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The Insolvency
Service

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Intermediary Guidance Notes: DRO2



INVESTOR IN PEOPLE

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PART 1 - INTRODUCTION

Background to Debt Relief Orders

Following extensive public consultation by the Government¹ examining the accessibility of debt relief, it was established that there is a relatively large proportion of applicants who are unable to access any form of debt relief due to the costs involved in seeking relief via bankruptcy or other methods.

Therefore, in order to provide applicants with better access to debt relief, one of the measures introduced by the Tribunals, Courts and Enforcement Act 2007 was a new form of debt relief called a Debt Relief Order (DRO), which came into force from the **6th April 2009**.

In contrast to other forms of debt relief, DROs are delivered in partnership with debt advisors, primarily from the advice sector. Representatives from the advice sector act as 'approved intermediaries' and assist applicants in making their application for a DRO to The Insolvency Service. Intermediaries are able to apply for a DRO with or on behalf of the applicants via an online application form. It is then the Official Receiver, and not the Court, who considers the DRO application. As a result of this, the costs involved in accessing debt relief have been greatly reduced in order to meet the needs of those people who would otherwise be without any other form of debt relief.

¹ 'A Choice of Paths: better options to manage over-debtedness and multiple debt', Department of Constitutional Affairs Consultation Paper, CP23/04, 20.07.2004

Criteria for DRO applicants

Eligibility criteria

DROs are not a suitable method of debt relief for all applicants. An applicant will only be eligible for a DRO if they fall within the specified criteria.

If applicants have assets or surplus income, or there is a possibility that their financial circumstances may improve in the near future, a DRO is not an appropriate solution, and other forms of debt relief should be examined with the applicant. Certainly if an applicant has total gross assets exceeding £1,000, or a monthly disposable income of greater than £50, or total liabilities (not including unliquidated or excluded debts) exceeding £20,000, the debt advisor should warn the applicant that the application will not meet the criteria for a DRO and will be declined by the Official Receiver.

An applicant has to satisfy all of the requirements if they are to be successful in their DRO application. The criteria are as follows:

- The applicant is **unable to pay their debts**;
- The applicant's **total liabilities must not exceed £20,000** (not including unliquidated or excluded debts);
- The applicant's **total gross assets must not exceed £1,000**;
- The applicant's **disposable income must not exceed £50 per month** (following deduction of normal household expenses).
- The applicant must be **domiciled in England or Wales**, or in the last 3 years have been resident or carrying on business in England or Wales.
- The applicant must **not have been subject to a DRO within the last 6 years**.
- The applicant must **not be involved in any other formal insolvency procedure at the time of application** for a DRO, such as:
 - a) An undischarged bankruptcy order;
 - b) A current Individual Voluntary Arrangement;
 - c) A current Bankruptcy Restrictions Order or Undertaking;
 - d) A current Debt Relief Restrictions Order or Undertaking;
 - e) An interim order

If there is a current pending applicant's bankruptcy petition in relation to the applicant but the applicant has not been referred to the DRO procedure by the Court then the application would be declined.

If there is a current pending creditor's bankruptcy petition against the applicant but the applicant has not obtained the creditor's permission for entry into the DRO process then the application would be declined.

If the applicant has given away any property or sold it for less than its true value in the last 2 years (a 'transaction at undervalue'), this may affect the determination of their application.

If the applicant has made payments which puts a creditor (or creditors) in a better position than others within the last 2 years (a 'preference'), this may affect the determination of their application.

Application fee

An applicant must pay a fee for entry into the DRO procedure, which must be paid before the Official Receiver will consider the applicant's application.

The current fee is £90.00, but is subject to change. To establish what the current application fee is, please see the following website:

<https://www.gov.uk/government/organisations/insolvency-service>.

In order to meet the various time constraints contained within the automated process, the DRO application fee must be paid either prior to submission, or at the latest on the day of submission, failure to adhere to this timescale could result in the application being cancelled.

Once the fee has been paid in full and an application has been submitted, the fee is non-refundable, regardless of whether the applicant's application for a DRO is approved or declined by the Official Receiver. It is therefore very important that all details provided by the applicant are true and correct with no omissions and that the applicant is satisfied they meet all the qualifying conditions prior to the application form being submitted for consideration.

Duties imposed on an applicant in relation to DRO Proceedings

The duties in this section apply to the applicant at any time after the making of an application for a Debt Relief Order. The applicant must notify the Official Receiver of any change in circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.

An Individual when applying for and subject to a DRO must:

- Ensure that they provide a complete and accurate disclosure of their affairs and comply with any request by the Official Receiver to provide further information. The Official Receiver may not need to contact the applicant. However, applicants should be prepared to cooperate fully with the Official Receiver if they are requested to provide further information in addition to their application form.
- Provide the Official Receiver with a full list of their assets and liabilities, including to whom the liabilities are owed (this information is collected via the online application form).
- Inform the Official Receiver of any property or increases in income that they receive whilst subject to the DRO moratorium period. For example lump sum (cash) payments, PPI refunds, tax rebates, other windfalls, property and money left in a will.

The legislation imposes this obligation in order to detect when an individual no longer meets the parameters for a DRO, i.e. their disposable income exceeds the existing parameter (currently £50 per month) or they receive property with a value in excess of the existing parameter (currently £1,000).

Whilst applicants are clearly required to comply with the legislation, they should not overly worry about small increases in income affecting their eligibility. Provided the increase in benefits or income does not permanently increase their income such that the parameter is breached, no further action will be taken by the Official Receiver.

- The decision to revoke is discretionary and where the value of the property acquired is modest, the Official Receiver will not revoke for all cases where the applicant is open and honest and the value of the asset in question is less than £1000, provided that the total sum involved does not exceed 50% of the applicant's total liabilities.
- Where the value of the property, including lump sum payments, is between £1000 and £1850, each case will be assessed on its own merits taking into consideration numerous factors, including but not limited to liabilities, health, personal circumstances, age, etc. and a decision will be made on an individual basis as to whether it would be appropriate to revoke or not.

- Where the value of the property, including lump sum payments, is in excess of £1850, it is more likely that a DRO may be revoked, although any mitigating factors would be included in our determination.
- Where the lump sum arises from an underpayment or backdated award of benefits or a back-dated payment of wages which is associated with a permanent increase in income, bringing the applicant's surplus income to over £50 per month, then this will lead to revocation.
-
- Not make payments to creditors scheduled in the DRO, although there are some exceptions where the Official Receiver will not seek to intervene where payments are made, i.e. rent arrears and debts subject to a taking control of goods agreement (formerly walking possession agreement). Further advice should be provided to the applicant in these circumstances.

Keep the Official Receiver informed of their whereabouts at all times during the course of the moratorium period. If the Official Receiver needs to contact the applicant but is unable to do so, because the applicant has not kept the Official Receiver informed of their whereabouts, then the Official Receiver may revoke the Debt Relief Order on those grounds.

The consequences of omitting information from the application form, which is required by the Official Receiver to grant a DRO, are varied.

The Official Receiver may decline a DRO application if it is established during consideration of the application that the applicant has omitted information. If a DRO has been approved, and it is later found that the applicant omitted key information, the Official Receiver may also revoke the DRO. This would result in the applicant once again being vulnerable to actions from their creditors. If it is considered by the Official Receiver that the omission was sufficiently serious, the applicant may be subject to criminal and/or civil sanctions, such as a Debt Relief Restrictions Order (DRRO).

Effect of a DRO on an applicant

Moratorium period

The principal effect of a DRO will be to place a moratorium period upon the debts that are scheduled within the DRO. During the moratorium period a creditor to whom a **qualifying debt** is owed:

- Has no remedy in respect of that debt.
- May not commence insolvency or other proceedings to recover that debt without the leave of the court and on such terms as the court may impose.

Once the moratorium period has expired (in most circumstances 12 months from the date of the order, although there may be exceptions to this time period), the qualifying debts scheduled in the DRO will be discharged and the applicant will be free from those debts.

The applicant is also freed from their obligations to notify the Official Receiver of any future change in their circumstances.

It should be noted that any debts incurred as a result of **fraud or fraudulent breach of trust** to which the applicant was a party, will not be discharged at the end of the moratorium period. The creditor will be free to pursue recovery of those debts.

The legislation is quite clear in that no creditor with a qualifying debt has any remedy in respect of that debt. This must include the right to levy execution or distress during the moratorium period.

The costs of any incomplete execution would represent a qualifying debt and where appropriate should be scheduled as such.

Effect of moratorium on a taking control of goods agreement (formerly a walking possession agreement)

However, it should be noted that where a creditor has the benefit of a taking control of goods agreement (formerly a walking possession agreement) that creditor would be deemed to be a secured creditor. As the rights of secured creditors are unaffected by the making of a DRO the execution or distress can be completed.

The Official Receiver acknowledges that where the applicant has entered a taking control of goods agreement, or is the subject to a suspended possession order (see **rent arrears**), the applicant may wish to make payments to avoid the removal of goods or the loss of their home. The Official Receiver will not intervene where such payments are made but these should not be included in any assessment of the applicant's expenditure for the purposes of determining surplus disposable income.

Unlike bankruptcy, there is no early discharge for an applicant from the DRO process. However, should an applicant's circumstances change sufficiently to allow them to make contributions to their creditors the Official Receiver will need to consider whether or not to revoke the DRO. If the changes in circumstance occur close to the end of the 12-month moratorium period, the Official Receiver can extend the moratorium period for up to three months to allow the applicant to come to an arrangement with their creditors before taking revocation action. During this extension time an applicant will be subject to the same restrictions, and will enjoy the same protection, as they experienced during the first 12 months of the DRO.

Payments to creditors

If the Official Receiver approves the applicant's application and a DRO is granted, all qualifying creditors scheduled in the DRO application will be contacted and notified that a DRO has been made. These creditors will also be informed that as a result of the DRO, the debts scheduled as owing to them are irrecoverable. As such, the applicant must not make any further payments to those creditors.

If the applicant receives any requests for payment from creditors that are scheduled within the DRO during the moratorium period, the applicant should indicate that they are subject to a DRO, and as such creditors have no remedy in respect of these debts.

DWP recovery of overpayment of benefits and social fund loans:

Following the decision of the Supreme Court in the case of Secretary of State for Work and Pensions v Payne & Cooper, it has been clear that "no remedy" is widely interpreted and the Secretary of State does not have the right to recover overpayments of benefits that are a qualifying debt in a DRO, by way of making deductions from an ongoing award of benefit.

This applies to deductions made in respect of the recovery of Housing Benefit (HB) and Council Tax reduction or support including where the local authority (LA) is recovering from ongoing HB and CTB or through the Secretary of State from other benefits. The restriction also applies to the recovery of tax credit overpayments from an ongoing entitlement.

DWP have migrated many benefits to the new Universal Credit (UC) scheme. Within the UC system eligible benefit claimants can ask for an advance called a payment on account (PoA).

A PoA is not a loan but on or before making a PoA the claimant is given notice of their liability to repay the advance by deduction from subsequent payments of benefits or to repay any balance to the extent it is not deducted. A PoA which has not been fully recovered at the date of the application is a qualifying debt. The restriction on recovery of the balance from an ongoing entitlement to benefit applies to PoA.

This does not apply to **social funds loans**. Social fund loans are not qualifying debts for the purposes of a DRO. These may be recovered by way of

deduction from ongoing benefits and are not discharged at the end of the moratorium period.

Approved intermediaries will therefore need to advise their clients that any deductions by the DWP/LA/HMRC (except in respect of social fund loans) should cease upon the making of the DRO. Clients should contact the DWP/LA/HMRC to rectify the position should this not occur automatically.

In light of the Payne & Cooper decision, intermediaries will need to consider what effect the cessation of any such deductions by the DWP/LA/HMRC might have on the applicants' disposable income subsequent to the determination of a DRO application. Any increase in benefit/tax credit income could mean that the applicants' subsequent disposable income might exceed the DRO income parameter of £50 per month and this could lead to the potential revocation of the DRO, which is obviously self-defeating.

However, where deductions have continued after the DRO is approved the Official Receiver will not regard the repayment of those incorrectly deducted payments as an increase in income or property for the purposes of revocation.

Rent Arrears

If the applicant has accumulated rent arrears these are a qualifying debt and should be included in the application. The landlord can still seek possession of the property after the making of the DRO notwithstanding that the arrears are a qualifying debt². The landlord is simply exercising their right to recover their property from a defaulting tenant. No leave of the court is required to either continue or commence the possession proceedings.

After a DRO is made a possession order might still be suspended on any grounds except payment of rent arrears (e.g. it might be suspended by reference to payment of current (future) rent). It must therefore follow that a possession order suspended before the DRO might be varied after the making of the order to exclude payment of the rent arrears.

When completing an assessment of essential expenditure for the purposes of a DRO no allowance should be made for the payment of rent arrears, whether or not at the time of completion the applicant is subject to a Suspended Possession Order.

Upon the making of the DRO, application could be made to the court (by the applicant) to vary the terms of the suspension to exclude payment of the rent arrears. The applicant should be advised to seek specialist housing advice before taking this step. As with cases where the applicant is subject to taking control of goods agreement (see above) whilst the creditor has no right to payment of the debt the Official Receiver will not intervene if payments are made to avoid giving possession of the property.

Excluded debts and debts which are the exception to the general rule

² Sharples v Places for People Homes Ltd; Godfrey v A2 Dominion Homes Ltd

As in bankruptcy there are some debts that the applicant will remain liable for and are not capable of being scheduled within a DRO. The debts that are non-qualifying as far as DRO purposes are concerned comprise the following:

- Any obligations arising from an order made in family proceedings or under a maintenance assessment made under the Child Support Act 1991.
- Any **fine** imposed for an offence
- The definition of a “fine” (which can be found in section 150 of the Magistrates’ Courts Act 1980) for the purposes of the Insolvency Rules is:

“... any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction;”

A “fine” therefore is the financial penalty that arises from the conviction but excludes other sums which the defendant is required to pay by the courts’ order. Fines are fairly prescribed in both their imposition and enforcement. A fine is clearly excluded for the purposes of the DRO, but other sums imposed by an order following conviction, such as an order for costs, are debts which do not fall within the definition of a fine applied by the Insolvency Act 1986 and therefore are a qualifying debt in a DRO.

Penalty Charge Notices (frequently referred to as “fines”)

Fixed penalty notices or penalty charge notices issued on behalf of a local authority, including those in relation to the London congestion charge, are not fines for the purpose of section 150 of the Magistrates Act 1980. They should be treated as qualifying debts and will be released at the end of the moratorium period. This is applicable to the majority of parking fines.

- **Student loans:** cannot be included under a DRO. They remain the responsibility of the applicant to repay within the terms of the loan agreement. Student Grants and overpayment of Student Grants are however qualifying debts for the purposes of a DRO application.
- Any obligation arising under a **confiscation order** made under section 1 of the Drug Trafficking Offences Act 1986 or section 1 of the Criminal Justice (Scotland) Act 1987 or section 71 of the Criminal Justice Act 1988 or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002.
- **Damages:** any debt which consists of a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages under Part 1 of the Consumer Protection Act 1987 (which deals with product liability) – being in either case damages in respect of the death or personal injury (including any disease or other impairment of physical or mental condition) to any person is an excluded debt.

- **Social Fund:** Where the DRO application was made on or after the 19th March 2012 any obligation arising from a payment out of the social fund under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992 by way of crisis loan or budgeting loan is an excluded debt.
- **TV licence:** A liability relating to a TV licence is not an excluded debt but must not be scheduled as a qualifying debt in the DRO application. A TV licence is required by law (see Communications Act 2003 and the Communications [Television Licensing] Regulations 2004] as amended)), and a debt relating to television licence arrears cannot therefore constitute a qualifying debt in a Debt Relief Order.
- **Secured creditors:** The rights of secured creditors to deal with their security are unaffected by the making of a DRO. A debt to a secured creditor is not a qualifying debt to the extent of the value of the security. It should be noted that if an applicant owns secured property it is unlikely that they would qualify for a Debt Relief Order, as their gross assets are likely to exceed £1,000.

Log book loans: Where a Bill of Sale has been properly registered with the High Court (and generally the log book loan companies do register the bill of sale properly) the lender is a secured creditor. This type of financing is typically a short term loan and title to the property may revert back to the applicant during the moratorium period. Depending on the value of the vehicle and the probable increase in disposable monthly income, the applicant could become ineligible for a DRO and would face revocation. In respect of listing repayments as an allowable expense, you should follow the guidance for vehicles on HP.

Pawned items: The terms of the agreement should be consulted to establish whether the legal title to the pawned goods lies with the applicant or the broker. If, as is usual, the applicant is still the legal owner of the goods the value of the pawned items (assets) should be checked to see if it is more than £1,000. You need to confirm the valuation is accurate since the pawnbroker's valuation is likely to be considerably lower than market value – and we could be looking at a transaction at undervalue (TAU) in this case. We would always advise that the applicant should resolve this situation before applying for a DRO, for instance redeeming the items and selling them at market value (to avoid the issue of a TAU), and making pro rata payments to all the creditors. The sum owed to the pawnbroker should not be classed as a qualifying debt with the jewellery being secured against it.

It is always advisable to sort out issues prior to submission to stop the application being declined, e.g. having a third party redeem the goods on behalf of the applicant and, if appropriate, selling them at market value, making pro rata payments to creditors.

Please note that secured creditors (or the secured element of any debt) must be listed on the application and identified as a secured debt by marking the relevant tick-box. If the value of a secured item is less than the total amount of the secured debt, the balance of the debt will be treated as unsecured (and therefore a qualifying debt), and must be scheduled separately as an unsecured debt on the application.

Where bailiffs have levied execution or distress on the applicant's goods prior to the making of the DRO and the creditor has the benefit of a taking control of goods (previously a walking possession agreement - see above).

The applicant should be notified that they must also carry on paying for ongoing commitments, such as rent and utility bills, during the period of the DRO and will be responsible for any debts that they incur after a DRO has been approved.

Joint debts

Joint debts include joint bank accounts. The making of a Debt Relief Order will not protect or write off the liability of any joint debt holder, or anyone who has guaranteed the debts of an individual who is the subject of a DRO.

Intermediaries should advise applicants that they may, in certain circumstances continue to receive **communications** from some of their creditors, whilst the moratorium period is in effect. As there is provision within the DRO legislation for a DRO to be revoked, creditors have advised the Insolvency Service that pursuant to the Consumer Credit Act (CCA), there is a necessity to maintain contact with the applicant in the form of notification/s confirming the outstanding liability/s during the moratorium period.

Whilst the subject of a DRO, applicants need not take any action in relation to continuing correspondence from creditors scheduled as qualifying creditors in their DRO and should under no circumstances, except as outlined in "walking possession" and "rent arrears" above, make any payments to creditors with qualifying debts.

It should also be noted that if a DRO is approved by The Insolvency Service, and then the applicant is faced with action from a creditor to recover a debt that was not included within the DRO application, the DRO will not cover this **omitted debt**. The applicant will be responsible for the omitted debt and as a result the creditor will be able to seek recovery of the same.

In the situation where an applicant has a DRO application approved, but forgets to include a debt that if included would still result in their total liabilities being less than £20,000, the above principle regarding omission would still apply, and a creditor would be able to claim for any omitted debts.

However, if the applicant fails to include a debt in a DRO application that if they had included would have resulted in their total liabilities exceeding the £20,000 limit, the applicant should inform The Insolvency Service immediately. The Official Receiver would then consider revoking the DRO. Failure to disclose this additional debt may result in criminal and/or civil sanctions.

The Official Receiver has discretion to amend the amount of a debt which has been wrongly stated in the application provided the amended total does not exceed £20,000 (leading to the revocation of the order). Every effort must be made to provide accurate information in the application but a qualifying debt may be amended in amount where the error is typographical or adequate explanation is given for using an estimated figure.

Applicant's estate and assets

DROs differ substantially from bankruptcy in that there is no applicant's estate held in trust under a DRO. This in turn means that the Official Receiver will have no claim over the applicant's property and will not seek to realise assets or pay dividends to creditors as they would under the trustee function in bankruptcy. It is a fundamental requirement of the DRO eligibility criteria that the applicant does not possess assets in excess of the £1,000 parameter, or surplus income to make any realistic contribution towards their debts. This is in contrast to the bankruptcy regime in which applicants may be required to make payments to their creditors via income payment agreements/orders.

Investigation

Unlike bankruptcy the Official Receiver does not have a statutory duty to investigate the conduct and affairs of applicants subject to DROs. However, the Official Receiver does retain significant powers of enquiry and enforcement under the DRO regime. These range from revocation of the DRO to criminal and civil sanctions if:

- the information provided by the applicant proves to be untrue, as previously outlined,
- it is found that the applicant has failed to disclose assets, liabilities or income within their application for a DRO,
- assets acquired or increased in income during the period when the DRO is in force.

Supporting Paperwork

The applicant should be able to produce documents confirming the information recorded on the application, in particular relating to assets, liabilities, income and expenditure. As part of their duty to ensure the accuracy of the application, intermediaries may wish to check this documentation carefully before submission. The applicant must also be advised that they will be required to retain all paperwork regarding their financial affairs e.g. accounting records, bank statements, invoices etc. for a minimum of 15 months. However, there may be certain circumstances where the applicant will be required to retain such paperwork for a longer period.

Restrictions imposed on an applicant subject to a DRO

Whilst DROs are aimed at providing a cheaper and therefore more accessible form of debt relief, they should not be seen as an easier option to resolving indebtedness. DROs provide an alternative to those who seek debt relief but who are not in the position to be able to repay their outstanding debts.

Applicants who have had their DRO application approved will be subject to the same restrictions as bankrupts. The main restrictions are as follows:

- The applicant must not obtain credit of £500 or more, either alone or jointly with another person, without disclosing to the lender that they are subject to a DRO. This restriction applies not only to the borrowing of money, but also to the obtaining of credit as a result of a statement or conduct made with the objective of securing credit, even though the applicant has not entered into a specific agreement for it. This would include, for example, ordering goods without requesting credit but then failing to pay for the goods when they are delivered.
- The applicant may not carry on a business (directly or indirectly) in a name that is different from the name under which they were granted a DRO, without telling all those with whom the applicant does business the name under which they were granted a DRO.
- The applicant may not be involved (directly or indirectly) with the promotion, management or formation of a limited company, and may not act as a company director, without the Court's permission.
- The applicant may not hold certain public offices³, or hold offices as a trustee of a charity or a pension fund.
- The applicant will not be eligible to apply for a DRO again for six years.

The Operation of Bank Accounts

The applicant is permitted to open a new bank or building society account after the granting of a DRO; however the bank or building society may require them to disclose that they are the subject of a DRO. It is then a matter of policy on behalf of the bank or building society as to whether or not to permit the applicant to open an account, and whether to impose any conditions or restrictions on the applicant's use of the account.

Intermediaries should also advise applicants that they must make their own arrangements in respect of the operation of any bank accounts following the approval of their DRO application. If a DRO is granted, an applicant's bank account will not necessarily be frozen. It will be for the bank or building society to decide whether or not to allow the applicant to continue operating the account. Although it is a matter of public record, the Official Receiver will not be contacting a bank or building society unless they are a creditor.

³ Please see the Secondary Legislation for an explicit list of these offices: Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 SI 2012/2404.

Intermediaries should advise applicants that their bank accounts may be affected by the making of a DRO; however this will be determined by the policies operated by the said financial institutions. Applicants should also be reminded that any monies in the account on application for a DRO will be considered as contributing towards the total level of assets after deduction of normal living expenses.

Credit History

Intermediaries should remind applicants that the DRO will be displayed on the Individual Insolvency Register⁴ as currently occurs in bankruptcy. The applicant will remain on the Individual Insolvency Register for the duration of the time that the order is in effect (usually one year), plus an additional three months. The details of the insolvency will also be kept by credit reference agencies generally for six years from the date the DRO is approved, although the period may vary depending on the policy of the different agencies.

Debt Relief Restrictions Orders/Undertakings

If, during the course of any enquiries, the Official Receiver finds that the applicant has been dishonest either before or during the period of the DRO, or that the applicant has behaved irresponsibly, the Official Receiver may apply to Court for a Debt Relief Restrictions Order/Undertaking (DRRO/DRRU). This is similar to a Bankruptcy Restrictions Order, and results in an applicant being subject to the restrictions listed previously for an extended period of between 2 to 15 years after the date of the DRO. If the applicant has a DRRO/DRRU issued against them, they will remain on the Individual Insolvency Register for the duration of the order/undertaking plus an additional three months.

⁴ Electronic Individual Insolvency Register, <http://www.insolvencydirect.bis.gov.uk/eiir/>

The Official Receiver

The system for applying for a DRO has been designed to be as automated as possible. As a result of this, the cost of applying for a DRO is set at a level that will make the process accessible to individuals who are unable to afford other forms of debt relief. Once the web application form has been submitted and the fee paid in full, the Official Receiver will process the applicant's application and will issue a DRO if appropriate.

The applicant should be advised that the Official Receiver will have the power to decline a DRO application, or may choose to delay the decision pending receipt of further information from the applicant. The applicant should therefore be made aware that submission of the application form to the Official Receiver will not automatically result in the applicant being granted a DRO, even if the application fee has been paid. Advice on how the payment of the application fee can be made is provided in the '**How to Pay**' of this guide.

The Official Receiver is also able to investigate the affairs of an applicant, whether on their own account or as a result of an objection by a creditor, and is able to revoke the DRO if the applicant is found to have understated assets or income, not disclosed liabilities, does not meet the entry criteria or if the applicant does not cooperate with the Official Receiver's enquiries.

The Insolvency Service will, as a result of any application submitted, carry out verification checks with an approved Credit Reference Agency, and by agreeing to the submission of an application for a Debt Relief Order, the applicant confirms their understanding and agreement that these checks will be undertaken. As such the Intermediary must inform the applicant that these checks will be carried out.

Approved Intermediaries

The seeking of debt advice

Applicants may only apply for a DRO via an advisor who has been approved as an intermediary by a 'Competent Authority'. In some cases, the debt advisor from whom the applicant initially sought advice will not be designated by a Competent Authority to act as an intermediary. In this situation, the debt advisor must refer the applicant to an approved intermediary before the applicant is able to apply for a DRO. An advisor who is not an approved intermediary will not be able to help the applicant in obtaining a DRO, as they will lack the accreditation details necessary to complete the online application form.

Approved intermediaries

An 'approved intermediary' is a skilled debt advisor who has been approved to act as an intermediary by a "Competent Authority". A person may become an approved intermediary by application to a Competent Authority.

A Competent Authority is a body designated by the Secretary of State as being able to authorise intermediaries. It is the Competent Authority who will then decide whether to grant an individual the authorisation to act as an intermediary. The Competent Authority is responsible for ensuring that intermediaries have the appropriate training and experience, as well as ensuring that the appropriate complaints and equal opportunities procedures are in place. An organisation can become a Competent Authority by application to the Secretary of State⁵.

A list of competent authorities can be found in the Guide to Debt Relief Orders publication on the following web address:

www.gov.uk/government/publications/debt-relief-orders

The role of the approved intermediary is to act as an agent between an individual seeking a DRO and The Insolvency Service, and to facilitate this relationship by advising on and completing of the DRO application form. It is recommended that an intermediary will have completed basic checks on the information provided by the applicant, such as considering paperwork and evidence of income and liabilities. If after having been presented with the various debt options available, the applicant wishes to proceed with an application for a Debt Relief Order, the intermediary will then assist the applicant with the completion of the online application.

Intermediaries hold a pivotal position in the DRO process and must therefore ensure that the applicants attention is drawn to, all the qualifying conditions, the effects of a DRO, including the duties and restrictions on the applicant as well as the moratorium period and discharge from the qualifying debts and the possible consequences of providing false information or omitting information from a DRO application, such as revocation of the DRO (and the

⁵ The Debt Relief Orders (Designation of Competent Authorities) Regulations 2009

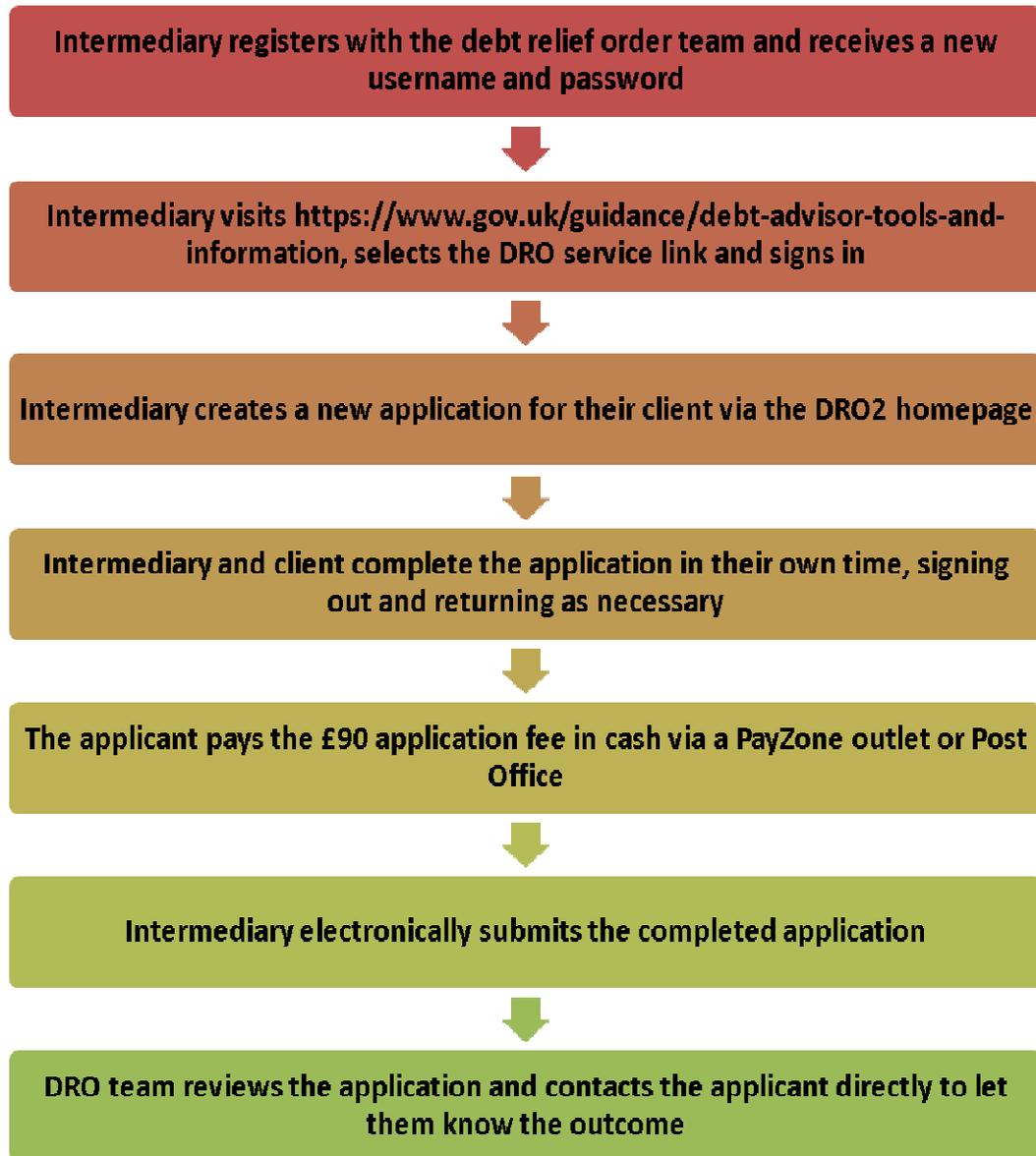
consequences of that in relation to their creditors) plus possible criminal and/or civil penalties such as a DRRO.

It is the applicant's decision to submit a DRO application. However it is assumed that approved intermediaries will already have completed checks, or be satisfied that those checks have been carried out, on the information provided by the applicant. These checks may include considering paperwork relating to the applicant's income, assets and liabilities. It is therefore assumed that an intermediary will have already made a decision as to the suitability of a DRO in view of the applicant's circumstances prior to completing the applicant's online application form.

PART II: COMPLETION AND SUBMISSION OF THE APPLICATION FORM

1. Process flow

The basic process for creating and submitting a DRO application is shown in the chart below.



NOTE:

- All applications must be created, completed and submitted by an approved intermediary.
- Members of the public won't be able to access the DRO2 system themselves or use it to create and complete their own applications.

2. Start an application

The application will be available from GOV.UK via the 'Debt advisor tools and information' page: <https://www.gov.uk/guidance/debt-advisor-tools-and-information>.

On the login page, you'll need to enter your username and password. You should enter the same username you use to access the existing DRO application. However, you will need to set a new password before you can access the system for the first time.

The DRO unit will be issuing instructions on how to do this in a phased manner throughout September. Please do not try and access the service until you receive these instructions.

Once you've logged in, you'll arrive at your homepage where you can:

1. create a new application
2. search for and open existing applications
3. create or join a group
4. change your user details, including your password

3. Accessing and completing an application

To begin, simply select the required application from the work list on your homepage by clicking on the blue application reference number. If the case is not visible, type the last name or application reference into the search bar and click the magnifying glass to search.

After you have selected a case, you will be navigated to the 'Application overview' page.

The application has 8 sections. For a breakdown of the information collected in each section see **Appendix A**.

The 8 sections can be completed in any order but care should be taken to ensure that all questions are answered before the application is submitted.

The data you enter on each page will be saved automatically whenever you move to a new section/page, navigate back to the application homepage or sign out of the application.

There is no time limit for completing an application, but your session will time out if the screen is left inactive for 30 minutes.

4. Pre-submission Check

As you fill in each section, the service will automatically complete certain basic eligibility checks. If the data you've provided fails any of these checks, a red 'eligibility warning' will appear on the homepage.

An explanation of why an eligibility warning has been displayed can be seen by clicking the red 'View eligibility warnings' button on the right-hand side of the application overview page.

An application with eligibility warnings can still be submitted at the applicant's request, but it may be declined.

5. Submitting an application

You should ensure that all 8 sections of the application have been completed and that the £90 fee has been paid before attempting to submit an application.

Once satisfied that the application is complete, click the green 'Submit application' button at the bottom of the 'Application overview' page. This will take you to the 'Application submission' page.

On the application submission page you can:

- add any further information that you believe the official receiver may need in order to make a decision regarding the application
- indicate that the applicant's address should be withheld
- submit the application
- submit the application but indicate that you have advised against submission (e.g. if you believe the application will be declined)
- By submitting the application you're declaring that you're satisfied that the information provided is accurate and that you have made the applicant aware of the implications of their application, including that:
 - checks will be made against the data provided using a credit reference agency
 - their debt relief order can be revoked and/or enforcement proceedings (including prosecution) can be brought against them if they are found to have omitted or provided misleading information
- they are authorising the Insolvency Service to send their data to appropriate external parties (e.g. creditors) in an unencrypted electronic format

6. Post submission (what happens next?)

Once an application has been submitted it will be hidden from the work list on your homepage.

However, it can be retrieved by searching for the case using either the applicant's name or application reference.

It is possible to view a submitted application and generate an electronic copy of that application.

Changes should not be made to any application once it has been submitted.

The applicant and intermediary will be notified directly once a decision has been made regarding their application.

7. Support for users

Any questions about using the application and these guidance notes should be directed to your Competent Authority, who will then refer the matter to the Insolvency Service (as appropriate).

Any technical difficulties with the application should be directed to the Debt Relief Order Team on the following details:

- All pre-submission application queries to 01752 635200
Email: dro.preorder@insolvency.gsi.gov.uk.
- All post-submission queries to 01752 635200,
Email: DRO.Unit@insolvency.gsi.gov.uk

General guidance and notices issued by the Insolvency Service can be found on the following sites:

- 'Debt advisor tools and information' page:
<https://www.gov.uk/guidance/debt-advisor-tools-and-information>,
- The Insolvency Service website:
www.gov.uk/government/organisations/insolvency-service.

8. Groups

The new group allocation function allows you to work more closely with your colleagues.

By creating a group or joining an existing group, you'll be able to take ownership of cases belonging to other group members.

Creating and joining groups

Once you have signed into the DRO case management system, you'll be able to create a group for you and your colleagues. The 'Group allocation' box can be found in the top right corner of the homepage. To begin, you should first click, 'Join a group'. This will take you to a new page where you can either join an existing group or create a new one.

To create a new group:

1. Select 'Join a group'
2. Select 'Create a group'
3. Enter a group name
4. Make a note of your group's access code as other members of your team will need it to join the group

To join a group that has already been created:

1. Select 'Join a group'
2. Enter your group's access code which you can get from any group member
A group member approves your request to join the group

Approving group members

If someone requests to join your group, you'll receive a notification the next time you sign into the service.

Any member of a group can approve or reject new requests to join. This can be done from the 'Group allocation' box by. Simply click the 'View existing group details' link.

New group requests will be displayed near the top of the screen. You'll need to individually approve or decline each request.

Accessing other groups members cases

By joining a group, you'll be able to access and work on other group members cases.

To access a case:

1. search for the case in the usual way on the homepage
2. click the 'Take ownership' button

This will give you ownership of the case, and it will move from your colleague's case list to yours.

Your colleague will need to repeat this process should this wish to re-take ownership of the case.

Leaving a group

You can leave a group at anytime from the 'Group allocation' box. Simple:

1. select 'View existing group details'
2. find your name
3. click remove

The same process can be used to remove other members from the group.

Appendix A - What data is collected in the application?

□ Personal information

- full name
- previous names
- address
- previous addresses going back 3 years
- National Insurance number
- relationship status
- information about any dependants you have
- contact details

□ Insolvency history:

- current debt relief options/proceedings
- past debt relief options used
- reference number for any prior debt relief options

□ Employment:

- current employment status
- information about current employer
- information about any self employed businesses in the last 3 years, including trading name, business address, trading dates

□ Assets:

- balance of all cash held in a bank, building society or savings account
- value of all cash held outside of a bank, building society or savings account
- details of any money owed to the applicant (eg compensations, loans, etc)
- details of any items or equipment used in the applicant's business/vocation
- details of any vehicles the applicant owns
- value of any properties the applicant owns
- details of any other assets or possessions they applicant owns other than essential household items

□ Pensions

- the policy provider's name and address
- the policy number
- the current value of the policy
- information about any payments the applicant is getting from the policy

□ Undervalue transactions:

- description of the asset sold or given away
- date of the transfer
- market value at date of transfer
- amount the applicant received after charges and legal fees
- applicant's relationship to the transferee
- applicant's reason for making the transaction

☐ Preferential payments:

- the preferred creditor's name
- applicant's relationship to the creditor
- date of the payment
- payment amount
- applicant's reason for making the payment

☐ Creditors:

- each creditor's name and address
- creditor's reference number
- amount outstanding to each creditor
- whether the debt is an excluded debt
- whether the debt is a secured debt
- information about any attachments of earnings

☐ Income and expenses:

- income from employment
- income from benefits
- income from pensions
- the rest of the household's income from their jobs, benefits and pensions
- amounts the applicant contributes to their household's living costs (e.g. household bills, groceries, transportation, childcare, leisure, etc)

Appendix B - Application technical information

Personal details:

Last name

The applicant's last name is not editable and will be taken directly from the last name you entered when creating the application.

If the last name has been entered incorrectly then you should either:

- delete the application and begin a new one
- contact the DRO team to request a name change

Number of dependent children

A child is considered a dependent if:

- the applicant is the child's parent or legal guardian and makes financial contributions towards to costs of raising the child
- they are under 16
- they are between the ages of 16 and 18, have never married and are in full time education

A child doesn't have to live with the applicant to be considered a dependant.

If the applicant does not have any dependent children, please insert a '0' in this box.

Prison addresses

If the applicant is in prison, please enter the prison's address when asked for applicant's current address and mark the "address withheld" box. This will trigger the official receiver's internal protocol for dealing with prison addresses. Unless the prisoner is at risk of violence, no subsequent application to court is necessary.

You should not enter any previous prison address in the applicant's DRO application. Instead, please provide the address where the applicant lived immediately before their incarceration.

National Insurance number

If the applicant has lost or forgotten their National Insurance number they should contact HMRC. Contact details for the National Insurance numbers team can be found at <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/national-insurance-numbers>.

Insolvency history

Formal insolvency proceedings

Formal insolvency proceedings include the following:

- Debt Relief Order (DRO)
- Bankruptcy
- Individual Voluntary Arrangement (IVA)
- Interim Order in consideration of an IVA
- Bankruptcy Restrictions Order or Undertaking (BRO/BRU)
- Debt Relief Restrictions Order or Undertaking (DRRO/DRRU)

Date of the insolvency proceeding

Formal insolvency proceedings and their start dates:

- Bankruptcy – the date on which the bankruptcy order was made
- IVA – the date on which the IVA was signed by the supervisor
- Interim order – the date on which the interim order was issued
- Bankruptcy Restrictions Order or Undertaking – date on which the order was issued or undertaking signed by the official receiver
- Debt Relief Restrictions Order or Undertaking – date on which the order was issued or undertaking signed by the official receiver

Applicant's IVA has been terminated

If the IVA has recently been terminated, the intermediary should email the DRO Team a copy of the Certificate of Termination and of the Receipts and Payments account.

Outstanding bankruptcy petition or application

Any outstanding bankruptcy petitions/applications must be disclosed in the application.

If a petition is withdrawn before the DRO application is submitted then it does not need to be disclosed.

If a pending creditor's petition has been presented against the applicant, the petitioning creditor will need to consent to the individual applying for a DRO. Evidence that the creditor has consented to the DRO application will be requested by the DRO team following submission of the application.

It is not possible to withdraw a bankruptcy application once submitted to the adjudicator, and a DRO application should not be made unless/until the bankruptcy application is rejected by the adjudicator.

Employment:

Applicant is a company director

An individual subject to a DRO cannot act as a company director and may not be involved, directly or indirectly, in the management, promotion or formation of a limited company without the court's permission.

The applicant should either resign their position as a director or apply to the court for permission to continue in the office. Evidence that the applicant has resigned or applied to court will be requested by the DRO team following approval of the application.

Assets:

Gross vs Net value

All assets should be listed at their market value without deductions for any security, charges and/or costs of sale.

For example, a land worth £1,000 on the open market should be disclosed at £1,000 regardless of whether or not it's been mortgaged and regardless of the likely costs of sale.

Valuations

For vehicles, a professional valuation is preferred, but an online valuation is acceptable.

Online valuations for motor vehicles can be obtained from any of the following websites:

- Parkers Guide: www.parkers.co.uk/cars/prices/
- Auto trader: www.autotrader.co.uk/car-valuation
- Glass: <http://www.glass.co.uk/> - garages use this site to check valuations for second hand cars. Like the Auto Trader site, it requires you to sign in using an email address but the service is free.
- Wise Buyers (motorcycles and cars): www.wisebuyers.co.uk

For all other items/possessions, the valuation provided by the applicant may be assumed to be correct without further enquiry. If you have any cause to question the valuation given, you should ask the applicant to obtain a professional valuation or online valuation.

Misleading information

It is an offence to provide misleading information in a DRO application.

Where the official receiver is aware that assets have not been accurately disclosed, they will consider revoking the DRO and/or prosecuting those involved.

Hire purchase or conditional sale agreements

Items subject to hire purchase or under conditional sale agreements should not be declared as assets, as they will not belong to the applicant until all of the payments under agreement have been made to the finance company.

Bills of sale, including log book loans

Where a Bill of Sale has been properly registered with the High Court, the lender is a secured creditor and the asset should be disclosed for its full market value.

Pawned items

The terms of the agreement should be checked to establish whether the legal title to the pawned goods lies with the applicant or the broker. If, as is usual, the applicant is still the legal owner of the goods then they should be included as assets and the full value of the items should be given when asked.

If legal title has passed to the broker then the goods should not be included in the application at all.

Lump sums paid in respect of benefits

Lump sums received in relation to the following items should not be entered as assets but should be declared in the additional information box on the submission page:

- Constant Attendance Allowance under the Industrial Injuries Benefit
- War Pensions Schemes
- War Pensioners Mobility Supplement under the War Pensions Scheme
- Armed Forces Independence Payment

All other lump sum awards that have been paid, awarded or claimed should be disclosed as assets.

Assets used in a business or vocation

Please give a description and valuation of any tools or other equipment used by the applicant in the course of their self employment/vocation. The description might include the make and model of the item, but doesn't need to include the colour or other similar details.

Items that are essential to the applicant's self employed business or vocation will be disregarded when assessing the DRO eligibility criteria.

Personal injury claims

Personal injury compensations payable before a DRO is approved are treated as assets and should be disclosed.

Personal injury claims not payable before the DRO is approved and involving any element of special damages (eg loss of earnings, care and assistance, travel expenses, etc) are also treated as assets and should be disclosed.

Personal injury claims not payable before the DRO is approved and relating solely to general damages are not treated as assets. They, therefore, do not need to be disclosed in the application but if the award is subsequently used to make a large purchase during the moratorium period, rather than on living expenses, the DRO may be revoked on the basis that the applicant's assets exceed £1,000.

Types of ownership (property)

Ownership of a property includes any beneficial interest claimed in a freehold leasehold or common hold property, regardless of whether the property is mortgaged, solely owned, jointly owned, part of a shared ownership scheme, etc.

Properties held on trust

Properties held on trust by the applicant do not need to be disclosed unless the applicant is a beneficiary of the trust.

Vehicles that have been adapted for disabled use

Any vehicles that have been adapted for disabled use should be declared as assets. Please indicate that the vehicle has been adapted for disabled use within the 'any other relevant information' section of the application submit page.

Vehicles held via the Motability scheme

Vehicles that are subject to the Motability scheme are subject to a lease hire agreement and should not be disclosed as an asset.

Applicants who were on the old DLA Higher Rate Mobility Component but who have lost their access to the Motability scheme under PIP may be entitled to a compensation payment of up to £2000 from the Motability scheme. This compensation is meant to allow the applicant to purchase a replacement vehicle. Applicants are advised to contact the DRO Team should they receive such a payment. Otherwise, they will be in violation of their statutory duty to inform the official receiver of a change of circumstance.

What is an essential household item?

Essential household items include clothing, bedding, furniture, household equipment, etc that satisfy the basic domestic needs of the applicant and their family.

Further examples of household items include cutlery, crockery, white goods, televisions and computers.

What if the applicant has an essential household item which is of exceptional value?

If an item falling within the category of an 'essential household item' is of exceptional value (eg it is an antique or a recently purchased high specification electrical item), then it should be disclosed as an asset.

Items of jewellery

High value pieces of individual jewellery or watches should be disclosed, excluding wedding rings.

Bad debts

If the applicant has tried and failed to recover money they are owed, the debt can be considered 'bad and irrecoverable' and should not be included as an asset.

Instead, please tell us about the debt in the submission page's 'additional information' box.

Assets subject to a taking control of goods agreement

Items held under a taking control of goods agreement should be listed for their full value. Where the enforcement officer sells the items before submission of the application, the item should be removed from the applicant's list of assets and the respective liability adjusted.

Pensions

What is an approved pension?

Approved pension are any occupational or personal pension schemes registered with and approved by HMRC for tax purposes. They include all retirement annuity contracts and stakeholder pensions.

It can be assumed that a pension is approved if one or more of the following is true:

- the pension is an occupational pension scheme with nationally based organisations (eg national retailers, high street banks, utility companies, etc)
- the policy is operated by a major pension provider/insurer (eg Scottish Widows, Standard Life, Aviva, Legal and General, etc)
- The annual pension statement sent to the applicant identifies that the scheme or policy is registered for tax purposes under section 153 of the Finance Act 2004

If there is no evidence at all to suggest whether the pension is approved, then the applicant should contact their pension provider to confirm if the policy is registered with HMRC for tax purposes under Section 153 of the Finance Act 2004.

All pensions held by the applicant must be disclosed in their application but approved pensions are not treated as assets.

Pensions which may be brought into payment during the lifetime of the DRO

If the applicant has a pension and will be eligible to access the funds during the lifetime of the DRO, the full value of the pension must be disclosed.

If the value of the pension exceeds the level of debt, an explanation must be provided in the 'additional information' section of the submission page as to why the applicant is considered to be unable to pay their debts and eligible for a DRO.

Excessive Pension Contributions

If the applicant has made excessive contributions into their pension arrangement and, in making these payments, has unfairly disadvantaged his/her creditors, the official receiver will consider Debt Relief Restrictions Order proceedings.

In considering whether the pension contributions were excessive, the official receiver will consider:

- a) whether any of the pension contributions were made to put assets beyond the reach of the applicant's creditors
- b)** whether the total amount of contributions was excessive considering the applicant's circumstances when they were made

Assets & payments history: undervalue transactions

An undervalue transaction is any transfer of money or other assets for significantly less than the value of the money or assets.

For example, an applicant selling a car worth £5,000 on the open market to a family member for £2,000 would be considered an undervalue transaction.

Undervalue transactions also includes any significant gifts (money or other assets) made by the applicant, including gifts in consideration of marriage/a civil partnership.

Situations where assets have been sold at auction or on the open market but the value achieved was less than market value (eg a forced sale following repossession) are unlikely to be considered undervalue transactions.

Assets & payments history: preferred creditor transactions

A preferred creditor transaction is a payment which puts one creditor (or creditors) in a better position than other creditors.

For example, an applicant paying a creditor in full without paying her/his other creditors anything at all would be considered a preferred creditor transaction. Preference transactions are typically (but not restricted to) payments to friends or family members.

Minimum contractual payments to a creditor are not considered preference transactions, unless there is intent on the part of the applicant to place that creditor in a better position than other creditors.

Payments made under a court order are also not counted as preference transactions.

Creditors

‘Total amount outstanding’ vs. ‘settlement figure’

When entering how much is owed to each creditor, please provide the ‘total amount outstanding’ even if a lower ‘settlement figure’ has been agreed with the creditor.

Examples of debts

Examples of debts that the applicant may owe include:

- rent
- electricity
- water rates and sewerage charges
- gas
- telephone
- council tax and business rates
- tax and National Insurance
- credit cards
- overdrafts
- loans
- goods or services that the applicant has received but not paid for
- benefits overpayments
- money owed to employees
- hire purchase and conditional sale agreements
- customers who have paid for goods or services that the applicant has not supplied
- creditors claiming their own goods are in the applicant's possession

Interest and charges

The total value of each debt should include all interest penalties and charges that have been applied by the creditor.

NOTE:

The value of the debt is calculated when the DRO application is considered by the official receiver, not when the application is submitted. Usually, these events are within 1- 2 business days of each other, but any delays, such as an unpaid application fee, which keep the official receiver from considering the application, can affect whether the applicant is within the £20,000 threshold.

Multiple debts to the same creditor

Each debt should be entered separately. For example, if an applicant has an overdraft and a personal loan with the same bank, two separate debts should be listed.

Secured debts

Secured creditors may have to be listed on the application twice if the secured item is worth less than the total value of the loan.

For example, if the applicant owns equipment worth £500 and that equipment is subject to a £1,000 charge in favour of ABC lending, you should list ABC lending as a secured creditor for £500 and as an unsecured creditor for £500 (£1000 minus the £500 security).

However, if the equipment was worth £1000 and the charge was a £1000, the creditor would only need to be listed the one time as a secured creditor.

What is an excluded debt?

Some debts can not be included in a DRO. These debts are called 'excluded debts'.

If a debt falls within any of the following categories it is an excluded debt:

- any debt relating to family proceedings or maintenance assessments made under the Child Support Act 1991.
- any fines imposed for an offence. A 'fine' is the financial penalty that arises from a conviction but doesn't include any other costs associated with the offence such as orders for costs.

NOTE:

Orders for costs can be included in a DRO.

Fixed penalty notices and penalty charge notices (PCN) issued by a local authorities are not considered fines. These can be included as normal debts which will be written off if a DRO is made.

- student loans
- confiscation orders made under:
 - section 1 of the Drug Trafficking Offences Act 1986
 - section 1 of the Criminal Justice (Scotland) Act 1987
 - section 71 of the Criminal Justice Act 1988
 - parts 2, 3 or 4 of the Proceeds of Crime Act 2002

any debts relating to damages for/under:

- negligence
- nuisance
- breach of a statutory, contractual or other duty
- Part 1 of the Consumer Protection Act 1987

crisis or budgeting loans made under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992

Foreign debts

Debts incurred outside the UK should be converted into sterling.

The same rules around qualifying vs excluded debts apply to debts incurred outside the UK.

Please be aware that a DRO is not recognised as a form of debt relief outside of the UK. Therefore, foreign creditors can continue to take action against the application in their 'home' jurisdiction.

For example, if a debt was incurred in Scotland/Northern Ireland, the creditor can still take action against the applicant within those national courts. However, any order made by the court there may not be enforced in England and Wales.

Statute barred debts and other unenforceable debts

Debts barred by limitation or otherwise unenforceable should not be included in the application.

If the official receiver discovers that a debt was not statute-barred/unenforceable after a DRO order has been, they will recalculate the total debt amount including this new debt. If the new total is more than £20,000, the DRO will be revoked.

Water rates

Most water authority charging regimes include an 'insolvency clause' which allows them, upon the making of a DRO, to split annual charges for water pre and post order. Where such a clause exists, only charges and arrears up to the date of the DRO application should be included.

Council tax

Any amounts due and unpaid under their instalment agreement should be included in the application. If the applicant's council tax is up to date under their instalment agreement then there is no debt because the unpaid balance relates to future occupation of the dwelling.

If instalment payments are in arrears and the applicant has defaulted in respect of a final notice, this will have resulted in the full balance for the year becoming due and payable. In this case, the full amount claimed on the final notice should be listed in the application.

Where the council has obtained a liability order, the total amount claimed on the liability notice should be listed in the application.

Taking control of goods agreements

Where a 'taking control of goods' agreement exists, the liability in respect of which control of goods was taken should be scheduled as an unsecured (qualifying) debt. The amount outstanding should be revised where the goods are sold and the proceeds applied to pay down the liability.

Hire purchase and conditional sale agreements

The total amount the applicant still owes against the hire purchase or conditional sale agreement can be included in the application but doesn't have to be. It's the applicant's choice whether to include the full amount or not.

If they choose not to include the debt then they will still be liable for the remaining balance. If they fail to keep up with repayments, the finance company can take action against them.

Any unpaid instalments where the due date has passed must be included in the application.

Income and Expenditure

Assessing the applicant's income and expenditure

Income and expense amounts declared on the application should be based on the applicant's actual expenses. The official receiver may ask for proof if any amount appears disproportionate.

Assessing surplus income using the Standard Financial Statement

Some adjustment has been made to the income and expenses fields in anticipation of the Standard Financial Statement, but trigger figures, etc have not been imbedded into the form.

Income

The applicant's income from all sources should be disclosed, including wages, benefits and pensions.

Income from benefits

All benefits should be included when calculating income, including:

- Child Benefits
- State Benefits relating to disability needs (eg care, supervision, mobility)
- Attendance Allowance
- Constant Attendance Allowance under the Industrial Injuries or War Pensions Schemes
- Disability Living Allowance or Personal Independence Payments
- War Pensioners Mobility Supplement or grants for the use of a vehicle
- Armed Forces Independence Payments

Expenses outside of the prescribed categories

If any of the applicant's expenses don't fit within the categories provided, please enter the sum of the additional expenses in the 'Other expense' field and briefly describe the nature of the expenses in the 'additional information' section of the submission page.

Expenditure in relation to care, supervision or mobility needs

Where an applicant is registered as disabled and in receipt of State Benefits for their care, supervision or mobility needs, it is acceptable to list the full State benefit amount as expense.

Child Benefits

Any Child Benefits that the applicant receives must be included in the income section of the application.

Everything that the Child Benefit pays for should be included in the expenses section of the application.

Motability scheme payments

Payments made directly between Motability and the finance company do not need to be disclosed in the application.

Payments made by the applicant directly to the car finance company should be listed as expenses.

Any mobility allowance received into the applicant's bank or building society account should be disclosed as income.

Payments under a hire-purchase or conditional sale agreement

If an applicant decides not to include a hire purchase or conditional sale agreement in their DRO application, then the applicant will remain responsible for all future payments.

Future payments under a hire purchase or conditional sale agreement must only be included if BOTH of the following criteria are met:

- 1) The vehicle subject to the hire purchase agreement is worth less than £1,000
- 2) The vehicle is necessary to satisfy the basic domestic needs of the applicant and her/his family.

Examples of how hire purchase or conditional sale agreements should be dealt with are given below.

Example Scenarios - Hire purchase or conditional sale agreements: Applicant has arrears on a hire purchase agreement.

Action: The applicant can either:

- (1) schedule the whole liability in the DRO application and this would count towards £20K liability parameter, or
- (2) schedule just the arrears in the DRO application and choose to exclude the future contractual liability from the DRO application, in which case the arrears would be a specified qualifying debt and count towards the £20K liability parameter and the excluded element of the HP liability would not be a specified qualifying debt and not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the applicant's Experian report that the applicant has chosen to exclude.

Outcome:

- (1) Whole debt is a qualifying debt and one that would be discharged at the end of the moratorium period; applicant unable to maintain payments and creditor's only remedy would be to seek recovery of their goods.
- (2) Scheduled arrears are a qualifying debt and one that would be discharged at the end of the moratorium period. The applicant would not be permitted to make payments in respect of the arrears. The excluded element of the liability is not a specified qualifying debt and the applicant would remain liable. If the goods in question were for the applicant's basic domestic needs the future repayments would be an allowable expense. However it is likely that if arrears are scheduled in a DRO application the applicant would be in default and the company may seek recovery of their goods.

Applicant has hire purchase agreement with no arrears.

Action: The applicant can either:

- (1) schedule the whole liability in their DRO application and this would count towards £20K liability parameter, or
- (2) choose to exclude the liability from the DRO application in which case it would not be a specified qualifying debt and not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the applicant's Experian report that the applicant has chosen to exclude.

Outcome:

- (1) Debt is a specified qualifying debt and one that would be discharged at the end of the moratorium period. Applicant unable to maintain payments and creditor's only remedy would be to seek recovery of their goods.
- (2) Debt is not a specified qualifying debt and the applicant would remain liable. If the goods in question were for the applicant's basic domestic needs the repayments would be an allowable expense. For example, payments in respect of a fridge or cooker would be allowed but payments in respect of a laptop computer or plasma screen television should be disallowed.

Applicant has hire purchase agreement with no arrears for a motor vehicle worth £3000.

Action: The applicant can either:

- (1) schedule the whole liability in their DRO application and this would count towards £20K liability parameter, or
- (2) choose to exclude the liability from the DRO application in which case it would not be a specified qualifying debt and not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the applicant's Experian report that the applicant has chosen to exclude.

Outcome:

- (1) Debt is a specified qualifying debt and one that would be discharged at the end of the moratorium period, Applicant unable to maintain payments and creditor's only remedy would be to seek recovery of their goods.
- (2) Debt is not a specified qualifying debt and the applicant would remain liable. As the vehicle in question is worth in excess of £1000 the repayments on the agreement would **not** be an allowable expense.

Applicant has hire purchase agreement with no arrears for a motor vehicle worth £900.

Action: The applicant can either:

- (1) schedule the whole liability in their DRO application and this would count towards £20K liability parameter, or

- (2) choose to exclude the liability from the DRO application in which case it would not be a specified qualifying debt and not count towards the £20K liability parameter. **Inform DRO Team** about any liability appearing on the applicant's Experian report that the applicant has chosen to exclude.

Outcome:

- (1) Debt is a specified qualifying debt and one that would be discharged at the end of the moratorium period. Applicant unable to maintain payments and creditor's only remedy would be to seek recovery of their goods.
- (2) Debt is not a specified qualifying debt and the applicant would remain liable. As the vehicle in question is worth less than £1000 the repayments on the HP agreement **would** be an allowable expense.

PART 3 - Fee payments

The fee

A DRO application can only be considered for determination once the application fee is paid in full. As such, the fee for entry into a DRO must be fully paid before the Official Receiver will consider the application. Applicants can pay the fee in instalments to suit their particular financial situation, until the entire application fee is covered. The fee is non refundable once an application has been submitted.

When the application has been submitted the system runs a check to confirm the fee has been received in full. Only when receipt of the fee is confirmed is the application forwarded for consideration by the Official Receiver.

Please bear in mind the effects of delaying payment once an application has been submitted in respect of charges on the debts they owe and the possibility, as a result of these charges, of the applicant's liabilities increasing above £20,000. Intermediaries should advise applying applicants of this possibility. In the situation where the applicant's total liabilities are too close the £20,000 limit, and if, when considering the applicant's personal circumstances, there is a reasonable and real prospect that their total debts will exceed the limit before the applicant can pay the application fee, the intermediary should inform the applicant that delaying payment may result in the application being declined and the loss of the application fee should the applicant pay it.

In the event that an applicant completes an application over a number of visits, the intermediary should update any liabilities figures on the application form to take account of any further accrued interest or charges, which may have increased the applicant's overall liabilities during the delay.

Important Note – The application fee should be paid prior to submission.

Due to the automated nature of the application process, there can be no manual intervention and an application will be automatically cancelled if payment has not been received prior to determination.

When the application has been submitted, this will result in an undertaking by the applicant to The Insolvency Service that the form has been completed in full and with their consent, as it is the intermediary who will be submitting the applicant's application on their behalf.

How to Pay

In all cases the intermediary should give the applicant their unique bar-coded letter to enable them to pay their fee. The applicant must then pay their fee via Payzone terminals or Post Office, to the Insolvency Service using this bar-coded letter.

Intermediaries should advise applicants that although the application may have been submitted to the Insolvency Service, the application will not be considered until such time as the application fee has been paid in full. Intermediaries should also advise of the methods in which an applying applicant can pay this fee (i.e. Payzone and the Post Office).

Payzone facilities are widely available in the UK. Payzone operates terminals in over 30,000 newsagents, convenience stores, forecourts, providing flexibility as a result of their long opening hours and accessibility. Outlets that have Payzone terminals are clearly marked outside with Payzone logos.

For more information please visit the following website:

www.payzone.co.uk

Post offices are of course widely available in the UK and details of local branches can be found by accessing the following website:

<http://www.postoffice.co.uk> using the branch finder facility.

An applicant will be able to pay the application fee at Payzone terminals or Post Offices, by presenting to the outlet the bar-coded letter that was issued to them by their intermediary. You will be able to provide the applicant with a bar-coded letter if an application has been created on the online application system. The application form does not have to be completed in full in order for this letter to be produced, as only the DRO applicant's basic details have to be provided so that the letter can be addressed to the applicant.

Intermediaries should ensure that they apprise themselves as to the available outlets in their locale and ascertain whether those outlets will accept payments in relation to DROs.

In order to ascertain which Payzone outlets accept what type of payment, you should access the Payzone website at www.payzone.co.uk. From the main screen select the "Consumer" tab and then select "Store Locator" from here a post code or town should be entered and this will then display all the Payzone facilities in that area.

For Intermediaries that deal primarily with telephone interviews, it will not be feasible to ascertain the whereabouts of all outlets for their clients however intermediaries may wish to advise their clients to make enquiries regarding the outlets in their area and their ability to make payments in relation to DROs.

The barcode generated on the printed letter will be specific to the applicant so that they may then present this letter at any Payzone facility or Post Office as detailed above. An applicant may then make a payment towards the

application fee as they would do as if they were making a utilities bill payment or mobile phone top up.

Applicants will only be able to make payment over the counter at the Payzone facilities or Post Offices in cash as any payment needs to be in cleared funds.

Intermediaries should advise applicants that in the instance where the applicant has found a charity who is willing to pay the application fee for them in part or in full, only in these circumstances will The Insolvency Service be able to take a cheque as payment. Where a charitable contribution comprises only part of the application fee, the applicant should pay the outstanding balance at a Payzone facility or Post Office. As such, cheques will only be accepted from charities.

Cheques from charities should be made payable to "The Insolvency Service (DRO)", and posted to the address below. All cheques sent to the Insolvency Service must have endorsed upon them the application ID number, Intermediaries should also instruct applicants to include a covering note with the cheque stating the applicant's name, address and application ID number (the number that is automatically generated when an online application form is started).

Please note: If the applicant is having their fee paid by a charity cheque, then the intermediary should allow the normal bank clearance periods for the cheque to clear, before the application is submitted to the Insolvency Service. If the application is submitted the same day as the cheque is sent to the Insolvency Service, it is likely that the cheque will not clear within the necessary time required, which will result in the application being cancelled.

Finance Section (DRO)
The Insolvency Service
Cannon House
18 Priory Queensway
Birmingham
B4 6FD

Refunds

If an applicant pays the application fee (in full or in part) and subsequently decides not to submit their application, they should request a refund via the intermediary.

No interest is paid in respect of any monies held by the Insolvency Service in anticipation of a DRO application.

Glossary

Approved Intermediaries – Members of the debt advice sector who are permitted to act as debt relief order (DRO) advisors. They will give advice to applicants and help them to complete the online application for a DRO. Approved Intermediaries are the only people who can submit a DRO application online, so they will submit the completed application on behalf of the applicant. Approved intermediaries are authorised to act as such by competent authorities.

Approved Pensions – most occupational or personal pension schemes found in the UK. They include occupational pensions from large organisations and personal pensions from well known insurance companies.

Asset - Anything that belongs to an applicant that may be used to pay their debts.

Bankrupt – An individual who has been made bankrupt by a Court because they are unable to pay their debts.

Bankruptcy - One way of dealing with debts that someone cannot pay. The bankruptcy proceedings free an individual from overwhelming debts so they can make a fresh start. Bankruptcy makes sure that an individual's assets are shared out fairly among their creditors.

Bankruptcy Restrictions Order (BRO) or Undertaking (BRU) - A formal insolvency procedure whereby a bankrupt may have a Court order made against them, or they give an undertaking, that will mean certain restrictions continue to apply for a specified period of between 2 and 15 years.

Department for Business Innovation and Skills (BIS) - The Government Department formerly known as the Department of Business Enterprise & Regulatory Reform (BERR) formerly known as the Department for Trade and Industry (DTI), of which the Insolvency Service is an executive agency.

Charge – A security interest such as a mortgage, taken over property by a creditor, to protect against non-payment of a debt. If the debtor does not pay the debt, the creditor has the right to take the property. Charges are always attached to specific assets.

Competent Authorities – Debt and financial advice organisations designated by the Secretary of State to authorise members of the debt advice sector to act as approved intermediaries.

Conditional Sale Agreement – An agreement to buy goods by instalments where the buyer can take possession of the goods but will only own them on the condition that they have paid all the instalments. The agreement may also have other conditions to be met before ownership can take place.

County Court Administration Order – A formal insolvency proceeding where the County Court issues an order for regular payments to be made by the applicant to the Court. The Court takes a 10% administration fee and divides the rest of

the payment among the creditors on a pro rata basis. To qualify for an administration order an applicant must have two or more outstanding debts, one of which must be a High Court or County Court judgment. The total debts must not be more than £5,000. Once an order is made, creditors cannot take action against the applicant without first asking the Court. See Part 6 of the County Courts Act 1984.

Creditor – An individual or body to whom money is owed.

Creditor's Bankruptcy Petition – A formal application to Court by a creditor for an individual to be made bankrupt.

Debt Management Plan (DMP) – The individual, with the help of the debt advice sector, sets out a schedule for the repayment of their debts to their creditors, which involves regular payments to an agent.

Debt Relief Order (DRO) – A formal insolvency proceeding that offers debt relief to a specific group of individuals who have total liabilities not exceeding £20,000, total gross assets not exceeding £1,000 and a monthly disposable income not exceeding £50.

Debt Relief Restrictions Order (DRRO) or Undertaking (DRRU) – A formal insolvency proceeding, similar to a BRO or BRU, whereby someone who is subject to a DRO may have a Court order made against them, or they give an undertaking, that will mean the restrictions of a DRO continue to apply for a specified period of between 2 and 15 years. If during the course of the DRO application, or after the approval of a DRO, the applicant has subsequently been found to have failed in the provision of an open and honest account of their financial affairs, or has not co-operated with the Official Receiver, an applicant may have a DRRO enforced against them.

Default – Failure by a debtor to meet their obligations, usually in the terms of a repayment.

Discharge – The process by which a debtor can be freed from bankruptcy debts (with certain exceptions) or freed from the restrictions of bankruptcy.

Domiciled

With regards to Debt Relief Orders, domiciled means do you live, or is your principal residence in England or Wales.

Electronic Individual Insolvency Register (EIIR) – The online database that holds details of all individuals who are currently subject to formal insolvency proceedings, have been discharged from bankruptcy within the last three months, or have had their bankruptcy order annulled (cancelled) in the last five days.

Estate – The sum total of a bankrupt's property available for distribution to their creditors. The degree, quantity, nature and extent of an interest that a person owns in real and personal property

Freehold – A form of legal title to land that means absolute ownership of the property and the land it stands on, for an indefinite period. It is also known as a 'life interest'.

Hire-Purchase Agreement – An agreement that is a secured loan that gives the provider of the goods certain rights over the goods until the hire-purchase agreement is finished. The goods are hired for the term of the agreement at which point the person who is hiring the goods can opt to buy them. This means that until the end of the agreement the hirer is not allowed to sell the goods as they are not the owner and they must abide by the terms of the hire-purchase agreement. See also **CONDITIONAL SALE AGREEMENT**

Gross Assets – The total value of an individual's combined assets before all charges and other fees requiring repayment have been deducted.

Individual Voluntary Arrangement (IVA) – A formal version of a DMA or DMP that is legally binding on the debtor and all of their creditors. If a debtor, who makes a proposal on how they will pay all or part of their debts, has 75% of the creditors who are present or represented at a meeting to consider the proposal agree to accept it, it is binding on all of the debtor's creditors. The supervisor of an IVA must be an insolvency practitioner. If someone has been made bankrupt they can enter into a Fast Track Voluntary Arrangement (FTVA). An FTVA works in a similar way to an IVA but the supervisor must be the official receiver.

(The) Insolvency Service – An executive agency of the Department for Business Innovation and Skills (BIS) that employs Official Receivers and their staff to administer and investigate bankruptcies and compulsory liquidations, to administer DROs and to supervise FTVAs.

Interim Order – An order of the Court for a short period, pending a final outcome. An example is an order giving a moratorium for a debtor who is intending to make a proposal for an IVA.

Judgment – Order of the Court in a civil or criminal proceeding.

Judgment Creditor – A creditor who has a judgment and who can enforce execution (usually by a bailiff) under the judgment as a result of the Court's decision.

Lease – A contract granting use or occupation of property during a specified period in exchange for a specified rent.

Leasehold – The right to an estate or interest held under a lease

Moratorium Period - A length of time during which the debts owed by a debtor are protected from the claims and actions of their creditors. Creditors cannot continue or commence legal action against the debtor for repayment of these debts, without leave of the Court. After the moratorium period has come to an end, these debts would usually be discharged. If the moratorium period is terminated by the Court or the Official Receiver, the debtor will again be subject to the actions of their creditors.

(The) Official Receiver – An officer of the Court and civil servant employed by The Insolvency Service, who administers and investigates bankruptcies and compulsory liquidations, and administers DROs and FTVAs.

Preferential Creditors – Certain unsecured creditors, in bankruptcy and liquidations, who receive priority payment over other unsecured creditors in the event of a distribution.

Qualifying Debts - A list of the debts that have been scheduled in an application for a Debt Relief Order. Please refer to the guidance notes as to the definition of a qualifying debt.

Revocation of Debt Relief Order- This is the process whereby the Official Receiver or Court, may terminate a Debt Relief Order.

(The) Secretary of State – A cabinet minister at the head of a Government Department who has vested statutory powers to carry out the business of the department they administer.

Secured Debts - A debt that entitles the lender to take possession of a specified piece of property if the debtor cannot repay the secured debt. An example would be a mortgage, whereby a house is considered collateral (an asset) towards the debt. If a debtor defaults or fails to meet one of the terms of repayment, the bank may seize the house to sell, using the proceeds to settle the debt.

Secured Creditors – Creditors who have a specific claim over one or more of the debtor's assets, such as a mortgage or charge over a house.

Unencrypted Electronic Format

Unencrypted is something that has not been encrypted, which means: to alter a file for example using a secret code so as to be illegible to unauthorised parties.

Undischarged Bankrupt – A debtor who is currently subject to a bankruptcy order and its restrictions.

Unsecured Creditors – Creditors who do not have a specific claim over the debtor's assets for all or part of the sum owed to them. Some unsecured creditors may be preferential or judgment creditors.

Unsecured Debts – Debts that do not identify specific assets that the creditor is entitled to where the debtor fails to meet the terms of repayment (or defaults), such as bank loans, credit cards, unpaid utility bills, income tax and any shortfall to secured creditors, once the value of their security is taken into account. Only unsecured debts are qualifying debts for a DRO, but not all unsecured debts will be qualifying debts (see qualifying debts).

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