g) Accessibility of DRO on-line application process	i) Level of computers with internet access held by the recognised intermediaries	The accessibility of bankruptcy forms	To assess whether the recognised intermediaries have sufficient IT equipment and access
	ii) Opinion of recognised intermediaries regarding the availability of on-line access in their office (based on questionnaire response)		
(h) Awareness and understanding of the DRO regime	i) Awareness and understanding amongst debt advisors (based on questionnaire response)	Awareness and understanding of bankruptcy amongst debt advisors	To assess the awareness and understanding of the new DRO regime within the debt advice sector
	ii) Level of referrals from debt advisors to recognised intermediaries (depending on the level of accreditation)	Not applicable	
	iii) Level of DRO applications in correctly made, and reasons why	Not applicable	To assess the understanding of the new DRO regime by recognised intermediaries

Measure	Definition	Benchmark information	Rationale
(h) Awareness and understanding of the DRO regime (continued)	iv) The level of debtor petition bankruptcies meeting the DRO entry criteria post-DRO implementation	The level of debtor petition bankruptcies meeting the DRO entry criteria pre-DRO implementation	To assess debtor awareness of the DRO scheme
	v) Public awareness of the DRO regime (based on survey response)	Public awareness of the bankruptcy regime (based on survey response)	To assess the public awareness and understanding of the new DRO regime
(i) Effect of a non-court based DRO application process	i) DRO fee payable	As estimate of the fees (including court fees) that would have been payable if the DRO application process was court-based	To assess the financial impact of not involving the court in the DRO application process
	ii) Opinion of DRO debtors as regards the potential effect of court involvement in the DRO process (to include potential increase in DRO fee) (based on questionnaire response)	Opinion of debtor petition bankrupts as regards the effect of the court being involved in bankruptcy process (based on questionnaire response)	To assess the impact on DRO accessibility of making application via recognised intermediaries rather than the court
	iii) Opinion of DRO debtors as the effect of the recognised intermediaries in the DRO process (based on questionnaire response)		
	iv) Timeliness between DRO applications and making of the DRO	Timeliness between a debtor being ready to present a bankruptcy petition and making of an order	To assess the timeliness of dealing with DRO applications
(j) Customer satisfaction with accessibility of DROs	i) Satisfaction of DRO debtors with process of obtaining a DRO (based on a questionnaire response)	Satisfaction of debtor petition bankrupts with the process of entering into bankruptcy (based on a questionnaire response)	To assess customer satisfaction with accessibility of DROs
	ii) Complaints received by The Insolvency Service regarding the accessibility of DROs as recorded in the complaints register	Complaints received by The Insolvency Service regarding the accessibility of obtaining a bankruptcy order based on a debtor's petition as recorded in the complaints register	
	ii) Complaints received by recognised intermediaries regarding the accessibility of DROs	Complaints received by the Court Service regarding the accessibility of obtaining a bankruptcy order based on a debtor's petition	

The financial rehabilitation of debtors subject to a DRO

16. This objective relates to the impact of a DRO on a debtor, and the key issue is whether a debtor can successfully re-access the financial market.

17. Following the making of a DRO, all debtors will be subject to bankruptcy restrictions³⁴ for a minimum of twelve months. However, the re-entry of a DRO debtor into the financial market will also depend on what impact the DRO regime has had on financial stakeholder perceptions and processes, and whether the debtor has 'learnt' from DRO experience.

18. As detailed above, the only debt relief system currently available to debtors who have no assets and no surplus income with which to come to an arrangement to pay their creditors is bankruptcy. However, such debtors may well not been able to meet the entry costs of bankruptcy (as detailed at paragraph 13), and therefore, such debtors are effectively unable to access debt relief. Therefore, it is appropriate to use both bankruptcy and 'do nothing' options as benchmark information.

19. Therefore, in order to evaluate the financial rehabilitation offered under the DRO regime, we need to look at the following:

- What affect does the discharge period in DROs have compared if the debtor had done nothing, or entered into bankruptcy? We need to look at both the type of restrictions imposed and the time for which they are imposed.
- What restrictions are imposed on DRO debtors under non-insolvency legislation? In particular, which impact will this have on DRO debtors in PAYE employment?
- How will credit reference agencies and lenders treat DRO debtors? However, it should be noted that it is anticipated that many of the debtors who will apply for DROs will be 'financially excluded', i.e. they cannot access banking or mainstream credit facilities, regardless of their credit history, due to their lack of income³⁵.
- Will self-employed DRO debtors be able to recommence trading?
- Do the DRO debtors feel that the DRO regime offers financial rehabilitation? What obstacles have they met?
- Do creditors understand the DRO process and how it affects them? Part of the re-habilitation process is that debtors subject to DROs are given a 'breathing space' from creditor actions.
- Further, the existence of the DRO regime may cause debtors to apply for debt relief via the DRO system at an earlier stage, i.e. while their debts still meet the DRO entry criteria, than they would have when bankruptcy was the only option. This may contribute to the rehabilitation of debtors.

³⁴ While the order is in force the debtor will be subject to the same restrictions as if he were bankrupt. For example, he will not be able to obtain credit above a prescribed amount without disclosing his status or engage in business under a name other that was disclosed in the application for the debt relief order.

³⁵ Financial exclusion can be described as 'the inability of individuals, households or groups to access necessary financial services in an appropriate form. Exclusion can come about as a result of problems with access, prices, marketing, financial literacy or self-exclusion in response to negative experiences or perceptions (Centre for Research into Socially Inclusive Services, 2003)

20. The suggested evaluation criteria are:

Measure	Definition	Benchmark information	Rationale
a) The affect of the DRO discharge period	i) A breakdown of the length of the DRO discharge period (fixed at 12 months unless windfall provisions apply)	A breakdown of bankruptcy discharge periods, and none (if the debtor had not sought any debt relief)	To assess the impact of insolvency legislation on DRO debtors
	ii) The restrictions imposed under the DRO	The restrictions imposed under bankruptcy, and none (if the debtor had not sought any debt relief)	
a) The affect of DROs on public and lender policies	i) Details of the non-insolvency legislation imposing restrictions on DRO debtors	Details of the non-insolvency legislation imposing restrictions on bankrupts, and none (if the debtor had not sought any debt relief)	To assess the impact of non-insolvency legislation on DRO debtors
	ii) Details of credit agencies' policies regarding the recording of DROs	Details of credit agencies' policies regarding the recording of bankruptcy orders and defaulting debtors	To assess the impact of the DRO regime on a debtor's ability to obtain credit
	iii) Details of lenders' policies in dealing with DRO debtors	Details of lenders' policies in dealing with bankrupts and defaulting debtors	To assess the impact of the DRO regime on a debtor's ability to obtain financial products
c) The affect of DROs on the self-employed	i) The percentage of trader DRO debtors who re-commence trading	i) The percentage of trader bankrupts who re-commence trading	To assess the impact of the DRO regime on entrepreneurial activity
d) Customer satisfaction with the DRO regime	i) DRO debtor satisfaction with the financial rehabilitation offered under the DRO regime (based on a questionnaire response)	Bankrupts' satisfaction with the financial rehabilitation offered under bankruptcy (based on a questionnaire response)	To assess the debtor views regarding the financial rehabilitation offered under the DRO regime

Measure	Definition	Benchmark information	Rationale
e) Creditor awareness and understanding of the DRO regime	i) Creditor awareness and understanding of the DRO regime (based on a questionnaire response)	Creditor awareness and understanding of the bankruptcy regime (based on a questionnaire response from specific frequent DRO creditors)	To assess whether creditors understand the DRO regime and how it affects them
	ii) Case study material where creditors have taken inappropriate action against a debtor subject to a DRO	Case study material where creditors have taken inappropriate action against a bankrupt	
f) Timeliness of seeking debt relief	i) Opinion of DRO debtors as regards whether DRO regime has encouraged debtors to seek debt relief at an earlier stage	Opinion of bankrupts as regards whether DRO regime would have encouraged them to seek debt relief at an earlier stage	To assess whether DRO regime has encouraged debtors to seek debt relief at an earlier stage
	ii) The debt profile of bankrupts after the introduction of the DRO regime	The debt profile of bankrupts prior to the introduction of the DRO regime	

The integrity of the DRO system

21. This objective relates to the protection of creditors' rights. There are various provisions proposed which aim to ensure the integrity of the system as follows:

Enforcement action

- **When making a DRO application, the debtor will be informed that the statement is subject to the provisions of section 5 of the Perjury Act 1911. These forms will also clearly state the effect of the order and the consequences of failure to disclose full facts or give false information.**
- **If a debtor obtains a debt relief order and is found to have made misleading statements about eligibility, e.g. failure to disclose assets or liabilities, then that would, if deliberate, constitute a criminal offence. Further, unlike bankruptcy, if the debtor has made a misleading statement about his assets, liabilities or income to obtain an order, it will also be possible to revoke the order, thus leaving the debtor once again without protection from enforcement and at risk of action by his creditors. This would also apply after the order if the debtor comes into property during the period of the order, which he fails to disclose.**
- The official receiver would be able to investigate suspicion of misconduct in exactly the same way as if the debtor had been adjudged bankrupt, and debtors whose conduct is found to be culpable and to have contributed to the insolvency would be subject to a regime of restrictions orders of between 2 and 15 years in the same way as in bankruptcy.
- There will be a range of offences aimed at tackling misconduct by the debtor, similar to those in bankruptcy such as failure to disclose information about his affairs, transfer of property out of the reach of creditors and destruction of books and papers.
- The proposed enforcement remedies are not mutually exclusive and in some cases, misconduct by the debtor may lead his being subject to a combination of (or indeed all of) the available enforcement actions.

Creditors' rights

- **Only scheduled creditors are bound by the DRO and prohibited from taking any enforcement action. Any creditor not scheduled would not be bound and will be able to pursue enforcement action if appropriate. However, if it transpires that creditors who ought to have been scheduled have not been, the official receiver will be able to revoke the order (as above).**
- Creditors will be able to object to the making of the order on a variety of specified grounds (for example that the debtor had failed to disclose assets, liabilities or income) and if the objection proves to be well founded following the official receiver's investigation, the order can be revoked and the debtor would then be open to enforcement action by his or her creditors.
- There will be a facility for creditors who are dissatisfied with the actions of the official receiver to apply to the court for the matter to be reviewed, and for the court to give directions or make such order as it thinks fit.

Action following a change in the debtor's financial situation

- It proposed that a debtor who experiences a windfall or an increase in income, irrespective of the sums involved, should disclose it to the official receiver. In cases where it appears that the debtor would be able to come to a sensible arrangement with his creditors, e.g. a county court administration order³⁶ or an individual voluntary arrangement, then s/he should be given a period of time in which to make appropriate arrangements after which the order would be revoked.
- Further, it is proposed that in cases where the debtor experiences a windfall or increase in income close to his discharge date, s/he should be permitted three months in which to make arrangements with his creditors, and that in some cases this will entail extension of the order until expiry of the three month period.

22. Therefore, in order to evaluate the integrity of the DRO regime, we need to look at the following:

- What arrangements does the Official Receiver have in place to ensure that misconduct will be identified?
- What level of enforcement action is taken in DRO cases? And what type of enforcement action is taken?
- Are creditors satisfied with the Official Receiver's actions? How often do they object and what is the result? How often do they seek judicial review?
- How often are windfalls identified, and what action is taken?

23. The suggested evaluation criteria are:

Measure	Definition	Benchmark information	Rationale
a) Working practices of an Official Receiver as regards DRO investigations	i) Processes laid out for DRO investigation in any Casework Process Quality Standard, investigation process and management notices (as appropriate)	Processes laid out for bankruptcy investigation in any Casework Process Quality Standard, investigation process and management notices (as appropriate)	To assess the Official Receiver's approach to DRO investigations
b) The level of enforcement action	i) The level of prosecution action as regards DROs, to include: - reports submitted - action taken following submission of report	The level of bankruptcy prosecution action, to include: - reports submitted - action taken following submission of report	To assess the level of criminal activity and the protection offered to creditors as a result
	ii) The level of Restrictions Orders action as regards DROs, to include: - reports submitted - action taken following submission of report	The level of bankruptcy restrictions orders, to include: - reports submitted - action taken following submission of report	To assess the level of civil misconduct and the protection offered to creditors as a result

Measure	Definition	Benchmark information	Rationale
b) The level of enforcement action (continued)	iii) The level of DROs that are subsequently revoked	Not applicable	To assess the level of revocations and the protection offered to creditors as a result

³⁶ The DCA proposals for the reform of County Court Administration Orders include raising the maximum permitted level of liabilities to £15,000, the debtor having a surplus income of greater than £50 per month

c) Creditor satisfaction with the integrity of the DRO regime	i) Level of objections to DROs and action taken	Estimate as set out in the Regulatory Impact Assessment (to not exceed 10% of the orders made)	To assess whether creditors feel sufficiently protected by the DRO regime
	ii) Level of creditor applications for judicial review and reasons why	Level of creditor applications for judicial review in bankruptcy cases and reasons why	
	iii) Level of complaints recorded in The Insolvency Service's Complaints Register relating to DROs	Level of complaints recorded in The Insolvency Service's Complaints Register relating to bankruptcy	
	iv) Creditor satisfaction with the DRO enforcement regime (based on questionnaire response)	Creditor satisfaction with the bankruptcy enforcement regime (based on questionnaire response)	
d) The level of windfalls	i) The level of windfalls identified in DRO cases and action taken as a result	The level of windfalls identified in bankruptcy cases and action taken as a result	To assess whether all windfalls are being identified

Methodology and Sources of Information

24. The following paragraphs set out the general approach to the evaluation and the proposed sources of information to be used.

a) The Insolvency Service's internal IT system

25. An internal IT system will be developed to support the DRO processes. The Service will ensure that sufficient information is recorded to extract the evaluation information required where possible.

Benchmarking information relating to bankruptcies will be extracted from The Service's existing IT system.

Information regarding enforcement action will be taken from databases held by the Authorisations Team.

b) Communication (including meetings) with Insolvency Service personnel

26. Communication with appropriate staff will enable the approach of the evaluation to be explained and any necessary information or documentation to be obtained. Such communication will be important in ensuring that the evaluators fully understand the issues within the area under evaluation. Staff who assist the evaluators will be kept informed of the progress of the evaluation.

c) Review of files.

27. File research will be used to supplement information from other sources.

d) Contact with professionals within the insolvency sector

28. The evaluators will seek the views of professionals within the insolvency sector to obtain information regarding the impact of the DRO provisions.

e) Structured questionnaires

29. Surveys of debt advisors (including recognised intermediaries), DRO debtors and creditors will be carried out.

30. A more detailed methodology for each evaluation measure is attached at Appendix 2.

Timing

24. The estimated timetable for completion of the evaluation is as follows:

Present – March 2009	Obtain benchmark information
April 2009 – April 2012	Obtain post-implementation information
July 2010	1 st interim report
July 2011	2 nd interim evaluation report
October 2012	Final evaluation report

May 2006

APPENDIX A: COMPARISON OF BANKRUPTCY AND DROS

	Bankruptcy	DROs
Costs involved	<ul style="list-style-type: none"> £325 petition costs (paid by a charity in less than 10% of cases) £XX court fees (if the debtor is not in receipt of benefits) 	<ul style="list-style-type: none"> Nominal fee to cover the administrative costs of the DRO (yet to be fixed)
Entry criteria	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Gross debts do not exceed £15,000 Gross assets do not exceed £300 Surplus monthly income exceeding £50
Application method	<ul style="list-style-type: none"> Completion of bankruptcy petition forms, either electronically or by hand. Hard copies of the completed petition forms to be presented at Court. 	<ul style="list-style-type: none"> Completion of DRO application forms electronically by a recognised intermediary. Electronic completed application forms subject to provisions of the Perjury Act and to be sent to The Insolvency Service.
Repeat insolvents	<ul style="list-style-type: none"> No limit on the number of times, or when a debtor can access bankruptcy 	<ul style="list-style-type: none"> A debtor cannot apply for a further DRO within a 6 year period
Discharge period	<ul style="list-style-type: none"> Automatic discharge after 12 months However, the Official Receiver can apply for earlier discharge in certain cases Discharge can be suspended due to non-cooperation 	<ul style="list-style-type: none"> Automatic discharge after 12 months The order may be revoked in some cases of misconduct Discharge can be extended for up to 3 months where a debtor receives a windfall to enable an arrangement to be reached with creditors (see below)
Enforcement action	<ul style="list-style-type: none"> Bankruptcy criminal offences Bankruptcy Restrictions Orders 	<ul style="list-style-type: none"> DRO criminal offences DRO Restrictions Orders Revocation of the DRO
Effect on creditors	<ul style="list-style-type: none"> All creditors with debt existing at date of bankruptcy order are bound by the order 	<ul style="list-style-type: none"> Only creditors disclosed in the DRO application are bound by the order Creditors can object to the order, which may lead to revocation of the DRO
Windfalls	<ul style="list-style-type: none"> Any windfall received by the debtor in the 12 months after the order can be claimed as part of the bankruptcy estate 	<ul style="list-style-type: none"> The Official Receiver must be notified of any windfall received by the debtor in the 12 months after the order If the windfall is sufficient and it appears that the debtor would be able to come to an arrangement with his creditors, the debtor will be given 3 months to do this and then the DRO will be revoked