



The Insolvency
Service

Insolvency Proceedings: Debt relief orders and the bankruptcy petition limit

Call for evidence

Foreword



Debt relief orders were introduced in 2009 to help the most vulnerable people get debt relief. Unresolved debt issues can have a devastating impact on the lives of individuals, including on their mental health, their relationships and on their family.

Debt relief orders give those with very few assets or income and relatively small level of debts a simple process to obtain debt relief. The debtor has support from an advice agency which ensures it is the best solution for them and helps them to make the application. In the five years since debt relief orders were introduced, over 140,000 people have received debt relief.

Now, it is time to review the effect debt relief orders have had on people's lives, that of their families, as well as those they owed money to, and to assess whether any changes could be made to improve how they work.

This call for evidence also asks whether we should make a change to the level of debt above which someone owed money can ask the Court to make the debtor bankrupt. Set in 1986 at £750, a person or business with an unpaid debt above this amount is able to petition the court for an individual's bankruptcy. I'm asking whether £750 is still an appropriate figure to be able to trigger this strongest of debt recovery tools.

This call for evidence is your chance to feed in your opinion and evidence on both the success, or otherwise, of debt relief orders, as well as on what an appropriate level for the creditor bankruptcy petition level is.

A handwritten signature in blue ink that reads "Jo Swinson".

Jo Swinson MP

Insolvency Proceedings: Debt relief orders and petition limits

1. Introduction

- 1.1 This document is a call for evidence for a review of the debt relief order (DRO) regime and how it can be improved, and also considering the case for increasing the creditor petition limit in bankruptcy. The call for evidence will be open until 9 October.
- 1.2 The call for evidence considers the following issues:-
- Whether the existing limits on assets (under £300) liabilities (less than £15,000) and income (surplus less than £50 pm) are appropriate and if not what should the levels be set at;
 - The design and integrity of the system including whether the competent authority system of approved intermediaries to assist the debtor apply for a DRO is working well and what the costs of operating it are and where they fall;
 - Whether DROs have given people a fresh start and financial rehabilitation; and
 - Whether the £750 limit for a creditor petitioning for bankruptcy is set at the correct level
- 1.3 This document is aimed at:-
- Debt advisors/debt charities
 - Debtors
 - Creditors and their trade bodies
 - Academics / Think Tanks
- 1.4 Chapter 2 covers the DRO landscape, with chapter 3 covering the case for increasing the creditor petition limit.
- 1.5 The Insolvency Service is also rebuilding the web-based system (project name - DRO2) used by both the Insolvency Service and the intermediaries to process DRO applications and monitor them, in order to make it more user friendly and efficient. We are consulting user groups separately on the computer system

aspects, but if you have views we would be pleased to hear them . Any changes that emerge from this policy review of DROs will of course feed into any redesign of the system.

- 1.6 All responses should be sent to the mailbox – DROandBankruptcyPetitionReview@insolvency.gsi.gov.uk or can be posted to:-

Paul Mayo
4 Abbey Orchard Street
London
SW1P 2HT

Q1 When responding can you please indicate the size of your organisation (not applicable to individuals). This will be useful for any impact assessment.

Sizes of organisation are divided into:-

0-9 employees = Micro; 10-49 = Small; 50-249 = Medium; 250+ = Large

2. Debt relief orders

- 2.1 DROs came into force on 6 April 2009 and apply in England and Wales. They were conceived to address a gap in the provision of debt relief. Debt management plans and individual voluntary arrangements were possible in cases where an individual had surplus income. Bankruptcy meanwhile required a debtor to pay an upfront fee to enter, which is currently set at £705: £525 deposit and £180 court fee, of which the latter can be waived in hardship cases.
- 2.2 Moreover, bankruptcy was seen by some as a disproportionate process for low debt and low asset cases. In bankruptcy the trustee has a legal duty to deal with the assets as the assets vest in (that is become the personal responsibility of) the trustee, and is a process for realising assets and distributing the proceeds to creditors. Additionally the trustee has to consider whether to investigate the behaviour of the bankrupt. All of these features of bankruptcy impose a cost which is not seen as proportionate in small sum cases.
- 2.3 The aim of DROs was therefore to provide debt relief to those excluded from existing procedures – those with low levels of debt with no prospect of paying off those debts due to low income and asset levels and without the means to enter bankruptcy. It was also designed to support the financial rehabilitation of debtors as its low cost provided debtors with an incentive to address their debt issues earlier.

2.4 Box 1 sets out the key features of DROs:-

BOX 1

Maximum debt of £15,000

*Maximum assets of £300**

Maximum surplus income of £50 per month

£90 entry fee

No repeat DRO within 6 years

After 12 months debtor emerges debt free – except for certain excluded debts

No repayment to creditors

During the 12 months of the DRO – debtor unable to act as director without leave of the court, or access more than £500 credit without notifying the lender of the DRO.

Remains on credit history for 6 years

*Excludes certain items such as a car (up to £1,000), approved pensions and basic belongings such as clothes, bedding and furniture

2.5 In contrast to bankruptcy, only debts included (scheduled) in the DRO are subject to the protection from creditors during the course of the DRO and the debts are discharged after the DRO ends after 12 months.

2.6 DROs are an administrative rather than a court based procedure.

DRO system

2.7 Entry to the system to the debtor is through a financial intermediary who is authorised by one of the twelve competent authorities appointed by the Secretary of State for Business Innovation and Skills. Table 1 lists the twelve competent authorities and shows their number of authorised intermediaries and their volume of DRO applications for the most recent financial year.

Table 1: Competent authorities, their intermediaries and the volume of the DRO applications Financial Year (“FY”) 2013/14

NAME OF COMPETENT AUTHORITY	NUMBER OF INTERMEDIARIES AND % OF TOTAL	NUMBER AND % OF DRO APPLICATIONS
Advice UK	140 (8%)	827 (3%)
Baines and Ernst	7 (0%)	229 (1%)
Christians Against Poverty	7 (0%)	1097 (4%)
Citizens Advice Bureau	1337 (72%)	14520 (53%)
Debt Release Direct	1 (0%)	120 (0%)
Insolvency Practitioners Association	2 (0%)	225 (1%)
Institute of Money Advisers	287 (16%)	3707 (14%)
National Debtline	12 (1%)	1227 (4%)
Payplan	12 (1%)	269 (1%)
Shelter	10 (1%)	40 (0%)
StepChange Debt Charity	31 (2%)	4962 (18%)
Think Money	5 (0%)	106 (0%)
TOTAL	1851	27329

- 2.8 The intermediaries are highly trained debt advisors and are the principle gatekeepers to ensure that the information the debtors provides is accurate and within the parameters allowing entry to the DRO system. The intermediary completes the application, but it is the debtor’s decision whether to apply or not.¹ Intermediaries will not charge a fee for completing a DRO application.
- 2.9 The completed application is sent to the Insolvency Service’s DRO team, which will process the application subject to the payment of the £90 fee by the debtor.
- 2.10 The DRO team conducts a number of automatic checks on the data submitted by the debtor to ensure that the debtor qualifies within the parameters. The DRO team also conducts a number of additional checks which may preclude the application, such as whether the debtor has a bankruptcy order pending, has made any preference payments or has been subject to a DRO in the past six years which would exclude someone from a further DRO.

¹ If the intermediary does not think the person is eligible for a DRO they are able to indicate their disagreement within the DRO Web App

- 2.11 Separately the application is subject to an external credit check by a credit reference agency. This checks the liabilities of the debtor (although not all debts are captured on the credit reference agency system), the identification of the debtor, and that they are correctly domiciled in England and Wales to qualify for a DRO.
- 2.12 Once these checks are completed satisfactorily, the DRO can be granted.
- 2.13 Assuming the DRO remains in place, the DRO provides a twelve month stay from creditor action unless a creditor gets leave of the court. After this period, the debts are discharged, although there is no formal discharge from the DRO unlike in bankruptcy². Unlike in bankruptcy, only debts included – referred to as scheduled – in the DRO are subject to its conditions.
- 2.14 At the time of the granting of the DRO, creditors who have scheduled debts are sent a document called a ‘Creditors’ Notice’ informing them of their rights to object to the DRO. Only creditors can object to the granting of the DRO and only on three grounds:
- The making of the order
 - The inclusion of their debt in the list of qualifying debts
 - The details of their debt
- 2.15 Any objection is considered by the DRO team in the Insolvency Service. If the objection is upheld, this can lead to the revocation of the DRO.
- 2.16 The debtor receiving a DRO is similarly sent a ‘Debtors Notice’ informing the debtor of their obligations. The DRO is monitored during the entire time it is in existence to check that the debtor should remain entitled to receive the debt relief provided by the DRO. The debtor may no longer be entitled to the DRO should they receive a significant windfall – most often compensation for mis-sold payment protection insurance, or alternatively an inheritance payment – or get a job or a promotion. This can lead to the revocation of the DRO. It is the debtors’ responsibility to inform the DRO team of any changes or potential changes to their circumstances so this can be assessed.
- 2.17 The Insolvency Service also has the power to issue a debt relief restriction order or receive a debt relief restriction undertaking (DRRO/DRRU) should the Official Receiver consider the behaviour of someone subject to a DRO to have been reckless or dishonest in contributing to the DRO. This includes gambling or making misleading statements to receive a loan. The DRO would not be revoked in such circumstances, but the person would be subject to a 2-15 year

² Under bankruptcy, the person is discharged from the process. This does occur in a DRO.

restriction extending the conditions of the DRO. This includes requiring creditors to be informed of the DRO when obtaining credit of £500 or more, and preventing the person acting as a company director during the restriction without the court's permission.³

Pension Change

2.18 When first introduced DROs were criticised for treating pensions as an asset, even when the pension was of low value and not receivable for many years, with the consequence that some people who would otherwise have qualified found themselves unable to apply for a DRO because they had pension rights.

2.19 This was changed in April 2011 in order to allow those with HMRC approved pension schemes to have access to a DRO. In practice this means that if the debtor has not retired, but has a private or occupational pension fund, in most cases the value of the pension fund will not count towards the £300 assets limit.

Social Fund Change

2.20 In 2012, the Government legislated to exclude social fund debt from the list of debts that could be included and discharged through either a DRO or bankruptcy. Social fund loans – and its successor 'Payment on Accounts' - was a finite pot of money which is loaned to people in financial difficulty. Writing off the debt would reduce the amount available to other people in difficulty, and therefore it was decided due to social policy concerns to add social fund loans to the existing list of government debts that could not be discharged.

Basic Statistics on DROs

2.21 Table 2 shows the number of DRO applications, the number of orders made and the number of applications declined each financial year since DROs began in 2009.⁴ Having stabilised around 30,000 per year in 11/12 and 12/13 – they experienced a 12% fall in orders made in 2013/14. Orders made were 98% of applications submitted in FY 2013/14.

³ If the DRO moratorium has ended then a debtor needs to disclose the existence of a DRRO/U.

⁴ Numbers do not tally as some applications are withdrawn before they reach determination by the DRO Team. For instance the fee may not have been paid or simply because the debtor has withdrawn their application.

Table 2: DRO applications, orders and declined cases

Year	Applications Submitted	Orders Made	Declined cases
2009/10	18485	17475	178
2010/11	27037	26326	174
2011/12	30734	30118	170
2012/13	31182	30501	131
2013/14	27329	26876	96

2.22 Table 3 shows the level of debt across DRO applications since inception – the limit being £15,000. This shows that consistently around 20% of cases assessed had debts below £5,000, whilst just over 40% of individuals had debt levels between £5,000 and £10,000, whilst just under 40% had debt levels between £10,000 and £15,000.⁵

Table 3: Levels of Debt

	Below £5,000	£5,000-£10,000	£10,000-£15,000	GRAND TOTAL
2009-10	3230 (18%)	7511 (42%)	6966 (39%)	17707
2010-11	5453 (21%)	11373 (43%)	9674 (37%)	26500
2011-12	6247 (21%)	12813 (42%)	11232 (37%)	30292
2012-13	6640 (22%)	12930 (42%)	11062 (36%)	30632
2013-14	5541 (21%)	11377 (42%)	10053 (37%)	26971

2.23 Table 4 shows the level of assets across DRO applications since inception – the limit being £300 for qualifying assets. This shows just under 90% have £0 qualifying assets.

⁵ The numbers shown are slightly above the orders made, meaning that some cases where orders were not made have also been assessed.

Table 4: Level of Assets

	£0	£1-£100	£101-£200	£201-£300	Grand Total
2009-10	15197 (86%)	2169 (12%)	240 (1%)	116 (1%)	17722
2010-11	23311 (88%)	2699 (10%)	363 (1%)	143 (1%)	26516
2011-12	26932 (89%)	2812 (9%)	353 (1%)	210 (1%)	30307
2012-13	27512 (90%)	2602 (8%)	297 (1%)	263 (1%)	30674
2013-14	24018 (89%)	2305 (9%)	421 (2%)	311 (1%)	27055

2.24 Table 5 gives the breakdown level of disposable income across DRO applications – the limit being £50 per month to gain entry. Around 20% of individuals have negative surplus income – their expenditure is greater than their income, whilst between 11-15% have a surplus income of between £26-£50.

Table 5: Level of Disposable Income

	<£0	£0-£25	£26-£50	Grand Total
2009-10	3451 (19%)	11661 (66%)	2613 (15%)	17725
2010-11	5295 (20%)	17901 (67%)	3331 (13%)	26527
2011-12	6370 (21%)	20556 (68%)	3389 (11%)	30315
2012-13	6605 (22%)	20769 (68%)	3303 (11%)	30677
2013-14	5433 (20%)	18592 (69%)	3037 (11%)	27062

2.25 Next turn to look at DROs from the creditors' angle.

2.26 Table 6 shows the average size of a debt owed to a creditor in a DRO. This has declined from around £1,400 in 2009/10 to just above £1,100 in 2013/14.

Table 6: Average level of debt per creditor in a DRO

FY	Average Debt per creditor
2009/10	£ 1,382
2010/11	£ 1,271
2011/12	£ 1,204
2012/13	£ 1,162
2013/14	£ 1,137

2.27 Table 7 looks at the amount owed to creditors for the financial year 2013/14. Over 54% (£125million) is recorded as miscellaneous. This includes debts owed to mobile phone companies, retailers and debt recovery firms. The proportions may not be wholly accurate as the "Miscellaneous" category may be overstated. Of the other categories, 29.4% is owed to banks, 8.8% to utility

companies and 5.7% to local authorities although these are likely to be understatements given the mis-categorisation.

Table 7: Amount and proportion of debt owed to different categories of creditors within DROs for the FY 2013/14

	Sum of Estimated Amount	Proportion
BK - Banks	£67,846,256	29.4%
BS - Building Societies	£1,143,490	0.5%
FI - Other Financial Institutions	£1,875,571	0.8%
GO - Government Departments	£39,033	0.0%
LA - Local Authorities	£13,149,951	5.7%
LD - Landlords	£22,567	0.0%
MI - Miscellaneous	£124,615,195	54.0%
PL - Private Lenders	£1,807,755	0.8%
UT - Public Utility Companies	£20,360,086	8.8%
Other	£30,883	
Grand Total	£230,890,787	100.0%

2.28 Table 8 looks at the employment status of DRO users since inception.

Unemployed is the largest category at around 50%. Those employed has risen from 19% in 2009/2010 to 28% in 2013/14, whilst the number self-employed remains small at around 2% - 669 individuals. Meanwhile housewife/husband (including caring for dependents) and retired account for around 10% each respectively.

Table 8: Employment status of DRO users

Year	Company Director	Employed	Housewife/husband - incl; caring for dependents	Other	Retired	Self Employed /Trading	Student	Unemployed	Grand Total
2009/10		3,339	1,864	602	1,712	249	218	9,582	17,566
		19%	11%	3%	10%	1%	1%	55%	100%
2010/11		5,471	2,619	1,156	2,588	400	267	13,853	26,354
		21%	10%	4%	10%	2%	1%	53%	100%
2011/12	2	7,375	2,660	1,277	2,561	563	276	15,486	30,200
	0%	24%	9%	4%	8%	2%	1%	51%	100%
2012/13	2	8,144	2,494	1,366	2,238	609	230	15,499	30,582
	0%	27%	8%	4%	7%	2%	1%	51%	100%
2013/14	1	7,615	2,211	1,317	2,052	669	203	12,873	26,941
	0%	28%	8%	5%	8%	2%	1%	48%	100%

2.29 The remainder of this chapter splits the call for evidence into three parts to focus on the questions we believe need to be assessed in evaluating the success of the DRO system and what future changes may be needed. These are:-

- **Access to the DRO procedure**
- **Design and integrity of the DRO system**
- **Impact on financial rehabilitation**

Access to the DRO procedure

Entry Parameters

2.30 The entry parameters have been unchanged since DROs were introduced in April 2009.

2.31 The debt limit in DROs was designed to limit the scheme to those with low levels of unsecured debt rather than allowing debtors to discharge ‘excessive’ sums. Those with mortgaged property were excluded by the asset limit being a gross value, not a net value.

2.32 If you applied an inflationary change since introduction, this would lead to the following levels for April 2014 shown in Table 9. For this we use two measures of inflation - the consumer price index and the gross domestic product (GDP) deflator.⁶

2.33 The limits were first proposed in a consultation in March 2005, so the table also looks at inflationary changes applied from this date. It can be argued that this more accurately reflects the impact of inflation.

Table 9: Inflation adjusted limit values for April 2014

Inflation Adjustment	Debt Limit	Asset Limit	Disposable income surplus limit
Current Limits	£15,000	£300	£50
GDP deflator (2009)	£16,200	£325	£54
CPI (2009)	£17,100	£340	£57
GDP deflator (2005)	£18,100	£360	£60
CPI (2005)	£18,900	£380	£63

⁶ GDP deflator is used for measuring national income in real terms.

2.34 Scotland has recently received Royal Assent (April 2014) for a Bill which includes a proposal for a Minimal Assets Process (MAP) which replaces the previous Low Income Low Asset route into bankruptcy. This is a similar product to the DRO product aimed at those with low levels of debt but who are unable to pay their debts. This is due to come into effect on 1 April 2015.

MAP has the following features:-

- **Debt Limit** – Minimum £1,500 – Maximum £17,000
- **Asset Limit** - £2,000 (for relevant assets - no single asset >£1,000)
- **Entry fee** – £90
- **Discharge** – Six month discharge from debts albeit with a post-bankruptcy restriction on credit for a further six months⁷ after their discharge with an option to extend this restriction for a further six months
- **Entry restriction** – Once in 10 years (compared to 5 years for bankruptcy)
- **Income restriction** – £0 disposable income or income entirely from benefits.

2.35 The maximum debt limit of £17,000 came out of discussions between the Accountant in Bankruptcy and Citizens Advice (CAB) and StepChange as it represented the average debt level of debt advisors' clients, with a lower figure being seen as excluding too many debtors from applying.

2.36 Table 10 looks at the impact raising the debt limit in isolation might have on the number of people using bankruptcy if they were to switch to a DRO.

⁷ A person seeking £2,000 of credit is obliged to tell the creditor about the post-bankruptcy restriction. In cases where £1,000 credit has already been obtained there is an obligation to tell the creditor of that existing debt.

Table 10: Estimated value of debts held in bankruptcy cases in FY 2013/14

Range	Estimated Value	
	Number in range	Proportion (non-blank entries)
£0 - 15000	1534	7%
£15001 - 16000	348	1%
£16001 - 17000	434	2%
£17001 - 18000	461	2%
£18001 - 19000	493	2%
£19001 - 20000	450	2%
£20001 - 22500	1059	5%
£22501 - 25000	945	4%
£25001 - 27500	876	4%
£27501 - 30000	775	3%
£30001+	16154	69%
Blank	49	
GRAND TOTAL	23578	100%

2.37 This shows that of the 23,529 bankruptcy cases in which we had data on the level of debt⁸, 1,534 could qualify for the DRO route based solely on the level of debt (but they might of course not meet the other criteria). Beyond the £15,000 debt level and up to £30,000 the table then breaks down the additional number of cases in each debt range. If the ceiling was raised to £20,000 an additional 9% of bankruptcies would qualify for a DRO on this basis; £25,000 an additional 18% of bankruptcies; and £30,000 would lead to 25% qualifying.

2.38 A similar exercise has been carried out for the asset limit:

⁸ There were 23,578 bankruptcies in the FY 2013/14. 49 of these did not show the level of debt.

Table 11: Estimated levels of assets held in bankruptcy cases FY 2013/14

Asset Value	Number in range	Proportion in range (of those entering a value)
£0-300	9735	54%
£301-500	1221	7%
£501-1000	2897	16%
£1001-1500	890	5%
£1501-2000	630	4%
£2001-2500	361	2%
£2501-3000	285	2%
£3001-3500	170	1%
£3501-4000	134	1%
£4001-4500	133	1%
£4501-5000	96	1%
£5001+	1402	8%
Blank	5622	
Total	23578	

2.39 Ignoring the blank entries where no asset record was entered for the debtor, 54% of bankruptcy cases in FY 2013/14 had an asset value within the DRO range of £0-£300. Increasing the asset limit to £2,000 would add a further 31% of bankruptcies (if they met the other criteria).

2.40 Finally we have combined the asset and debtor data in bankruptcy to consider the upper bounds of how many cases could be included if you changed the limits simultaneously.⁹

⁹ We have not combined with the surplus income data because the vast majority of cases are missing a surplus income value.

Table 12: Number of bankruptcy cases FY 2013/14 below both a debt and asset limit (but not necessarily meeting the income test for a DRO)

Change	Estimated Debts	Assets	Number of cases (17,929 cases show both an asset+debt)	% of cases (out of 17,929 cases)	Number of cases (Ratioed to 23,578 bankruptcies)
Current Limits	<£15,000	<£300	480	3%	637
GDP deflator (2009)	<£16,200	<£325	622	4%	825
CPI (2009)	<£17,100	<£340	775	4%	1,014
GDP deflator (2005)	<£18,100	<£360	932	5%	1,226
CPI (2005)	<£18,900	<£380	1,060	6%	1,391
	<£20,000	<£500	1,318	7%	1,745
	<£25,000	<£1,000	2,723	15%	3,584
	<£30,000	<£2,000	4,097	23%	5,399

2.41 Table 12 looks at various permutations – including the impact of changing the limits in line with the two inflation measures. We have 17,929 bankruptcy cases where values for both the asset and debt levels have been recorded. The fourth column shows the number of cases out of these valid cases falling below the various limit, whilst the 5th column shows these as a percentage of the valid cases. For example, 480 cases representing 3% of the 17,929 cases, in bankruptcy, sit below the current DRO limit of £15,000 debt and £300 eligible assets. The final column shows how many cases this implies for the full 23,578 bankruptcy cases from 2013/14 and assumes missing data matches the pattern of data we have collected.¹⁰ This is provided to give a real indication of the actual effect of any change.

Q2 What level do you think the maximum debt amount should be set to and why?

Q3 Do you think there should be a minimum limit of debts?

Q4 What level do you think the maximum asset amount should be set at and why?

2.42 Next we turn to look at the maximum level of surplus income which is currently set at £50 per month for DROs. Where the debtor is not subject to an Incomes Payment Order/Income Payments Agreement, surplus income data is not

¹⁰ This is thought to be a reasonable assumption.

routinely collected for bankruptcy cases, and hence we have data on only 1,500 of the total bankruptcy cases.

- 2.43 If we assume that the missing cases are equally distributed in line with the cases for which we have surplus income data, 25% of bankruptcy cases last year fitted within the £50 maximum limit under a DRO.

Table 13: Level of monthly surplus income in bankruptcy cases FY 2013/14

	Case s	Proportion (non blank cases)
£0-50	388	25%
£51-100	321	21%
£101-150	219	14%
£151-200	143	9%
£200 +	463	30%
Blanks	22044	
GRAND TOTAL	23578	

- 2.44 Since 2004, the Insolvency Service has used the Living Costs and Food Survey for calculating surplus income. This survey is produced by the Office for National for Statistics and sets out reasonable expenditure for different household sizes and types. Meanwhile two other calculators are exclusively used within the debt management and personal insolvency industry: the Common Financial Statement (CFS); and StepChange’s debt remedy calculator. A consultation is ongoing to produce a Common Income and Expenditure Calculator to use as an industry standard.
- 2.45 The case for making an upward revision to the DRO surplus income level is arguably weaker than other possible changes to the limits. Under bankruptcy, an Income Payments Order will be put in place taking the whole surplus income if a bankrupt has a surplus income of more than £20 per month, subject to an allowance for emergencies and contingencies of £10 a month for each family member. Therefore given that DRO users will potentially get to keep more surplus income than bankruptcy, the case for increasing the limit to make the disparity larger still is weaker.

Q5 What level do you think the surplus income amount should be set at and why?

For Q2-Q5 about the limits in addition to your views any case study evidence would be very useful.

- 2.46 In addition to any switching from bankruptcy that may occur if any of these limits are raised, there may be additional people who are unable to currently

afford the entry fee for bankruptcy (£705) who would then be able to qualify for a DRO.

Cost of DROs

2.47 The cost of the DRO is £90, £80 of which covers the Insolvency Service's costs for administering the scheme with £10 going to the Competent Authority. The charging by the Insolvency Service is on a cost recovery basis.

2.48 The payment of £10 per DRO application to the competent authorities is a payment to defray against their costs and expenses, for example training of intermediaries through a course provided by the Money Advice Trust. This payment is not meant to cover all costs however, because it was recognised at the time DROs were introduced, that DROs had the potential to save debt advisors significant time in the work they undertook on debtors' behalf.

2.49 A DRO drew a line in the sand preventing creditor action, and meant that debt advisors did not need to negotiate any repayment or defray any action on behalf of debtors with their creditors. In addition, it also removes the time devoted to assisting debtors to apply for grants in order to be able to petition for bankruptcy and any queries arising out of any subsequent bankruptcy proceedings.

2.50 The current cost of DROs is the same as the £90 fee the new Minimal Asset Process is expected to charge for entry in Scotland.

Q6 Do you think additional costs of the competent authorities should be covered by the application fee? If so, how much and why?

Payment system

2.51 Debtors are able to pay the £90 fee either through using Payzone – a payments acceptance network available in many local shops – or through payment at the Post Office. In addition payment can also be made using a charity cheque. In addition to being able to pay the £90 fee as a one-off payment, the fee can also be paid in £5 per week instalments. We believe there may be some instances where payment via either Payzone or the Post Office may not be geographically convenient.

Q7 Do existing payment systems provide sufficient coverage to enable debtors to pay the fee? If not, what other payment systems should be added?

Restriction on entering the DRO process

2.52 A debtor is able to obtain a DRO once every six years – a period that was partly chosen because it matched the time period that entries remain on the credit

reference agency registers. As part of the original DRO consultation, an additional barrier of limiting DROs to two per individual also attracted some support, although it was rejected on the grounds that having two separate limits on access (six years and only two applications) would make the checking system unnecessarily complicated and would add to costs.

2.53 Eighteen DROs have been rejected since the scheme's inception either at application stage or through a subsequent revocation on the basis of the person having had a previous DRO.

2.54 As reported previously, Scotland's Minimal Asset Process restricts access to once every ten years. Meanwhile entry to the New Zealand No Assets Procedure is a once only entry scheme, which is also unavailable to anyone who has previously been bankrupt.

Q8 Do you consider the six year restriction is appropriate? If not, please provide reasoning for an alternative.

Design and integrity of the DRO system

The Competent Authority/Intermediary Model

2.55 The model in operation was chosen for a number of reasons:-

- The intermediaries are experienced debt advisers who are effective at extracting and interrogating the information provided by debtors, and knowing when a DRO is the most appropriate solution. This ability to interrogate the information was seen as an important safeguard for creditors.
- Some applicants could have low levels of numeracy and literacy and the intermediary either through face to face or telephone conversation, could help ensure these people could access the system.
- Intermediaries' filling out the forms on behalf of debtors helps reduce the cost to debtors of wasted applications where they were not suitable candidates.
- The DRO system is electronic with the intermediary filling out and submitting the DRO application which is sent to the DRO Team within the Insolvency Service for processing. This is a low cost solution.
- The wider office network of debt advisers was seen as a benefit for access over the Official Receiver network in the original consultation. With the exception of the Citizen's Advice bureau, we believe most if not all of the other competent authorities provide a telephone service, further enhancing coverage.

2.56 The strong filtering role provided by intermediaries can be seen by the fact that 98% of applications for the FY 2013/14 submitted by intermediaries ended up in DROs¹¹.

Q9 Do you consider the competent authority/intermediary model is working well? How could it be improved? Would another model be better?

2.57 There are a number of specific questions we would like to explore around the current model.

Debtor experience

2.58 An issue we wanted to consider was whether all debtors were able to access DROs and have four questions on this area.

2.59 **Debtor awareness** - Are the debtors who DROs are aimed at aware of the existence of the DRO solution, and where they should go to enquire about whether they might qualify and to get an application submitted?

2.60 **Geographical coverage:** Although most providers give a telephone service potentially giving DROs national coverage, the Citizens Advice Bureau network which provides over 70% of intermediaries and is responsible for over 50% of DRO applications does not provide a telephone service. Citizens Advice service is delivered through face to face with some outreach work, where access is more dependent on having branches near applicants. Does this create any gaps in coverage?

2.61 **Speed of applications:** Obtaining a DRO quickly is an important consideration for a debtor as it enables the individual to obtain earlier protection from their creditors. Due to the need to get an appointment at a Citizens Advice Bureau, we believe an application can take around 4-6 weeks from initial contact to being sent to the DRO team. In terms of the DRO team's processing of applications, the time to process an application depends in part on whether there are any gaps or errors in the information sent by the intermediary to them. Where all information is correctly filled in and the additional checks are completed satisfactorily, the DRO team were able to make a Debt Relief Order within 48 hours for 99% of cases.

2.62 **Availability of intermediaries:** One issue we have been made aware of is that the number of DROs may be being limited due to a lack of intermediaries to process the cases. The number of intermediaries fell from 1,881 in 2012/13 to 1,851 whilst there was a larger proportionate fall in the number of DROs submitted from 31,182 to 27,329.

¹¹ 26,876 approvals for 27,329 applications.

- Q10 Are debtors who are suitable for DROs aware of their existence?**
- Q11 Do debtors know to contact a competent authority to pursue a DRO application?**
- Q12 Is there any issue with the geographical coverage of the competent authority networks?**
- Q13 Is there any issue with the speed of DROs applications? If yes how can it be improved?**
- Q14 Is there any issue with the number of intermediaries? If yes, is this a funding issue?**

Revocations

2.63 A DRO can be revoked due to an objection by a creditor to the granting of the DRO, a material omission of information from the DRO application or because of an improvement in the debtors' financial situation meaning that they can now deal with their debts.¹² The debtor has a duty to inform the Official Receiver of any such changes. Creditors are able to inform the DRO Team if they become aware of a change in circumstances. During the moratorium period it is the Official Receiver's decision whether to revoke the DRO. Outside this period the power lays with the Court.

2.64 Revocations for the past three years have been running at around 300 per FY. Objections – which will mostly come from creditors although could come from a third party if they aware of a change in circumstances for the debtor – peaked at 402 cases in FY 2010/11 and has fallen to 271 in FY 2013/14. This decline reflects in part creditors better understanding of the DRO process and the grounds on which they can object.

Table 14: Statistics on revocations per year

	Revocations	Objections
2009/2010	90	335
2010/2011	188	402
2011/12	300	353
2012/13	301	275
2013/14	310	271

¹² The death of the DRO debtor is a further valid reason for revocation.

- 2.65 Approximately 1% of cases in 2013/14 (282 out of 26,876 DROs) ended up needing to have an Income and Expenditure Survey to reassess eligibility for a DRO following an improvement in the debtor's income or asset position. Unlike the decision to approve a DRO where the debtor needs to meet the entry criteria to qualify, the official receiver has the discretion to decide if the change in financial circumstances is sufficient enough to allow the debtor to deal with their creditors. This led to 154 revocations in 2013/14 on the grounds that the asset limit was exceeded, and 29 revocations on the ground that the disposable income had been exceeded.
- 2.66 The decision to revoke a DRO or not revoke a DRO by the Official Receiver is appealable to the court. Since inception there has been one creditor objection that went to the court. This appeal was successful.
- 2.67 There have been two debtor challenges to the court following a decision to revoke a DRO following an improvement in financial circumstances. One such challenge was successful on the fact that the official receiver had not exercised discretion in revoking a DRO because due to a change in circumstances the debtor was no longer within the limits. The legislation specifically allows discretion to be exercised. Since this decision, the decision to revoke following a change of circumstances is no longer being so strictly applied, with revocation now only occurring if the creditors could be expected to benefit if the DRO was revoked.

Q15 Do you think that the revocation system is working effectively? If not, what changes should be made?

Q16 Is the current treatment of increases in income and asset windfalls appropriate?

Enforcement Regime

- 2.68 Debt relief restrictions orders (DRRO) or debt relief restriction undertakings (DRRU) (where someone voluntarily agrees to a sanction) can be sought where the OR considers there has been reckless or dishonest behaviour during the period of their insolvency. The restriction extends the original restrictions around obtaining credit and acting as a company director (without leave of the court) for between 2-15 years depending on the seriousness of the behaviour.
- 2.69 The decision as to whether to pursue a restrictions order is made by the Authorisation Team (on behalf of the Secretary of State) which is part of Investigations and Enforcement Services within the Insolvency Service. The decision to proceed is made on whether it is in the public interest.
- 2.70 Table 15 shows the number of restrictions given out per year.

Table 15: Number of DRO restrictions per year

	DRROs/DRRUs
2009/2010	2
2010/2011	8
2011/12	6
2012/13	20
2013/14	19

2.71 Failure to fully disclose assets was the largest reason behind the granting of a DRRO/DRRU last year. By contrast there are very few restrictions imposed due to non-disclosure of liabilities. DRRO/DRRUs can also be issued if gambling is involved, or for example if there has been false information given by the debtor about their employment status in order to obtain a loan.

2.72 A restrictions order/undertaking does not automatically lead to a revocation of the DRO. If the restriction is imposed following the person withholding details about their financial circumstances in order to get under the maximum limits on DROs, this would see the DRO revoked. If however, the restriction was due to gambling or other culpable behaviour, the person may still qualify for the DRO and therefore it would remain in place.¹³

Q17 Do you consider that the DRO restriction system is working well to deter reckless behaviour? What changes should be made, if any?

Financial Rehabilitation

2.73 An important element of the benefit DROs are designed to achieve is around restoring individuals to financial health and financial market participation who would otherwise remain burdened by debt. There are three elements where the DRO process can influence the ability of a debtor to financially rehabilitate: entry; the process itself; and post DRO policies of lenders and credit rating agencies.¹⁴

Entry

2.74 A DRO may lead to greater financial rehabilitation if through providing a lower cost insolvency solution; it enables a debtor to deal with any debt issues earlier and following a DRO return to a sound financial footing sooner.

¹³ In the case of a debt that was fraudulently acquired. The DRO would cover this debt, but once the DRO had ended at 12 months, the debt would be reinstated and the creditor could pursue it.

¹⁴ In addition to this evidence gathering exercise, we also intend questioning a number of recent DRO debtors to get their views on the degree to which a DRO has helped them to resolve their debt issues.

Q18 Do you consider that the DRO regime has encouraged debtors to seek debt relief at an earlier stage? If yes, please explain how this has been a benefit including any case study evidence?

DRO Process

Period of discharge

2.75 The period of the discharge (the moratorium) of the debt under a DRO is twelve months – in line with the discharge period for bankruptcy¹⁵ – after which any scheduled debt is cancelled. By contrast the period of the cancellation of debts for Scotland's new MAP route into bankruptcy is six months, which is different from the length of time restrictions around obtaining credit are imposed, which is twelve months.¹⁶

2.76 A longer period of discharge from debts allows a greater opportunity for creditors to receive a payment if for example the debtor receives a windfall and the DRO is revoked. The discharge period needs to balance the need to impose a suitable period of restrictions on the debtor to discourage debtors taking on unserviceable debts, with the need to help debtors rehabilitate themselves - which includes being able to re-engage with credit markets once their debt has been cancelled.

Q19 What is an appropriate length of time for discharge?

Q20 Do you think the length of discharge and the length of DRO restrictions should be the same or different? Please provide reasoning for your response and indicate what an appropriate time for both is?

Impact of DRO restrictions on employment and self employment

2.77 During the period of the DRO, any increase in income needs to be reported to the OR, for instance due to gaining employment or a promotion, which could lead to a revocation of the DRO if the change is significant. The same applies to undertaking any additional self-employment work. This could in theory act as a disincentive to get a job, seek a job or get additional self-employment work and therefore limit the debtor's ability to rehabilitate.

2.78 Initial conversations with the DRO Team have indicated that they have seen many cases of people on DROs getting a job – so at least anecdotally it

¹⁵ Discharge in bankruptcy refers to the discharge of the individual from their bankruptcy. This discharge is not mirrored in DRO. However both procedures have their debts discharged after 12 months.

¹⁶ The DRO restriction around obtaining credit is also 12 months.

appears that it is not acting as a disincentive to improve the debtors circumstances. Indeed it was commented that the typical low skilled job that someone subject to a DRO is more likely to acquire, may be insufficient to move someone outside of the DRO qualifying parameters.

Q21 Do you think DROs impose any barriers on employment or self employment? If yes, how could this be mitigated?

Post DRO lender policies

2.79 Equally important for rehabilitation is the policies of lenders and credit reference agencies to a debtor who has had a DRO – and thus the debtor’s ability to access credit in future. However, given many DRO users may have little or no income, it is likely that many individuals will remain credit excluded, even after having their debts written off, preventing any full rehabilitation.

2.80 This commercial decision is purely for lenders and credit reference agencies to make, but capturing the policies in place is an important part of commenting on likely debtor rehabilitation.

Q22 Lenders/Credit rating agencies only: What credit policies do you have for someone who has gone through the DRO process?

Impacts of financial rehabilitation

2.81 Finally we wanted to gather evidence on the impact on debtors of any financial rehabilitation gained from debt relief from DROs. The initial evaluation report¹⁷ we conducted back in 2010 highlighted a number of effects. A Save the Children Fund¹⁸ report stated that measures which help to put low-income families back in control of household finances are essential to tackle child poverty. The report considers the impact of carrying debt on families struggling to heat their homes, buy clothes for their children and provide basic household items such as a cooker and a fridge.

2.82 Other issues highlighted was the impact of debt on mental health. This problem lost UK employers 11.4 million man days per annum back in 2008/09¹⁹. This

¹⁷ <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/insolvency/evaluation-reports-pubs>

¹⁸ The Save the Children Fund, 2009. *The impact of debt on the UK’s lowest earning families*. Available at: http://www.savethechildren.org.uk/en/docs/Debt_brief.pdf

¹⁹ Health and Safety Executive. *Labour Force Survey 2008/09*. Available at: <http://www.hse.gov.uk/statistics/causdis/stress/scale.htm>

was estimated by the NHS to cost the UK economy in the region of £23 billion, plus care costs of £12.5 billion²⁰.

2.83 A BERR report on over-indebtedness also showed that persistent ill health combined with unresolved credit commitments can cause a prolonged cycle of debt and ill health (most commonly ill health relates to psychological conditions)²¹. Another study identified a 'moderate association' between debt and mental health, suggesting that an individual's attitude towards debt is important, as the extent to which they worry about debt can have a greater impact on mental health than the level of debts²². It also found that the overall mental health issue for people in debt is significant, citing international studies which found links between debt and suicide/self harm²³

Q23 What impact have DROs had on the wellbeing of debtors – please provide evidence?

²⁰ NHS Evidence resource. Available at:

<http://www.library.nhs.uk/mentalhealth/viewresource.aspx?resid=105867>

²¹ ²¹ Disney, R. Bridges, S. & Gathergood J., 2008. *Drivers of Over-indebtedness*. Report to BERR. Available at: <http://www.berr.gov.uk/files/file49248.pdf>

²² Fitch, C et al, 2010. *Debt and Mental Health: What do we know? What should we do?* Available at: [http://www.rcpsych.ac.uk/pdf/Debt%20and%20mental%20health%20\(lit%20review\).pdf](http://www.rcpsych.ac.uk/pdf/Debt%20and%20mental%20health%20(lit%20review).pdf)

²³ Ibid - Pg 14

3. Bankruptcy creditor petition limit

- 3.1 The minimal amount of debt a creditor needs to be owed in order to petition the court for someone's bankruptcy has been £750 since 1986. This has given creditors, due to the effect of inflation, an enforcement option over low level debts, which Parliament had not originally intended them to have.
- 3.2 Furthermore, bankruptcy is an extremely expensive way of recovering low level debts. It is a judicial process, which will involve fees to cover the actions by the Official Receiver, court costs including solicitor costs for creditors, and in cases taken on by insolvency practitioners where there are sufficient assets to realise, their fees. As a tool for returning money to creditors in low value cases it is largely ineffective.
- 3.3 A Newsnight piece on 23 April 2014 highlighted a number of cases where individuals had been placed into bankruptcy through a creditor petition for a low value debt, but who had ended up facing far larger debts through the bankruptcy process. One example was of a person originally with a £1,350 council debt that has turned into a debt of £80,000 through bankruptcy. Another example was a couple with a £7,000 debt which turned into a £100,000 debt through the fees charged in bankruptcy, and who were forced to sell their house for £110,000, eventually only seeing £15,000 back. In addition the Secretary of State has over the years received complaints from aggrieved bankrupts complaining about the low level of the creditor petition level which has been used to put them into bankruptcy.
- 3.4 Given its potentially devastating effect upon individuals and families, bankruptcy should be used as a last resort by creditors to resolve any unpaid debts.
- 3.5 There have also been a number of legal rulings where the appropriateness of using bankruptcy as a tool for recovering small level debts has been questioned. For instance in *Ford v Wolverhampton CC* the Ombudsman found that there had been maladministration by the local authority insofar as it had obtained a bankruptcy order against the debtor in respect of arrears of council tax of £1,105. Commenting the Ombudsman said, "There is a question of proportionality here, too. The council cannot turn a blind eye to the consequences to the debtor of any recovery option it pursues..... The dire and punitive consequences of bankruptcy, involving a multiplication of the original debt many times over and frequently incurring the loss of the debtor's home,

must be a factor to be taken into account in deciding that the ‘last resort’ [bankruptcy] is indeed appropriate.”²⁴

- 3.6 In another case, *Hunt v Fylde BC* the issue of human rights was raised by the district judge, “as we contemplate an individual losing his home for a small tax liability when the more proportionate remedy of a charging order subject to court control is better”.
- 3.7 These rulings however may not have wider application to cases that do not involve a petition brought by a local authority. Further in *Griffin v Wakefield Metropolitan DC*, Judge Walker, referring to bankruptcy, stated that there can be no objection to the use of a procedure which is permitted by statute and regulations.

Devolution

- 3.8 Any change to the creditor petition limit would cover England and Wales only. Bankruptcy (sequestration) is devolved to Scotland where the petition limit for bankruptcy in Scotland was changed to £3,000 in April 2008. All insolvency matters are devolved to the Northern Ireland Executive. The creditor petition limit is £750 in Northern Ireland.

Potential changes

- 3.9 Applying an inflationary adjustment, would return the level for the creditor petition limit to the real values envisaged by Parliament in 1986. Table 16 shows these values for CPI inflation for 2013, and for the GDP deflator – up to the end of the financial year 2013/14.

Table 16: Inflation adjusted credit petition limit

Inflation Adjustment	Credit petition limit
CPI	£1,700 (2013 value)
GDP deflator	£1,600 (2013/14 value)

- 3.10 We have also looked at the various limits in place in selected other countries. Whilst a number of European countries have no creditor petition limit (Germany, Italy and Spain), a number of others have recently revised the limit, most notably the Republic of Ireland, which raised its limit to €20,000 (£15,900) in December 2013.

²⁴ There are a number of similar investigations and findings by the Ombudsman on bankruptcy for use as a recovery tool for council tax debt..

Table 17: Creditor Petition Levels in various countries²⁵

Country	Level of the credit petition limit	Additional Comments
Australia	(\$5,000) £2,700	Revised in August 2010
Germany	None	The request is admissible if the creditor has a legal interest in the opening of the insolvency proceedings, shows his claim, and the reason why insolvency. proceedings should be opened.
Italy	None	Request by creditor only start of procedure, since the Judge has to verify the overall debt and the debtor's asset value respects some parameters, and the Judge can otherwise rule on the appropriateness of the insolvency
Netherlands	None	
Northern Ireland	£750	
Republic of Ireland	(€20,000) £15,900	Revised in December 2013
Scotland	£3,000	Revised in April 2008
Spain	None	No minimum amount of debts in order to open an insolvency proceeding; it must be opened where the debtor is not able to pay in a regular way his/her debts

3.11 Finally we turn to look at the impact any change would have on the number of bankruptcy petitions by creditors. Table 18 combines Ministry of Justice data on the total number of creditor petitions in FY 13/14 (11,900) with the data held by the Insolvency Service on creditor petition orders (5,145) including the amount of debt owed in the creditor petition.

3.12 The impact of any change to the creditor petition limit will be felt on all credit petitions lodged at the court. Creditor petitions are used by creditors as a tool for recovering debt, so following repayment the petition will often not need to move to a bankruptcy order. In constructing Table 18 we have assumed that

²⁵ Exchange rate conversions July 2014

the distribution of the creditor petition amounts is similarly distributed for creditor petitions which do not end up as orders, as for the orders for which the data is taken.

3.13 Table 18 shows that an increase in the petition limit to £2,000 would have led to 404 fewer creditor petitions in 13/14, 3% of the 11,900 creditor petitions there were in that period. Meanwhile an increase to £3,000 would have led to 979 fewer creditor petitions, 8% of the total.

3.14 This is likely to be an overestimate of any impact on the level of creditor petitions, as for some cases it may just lead to a creditor waiting until a higher level of debt is incurred before issuing a petition.

Table 18: Creditor petition levels FY 13/14

Range	Number of cases	Cumulative number of cases	Cumulative % of cases	Proportion of cases
£750 - 1000	78	78	1%	1%
£1001 - 2000	325	404	3%	3%
£2001 - 3000	575	979	8%	5%
£3001 - 4000	547	1,526	13%	5%
£4001 - 5000	477	2,002	17%	4%
£5001 - 6000	458	2,461	21%	4%
£6001 - 7000	375	2,836	24%	3%
£7001 - 8000	307	3,143	26%	3%
£8001 - 9000	268	3,411	29%	2%
£9001 - 10000	201	3,612	30%	2%
£10001 - 20000	1,437	5,049	42%	12%
£20001+	6,851	11,900	100%	58%
	11,900			100%

Q24 What would you consider an appropriate creditor petition level? Please provide evidence for this view, including any case study examples.

Q25 Is there any other aspect of DROs or the creditor petition limit you would like to comment on? Please do so here.

List of Questions

Q1 When responding can you please indicate the size of your organisation (not applicable to individuals). This will be useful for any impact assessment.

Sizes of organisation are divided into:-

0-9 employees = Micro; 10-49 = Small; 50-249 = Medium; 250+ = Large

Q2 What level do you think the maximum debt amount should be set to and why?

Q3 Do you think there should be a minimum limit of debts?

Q4 What level do you think the maximum asset amount should be set at and why?

Q5 What level do you think the surplus income amount should be set at and why?

For Q2-Q5 about the limits in addition to your views any case study evidence would be very useful.

Q6 Do you think additional costs of the competent authorities should be covered by the application fee? If so, how much and why?

Q7 Do existing payment systems provide sufficient coverage to enable debtors to pay the fee? If not, what other payment systems should be added?

Q8 Do you consider the six year restriction is appropriate? If not, please provide reasoning for an alternative.

Q9 Do you consider the competent authority/intermediary model is working well? How could it be improved? Would another model be better?

Q10 Are debtors who are suitable for DROs aware of their existence?

Q11 Do debtors know to contact a competent authority to pursue a DRO application?

Q12 Is there any issue with the geographical coverage of the competent authority networks?

Q13 Is there any issue with the speed of DROs applications? If yes how can it be improved?

- Q14 Is there any issue with the number of intermediaries? If yes, is this a funding issue?**
- Q15 Do you think that the revocation system is working effectively? If not, what changes should be made?**
- Q16 Is the current treatment of increases in income and windfalls appropriate?**
- Q17 Do you consider that the DRO restriction system is working well to deter reckless behaviour? What changes should be made, if any?**
- Q18 Do you consider that the DRO regime has encouraged debtors to seek debt relief at an earlier stage? If yes, please explain how this has been a benefit including any case study evidence?**
- Q19 What is an appropriate length of time for discharge?**
- Q20 Do you think the length of discharge and the length of DRO restrictions should be the same or different? Please provide reasoning for your response and indicate what an appropriate time for both is?**
- Q21 Do you think DROs impose any barriers on employment or self employment? If yes, how could this be mitigated?**
- Q22 Lenders/Credit rating agencies only: What credit policies do you have for someone who has gone through the DRO process?**
- Q23 What impact have DROs had on the wellbeing of debtors – please provide evidence?**
- Q24 What would you consider an appropriate creditor petition level? Please provide evidence for this view, including any case study examples.**
- Q25 Is there any other aspect of DROs or the creditor petition limit you would like to comment on? Please do so here.**