EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (ENGLAND AND WALES) (AMENDMENT) RULES 2021

2021 No. 672

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes provision to amend Rule 9.9 of the Insolvency (England and Wales) Rules 2016, which lists property the official receiver must disregard for the purposes of determining the value of a person's property in connection with a Debt Relief Order (DRO). This includes a single domestic motor vehicle where the maximum potential realisable value is less than £1,000. This instrument changes that amount to £2,000.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are prescribed monetary limits that need to be met in order for an individual to be able to apply for a DRO.

3.2 This instrument should be read in conjunction with the 'Insolvency Proceedings (Monetary Limits) (Amendment) Order 2021' which amends the prescribed amounts for the debtor's overall indebtedness, monthly surplus income, and total value of property for the purposes of making a DRO.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument amends the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024). Rule 9.9 of those Rules lists property the official receiver must disregard for the purposes of determining the value of a person's property in connection with a DRO. This includes a single domestic motor vehicle whose maximum potential realisable value is less than £1,000. This instrument changes that amount to £2,000.

6.2 The instrument includes a transitional provision explaining that the new limit will only apply to applications for a DRO made on or after 29 June 2021.

7. Policy background

What is being done and why?

7.1 DROs were introduced in April 2009. Delivered in partnership with the debt advice sector, DROs provide low cost, easy access to debt relief for those with relatively low levels of unmanageable debt, and no means with which to pay their creditors, providing a fresh start for the most vulnerable. At the end of the DRO period (usually 12 months) the debts included within the order are written off and the individual is no longer responsible for paying them.

7.2 In order to be able to apply for a DRO a person must meet strict monetary eligibility criteria which were last changed in 2015.

7.3 There are individuals who are unable to make contributions to their creditors and for whom bankruptcy is a disproportionate solution but who currently cannot access a DRO as they do not meet the monetary criteria.

7.4 Evidence provided by the Office for Budget Responsibility suggests that the economic outlook as a result of the Coronavirus pandemic remains highly uncertain and depends upon many factors. As a result, it is anticipated that there will be a greater need for people in financial distress to have access to an appropriate debt solution. Government has also introduced a new breathing space scheme in 2021, which will provide people in debt with a 60 day pause on creditor enforcement action. This, coupled with the potential impacts on personal indebtedness as a result of the coronavirus pandemic, means that it is now appropriate to increase the DRO limits.

7.5 The current limits are that a person must:

- own assets that are not worth more than £1,000 in total (essential household items such as bedding, and furniture are excluded as are tools or other equipment that are essential for work. In addition, one domestic motor vehicle worth no more than £1,000 is excluded from the asset criteria);
- have no more than £50 surplus income each month, after paying tax, national insurance and normal household expenses; and
- have debts of £20,000 or less.

7.6 Following a consultation in January 2021 on increasing the monetary limits, Ministers have agreed to:

- Increase the threshold on the value of assets that a debtor can hold and be eligible to enter into a DRO from £1,000 to £2,000.
- Increase the value of a single motor vehicle that can be disregarded from the total value of assets from £1,000 to £2,000.

- Increase the level of surplus income received by the debtor before payments should be made to creditors from £50 to £75 per month.
- Increase the total debt allowable for a DRO from £20,000 to £30,000.

7.7 This instrument increases the value of a single domestic motor vehicle that can be disregarded from the total value of assets for the purposes of obtaining a DRO, from £1,000 to £2,000. This requirement is contained in Rule 9.9 of the Insolvency (England and Wales) Rules 2016. The limit on the other prescribed criteria can be found in the Insolvency Proceedings (Monetary Limits) Order 1986 (SI 1986/1996) and are therefore amended by a separate instrument (see paragraph 3.1 above).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable

10. Consultation outcome

10.1 A full public consultation was carried out between 12 January 2021 and 26 February 2021. The consultation text can be found at www.gov.uk/government/consultations/debt-relief-orders/debt-relief-orders-consultation-on-changes-to-the-monetary-eligibility-criteria

10.2 In the consultation the Government proposed the following changes to the monetary eligibility criteria for an individual to access a DRO:

- To increase the total amount of debt allowable from £20,000 to £30,000;
- To increase the allowable value of assets owned by the individual from £1,000 to £2,000. The consultation did not propose any to change the items excluded from the calculation of assets nor did it propose any change to the £1,000 limit on the value of a domestic motor vehicle; and
- To increase the level of allowable surplus income to from £50 to £100 per month.

10.3 There were 148 written responses to the consultation. Virtual meetings were also held with key stakeholders from the debt advice community and from the creditor community. Whilst a majority of those responding supported the Government's proposal to raise the monetary limits, the responses were polarised between two positions. Stakeholders from the debtor and academic communities put forward strong arguments for the Government's proposed increases to the limits to go further, allowing more people access to DROs. Equally strong opposing arguments were put forward by the creditor and insolvency practitioner communities, that some of the proposed changes went too far.

10.4 Although not included as a proposal within the consultation, the debt advice sector argued strongly that the value of a disregarded motor vehicle should be increased. The suggested increase in value ranged from £1,500 to £3,000 with the majority supporting an increase to £2,000. The arguments put forward for increasing the value of the motor vehicle focused on the cost of a car having increased substantially since

the level was set in 2009 and that the costs of maintaining a very low value car are often higher.

10.5 The Government's full response to the consultation can be found at www.gov.uk/government/consultations/debt-relief-orders

11. Guidance

11.1 The Insolvency Service issues regular bulletins to interested parties; these were used to raise awareness of the proposed new limits at the time of publication of the Government's response to the consultation.

11.2 The A-Z guidance for DROs, issued by the Insolvency Service for authorised intermediaries, has been updated to set out the way in which mobility scooters will be dealt with in the DRO process. This guidance will be further updated to account for these changes, in time for commencement of the new provisions.

12. Impact

12.1 The net cost to business per year of the overall DRO changes, is estimated to be £9.2 million.

12.2 The motor vehicle limit was set at £1,000 when DROs were introduced in 2009 and has not been updated to reflect inflation. Uprating the limit with inflation from 2009 to 2020, results in a new limit of £1,215. Analysing debt advice data shows increasing the motor vehicle limit from £1,000 to £1,215 has only a marginal effect on increasing the percentages falling under the motor vehicle criteria from 48% to 50%.

12.3 The Government has therefore decided to increase the motor vehicle limit to £2,000. This will help to unblock barriers to access DROs and increase the percentage of debtors falling under the motor vehicle criteria from 48% currently, to 67%, thereby enabling access to those who need it the most.

12.4 It is estimated that this change, along with the increase to the other prescribed monetary limits, will lead to an increase of about 13,200 new DRO cases in England & Wales. This is an increase of 49% compared to cases in 2019. We consider that 2019 is a better reference point than last year, where the economy was subject to the unprecedented impact of the coronavirus pandemic.

12.5 An Equalities Impact Assessment has concluded that the change will not deliver a less beneficial outcome for any one group compared to others.

12.6 The public sector is a significant creditor in insolvency and therefore the cost to creditors from individuals accessing debt relief will have an impact. Analysis estimates that 14% of creditor returns are due to public sector organisations therefore, the annual cost to public sector creditors is estimated to be £0.9m.

12.7 A full Impact Assessment is submitted with this order and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses as they may provide credit to individuals which falls into a DRO. However, the largest burden falls on the increase of DRO applications made by large competent authorities. As a result, the burden will not fall disproportionately on small and micro business.

13.2 Most creditors by value in the personal debt space are large financial institutions and Government creditors, therefore the impact on small and micro business will be minimal.

13.3 No specific action is proposed to minimise the regulatory burdens on small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause; however, the Impact Assessment gives a commitment to review the policy by June 2026.

15. Contact

15.1 Alison.Ireland@insolvency.gov.uk can answer questions about these regulations.

15.2 Angela Crossley, Director of Strategy and Change at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Climate Change and Corporate Responsibility, Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.