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**Research Paper**

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## **Debt Relief Orders**

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Paper providing an update on the progress of Debt Relief Orders in Great Britain, an overview of the Insolvency Service's consultation process and the response to this process. An outline of press commentary on the subject is also provided.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

## Summary of Key Points

Debt Relief Orders (DROs) are aimed at assisting over-indebted individuals with *relatively low liabilities, little surplus income and few assets who are currently unable to access other forms of debt relief*. They offer an alternative to bankruptcy at a reduced cost to the over-indebted individual.

The current progress on DROs in Great Britain is that primary legislation (the Tribunals, Courts and Enforcement Act 2007) received Royal Assent in July 2007 with some details still to be finalised, namely; *the secondary legislation and the processes, including the development of an IT infrastructure*. It is expected that DROs will come into force in 2009. A draft copy of the secondary legislation has also been published.

Applicants to the DRO scheme must meet the following qualification criteria:

- Be unable to pay their debts;
- Have unsecured debts of less than £15k;
- Have assets of less than £300;
- Have surplus income of less than £50 per month, as defined using common financial statement;
- Be domiciled in England or Wales, or for the last three years have been resident or carrying on business there; and
- Not have an existing Bankruptcy Order, Bankruptcy Restrictions Order or Individual Voluntary Arrangement or have had a Debt Relief Order in the last six years.

To date the fee for the scheme has not been finalised, although during the consultation process a majority of respondents agreed to £100 as a reasonable amount.

The Insolvency Service's 2005 consultation document *Relief for the indebted – an alternative to bankruptcy* outlined the schemes' proposals. A subsequent paper has been released, summarising consultee responses and presenting government reaction to these responses.

The response document suggests widespread consultee agreement but does highlight some issue of concern.

The majority of consultees agreed that:

- the debtor should pay a non-refundable upfront fee;
- £100 was a reasonable amount for such a fee;
- a debtor should be restricted to the frequency with which he can obtain an order, no more than once every six years;
- involvement of an intermediary would benefit the order;
- the role of the intermediary should be advisory and providing additional assistance in completing forms;
- £15,000 was a reasonable upper limit on the level of debt to be covered by the scheme;
- that secured debt should not be included in the scheme
- £50 was an appropriate cap on surplus income;

- the Common Financial Statement would be a suitable means of calculating surplus income;
- an upper limit on assets be set at £300;
- the scheme should be facilitated administratively;
- that creditor protections were adequate; and
- subsequent windfall and income increases should be disclosed irrespective of the sum.

The following is a summary of issues that concerned consultees and the response to those issues.

**£50 cap on surplus income** – Some respondents made the case for a flexible approach, although this was dismissed on the grounds that it would problematise attempts to make the scheme *fair, transparent and easy to operate*.

**Exclusion of certain benefits in the calculation of income** – some concern was voiced over the inclusion of certain benefits in the calculation of surplus income, particularly of *child benefit, child maintenance, disability allowance and attendance allowance*. In response, it was noted that the official receiver would not normally include such benefits in the case of bankruptcy and assurances were made that this would be the case for DROs.

**£300 Upper limit on assets** – some commentators have argued that the upper limit on assets should be increased. This was viewed to contradict the intention of a DRO as those with assets in excess of £300 would qualify for bankruptcy.

**Intermediaries** – some concern was voiced re intermediaries losing their independence and becoming more akin to an assistant to the official receiver. The response was to ensure; *intermediaries would not be placed in the position of having to make a decision on behalf of the official receiver*. The response added: *nor would they be expected to act in the interest of any other than their client*.

**Inclusion of secured debt** – there was an apparent *misunderstanding* amongst consultees on this issue, with consultees arguing that inclusion of secured debt would contradict the No Asset, No Income ethos of the proposals. The response document clarified this issue, stating: *secured debt should be included for the purposes of determining levels of liabilities and entry into the scheme should be determined in reference to gross assets and gross liabilities*.

**Creditor Protection** – questions were raised about the low cost of the scheme and how this would marry with the requirement of close scrutiny. The response was to assure a *robust enforcement regime*. Adding that the official receiver would be able to investigate suspicions of misconduct with the power to enforce redress actions.

**Press coverage** – DROs have received minimal press coverage over the last four years. Stories which have covered the scheme have expressed divergent views on the subject, ranging from those which echo the opinions of the Citizens Advice Bureau regarding the scheme and the need to introduce it urgently and those which reflect the concerns of creditors who fear the scheme may enable *'quickie bankruptcies'* or encourage *debt avoidance* and improper disclosure of assets.

**1 BACKGROUND**

**2 DEBT RELIEF ORDER PROPOSALS**

**3 CONSULTATIONS PROCESS AND GOVERNMENT RESPONSE**

- 3.1 Fees
- 3.2 Appropriate Timescale
- 3.3 Intermediaries
- 3.4 Limitation on amount owed
- 3.5 Inclusion of secured debt
- 3.6 Surplus income
- 3.7 Assets
- 3.8 Court involvement
- 3.9 Creditor protection

**4 Press Commentary**

## 1 BACKGROUND

Debt Relief Orders (DROs) were first considered in the Department for Constitutional Affairs' 2004 consultation *A Choice of Paths: better options to manage over-indebtedness and multiple debt*. At the time of this consultation process the scheme was known as the No Income, No Asset Debt Relief Scheme (NINA). The consultation document outlined initial proposals and qualifying terms of the scheme, similar to those which would later make up the terms of the DRO proposals (outlined below). The department's consultation response document noted that the *concept of NINA was well received*.<sup>1</sup>

A subsequent consultation process began in March 2005, with a summary and analysis of responses published in November of the same year (details of which are outlined below).<sup>2</sup>

The most recent information issued by the Insolvency Service (correct as of March 2008) notes that the primary legislation received Royal Assent in July 2007<sup>3</sup> with some details still to be finalised, namely; *the secondary legislation and the processes, including the development of an IT infrastructure*. It is expected that DROs will come into force in 2009. A draft of the secondary legislation The Debt Relief Orders (Designation of Competent Authorities) is now available on The Insolvency Service website. To date no legislation including DRO applicant requirements and costs, draft or otherwise, has been published, although anticipated criteria are available.<sup>4</sup>

## 2 DEBT RELIEF ORDER PROPOSALS

The following is a summary of the DRO proposals, outlined in the latest Insolvency Service release on the subject. The points refer specifically to DROs in England and Wales, however, it is worth pointing out that the proposals outlined in DETI's current consultation document mirror those outlined here. DETI have estimated that DROs will assist approximately 1,000 people in Northern Ireland per annum. This figure was calculated by extrapolating down the equivalent figure for England and Wales, 36,000 per annum

In summary, DROs are designed to assist over-indebted individuals with *relatively low liabilities, little surplus income and few assets who are currently unable to access other forms of debt relief*.<sup>5</sup> DROs offer an alternative to bankruptcy to those individuals who, by

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<sup>1</sup> Department for Constitutional Affairs, Response Paper: A Choice of Paths: better options to manage over-indebtedness and multiple debt, July 2004 [www.dca.gov.uk/consult/debt/responses.pdf](http://www.dca.gov.uk/consult/debt/responses.pdf)

<sup>2</sup> The Insolvency Service Relief for the indebted – an alternative to bankruptcy: Summary of Responses and Government Reply, November 2005  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)

<sup>3</sup> The primary legislation, the Tribunals, Courts and Enforcement Act 2007 is available on [www.opsi.gov.uk](http://www.opsi.gov.uk) ([http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070015\\_en\\_1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_1)) Debt relief orders appear at clause 108 and are detailed in Schedule 17, page 266 onwards

<sup>4</sup> The Insolvency Service, Debt Relief Orders  
<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/DebtRelief.htm>

<sup>5</sup> The Insolvency Service, Standard Lines Document  
<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/a%20STANDARD%20LINES.doc>

way of their limited assets and incomes, experience difficulty in covering the cost of bankruptcy, which can reach up to £1625 (correct March 2005).<sup>6</sup> A DRO will protect applicants from their creditors and lead to debts being discharged after one year.

The requirements of applying for a DRO will be finalised in the secondary legislation, which is still to be made available in its ultimate form. They are anticipated to include requirements that the applicant must:

- Be unable to pay their debts;
- Have unsecured debts of less than £15k;
- Have assets of less than £300;
- Have surplus income of less than £50 per month, as defined using common financial statement;
- Be domiciled in England or Wales, or for the last three years have been resident or carrying on business there; and
- Not have an existing Bankruptcy Order, Bankruptcy Restrictions Order or Individual Voluntary Arrangement or have had a Debt Relief Order in the last six years.

The reduction in cost has yet to be finalised and does not appear in the Insolvency Service's list of anticipated criteria. Their 2005 consultation response, however, suggests an administrative cost of £100 would be the most favoured outcome.<sup>7</sup>

DROs will be applied for online, via an approved intermediary completing the online forms on behalf of the applicant. An *approved intermediary* is defined in the draft secondary legislation as a *competent authority that ensures the provision of:*

- debt management or debt counselling services to the public through supervised intermediaries;
- education, training and development in debt management or debt counselling services to those intermediaries; and
- if it appears to the Secretary of State taking into account the information provided to him by that body, that it is a fit and proper body to approve individuals to act as intermediaries between a person wishing to make an application for a debt relief order and the official receiver.<sup>8</sup>

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<sup>6</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy, March 2005  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/consultationpaperwithnewannex1.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultationpaperwithnewannex1.pdf)

<sup>7</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)

<sup>8</sup> The Insolvency Service, Debt Relief Orders  
<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/DebtRelief.htm>

A person, in receipt of a DRO will:<sup>9</sup>

- be protected from enforcement action by the creditors included in the application (those creditors would need to seek leave from the court to pursue their debts);
- be free from those debts at the end of the period (12 months from Order);
- be obliged to provide information to and co-operate with the Official Receiver;
- be expected to make arrangements to repay their creditors should financial circumstances improve.

DRO's will affect a person's credit rating. Civil and criminal penalties will be in place for abuses of the system.<sup>10</sup> Creditors will be protected from abuses through a number of safeguards, including:

- online applications will be safeguard through the use of an intermediary;
- electronic submission will allow for automatic cross checking;
- creditors will be entitled to object to the order, in particular if the debtor had failed to disclose assets, income or liabilities (creditors will be given 28 days to make objections);
- valid objections will result in an enquiry by the official receiver and the possible revocation of the order; and
- to ensure creditors are not excluded from any change in the debtor's fortunes, consideration will be given to including a mechanism to account for windfalls or increases in incomes during the "stay period" (within 21 days of the debtor becoming aware of any increases in income).

### **3 CONSULTATIONS PROCESS AND GOVERNMENT RESPONSE**

#### **3.1 FEES<sup>11</sup>**

The 2005 consultation document asked respondents whether they considered a reasonable fee, to cover costs, appropriate, to define 'reasonable', and who should fund the scheme, if they felt a fee was inappropriate.

The majority of respondents (50 out of 66) felt a fee was appropriate. Of the 63 people/organisations who chose to offer a definition of a 'reasonable' amount, 16 felt £100 would be acceptable, with 11 stating £50-100 would be the best outcome, whilst only seven respondents believed there should be no or a token fee. Of the remaining respondents seven believed the fee should £50 or less, eight £50, six £100 and eight expressed no view.

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<sup>9</sup> The Insolvency Service, Standard Lines Document  
<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/a%20STANDARD%20LINES.doc>

<sup>10</sup> The Insolvency Service, Standard Lines Document  
<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/a%20STANDARD%20LINES.doc>

<sup>11</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)

Twenty-five respondents chose to answer the question 'if you do not think a fee of any sort should be payable, do you have any suggestions as to how the scheme might be funded'. Of these, 15 believed the cost of the scheme should be covered by the credit industry, eight suggested central government and two opted for the insolvency service.

As a result of this consultation process the government proposed:

- the debt relief order scheme be funded by of an up front, non-refundable by the debtor; and
- that the fee should be set at no more than £100.

To date the level of fee has not been finalised.

### **3.2 Appropriate Timescale<sup>12</sup>**

With regards to timescale, consultees were asked whether or not entry to the scheme should be restricted to once every six years. The majority of respondents (36) agreed that this was an appropriate timescale, whereas 13 believed twice every six years was preferable and only three suggested there be no restrictions.

As a result of this information it was proposed:

- that a debtor be restricted to the frequency with which he can obtain an order, and will not be able to obtain one more than once every six years.

### **3.3 Intermediaries<sup>13</sup>**

On the subject of intermediaries, consultees where asked:

- whether they believed the use of an approved intermediary would make the system more accessible and efficient; and
- what the role of the intermediary should be.

The overwhelming majority (50 of 65 respondents) agreed that an intermediary would benefit the scheme, particularly through the provision of *useful face-to-face contact which would not otherwise be available*. As to the role of the intermediary, respondents generally put forward a number of suggestions, including:

- determination as to whether a DRO was the best option;

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<sup>12</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)

<sup>13</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)



- advising debtors about their rights and responsibilities;
- gathering and validating information;
- helping to complete and submit the form; and
- offering budget advice generally.

Some concern was voiced over the possibility that intermediaries may lose some of their independence, becoming more akin to an assistant to the official receiver. To this end the Citizens Advice Bureau (CAB) noted:

*“For CAB advisers to participate in the scheme as approved intermediaries, the Insolvency Service must give Citizens Advice written assurances that the duties of the approved intermediary do not breach the Citizens Advice Service partnership accord with Government; i.e. that we will always act independently and in the best interests of our clients, and not as an agent of Government.”*

On this matter the response document proposed to:

- liaise with relevant organisations through the newly formed working group to further develop, clarify and refine the role of the intermediary; and
- legislate to clarify that an approved intermediary will not be liable in damages for anything done or not done in carrying out his/her functions, providing they do not act in bad faith.

### **3.4 Limitation on amount owed<sup>14</sup>**

Consultees were asked whether £15,000 was a reasonable cap on the amount of debt covered by the DRO scheme. A total of thirty respondents believed that a cap of £15,000 or less was appropriate, of these the majority (24) agreed with a cap of £15,000. Twenty-one consultees believed the cap should be greater than £15,000. In response the government highlighted that cases of DRO would rise to 45,000 per annum with a £20,000 cap (as opposed to 36,000 per annum with a cap of £15,000).

In conclusion, it was proposed that the cap be initially set at £15,000 with provisos included in final secondary legislation to allow room for manoeuvre.

### **3.5 Inclusion of secured debt<sup>15</sup>**

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<sup>14</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)

<sup>15</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)

In response to the question “should secured debt be included as part of the total”, 35 consultees answered no, eighteen yes, and further fifteen did not specify a preference.

The response document notes an ‘*apparently great misunderstanding*’: notably, some respondents assumed secured creditors would lose their security, whilst those in the voluntary advice sector voiced concern that including secured debt would exclude homeowners from the scheme. Clarifying their position, the government argued that including homeowners would increase the complexity and therefore the cost of the scheme. The response continues:

*“... in some (but not all) cases... the homeowner has previously had unsecured debt which has been consolidated by a secured loan/second mortgage on the property, or a creditor may have taken a charging order. In such circumstances, the individual does not, in our view, fall into the category of “small” debtor at whom the scheme is aimed. Bankruptcy is perhaps not a disproportionate response in these cases.”*

Consultees also pointed out that if a secured debt was included then it would follow that an asset must be included, a situation in contradiction to the DRO principle of No Assets, No Income. The response to this was to advocate the inclusion of a mechanism to take into account *gross assets and gross liabilities*.

Considering these responses led to the following proposals:

- the principal that secured debt be included retained for the purposes of determining the level of liabilities, with the caveat that the position of creditors would be unaffected; and
- an individual's entry into the scheme will be decided in reference to gross assets and gross liabilities (with the exclusion of domestic items and items necessary for the debtor's employment or trade).

### **3.6 Surplus income<sup>16</sup>**

Consultees were asked if a surplus income cap was appropriate, if £50 was a realistic figure and if not what would be realistic.

The majority of respondents (54) agreed to a surplus income cap. Similarly, a majority (37) support setting the cap at £50. Some respondents made the case for a flexible approach, although this was dismissed on the grounds that it would problematise attempts to make the scheme *fair, transparent and easy to operate*.

In a separate, but related, question consultees were asked if the Common Financial Statement would be an appropriate means of calculating surplus income, to which the majority answered yes. Some, however, argued that since the CFS was designed to apply to households it was therefore unsuited to individuals. This resulted in the following response:

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<sup>16</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/reliefforthindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/reliefforthindebtedanalternativetobankruptcyresponse.pdf)

*'... we have checked with the Money Advice Trust, who helped develop the statement and they state there is no reason why it cannot be used for individual expenditure.'*

A further question on this topic asked if income in DRO cases should be defined in the same way as in bankruptcy cases. Again, there was majority agreement to this. Income, in bankruptcy cases is defined by the Insolvency Act 1986 as:

*"... every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of carrying on any business or in respect of any office or employment..."*

Those who did not agree argued for the exclusion of *child benefit, child maintenance, disability allowance and attendance allowance*. The following was stated in response:

*"... the official receiver does not generally take such benefit payments into account, and they are not included in the calculation of surplus income. We propose to treat DROs in the same way."*

The consultation process, in this area, led to the following conclusions/proposals:

- a £50 cap on surplus income is appropriate, although secondary legislation should allow for review and amendment;
- the CFS is a suitable way of determining surplus income, although it may require adaptation; and
- income will be defined in the same way as bankruptcy.

### **3.7 Assets<sup>17</sup>**

In relation to assets, consultees were asked if £300 was an appropriate amount and whether some asset types should be excluded as is the case with bankruptcy.

The majority of respondents (28) agreed with the £300 upper limit, although a significant number (15) believed it should be increased, while 22 wished to see it increased and/or made more flexible although without a specific cap. The first of these alternatives was countered with the assertion that if a cap in excess of £300 was introduced it would undermine the principal of the DRO, since those with assets at this level would qualify for bankruptcy.

With regard to the exclusion of certain assets there was a majority of support for this clause.

The following proposals resulted from this discussion:

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<sup>17</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf)

- that a £300 level be brought forward but that resulting legislation include mechanisms for review and alteration; and
- an approach, similar to that employed in bankruptcy cases, be used to determine types of asset which may be excluded, namely *equipment used by the debtor in his business or employment*.

### 3.8 Court involvement<sup>18</sup>

Consultees were asked whether they thought DROs could be made administratively or whether the court should be involved. The majority (60) were in favour of an administrative approach. Those who believed court involvement was preferable argued that this would add gravitas to the order. The idea that the debtor should be required to make a statement of truth was also put forward, and that debtors should be made aware that falsification of information would equate to a criminal offence.

In this case it was concluded that:

- the order would be made administratively on the basis that it would be made by the official receiver;
- that the information provided by the debtor be subject to s5 of the Perjury Act 1911; and
- DRO forms should clearly state that falsification of information would constitute a criminal offence.

### 3.9 Creditor protection<sup>19</sup>

On the issue of creditor protection respondents were asked whether the protections offered were sufficient and what steps, if any, should be included to increase protection

Most respondents agreed the existing protections were adequate (34), although some 23 did not specify. Questions were raised about the low cost of the scheme and how this would marry with the need for rigorous scrutiny. The response document states that there would be *a robust enforcement regime*, adding:

*“the official receiver would be able to investigate suspicion of misconduct in exactly the same way as if the debtor had been adjudged bankrupt, and debtors whose conduct is found to be culpable and to have contributed to the insolvency would be subject to a*

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<sup>18</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/reliefforthindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/reliefforthindebtedanalternativetobankruptcyresponse.pdf)

<sup>19</sup> The Insolvency Service, Relief for the Indebted – An Alternative to Bankruptcy – Summary of Responses and Government Reply  
[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/reliefforthindebtedanalternativetobankruptcyresponse.pdf](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/reliefforthindebtedanalternativetobankruptcyresponse.pdf)

*regime of restrictions orders of between 2 and 15 years in the same way as in bankruptcy.*

A related question was asked on the issue of whether misrepresentation warranted enforcement action as well as revocation, the majority were in favour of this approach.

Additional questions were asked around the issue of a debtor receiving a windfall or an income increase.

The general question of what should happen in such a case generated a number of responses, namely: using bankruptcy; reviewing or terminating the order; and allowing the debtor one month to pay.

Consultees were asked *‘if a debtor benefits from a windfall close to the date when their debts are about to be cleared by the order, should the order be extended to allow the debtor time to deal with the matter.* The majority (48) agreed that this should be the case. The majority (26) felt that three months would be an adequate solution to the related question of how long should a debtor be given to deal with creditors in such a case. Furthermore, the majority (51) of respondents agreed failure to disclose a windfall prior to discharge should result in enforcement action.

The above resulted in the following proposals:

- an appropriate and proportionate range of misconduct remedies, including restrictions, offences and revocation would be included in the final legislation;
- deliberate cases of misrepresentation will result in prosecution;
- windfall and income increases should be disclosed irrespective of the sum, where the sum received would enable a *sensible* arrangement with creditors a debtor would be granted three months to make necessary arrangements, after which the order would be revoked; and
- failure to disclose a windfall will result in revocation of the order, the rendering void of any discharges and the possibility of enforcement action by the creditor if they choose.

#### **4 Press Commentary**

In May 2006, both The Guardian<sup>20</sup> and The Daily Telegraph<sup>21</sup> reported on research carried out by Citizens Advice Bureau (CAB) which found the average individual receiving advice from them was in debt of £13,153 – an increase of a third on 2003, and the equivalent of 17.5 times their total monthly household income. The same news reports both expressed the CAB view that people are “*condemned to a lifetime of poverty overshadowed by an inescapable burden of unpayable debt*” and the

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<sup>20</sup> The Guardian Debtors owe 17 times their monthly income, May 24 2006, [www.guardian.co.uk/money/2006/may/24/business.creditanddebt](http://www.guardian.co.uk/money/2006/may/24/business.creditanddebt)

<sup>21</sup> The Daily Telegraph, Poor facing a life time of debt says charity, May 24 2006 [www.telegraph.co.uk/news/uknews/1519227/Poor-facing-a-lifetime-of-debt-says-charity.html](http://www.telegraph.co.uk/news/uknews/1519227/Poor-facing-a-lifetime-of-debt-says-charity.html)

organisation's belief that plans to push ahead with DROs should be carried out as a matter of urgency.

In March 2008, The Mail on Sunday quoted comments from insolvency practitioner *Begbies Taylor*, which argued; *'The basic problem with DROs is that they rely on the debtor telling the truth'*.<sup>22</sup>

The industry publication *Accountancy Age* noted in April 2008: *"no firm timeline for the introduction of DROs, which many consumer groups believe ought to be implemented at the earliest time parliament can push for full legislative passage. In contrast, there are alternative views that this is yet another step to making bankruptcy or debt avoidance easier."* It concluded; *"used for the right reasons they will bring much needed relief to those who need it the most, but as it is not yet clear how the calculation of assets and disposable income is to be assessed there is clearly much work yet to be done at the coalface."*<sup>23</sup>

An earlier (2006) publication *Mortgage Strategy* carried a DRO story under the headline *'Quickie Bankruptcy Concern'*. The story quoted industry insiders, one such comment concluded:

*"From a lender's perspective there is a slight concern because people declaring themselves bankrupt is something that should be taken pretty seriously... The fact that someone can declare themselves bankrupt so easily does not mean that we will be altering our lending criteria and we would still put a person who has been declared bankrupt after one year on a higher adverse product."*<sup>24</sup>

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<sup>22</sup> The Mail on Sunday, Debtors 'may hide assets', March 30, 2008

<sup>23</sup> Accountancy Age, Helping the Helpless, April 17, 2008

<sup>24</sup> Mortgage Strategy, Quickie Bankruptcy - December 4, 2006, Pg. 16