EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (ENGLAND AND WALES) (AMENDMENT) RULES 2024

2024 No. 622

1. Introduction

1.1 This explanatory memorandum has been prepared by the Insolvency Service, an Executive Agency of the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kevin Hollinrake, Minister for Enterprise, Markets and Small Business at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 Angela Crossley, Director of Strategy, Policy and Analysis at the Insolvency Service, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Andrew Shore, Assistant Director of Policy, the Insolvency Service. Telephone: 0300 304 5649 or email: Policy.Unit@insolvency.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 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 £2,000. This instrument changes that amount to £4,000.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 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. In order to be able to apply for a DRO a person must meet strict monetary eligibility criteria which were last changed in 2021, as a way to help people struggling financially following the pandemic.

5.2 In 2022, in response to calls from creditors and others, the Government ran a call for evidence on the overall personal insolvency regime. This sought views on how the framework operates and how it ought to be funded. The Government published the response in 2023 and committed to developing proposals to fundamentally reform the framework, and in the interim to consider ways to improve the debt relief landscape without primary legislation. This measure forms part of those proposals.

5.3 Responses to the call for evidence highlighted that 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, for example because they do not meet the monetary criteria for debt levels (£30,000) and/or they have a basic domestic motor vehicle which exceeds the £2,000 limit.

5.4 In addition, published reports from debt and other third sector charities continue to indicate that personal debt levels are rising and there is a need to open DROs up to more debtors. Debt relief provides a net benefit to the economy by improving wellbeing and by enabling individuals to return to normal economic participation, and affordable access to debt relief is in line with international best practice. A United Nations working paper, published in early 2023, states that "for debtors with no or limited surplus income and assets, relief should be widely available to ensure that no one is too poor to become insolvent."

5.5 As a result, Ministers have agreed to:

- Increase the value of a **single motor vehicle** that can be disregarded from the total value of assets an individual seeking a DRO is permitted to own from **£2,000 to £4,000**.
- Increase the total **debt allowable** from **£30,000 to £50,000**.

5.6 To be eligible for a DRO, an individual is permitted to have assets with a total value of no more than £2,000. However, a motor vehicle up to the value of £2,000 is excluded for the purposes of this calculation. Since 2019 the cost of second-hand motor vehicles has risen significantly, and it is now not uncommon for second hand vehicle values to be between £4,000 and £5,000.

5.7 This instrument therefore 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 £2,000 to £4,000. This requirement is contained in Rule 9.9 of the Insolvency (England and Wales) Rules 2016. The limit on other prescribed criteria can be found in the Insolvency Proceedings (Monetary Limits) Order 1986 (SI 1986/1996). The debt threshold is therefore amended by a separate instrument.

What was the previous policy, how is this different?

5.8 The DRO monetary limits were last changed in June 2021 to increase:

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

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

5.9 This Statutory Instrument (SI) will increase the motor vehicle value from £2,000 to £4,000 to reflect the current value and availability of second-hand motor vehicles.

5.10 A separate SI, the Insolvency Proceedings (Monetary Limits) (Amendment) Order 2024, will increase the debt threshold from £30,000 to £50,000, to reflect the fact that personal debt levels are rising.

6. Legislative and Legal Context

How has the law changed?

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 £2,000. This instrument changes that amount to £4,000.

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 the commencement date – the 28 June 2024.

Why was this approach taken to change the law?

6.3 As the monetary limit is set out in the Insolvency (England and Wales) Rules 2016, amending those Rules is the only possible approach to make the changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A call for evidence on the personal insolvency framework (England and Wales) was published on 5 July 2022 and ran until 24 October 2022. Amongst other things, it sought views on the current personal insolvency procedures, including DROs, and whether these are working effectively.

7.2 There were 64 responses from a mixture of stakeholders, including from the debt advice sector, creditor organisations, regulators, members of the insolvency profession, academics and individuals. As well as written responses, officials held a series of meetings and events with key stakeholders to discuss the issues raised in the call for evidence.

7.3 A summary of the responses was published on the 4 August 2023 and both the response and the original consultation can be found at - Review of the personal insolvency framework: Summary of responses and next steps - GOV.UK (www.gov.uk). The Government response committed to developing proposals to reform the framework for further consultation, and in the interim, consider whether there is scope to improve the debt relief landscape through non legislative means or secondary legislation.

7.4 The responses highlighted an increasing number of individuals who require urgent relief from a growing debt burden and recommended that the DRO monetary limits, particularly in relation to the debt and exempt motor vehicle threshold, should be regularly increased. This measure can be achieved through secondary legislation so is being brought forward now.

7.5 The limits strike a balance between the needs of debtors to access low-cost debt relief, and the expectation of creditors that, where particularly large debts are owed, the cause of insolvency will be investigated in greater depth by having the individual enter bankruptcy instead.

8. Applicable Guidance

8.1 Guidance on this instrument has been published through Dear IP (Article 120) - Dear Insolvency Practitioner - Guidance - GOV.UK (www.gov.uk).

8.2 The A-Z guidance for DROs, issued by the Insolvency Service for authorised intermediaries, will be updated to account for these changes in time for commencement of the new provisions.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 In line with Better Regulation requirements, a full Impact Assessment (IA) has not been prepared for this instrument because the policy changes fall within De Minimis IA thresholds.

9.2 The aim of increasing the DRO eligibility criteria is to remove barriers to enable those with low debt, assets and surplus income to access DROs and obtain debt relief. The impact of this will be that more individuals in financial distress are able to make a 'fresh start' and be free from financial pressure, thereby becoming an active member of the economy. There are substantial non-monetised benefits for debtors, their families and society, such as improved physical/mental wellbeing. There is also a non-monetised benefit to creditors where the costs involved with recovering the debt exceed the debt level itself. By writing off debt in these cases, it can result in a net benefit for creditors.

9.3 Overall, there is estimated to be an annual net direct cost to business of £2.7 million.

Impact on businesses, charities and voluntary bodies

9.4 There is no, or no significant, impact on business, charities, or voluntary bodies because the costs to business are small as set out above.

9.5 The legislation applies to activities that are undertaken by small businesses as they may provide credit to individuals and the debt that arises 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.

9.6 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.

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

9.8 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 £0.2m.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through ongoing and regular engagement with stakeholders to assess the impact of the changes. The Insolvency Service will also monitor the use of DROs through the continued publication of official statistics. In addition, the Insolvency Service is undertaking a significant programme of reform to the personal insolvency framework. As part of this, a public consultation will be issued in due course on wider reform to the regime as a whole.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Enterprise, Markets and Small Business has made the following statement: "The net impact on business of these changes is not expected to be significant, being £2.7 million. As the net impact is below +/- £5 million net annualised and in line with Better Regulation requirements, a statutory review clause is not required."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").