

Consultation

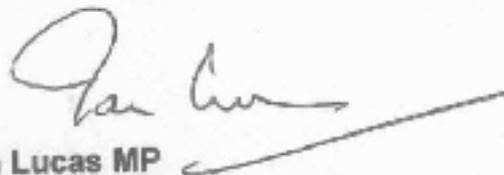
Debt Relief Orders and Pensions

Foreword

The global recession has resulted in a rise in the number of people who are experiencing problems repaying their debts. The Government has worked hard over the last 10 years to help those in financial difficulty, whilst also preserving the rights that creditors have to recover the money owed wherever possible.

For example, last year we introduced innovative Debt Relief Orders (DROs). This is an affordable solution that provides real assistance to those who are burdened with relatively low levels of debt that they will never be able to repay. And the Government is determined to do all that it can to support people, both now and in the future. In particular, I have listened to concerns expressed by debt advice agencies that there is a group of people who would otherwise be suitable for a DRO but for the fact that they have pension rights based on a little money held in a pension that they cannot draw down for some years. They are trapped in debt because they have nothing to offer their creditors and cannot afford bankruptcy.

I am therefore proposing a common sense change to the DRO eligibility criteria to help these individuals. I very much look forward to hearing your views on the scale of this issue and also which of the suggested options for change you think would provide the best solution.



Ian Lucas MP
**Minister for Business and
Regulatory Reform**
**Department for Business
Innovation & Skills**

Debt Relief Orders and Pensions

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Debt Relief Orders and Pensions

Summary

Early evaluation of the Debt Relief Order (DRO) regime suggests that there may be a group of people who would otherwise be suitable for a DRO but for the fact that they have a future pension right that is both small and still some years away from coming into payment. They may be trapped in debt because they have nothing to offer their creditors and cannot afford bankruptcy.

The purpose of this consultation is to invite views on whether and, if so, how the DRO eligibility criteria should be changed to address this issue. Some possible options are set out in this paper and we also attach an initial impact assessment. We very much welcome your views, both about whether there is a real problem and, if so, which option you think would provide the best solution, as well as about the possible costs and benefits of a specific amendment to the DRO eligibility criteria.

How to respond

When responding please state whether you are doing so as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

This consultation was published on 23 March 2010. The consultation period will run for 3 months, and the closing date for responses is 23 June 2010.

However, we encourage responses as early as possible to assist us in accelerating the process of considering replies.

A response can be submitted by email or letter to:

Andy Woodhead
Policy Directorate
The Insolvency Service
Zone B, 3rd Floor
21 Bloomsbury Street
London
WC1B 3QW
Fax: 020 7637 6746

Email: policy.unit@insolvency.gsi.gov.uk

Additional copies

This consultation can be found at: www.insolvency.gov.uk. You may make additional copies without seeking permission.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information, including personal data that you provide, to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidentiality. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system, will not, of itself, be binding on The Insolvency Service.

Help with queries

Questions about the policy issues raised in the document can be addressed to Andy Woodhead, The Insolvency Service (contact details as above).

If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Idowu Babatunde
Consultation Co-ordinator
Department for Business, Innovation and Skills
Better Regulation Team
1 Victoria Street
London. SW1H 0ET
Email: Babatunde.Idowu@bis.gsi.gov.uk
Tel: 020 7215 0412
Fax: 020 7215 0235

A copy of the Government's Code of Practice Consultation Criteria is attached at annex B

What happens next?

The Government will consider the responses received before deciding how best to proceed. Decisions taken in light of the consultation will be published along with a summary of the responses.

We intend to continue our active engagement with stakeholders throughout the period of this consultation and into the future. Stakeholders will be able to follow developments on these proposals following the consultation on the Insolvency Service website at www.insolvency.gov.uk.

Overview

The global recession has resulted in a rise in the number of people who are experiencing problems repaying their debts. The Government has worked hard over the last 10 years to help those in financial difficulty, whilst also preserving the rights that creditors have to recover the money owed wherever possible.

DROs were introduced in April 2009 following research that identified that there were people in long term debt difficulties who had nothing to offer their creditors and who could not afford to make themselves bankrupt. Delivered in partnership with the professional debt advice sector, DROs provide low cost easy access to debt relief for those overwhelmed by relatively low levels of unmanageable debt. They are designed to provide a fresh start for the most vulnerable people trapped in debt. There are strict eligibility criteria of assets less than £300, debts no more than £15,000 and surplus income of less than £50 per month.

Full formal evaluation of the procedure is planned to take place 3 years after introduction, but we have received representations from debt advice agencies that indicate that vulnerable people with small amounts of debt are still struggling because, despite meeting all of the other eligibility criteria, they are unable to obtain a DRO because of the present “asset” value of their future pension.

For example, they cited the case of a man who is claiming jobseeker’s allowance and unable to sustain debt repayments. He meets all the conditions for a DRO except that he does have a retirement fund presently valued for the purposes of the DRO asset limit at just over £600. This takes him over the £300 asset limit for a DRO. He cannot access his pension for many years and, when it is paid, it would only amount to an income of £1.72 per month. His only option currently is a token payment plan extending over many years.

This individual, and people just like him, have no means or prospect of ever paying back their debts. The debt advice agencies noted that, in the event of bankruptcy, an HM Revenue and Customs (HMRC) approved pension cannot be claimed by a trustee in bankruptcy for the benefit of creditors.

The purpose of this consultation is to look at the scale of the problem and, if necessary, ways in which the DRO regime might be changed, by an amendment to the Insolvency Rules, in order to allow DROs to be granted

where someone has a future pension right to a very small pension that is some years away from coming into payment, but whose present value takes them above the asset cap. The issue is how this should be valued for this purpose and to what extent (if any) the value of that pension right should be disregarded for this purpose. For the purposes of this consultation, references to future entitlement to pension rights include:

- any future entitlement to amounts which will become due to the debtor because their pension scheme has wound up by purchasing annuities,
- any future entitlement to pension compensation that will become due to the debtor because their scheme has transferred into the Pension Protection Fund, and/or
- any future entitlement to assistance payments which will become due to the debtor as a qualifying member of a pension scheme which qualifies for the Financial Assistance Scheme.

The Options

We want to ensure that DROs can still be delivered at low cost. We also want to ensure that any change is specifically targeted at the most vulnerable - people in long term debt difficulties who have nothing to offer their creditors and cannot afford to make themselves bankrupt.

We therefore consider ways in which the DRO entry criteria can be clarified to make clear that people with a future entitlement to a small pension may still use the DRO procedure.

Because this proposal is designed to address a specific problem that has been identified, no other changes are being proposed to the DRO process and the entry criteria relating to total debts and surplus monthly income must still be met.

Option 1: No change

We have thought about whether bankruptcy is the more appropriate option for someone who does not currently qualify for a DRO because they have a future entitlement to a pension that (together with other assets) is worth more than £300. Under bankruptcy rules, the trustee in bankruptcy will make enquiries on a case by case basis to check the value of the pension and whether it can be claimed for the benefit of creditors. (A pension that has been approved by HMRC cannot be claimed by a trustee for the benefit of creditors.) The evidence from the debt advice sector is that there is a group of people who simply cannot afford the fee required to apply for bankruptcy. They are typically in long term token payment schemes with their creditors, negotiated with assistance from a debt advice agency, under which the overall debt is not reduced at a rate that has any real impact on either the creditors or the individual debtor. In effect, there is currently no real and lasting solution to their debt problems. They do not qualify for the DRO procedure because the present value of their future pension entitlement counts as property with a value for the purposes of the DRO limit, and takes them beyond that limit. **We**

invite views on the scale of this problem. The various options for change should be compared to the option of leaving the criteria as they are.

Question 1: Does the present limit exclude persons who would otherwise qualify because of the value being given to a future pension right in calculating the application of the DRO limit?

Question 2: How should such a future pension right be valued for this purpose?

Option 2: Specifying a Time Cap

One option for excluding certain pension rights would be to take out, from the asset calculation, pensions that are some way off payment. There is an argument for saying that where an individual has a pension right that will lead to a pension in the near future, the rights to that pension fund should be taken into account in determining whether the individual qualifies for a DRO. This ensures that the interests of creditors are taken into account where it is known that the debtor will soon have an improvement to his/her financial circumstances. We are therefore seeking views on **whether a right to a future pension should not count towards the eligibility criteria relating to assets where the pension cannot come into payment for at least a specified period of time.**

We would be seeking to ensure that such a time period is not so restrictive that even the most vulnerable who have a small future pension right still cannot access a DRO. Early indications, as set out in the attached initial impact assessment, suggest that a period of 5 or 10 years might be most appropriate. As pensions can sometimes be accessed before retirement, the time cap would relate to the ability to access the pension.

Question 3: Do you think that rights to a pension should not count towards the eligibility criteria relating to assets provided that the pension cannot be brought into payment for at least a specified period of time?

Question 4: If so, do you consider that 5 years until access is an appropriate period? Do you consider that 10 years until access is an appropriate period?

Option 3: Specifying a Financial Cap

There is an argument for saying that creditors should not be excluded from receiving benefit if an individual has rights to a substantial pension fund. This benefit might be in terms of receiving payment once that individual is in receipt of an income from the pension, or in terms of claiming some of the regular payments that are being made into that pension.

We are therefore seeking views on **whether having an entitlement to a future pension should not count towards the eligibility criteria relating to assets provided that the current value (ie at the time of the DRO**

application and determination) of the pension is no more than a specified amount.

Again, we would be looking to ensure that any financial cap is not so restrictive that the most vulnerable who have a right to a small pension cannot access a DRO. The case studies we have seen suggest that somewhere from £1,000 up to £10,000 might be an appropriate financial level. Again, there is an important issue as to how a value is given to a pension. As far as possible we would want to rely on readily accessible information.

Question 5: Do you think that having an entitlement to a pension should not count towards the eligibility criteria relating to assets provided that the current value of the pension is no more than a specified amount?

Question 6: If so, do you consider that a current value of £1,000 is an appropriate amount?

Question 7: Do you consider that a current value of £5,000 is an appropriate amount?

Question 8: Or do you consider that a current value of £10,000 is an appropriate amount?

Question 9: Do you have comments on how the entitlement should be valued for this purpose?

Option 4: Requirement that the pension scheme has to be HMRC approved

In bankruptcy, a pension that has been approved by HMRC cannot generally be claimed by a trustee for the benefit of creditors (although there is provision for a trustee in bankruptcy to recover excessive contributions under section 342A of the Insolvency Act 1986). An option would be to align DROs with bankruptcy in this respect. However, as there will not be the same detailed investigation in the case of a DRO, there would be no easy way of ensuring that excessive contributions were recovered for creditors. We therefore do not suggest that such pensions should be entirely excluded. However, we are seeking views on **whether we should specify that, as an additional requirement, the pension scheme must be one that is approved by HMRC in order that the right to it would not count towards the value of assets for the purposes of determining whether an individual is eligible for a DRO.**

This would involve a check to ensure that the pension was HMRC approved. Such a check would have a cost. It is important that the fee for a DRO is kept as low as possible in order to ensure that the procedure is accessible to those who most need it. Similarly it is important that debt advice agencies do not have to incur undue costs.

Restricting access to DROs for those who have pension rights under pensions that are approved by HMRC (in addition to financial and/or time caps) should provide reassurance to creditors that the funds held in the scheme would not, be money that they could be likely to be able to claim.

Question 10: Should there be an additional requirement that pensions must have HMRC approval in order that the pension rights do not count towards the value of assets for the purposes of determining whether an individual is eligible for a DRO?

Option 5: A combination of time caps, financial caps and/or HMRC approved status

Alternatively, we could specify any combination of the above three options. For example, we could specify that future pension rights should not count towards the DRO eligibility criteria relating to assets provided that the pension scheme is approved by HMRC and that the current value of the pension is no more than £1,000 and that the pension does not come into payment for at least 5 years. Or, for example, that the current value of the pension is no more than £10,000 and that the pension does not come into payment for at least 10 years.

Question 11: Do you think that a combination of time caps and/or financial caps with or without HMRC approved status should be applied in determining whether pension rights would not count towards the value of assets for the purposes of determining whether an individual is eligible for a DRO? If so, please indicate your preferred combination in this table:

Qualifying criteria	With HMRC approved status	Without checking whether HMRC approved status
£1,000 and 5 years		
£1,000 and 10 years		
£5,000 and 5 years		
£5,000 and 10 years		
£10,000 and 5 years		
£10,000 and 10 years		
If you wish to suggest different criteria please enter the details below		

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Checking the pension details

In respect of any of the above four options, there is also a question about how we calculate the current value of a future pension for this purpose, who would check the current value of the pension, the earliest date it would come into payment and/or whether or not it is a pension that is approved by HMRC.

Under the DRO procedure, advisers from the debt advice sector act as approved intermediaries and help individuals apply to an official receiver for a DRO. The official receiver, not the court, then considers the DRO application and decides whether or not to grant the order. On receipt of an application, the official receiver can make a DRO, or can reject the application or hold it pending further information.

We do not think that it is appropriate for the official receiver to make initial enquiries about the pension at the time he or she is considering whether or not to grant a DRO. As the applicant will already have had to have paid a non-refundable application fee, making pension enquiries at this point would risk the fee being lost if the application is declined. Furthermore, if the official receiver had to make such enquiries, the cost of doing so would have a direct effect on the DRO application fee. This would be contrary to the intention to keep the fee low so that DROs are accessible to the most vulnerable.

We therefore propose that **checks to determine whether the pension is one that is approved by HMRC should be carried out as part of the application process.** Specifically, the debtor should provide the approved intermediary with details of the current value of the pension and the earliest date that pension might come into payment. Depending on how the pension is valued, this might be in the form of the last annual statement issued by the pension provider. The intermediary would need to be satisfied that the pension complies with the new criteria before completing the application.

If the debtor does not have the relevant paperwork to confirm these pension details, it would be for the intermediary to decide whether they wish to help the debtor to obtain that paperwork from the relevant pension provider before submitting a DRO application.

Ultimately, unless the intermediary has written confirmation of these details before submitting the application, the application would be unlikely to succeed and the application fee would be lost.

Question 12: Is it practical to suggest that the approved intermediary needs to be in possession of details about a debtor's pension(s) before making the application for a DRO?

Question 13: If not, can you suggest an alternative way in which these details can be checked without risking increased costs for the debtor?

Initial Impact Assessment

In the attached initial impact assessment, we have made estimates of the possible costs and benefits of the possible options. Your views are invited on these estimates, which will help inform decisions on the way forward. If you have evidence to support your views, this would be very helpful.

Question 14: Do you agree with the estimates set out in the initial impact assessment of the costs and benefits of the possible options? Can you provide further information to help inform the impact assessment as set out in that document?

ANNEX A

What is a Debt Relief Order?

A DRO is a debt relief solution available in England and Wales, for people who owe relatively little money, have little or no disposable income and no assets to repay what they owe and cannot afford to make themselves bankrupt.

Unlike other forms of debt relief, DROs involve a partnership between The Insolvency Service and the professional debt advice sector. Advisers from the debt advice sector act as 'approved intermediaries' and help individuals apply to the official receiver for a DRO. The official receiver, not the court, will then consider the application and whether or not to grant the order. On receipt of an application, the official receiver can make a DRO, or can reject the application or hold it pending further information.

As DROs are intended for those with very little who cannot afford bankruptcy, there is a much lower application fee of £90, to cover the costs to the official receiver of dealing with the case.

There are strict entry criteria. This ensures that DROs are only available to those most in need and it also means that DROs are granted in cases where the individual's financial affairs are straightforward and the official receiver in dealing with the case will therefore be able to maintain low costs and so keep the application fee at a level that is more affordable for this group of people.

A person applying must have less than £15,000 debts, surplus income of less than £50 per month and assets of less than £300 (although they are able to keep a car if it is worth less than £1,000). DROs can only be accessed with the help of an experienced debt adviser, who has been approved to act as an intermediary, to help with such applications.

If a DRO is made, all the creditors which the debtor has listed are notified of the order and the applicant is then protected from action being taken by those creditors. Generally speaking, the debtor is discharged from their liabilities after one year. Creditors do have the opportunity to object to a DRO being made, for example if they have information to indicate that the entry criteria have not been met. If there is a valid objection or if circumstances change during the year, meaning that the entry criteria are no longer met and the individual is able to make some contribution towards his or her debts, the DRO can be revoked by the official receiver, leaving the debtor once again to negotiate payments to creditors.

ANNEX B

The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

ANNEX C

Impact Assessment

Summary: Intervention & Options

Department /Agency: The Insolvency Service	Title: Impact Assessment of amending the criteria for debtors' property in relation to an application for a Debt Relief Order	
Stage: Consultation	Version: 1	Date: 1 March 2010
Related Publications: Relief for the indebted-An alternative to bankruptcy		

Available to view or download at:

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

Contact for enquiries: Andy Woodhead

Telephone: 020 7291 6738

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

The Debt Relief Order (DRO) regime was introduced in April 2009 to provide easier access to debt relief for low-income debtors, contributing to wider policies on social justice. We have received evidence that a number of needy potential beneficiaries are unable to access DROs because the value of their pension rights, together with their assets, exceeds the prescribed values scheduled for entry. We propose to adjust the threshold levels, with reference to the debtor's rights to a pension, and by so doing, make it more accessible for vulnerable debtors.

What are the policy objectives and the intended effects?

The objective is to allow greater access to DROs for vulnerable and impoverished debtors, improving services for those who have fallen into debt and their creditors. The effect would be to enable them to get debt relief, or to get access at less cost than through bankruptcy. This would enable them to make a fresh start. As their assets and income would have to be very low there would not be expected to be any significant disadvantage to creditors.

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

Option 1) Do Nothing

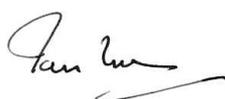
Option 2) Amend the DRO qualifying criteria in regard to the prescribed value of a debtor's assets. This is the preferred option as it would allow wider access for vulnerable and impoverished debtors. Various ways of doing this are being canvassed in the consultation document.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Expected to be reviewed in April 2012 at the same time as the evaluation of the DRO regime.

Ministerial Sign-off For consultation 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:



Date: 04-03-2010

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The main cost is expected to be ascertaining the value of a person's pension rights and (depending on whether this option is chosen) checking for HMRC approval of the pension scheme. This costs (which are not expected to be large) would be incurred either by the debtor or by the advice agencies.	
	One-off (Transition) Yrs		
	£		
	Average Annual Cost (excluding one-off)		
	£ 100-300k	Total Cost (PV)	£ 100-300k
Other key non-monetised costs by 'main affected groups' Creditors could be affected if by allowing more debtors to access DROs, they received a smaller amount of assets. This effect is expected to be small, as creditors would not benefit from HMRC approved pensions in the event of a bankruptcy, and low limits would be set.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Some 5-10,000 vulnerable debtors might be able to access lower cost debt relief, with savings to debtors of some £350k-£890k through lower application fees, and savings to the public sector of some £250k-864k through fewer debtor petitions for bankruptcy.	
	One-off Yrs		
	£		
	Average Annual Benefit (excluding one-off)		
	£ 600-1,754k	Total Benefit (PV)	£ 600-1,754k
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, as well as having health benefits. 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 More data is needed to establish the parameters set out in Option 2 so as to assess the potential number/percentage of beneficiaries

Price Base Year 0	Time Period Years 0	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ N/A
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	April 2011			
Which organisation(s) will enforce the policy?	Insolvency Service			
What is the total annual cost of enforcement for these organisations?	£ minimal increase			
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 year?	£ 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 - Decrease)	
Increase of	£ N/A	Decrease of	£ N/A
		Net Impact	£ N/A

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[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.]

Introduction

Within this Impact Assessment (IA) we outline and, where possible, attempt to quantify the costs and benefits of policy options regarding the treatment of Debt Relief Orders (DROs). We ask some specific questions and invite comments and suggestions on how the assumptions used in this IA may be improved.

Background

The recent Institute for Public Policy Research (ippr) paper “Strength against shocks: low income families and debt”¹ found out that “*In the decade to 2008, average household debt in the UK increased substantially*”. It further pointed out “*All income groups can experience a ‘shock’ to their income. But ippr’s findings illustrate how poverty and financial insecurity means low-income families are already vulnerable to debt*”.

In addition, according to The Association of Business Recovery Professionals (R3) in the current economic climate, debt is a problem for many people. A recent press release² from R3 states:

“R3’s research indicates that around one million people are struggling without seeking help, and a further half a million (574,000) have contacted their creditors informally for help after struggling with their debts. All in all, the number of people experiencing financial difficulty is estimated to be around seven times the number of people in formal insolvency.”

Debt Relief Orders (DRO) were introduced in April 2009. They are aimed at providing much needed debt relief to a specific group of over indebted individuals i.e. those with a relatively small amount of debt (less than £15,000), with minimal disposable income (less than £50.00 pcm) and little or no assets. This group had been struggling to afford the cost of bankruptcy (which costs £510 or £600 from 6 April 2010, compared with £90 for a DRO application fee). In any event, bankruptcy would likely have been a disproportionate response to their relatively straightforward affairs.

The DRO regime is delivered by The Insolvency Service in partnership with nine Competent Authorities³. These are organisations that are recognised by the Secretary of State and they assist debtors in their application for a DRO through their approved intermediaries. The DRO application is a web based system.

The published statistics show the following:

Period	Number DROs made (i.e. applications that were approved)
Q2 -2009	1,978
Q3-2009	4,505

¹ http://www.infohub.moneyadvicetrust.org/content_files/files/strength_against_shocks.pdf

² <https://www.r3.org.uk/pressandpublic/default.asp?page=1&i=520&id=339#PressStory>

³ <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/DebtRelief.htm>

Q4-2009	5,348
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Please note that it is likely that the low figure for Q2 – 2009 is because this was a new procedure that only became available from 6 April 2009.

The Insolvency Service records show that of the approved cases up until 31 December 2009:

- 19% of cases had liabilities of less than £5,000:
- 34% of cases had liabilities between £5,001 to £10,000: and
- 47% of cases had liabilities between £10,001 and £15,000

Summary of the problem

Representations from debt advice agencies indicate that there is a group of people who would otherwise be suitable for a DRO but for the fact that they have a right to a small pension that is still some years away from coming into payment. They are trapped in debt because they have nothing to offer their creditors and cannot afford bankruptcy. We therefore propose a specific amendment to the DRO eligibility criteria to address this issue.

Representations from the debt advice sector

Since the introduction of DROs, some debt advice agencies have raised concerns about a number of debtors who meet all other eligibility criteria, but cannot obtain a DRO because they have a right to a small pension that often cannot be realised for many years.

Because DROs were only introduced in April 2009, there is currently little research data into the various properties/factors of DRO cases.

However, between 1 February 2010 and 14 February 2010, Advice UK, Citizens Advice, Consumer Credit Counselling Service (CCCS), the Institute of Money Advisors (IMA) and National Debtline surveyed a number DRO candidates who were unable to access the regime because they had pension funds. Overall, these agencies received information about 242 clients who were ineligible for the debt relief order because they had rights to a pension and the current value was more than £300. It has not yet been possible to confirm whether these pensions were HMRC approved schemes, but the overall indication is that the majority of people who were excluded from applying for a DRO were excluded only because they had a right to a pension. There was a tendency for these people to be young with a relatively small value to their pension. Specifically:

- 96.3% of those surveyed were excluded from applying for a DRO only because of their pension rights.
- 49.3% were known to have a pension with a current value below £5000.
- Of those who were excluded from DRO solely because of their pension, 78% had a pension with a current value of less than £5,000. Of these, 42% were under 35 years of age. 69% were under 45 years of age.
- 35% of people who were excluded from DRO solely because of their pension rights were aged under 35 and 63% were under 45.

Qualitative data in the survey suggests that many of the people affected had pension rights which they had acquired when they worked in the public sector (armed forces/civil service/NHS/local government).

It should be emphasised that these are not Official Statistics and it is not known whether those people surveyed are representative of potential DRO candidates unable to access the scheme as a whole, nor if the sample was of sufficient size to provide robust statistics. Further work would be required to confirm the validity of these findings, or otherwise.

The Government has asked those agencies to gather more detailed information on the number of indebted individuals who appear to be currently excluded on this basis, to help inform the Final Impact Assessment.

The impact of the current eligibility criteria for DROs in relation to pensions can be seen from the two case studies set out below.

Case studies and impact - provided by Citizens Advice Bureau

Case 1

A disabled man sought advice from a Bedfordshire CAB about debts of £14,000. The client can no longer work due to his health problems, and was reliant on a low income from disability benefits and his wife's part-time earnings. The couple have no assets and less than £50 per calendar month disposable income. However, the client had paid into an occupational pension some years ago that is presently valued for the purposes of the DRO asset limit at more than £300. He was very frustrated to learn that he was not eligible to apply even though he was unable to gain any benefit from the pension. In bankruptcy, the pension would not be claimable by the trustee of the bankruptcy estate.

Impact

The client has struggled to deal with his debts for some time and fitted into the eligibility of a DRO apart from the pension rule. He is unable to afford the cost of bankruptcy and is now left with an unreasonable, long-term token offer arrangement. The client may eventually be in a position to petition for bankruptcy, involving a much lengthier, costly process for the client, the advice agency and The Insolvency Service.

Case 2

A client from a CAB in South Wales claiming jobseeker's allowance and unable to sustain debt repayments met all the conditions of a debt relief order. However, he did have a rights to a retirement fund presently valued for the purposes of the DRO asset limit at just over £600. This took him over the £300 asset limit for a debt relief order and so his application would fail. He cannot access his pension for many years yet and when it is paid, it would only amount to an income of £1.72 per month, payment of which is possibly not even practical.

Impact

The client continues to experience pressure from creditors and will now have to continue with a token payment plan extending over many years and will require continued support from the advice sector. The client is unable to afford bankruptcy fees and will need to seek charitable assistance to pursue an option which holds far wider implications than a DRO and will be far more resource intensive for The Insolvency Service.

Policy options

Option 1 – Maintaining the status quo.

Detail

Under this option the current DRO eligibility criteria of assets less than £300, debts no more than £15,000 and surplus income of less than £50 per month would stay in place. Many of those

who would otherwise be suitable for a DRO but for the existence of a right to a small pension would continue to be excluded from applying for a DRO if the existing structure is maintained. These individuals would be forced to live with debts that they cannot repay, and with the associated problems, such as stress and the consequential adverse impact on health. This option would involve no additional costs but it would also generate no additional benefits.

Option 2 – Amend the DRO qualifying criterion relating to the value of a debtor’s assets

Detail

This option would involve some pension rights being excluded as an asset for the purposes of determining eligibility for a DRO. The exclusion could be linked to a specified time period related to how long it would be before the debtor could access those pension funds and/or to the current value of the pension. A further factor could be whether the pension is an HMRC approved one. Alternatively, a combination of those factors could be used to determine eligibility. The Government wishes to retain the simplicity of the current DRO system in order to keep the access costs relatively low. It also recognises that providing for a blanket exclusion of pension rights as an asset in a DRO might put significant funds out of the reach of creditors who should have the right to be repaid wherever that is practical and justified. It would also arguably be against the spirit of the DRO regime to allow those with rights to a significant pension to have access to a debt relief option which is aimed at the most vulnerable.

Policy option 2 could be achieved by amending the prescribed value of a debtor’s property (see Schedule 4ZA –Paragraph 8 of the Insolvency Act 1986). Below we consider various possibilities for exclusion criteria and present a sensitivity analysis of the costs and benefits based upon the available facts and certain assumptions.

Based on information from Advice UK, Citizens Advice, CCCS, IMA and National Debtline, as set out above, the parameters currently being considered are pension rights where the current pension value is less than £1,000 or less than £5,000, or less than £10,000 and/or which cannot be accessed by the debtor within 5 years, or within 10 years of a DRO application being made.

To provide some context, a current pension value of £10,000 would provide an individual with an income of less than £10 per week, payment of which might not even be feasible. This is based on an internet search carried out in February 2010 for the best annuity rates for male and females aged 60 who are spending £10,000. The search revealed that the best annuity level (without guarantee) was just below £500 per annum.

Possible benefits

The main benefit would be that vulnerable people facing relatively small levels of debt would be able to access debt relief by a simpler and cheaper process of a DRO rather than through bankruptcy. On the basis of information from the debt advice sector, we estimate that the number of additional DROs might be in the range 5-10,000 p.a. (depending on what limits are set). Using the same analysis that was used when DROs were introduced (the Impact Assessment for which is annexed) would give savings for debtors through lower application fees and no Court fees of some £445-890k p.a. and savings for the Court Service from reduced debtor petitions for bankruptcy of £432-864k p.a., as it had been estimated that there would be savings of some £89 and £86 respectively per DRO. However, we have separately been consulting on reforming the route for debtors petitioning for bankruptcy by introducing a new administrative procedure, which would give savings to both debtors and the public sector, with the Court Service having a reduced involvement. The range takes into account that these measures are being considered but have not yet been taken forward. We have therefore made an adjustment to the **potential savings estimates to give a range of £350k-£890k through lower application fees, and savings to the public sector of some £250k-864k through fewer debtor petitions for bankruptcy.**

In addition there would be benefits, which are difficult to quantify, from:

- reduced instances of debt related stress for individuals, with the consequential benefits for the debtor's family, impact on the NHS and therefore the wider society; and
- creditors will not incur collection costs for debts that will never be recovered.

We invite comments on this analysis and the estimates.

In order to refine these estimates, we would particularly welcome more detailed information about:

- the number of debtors who cannot enter a DRO because they have rights to a pension, the present value of which exceeds the current limit on assets to qualify for a DRO;
- the current value of pension rights that these individuals hold; and
- the age of debtors who cannot enter a DRO because they have rights to a pension that is presently valued at an amount that exceeds the current limit on assets to qualify for a DRO.

In order to assess the scale of possible costs and benefits of Option 2, we would be interested to hear views on the following specific issues:

Question 1: How many people, who currently cannot apply for a DRO only because they have rights to a pension, do you think might be eligible if current pension values of up to £1,000 or £5,000 or £10,000 do not count towards the value of assets?

Question 2: How many people, who currently cannot apply for a DRO only because they have rights to a pension, do you think might be eligible if that pension does not count towards the value of assets provided that it does not come into payment for at least 5 years or 10 years?

In bankruptcy cases, pension funds held in schemes that are approved by HMRC do not now form part of the bankruptcy estate and therefore would not be available to distribute amongst the bankruptcy creditors.

The main provisions of the Welfare Reform and Pensions Act 1999 (WRPA99), which affect how pensions are dealt with in bankruptcy proceedings, came into force on 29 May 2000. From that date, in any case where the bankruptcy order was made on a bankruptcy petition that was presented on or after 29 May 2000, an approved pension arrangement does not form part of the bankruptcy estate.

Approved pension arrangements are defined in section 11(2) WRPA99. In summary, they comprise:

- a. Any pension schemes registered under section 153 of the Finance Act 2004 (essentially schemes registered by HMRC plus annuity contracts used to secure benefits under a registered pension scheme which do not provide for immediate payment of benefits);
- b. All retirement annuity contracts;
- c. Any personal pension schemes that have been approved by the HMRC for tax purposes (sometimes referred to as approved personal pensions); and
- d. Stakeholder pensions are exempt property in cases where the petition for bankruptcy was presented on or after 29 May 2000.

These are the most common pension arrangements. In bankruptcy cases, if the trustee in bankruptcy has any doubt as to whether registration with or approval by HMRC has been made or granted, he/she can make an enquiry of the pension provider seeking confirmation.

The consultation suggests that it would be for the debtor to provide the approved intermediary with details of the pension. The intermediary would need to be satisfied that the pension complies with the new criteria before completing the application, and might need to contact the pension provider (by means of a standard letter) in order to do so.

Costs

Debtors, Competent Authorities, approved intermediaries and Government/The Insolvency Service

There will be an additional cost to debtors, Competent Authorities, their approved intermediaries and/or pension providers in obtaining details about pensions. It is noted however that Competent Authorities were in a position to provide some information about those who failed to qualify for a pension, suggesting that intermediaries are already having to gather or receive at least basic information about pensions at present in order to decide whether a debtor is eligible for a DRO. We have estimated that the additional costs might be some **£20-30 per debtor**, and might be incurred for some 5 -10,000 debtors p.a. This would give a range of £100-300k pa.

Comments are invited on this estimate.

In order to refine these estimates, it would be helpful to have responses to the following questions.

Question 3: What percentage of debtors are likely to have such details about their pension readily available?

Question 4: How much might it cost an approved intermediary to obtain details about the current value of a pension, the date it comes into payment and whether or not it is registered with or approved by HMRC?

There would be a further one off cost relating to the current the web based application. This currently already has a free text box which could be used by approved intermediaries on behalf of applicants to include details of any pension that falls within the defined parameters, but the guidance to intermediaries would need to be updated to reflect the change in parameters. It is

expected that this will only take around 2-3 hours to update, but there will be a small additional cost to intermediaries in familiarising themselves with the new guidance. The Insolvency Service could assist with this by publishing and circulating a newsletter that outlines the changes.

Creditors and pension providers

It is not expected that there would be any additional cost to creditors. Although there will be additional debtors able to enter the DRO procedure and therefore write off their debts, these are individuals who are not in any event be in any real position to repay their debts, so creditors would not be suffering materially increased debt write off. Pension providers would incur some costs if they are asked to provide information about individual pensions to the debtor/approved intermediary. The Insolvency Service already has a standard letter to be sent to pension providers for bankruptcy cases which can be adapted for intermediaries to use in DRO cases, if necessary, thus keeping costs as low as possible.

Question 5: How much would it cost a pension provider to provide details about the current value of a pension, the date it comes into payment and whether or not it is registered with or approved by HMRC?

The additional one off costs are thus expected to be minimal. As regards recurring costs, debtors will be asked to provide details about their pension and, only if they are unable to do so, would enquiries be made either by the debtor or his/her approved intermediary of pension providers. The Insolvency Service and Competent Authorities already work closely on ensuring that the DRO guidance notes are kept up to date and any changes in relation to this proposal would not add any extra cost to that work.

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	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	No	No
Rural Proofing	No	No

Specific Impact Tests

Small Firms Impact Test

As the proposal does not affect small businesses, their customers or competitors a Small Firms Impact Test has not been carried out.

Competition Assessment

The proposal does **not**:

- Directly limit the number or range of suppliers
- Indirectly limit the number or range of suppliers
- Limit the ability of suppliers to compete
- Reduce suppliers' incentives to compete vigorously

Consequently the proposal is unlikely to raise any competition concerns.

Ethnicity, age and gender

The costs and benefits calculated previously in this impact assessment will be applicable to all groups who qualify for DRO. For this reason no disproportionate effects are expected for those of differing ethnicity, age, sex or disability. Analysis of the Insolvency Service's approved applicant data shows how the applicant numbers are distributed across minority groups. This is presented below.

Ethnicity

The majority of approved applicants are White British, accounting for 86%. The remainder of applicants are spread quite evenly amongst different ethnic groups that each form a small proportion of approved applicants (less than 2.5%).

Age

The distribution of applicant age is shown in the table below. The largest group of approved applicants being the age group 25-33 closely followed by the 34-42 and 43-51 age groups who both form 20% of approved applicants each. Those in middle age tend to be under large financial pressures due to higher numbers of dependants.

Age	%
18-24	10
25-33	24
34-42	20
43-51	20
52-60	13
Over 60	12

Gender

37% of approved DRO applicants are male, whilst 63% are female.

Disability

29% of approved DRO applicants have some form of disability.

Health

Link between debt and mental health

There is a demonstrable link between debt and mental health:-

The Sainsbury Centre for Mental Health⁴ bulletin *“The facts about mental health and employment”* sets out that:-

“At any one time one worker in six will be experiencing depression, anxiety or problems relating to stress (Singleton et al., 2001). Many people find it difficult to remain in employment and face isolation and discrimination in their workplaces.”

In November 2009 the publication *“Mental health and the economic downturn-National priorities and NHS solutions (Royal College of Psychiatrists, Mental Health Network, NHS Confederation & London School of Economics and Political Science⁵)”* states:

- *“Mental health problems have not only a human and social cost, but also an economic one, costing £110 billion a year (Friedli & Parsonage, 2007).”*and
- *“Demand for mental health services is likely to increase as a result of unemployment, personal debt, home repossession and other fallout from the recession.”*

According to the Health and Safety Executive⁶, there were 11.4 million work days lost in Great Britain due to self-reported work-related stress, depression or anxiety (0.48 work days per employee).

There is therefore a health related benefit, albeit it difficult to quantify, in providing the most vulnerable with relief from their unmanageable debt. This benefit would be felt by the individual debtor, his/her family and wider society.

⁴ <http://www.scmh.org.uk/>

⁵ <http://www.rcpsych.ac.uk/press/pressreleases2009/economicdownturnreport.aspx>

⁶ <http://www.hse.gov.uk/statistics/causdis/stress/index.htm>