

# Consultation

## Reforming Debtor Petition Bankruptcy and Early Discharge From Bankruptcy

November 2009

# Consultation on Reforming Debtor Petition Bankruptcy and Early Discharge from Bankruptcy

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## Foreword

The current economic downturn is causing real hardship for many, and the Government is determined to do all it can to support people, both now and in the future.

We have already taken active steps to improve the provision of debt advice and support for people facing financial difficulty. But we recognise that some people are simply overwhelmed by unmanageable levels of debt that they will never be able to repay. For those individuals, seeking their own bankruptcy is often the only way of securing much needed relief.

Creating a new administrative entry process, where an individual can apply for their own bankruptcy without going through the court would, we believe, remove, or at the very least reduce, the delay many debtors experience between presenting their bankruptcy petition and the bankruptcy order being made. This new process would also free up valuable court time and resources.

We intend the route of entry to be self-financing and for bankruptcy to remain an affordable option for those who need it. Our challenge is to design a route for debtors into bankruptcy that is modern, value for money and accessible.

We are also recommending repeal of provisions relating to early discharge of bankrupts, as these have been found to be ineffective in achieving the aim of reducing stigma, whilst costing significant amounts to administer.

We very much look forward to hearing your views on these issues.

**Ian Lucas MP**

**Minister for Business and  
Regulatory Reform**

**Department for Business  
Innovation & Skills**

## **Section A: General information**

### Introduction

Since the expansion of the credit market in the 1980s, the availability of credit has increased significantly. Whilst the majority of credit users are not in financial difficulty, the global recession has resulted in a rise in the number of debtors who are experiencing difficulties repaying their debts. Some have complex debt problems, or need support to enable them to repay their debts, others simply have no realistic hope of ever being able to repay them.

The Government is committed to helping those in financial difficulty, whilst balancing this against the rights that creditors have to recover their debts wherever possible. We are separately consulting, together with the Ministry of Justice, on whether there is a need to make further statutory provision in relation to debt management plans<sup>1</sup>.

The Insolvency Act 1986 provides assistance to both those who can repay some or all of their debts with support, by means of an Individual Voluntary Arrangement (IVA); and those who genuinely cannot repay their debts and will never be able to do so, by making provision for the bankruptcy of individuals. Also, since April 2009, debt relief orders have enabled those with debts of less than £15,000, no substantial assets and little or no income to write-off their debts.

This consultation looks at bankruptcy, and specifically at what improvements can be made to secure better access to bankruptcy by debtors for whom other forms of debt relief are simply not appropriate. We wish to be clear that no changes are proposed to the way in which creditors petition for bankruptcy. This consultation also examines whether granting early discharge from bankruptcy delivers real help, and makes recommendations for reform.

### Executive Summary

This consultation is about two aspects of bankruptcy. The first is how debtors apply for themselves to be made bankrupt. The second is about granting early discharge to bankrupts. It builds upon information gathered during previous reviews and consultations and sets out detailed proposals for a reformed

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<sup>1</sup> A debt management plan is an alternative method of dealing with debt problems, for those who can afford to make payments towards their debts. This is a market-based solution that has arisen to meet the demand of those consumers who feel that the current suite of insolvency options available is not appropriate for their financial situation. The consultation document, entitled Debt Management Schemes – delivering effective and balanced solutions for debtors and creditors, is available at <http://www.justice.gov.uk/consultations/debt-management-schemes.htm>. The consultation closes on 18 December 2009.

debtor petition procedure and for streamlining early discharge. We now invite your views on these detailed proposals.

Section C of this document sets out our proposals in detail and asks some questions. In developing these proposals, we have listened to the views of a wide range of stakeholders. This consultation provides the opportunity to comment further on that detail.

In taking forward our development of these proposals, we would be very grateful for your views in response to some or all of the questions asked. We would also welcome responses to the questions asked in the outline analysis 'Initial Impact Assessment' (see Section C: Annexes E and F), along with any general views on that document you may have, particularly as to whether or not the costs and benefits of the proposals are fully covered.

#### How to respond

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

This consultation was published on 13 November 2009. The consultation period will run for 12 weeks, and the closing date for responses is 8 February 2010. However, we encourage responses as early as possible to assist us in accelerating the process of considering replies.

A response can be submitted by email or letter to:

Maria Isanzu  
Policy Directorate  
The Insolvency Service  
Zone B, 3rd Floor  
21 Bloomsbury Street  
London  
WC1B 3QW

Fax: 020 7637 6746

Email: [policy.unit@insolvency.gsi.gov.uk](mailto:policy.unit@insolvency.gsi.gov.uk)

This consultation will be of interest to: individual consumers, sole traders, creditors, debt advisors, insolvency practitioners, the judiciary and academics.

#### Additional copies

This consultation can be found at: [www.insolvency.gov.uk](http://www.insolvency.gov.uk). You may make additional copies without seeking permission.

#### Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidentiality.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system, will not, of itself, be binding on The Insolvency Service.

#### Help with queries

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

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

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

A copy of the Government's Code of Practice Consultation Criteria is attached at Annex G.

#### What happens next?

The Government will consider the responses received and whether it is necessary to legislate on this matter when Parliamentary time allows. Decisions taken in light of the consultation will be published along with a summary of the responses.

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

#### List of consultation questions

- 1. What skills and experience do you think it is appropriate that a Decision Maker should have in order to make bankruptcy orders administratively?**
- 2. Should the Decision Maker role sit within The Insolvency Service or elsewhere?**
- 3. What links should there be between the Decision Maker and other bodies?**
- 4. Would a requirement on debtor applicants, to confirm both that the consequences of bankruptcy have been read and understood and that they still want to submit the application, be sufficient to ensure that those who apply for their own bankruptcy appreciate the seriousness of taking this step?**
- 5. Would information about other debt relief mechanisms, provided as part of the application process, be enough to ensure that debtors have sufficient opportunity to consider whether opting for bankruptcy is the right decision for them?**
- 6. Should debtors be encouraged to consider alternative debt resolution procedures before submitting an application for bankruptcy?**

- 7. Is there a need for the Decision Maker to be given power to direct someone into an alternative debt relief mechanism<sup>2</sup>?**
- 8. Should there be any exemptions or remissions of the application fee?**
- 9. If yes, how would you suggest that the cost of any fees forgone could be met in order to keep the application process self-financing?**
- 10. Do you think that there should be differential pricing of a bankruptcy application, according to whether it is made electronically or on paper?**
- 11. Should there be a facility to enable debtors to make their bankruptcy applications on paper forms?**
- 12. Should there be a facility to enable payment to be made on line at the same time as the application form is submitted?**
- 13. Is a maximum of 10 days an appropriate period of time to allow between receipt of acknowledgement of the application and payment of the fee that covers both the cost of administering the application and the deposit<sup>3</sup>?**
- 14. If you have answered “no” to the previous question, what period do you consider appropriate and why?**
- 15. Should the application form automatically expire if payment is not made within a specified period of time?**
- 16. Have we suggested any powers for the Decision Maker that you think are unnecessary? If so, which powers and why might they be unnecessary?**
- 17. Are there any additional powers that the Decision Maker should have? If so, what powers and why do you think these are necessary?**

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<sup>2</sup> Section 274 of the Insolvency Act 1986, under which the court can make an interim order for the purpose of considering and facilitating implementation of a debtor's proposal for an individual voluntary arrangement.

<sup>3</sup> Deposit as security for the payment of the official receiver's administration fee, to the extent that the relevant assets are insufficient for that purpose. See The Insolvency Proceedings (Fees) Order 2004.

**18. Within what set period of time should a debtor be required to provide further information, after which time the application will be deemed withdrawn? Please provide reasons for your choice.**

**19. Should the Decision Maker have a general power to stay a bankruptcy application? If yes, would you please explain your reasons and outline the circumstances in which you think such a power would be useful.**

**20. Should the Decision Maker have the power to appoint a trustee? If yes, would you please explain your reasons and outline the circumstances in which you think such a power would be useful.**

**21. Do you think that assets may be at risk in the period between a bankruptcy application being accepted and a bankruptcy order being made?**

**22. In order to ensure that assets at risk are protected, should the Decision Maker have the power to appoint an interim receiver in the period between a bankruptcy application being accepted and a bankruptcy order being made?**

**23. If you have answered “no” to the previous question, can you describe a better way of ensuring that such assets are protected?**

**24. Do you agree with the duties we have outlined for the Decision Maker?**

**25. Have we suggested any duties that you consider are unnecessary? If so, which ones and why?**

**26. Are there any other duties the Decision Maker should have? If so, what are they and why do you think they are necessary?**

**27. Do you think that two working days, from when an application is deemed to have been submitted, is an appropriate period of time within which to require the Decision Maker to make a decision?**

**28. Do you think that the two working days within which the Decision Maker is required to make a decision should be stayed if the Decision Maker stays his or her consideration of a bankruptcy application pending receipt of further information and/or evidence?**

**29. Should failure to respond to a request for further information be treated as the application being withdrawn by the debtor?**

**30. Would 14 days be sufficient time to give to the debtor to ask the Decision Maker to review his/her decision? If not, why? How long do you think it should be?**

**31. Do you think that early discharge should be repealed?**

**32. If you do not think that early discharge should be repealed, what specific benefit do you think there is in keeping early discharge? Please provide figures if you can.**

## Section B: Background to the proposals

### 1. Debtor application for bankruptcy

Since 2002, the number of bankruptcy orders, in particular debtor petitions, has steadily risen in England and Wales<sup>4</sup>. This increase has resulted in mounting pressure on court resources, which in turn has led to some debtors experiencing significant delays when seeking the debt relief that is provided through bankruptcy.

Research carried out by The Insolvency Service and by the courts in 2007 showed that, in some parts of England and Wales, debtors faced delays of up to three months between the time they first contacted the court to arrange an appointment to file their petition to the making of the bankruptcy order<sup>5</sup>. This pressure on court resources has also led to delays for other civil court users.

In March 2005, The Insolvency Service proposed an alternative option to bankruptcy for those with 'no income and no assets'. '*Relief for the indebted – an alternative to bankruptcy*' was the precursor to debt relief orders and introduced for the first time the possibility that The Insolvency Service could make orders administratively, thus removing the need for the courts to be involved in the order-making processes in insolvency proceedings.

The rise in the number of people petitioning for their own bankruptcy also coincided with a period during which the Government has actively sought to promote the use of technology in the provision of public services. Thus, The Insolvency Service included within its original feasibility study, carried out in 2006, an examination of whether the court could be removed from the debtors' petition process and whether an Official Receiver could instead deal with debtors' applications and the making of bankruptcy orders, possibly electronically.

If such a change could be made, the courts would be freed up to deal with other aspects of the bankruptcy process that do require judicial intervention, for example bankruptcy petitions presented by creditors, income payments orders, suspension of discharge applications and public examinations.

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<sup>4</sup> See <http://www.insolvency.gov.uk/otherinformation/statistics/insolv.htm>

<sup>5</sup> Details of these studies are in Annex D1 of the 2007 consultation - see [http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_register/Initialstageconsultationpaper.doc](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/Initialstageconsultationpaper.doc)

This administrative approach to debtors' petitions is already in place in Scotland, Australia, Canada and New Zealand, but can only be achieved in England and Wales by amending the Insolvency Act 1986 and associated secondary legislation.

In October 2007, The Insolvency Service published a consultation paper, *'Bankruptcy: proposals for reform of the debtor petition process'*, setting out recommendations for reform and inviting stakeholders to share their views on those proposals. We proposed that debtors could submit electronic application forms to The Insolvency Service and that an Official Receiver (OR) would make the order administratively. In July 2008, we published the summary of responses to that consultation.

The responses to our consultation showed widespread agreement amongst stakeholders that there is no longer a need for direct court involvement in the order-making process in debtor petition bankruptcies. Stakeholders provided a wide range of commentary and ideas, including concerns about the finer detail of the proposal, which centred on issues relating to provision of advice; maintaining the seriousness of bankruptcy; and confirming the identity of the applicant.

We continued to develop the initial policy proposal and, in early 2009, held a seminar and workshop to encourage a debate about those concerns and to better understand and identify their roots. The seminar was attended by a wide range of stakeholders and the feedback received was both encouraging and constructive in helping to identify matters of real concern. We have thought carefully about how we address these concerns, and we now set out in detail and within our proposals, exactly how we intend to tackle these issues. In summary:-

**An application that could be made electronically that would be decided by a person suitably qualified to make such a decision.**

Our first proposal is that the court based judicial process for the granting of a bankruptcy order where the debtor is the petitioner will be replaced by an administrative procedure. Under this proposal, individual debtors will be able to fill out an application for bankruptcy online and then submit that application electronically. The Secretary of State will appoint decision makers ("DMs") who, after carefully considering each application, will make a decision about whether or not to make a bankruptcy order. We will also allow paper applications by post. Once the Order is made, the present post bankruptcy order procedures will continue to apply as now.

**The provision of advice and information to debtors wishing to petition for their own bankruptcy;**

We know from research carried out in 2007 that around 94% of bankrupts had sought debt advice prior to presenting their own petitions<sup>6</sup>. We want to build on this by encouraging debtors to seek advice as early as possible in order to help them decide which debt relief mechanism would best suit their circumstances. We will support debtor applicants for bankruptcy by checking that they meet the eligibility criteria and we will use prompts and pop-up messages within the on line application process both to encourage applicants to seek advice and to think about whether bankruptcy really is the right option for them.

**The need to ensure that bankruptcy remains a serious regime**

Bankruptcy is more than an appearance at court. The seriousness of bankruptcy is evident throughout the whole process, and not just at the point of entry before a court official. The person who makes the bankruptcy order, and the process associated with it, must have rigour and be carried out by a suitably qualified person with an appropriate level of skills and knowledge of insolvency and/or debt issues. We also need to bear in mind that an appearance at court can represent an inappropriate barrier for those individuals for whom bankruptcy is clearly the best option but who are prevented from filing their petition currently by a fear of going to court.

We want to ensure that bankruptcy remains a serious regime and that applicants take time to consider fully the consequences of bankruptcy before they take that step. On the other hand, we do not want to build in an automatic period of delay that could prove distressing and serve no useful purpose for those who desperately require the relief of bankruptcy.

As a way of achieving an appropriate balance, we propose setting out the consequences of bankruptcy in the application form and asking applicants to confirm that they have read and understood them. We could also include a question at the end of the form asking applicants to confirm that they still wish to proceed with their application.

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<sup>6</sup> Survey of Debtors Petitioning for Bankruptcy, The Insolvency Service, 2007

### **The identity of the individual petitioning for their own bankruptcy**

The person who makes the bankruptcy order under our proposals is just as well placed as the courts to confirm an applicant's identity. If an applicant does try to assume another's identity, they could be committing a criminal offence<sup>7</sup>. Whilst we do not think that this would happen frequently – there is no monetary gain to be had by stealing an identity in order to petition for bankruptcy – we would intend to take enforcement action against those who do try to abuse the system, and this should act as a deterrent for others.

There is no evidence from other countries where debtor petitions are dealt with administratively that identity fraud is an issue.

### **2. Early discharge**

We monitor and evaluate the effectiveness of insolvency legislation, to make sure that it is delivering the intended objectives and that it is fit for purpose. The Enterprise Act 2002 reduced to one year the standard period of bankruptcy from, in most cases, three years. In addition scope was given to grant an even earlier discharge in less than one year in cases where all enquiries are completed satisfactorily by the Official Receiver.

Evaluation of the personal insolvency provisions of the Enterprise Act 2002 in November 2007 found that the introduction of discharge from bankruptcy after one year was achieving real benefits and was supported by stakeholders. However the ability to discharge a bankrupt earlier than one year did not appear to have had any significant effect on reducing the stigma of bankruptcy or encouraging early rehabilitation, but the process under which early discharge is granted carries administrative costs. We therefore propose to remove this discretionary ability to grant early discharge.

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<sup>7</sup> For example, under the Fraud Act 2006.

## **Section C: The proposals**

### An overview

#### **Debtor application for bankruptcy**

We propose that instead of the present court based procedure, debtors seeking a bankruptcy order will be able to submit an application for bankruptcy electronically directly to a person who is specifically appointed by the Secretary of State to decide such applications and that person will, if appropriate, make a bankruptcy order. There will also be a facility to enable debtors to make such applications on paper forms, if they wish.

In order to encourage debtors to think about both the seriousness of the step they are about to take and whether bankruptcy is the right choice for their circumstances, we propose asking applicants, in the application form, to confirm that they have read and understood the consequences of bankruptcy and that they still wish to proceed with their application. We will help them by providing information about bankruptcy and other debt relief mechanisms, both as part of the application form and through a telephone support line.

Because we want to make the process self-financing, we propose that the costs incurred in processing an application will be met in full from the fee charged - there will be no fee remissions or exemptions. A debtor will be able to submit payment electronically at the same time as making a bankruptcy application or can make payment at a payzone.

A bankruptcy application, whether made electronically or on paper, will not be deemed to have been made to the DM (and therefore no action can be taken such as, for example, making the order) until a completed application form, a Statement of Affairs *and* full payment of both the application fee and the deposit have been received. This total amount is to be paid in full – there is to be no facility to pay in instalments. A requirement to make this payment in full and up front is intended to deter frivolous and spur-of-the-moment applications. If full payment is not received within ten days<sup>8</sup> of an application being submitted and electronically acknowledged, the application will automatically expire. An applicant will also be able to withdraw an application any time before a decision is made.

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<sup>8</sup> This will be ten calendar days, given that payment can be made on any day at any time by on line methods.

The DM will have the power to make a bankruptcy order if satisfied on the balance of probability that that the debtor applicant is insolvent<sup>9</sup>, that the debtor applicant's Centre of Main Interest (COMI)<sup>10</sup> is in England and Wales, and that there is no reason to reject or refuse to make an order.

The DM will have the power to ask the debtor for more information. There will also be a power to refuse a bankruptcy application and to refuse to make a bankruptcy order if the DM is not satisfied that that the debtor is insolvent or that the debtor's COMI is in England and Wales; or if the application is an abuse of process or if information provided in the application fails to pass checks; or if the debtor fails to provide the minimum information needed in the Statement of Affairs and/or the application form to enable a decision to be made; or if the debtor applicant fails to provide additional information as requested within 14 days of such a request.

In exercising these powers, the DM will have a duty to determine the application by either making the bankruptcy order or by refusing to do so. That person will also be under a duty to provide a reason for a decision to refuse to make an order; and will be required to make a bankruptcy order if he/she is satisfied that, on the balance of probability, the tests of insolvency and COMI are met; that the application is not an abuse of process; and that the debtor is therefore entitled to bankruptcy.

A debtor's application for bankruptcy must be considered and a decision made within two working days of the application being made, following which the decision must be relayed to the debtor. If a debtor is not satisfied with the decision that has been made, he/she can, within 14 days, ask the DM to review that decision. There will be an ultimate right of appeal to the court.

### **Early discharge**

We also propose that the provision that allows early discharge in less than one year after bankruptcy should be repealed. Unless the discharge period is suspended by the court, automatic discharge would occur on the first anniversary after bankruptcy.

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<sup>9</sup> The test of insolvency under the current legislation is one of liquidity (s. 272 the Insolvency Act 1986). A statement by the debtor that he is insolvent and unable to pay his or her debtors is sufficient together with a request that a bankruptcy order be made. Although the concept of a debtor being unable to pay his debts is not defined, it has been established by case law to mean the debtor cannot pay his debts as they fall due *Re Coney* [1998] BPIR 333 (the test is one of current liquidity)

<sup>10</sup> Article 3 of the EC Regulation on Insolvency Proceedings 2000.

## Detailed proposals

### **1. Debtor application for bankruptcy**

Currently, section 264 of the Insolvency Act 1986 specifies that individuals who wish to make themselves bankrupt must complete a petition and Statement of Affairs and take the completed forms in person to their local court (specifically, one that has insolvency jurisdiction). The court will then allocate a date to hear the application. Debtors are required to attend the court, make a declaration of insolvency and swear a statement of truth. Providing they meet certain conditions, a bankruptcy order will be made at the court, and the official receiver is then notified of the bankruptcy order and, in the vast majority of cases, is appointed receiver and manager of the bankruptcy estate, pending the appointment of the trustee in bankruptcy.

A key aspect of our first proposal is to remove the court from the process of granting a bankruptcy order in these circumstances and replace it with an administrative one. An individual debtor should be able to fill out an application for bankruptcy and their Statement of Affairs (Statement) online and then submit the application form and Statement electronically to the Secretary of State. The Secretary of State would be able to appoint one or more decision makers (DMs) to determine those applications. Our intention is that any such persons would be new officeholders with the relevant expertise to determine the applications.

There is a question as to whether the role of the Decision Maker should sit within The Insolvency Service or elsewhere. If it sits within The Insolvency Service, it would seem appropriate to have it separate operationally from the role of official receivers who deal with bankruptcy administration (post order).

The person making the decision should thus not be the same person as the OR who is appointed after the bankruptcy order is made to deal with the administration of the bankruptcy and any subsequent investigation into the conduct and affairs of the bankrupt. This would also ensure that there is no conflict of interest when, for example, an OR seeks to have a bankruptcy order annulled on the grounds that it ought not to have been made<sup>11</sup>.

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<sup>11</sup> Section 282(1)(a) of the Insolvency Act 1986

## QUESTIONS

**1. What skills and experience do you think it is appropriate that a Decision Maker should have in order to make bankruptcy orders administratively?**

**2. Should the Decision Maker role sit within The Insolvency Service or elsewhere?**

**3. What links should there be between the Decision Maker and other bodies?**

### 1. Steps to encourage debtors to seek advice and information before submitting an application for bankruptcy

There are two aspects to the issue of advice and information. Firstly, making sure that people appreciate the seriousness of bankruptcy and, secondly, helping ensure that people choose this if it is the most appropriate debt relief solution for their circumstances.

Responses from the first consultation revealed that some stakeholders believed that removing the courts from the order-making process in debtor petition cases could reduce the seriousness with which the bankruptcy process is regarded. Stakeholders considered that the provision of good quality advice and information was key in people's understanding and therefore in ensuring that they take the process and consequences of bankruptcy seriously.

But whilst stakeholders thought that good quality money advice is needed to inform people to make the right choice, there was very little agreement about what constitutes "good quality" or "best advice". Certainly, free and impartial debt advice is an important support mechanism for consumers. Recognising this, the government continues to work with the debt advice sector and local authorities to develop wider strategic approaches to increase the capacity of advice provision.

For example, the Pre-Budget report in 2004 committed £45million to provide a step changes in free face-to-face debt advice, targeted in areas of high financial exclusion in England and Wales. The money was part of HM Treasury's £120million Financial Inclusion Fund and helped fund around 500 new debt advisors.

A second Financial Inclusion Fund of £130million was announced in 2007, enabling free face-to-face debt advice to continue from April 2008 to March

2011. This increased the budget for face-to-face advice to £76million . And on 9 May 2008, HM Treasury announced a top up of £9million to enable the projects to maintain the then current levels of debt advice for the next three years. The funding has resulted in over 244,000 clients receiving free face-to-face debt advice to the end of June 2009.

Taking into account the views expressed by stakeholders and, in order both to ensure that those in debt appreciate the seriousness of applying for bankruptcy, and to enable them to make an informed choice about whether bankruptcy really is the right solution for them, we propose providing information about bankruptcy and other debt relief mechanisms as part of the bankruptcy application process. We also propose that debtor applicants would have access to a facility that would offer support and assistance over the telephone to help with completion of the application form. The cost of this support telephone line would have to be met from fee charged for administering the application.

Also as part of the application process, applicants will be asked to confirm that they have read and understood the consequences of bankruptcy and that they still want to continue with their application. As they complete their application form, pop up boxes will be used to indicate where other debt relief mechanisms might provide an alternative solution. For example, information about debt relief orders could be provided after an applicant has listed all his/her debts, in order to give the applicant an opportunity to consider whether a debt relief order might be more suitable. A question at the end of the application could ask debtor applicants to confirm that they still wish to continue with their application.

Ensuring that individuals understand and take the process seriously is key to making sure that bankruptcy rightly remains an option only for those whose circumstances warrant bankruptcy relief. Thus, whilst the DM could not offer advice about which debt relief procedure would be the most appropriate for a debtor's circumstances, we believe it is important to ensure that, prior to submitting an application form, an individual has had sufficient opportunity to consider which debt relief mechanism best suits his/her circumstances, and that there is someone they can turn to for support in completing their application.

**We therefore propose that, as part of the application process, an applicant will be guided to information about other debt relief mechanisms. Applicants will be asked to confirm that they have read and understood the consequences of bankruptcy and, before they can**

**submit their application form, they will be asked to confirm that they still wish to proceed. We also propose that debtor applicants should have access to a telephone help line providing support and assistance about completing the application.**

If the debtor fails to indicate that he/she has read and understands the consequences of bankruptcy or fails to confirm that he/she still wishes to proceed, they will not be able to submit the application electronically.

If the debtor decides to make an application on paper, and fails to tick the relevant boxes and therefore demonstrate that his/her attention has been drawn to the consequences of bankruptcy, his/her application may similarly be returned and thus delay their application process.

## **QUESTIONS**

**4. Would a requirement on debtor applicants, to confirm both that the consequences of bankruptcy have been read and understood and that they still want to submit the application, be sufficient to ensure that those who apply for their own bankruptcy appreciate the seriousness of taking this step?**

**5. Would information about other debt relief mechanisms, provided as part of the application process, be enough to ensure that debtors have sufficient opportunity to consider whether opting for bankruptcy is the right decision for them?**

### **2. Referrals to other procedures**

We recognise that, to ensure that those in debt access the most appropriate debt resolution procedure for their circumstances, there should be mechanisms in place to help the debtor throughout the application process.

During our earlier consultation, we asked whether there should be an option to refer debtors who are applying for bankruptcy to other insolvency procedures. A large majority (92%) of stakeholders commented that the OR should have this power. For many respondents (80%), not only would this simply be a replication of the court's power under section 274 of the Insolvency Act 1986, it was also seen as a way to ensure that debtors access the most appropriate debt relief remedy for their circumstances.

However, respondents also commented that debtors should have sought advice before applying for bankruptcy. We believe that it is most important to encourage such advice and that, if we put mechanisms in place that facilitate this, there would be no need for the DM to decide which remedy might be

more suitable and to direct the debtor accordingly. Referrals could also confuse and complicate the role of a DM and thereby increase the overall cost of the process, defeating one of the key objectives in making bankruptcy an affordable option for those in need. The key is therefore to ensure the debtor has adequately considered the implications of bankruptcy, and thought about whether this is the right choice, by ensuring that the debtor has access to information about other debt relief mechanisms before a bankruptcy application is submitted. This has the added benefit of ensuring that, once a debtor has decided that bankruptcy is the best or only option, the bankruptcy application is not delayed any longer than absolutely necessary. This should ensure that debtors do not continue to remain subject to creditor collection or enforcement action, which can be detrimental to both parties, if the debtor truly cannot pay.

One of the benefits of an online system is the opportunity for signposting. Depending on the information that the debtor supplies in answer to the questions on the bankruptcy application form, pop-up messages could inform or remind the debtor about other debt relief solutions. Those making a paper application for bankruptcy would be given the same opportunity through written guidance.

## **QUESTIONS**

**6. Should debtors be encouraged to consider alternative debt resolution procedures before submitting an application for bankruptcy?**

**7. Is there a need for the Decision Maker to be given power to direct someone into an alternative debt relief mechanism<sup>12</sup>?**

### **3. Ensuring that the debtor application process is self-financing**

One of the key objectives of the new administrative process is that it is self-financing. In order to achieve this objective, we propose that **the costs incurred in processing an application will be met in full from fees charged.**

Whilst costs should be lower under the administrative process that we propose, there would also be the additional cost of providing the support telephone line. In order to ensure that the process is self-financing, this additional cost would have to be met out of fees charged. Overall, we still

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<sup>12</sup> Section 274 of the Insolvency Act 1986, under which the court can make an interim order for the purpose of considering and facilitating implementation of a debtor's proposal for an individual voluntary arrangement.

expect that the cost of making an application for bankruptcy under our proposals would be less than the current court fee.

At present, a debtor who applies for bankruptcy has to pay to the court a total of £510, comprising a court fee of £150<sup>13</sup> and a £360<sup>14</sup> deposit as security for the payment of the official receiver's administration fee.

There is currently some scope for the courts to offer full remission or part exemption of the court fee for those who are on means-tested benefits, low – income or who would suffer financial hardship if they had to pay the fee in full, while the OR deposit has to be paid in full. Around 21,500 debtor applications received full or partial fee remissions in 2008-2009 totalling some £3million.

Under our proposal, **there will be no fee remissions or exemptions.** We want to make the procedure as affordable as possible, but also to ensure that those who benefit from the procedure contribute equally towards it. We suggest that it would not be appropriate for others, such as other applicants for bankruptcy or taxpayers, to have to meet the cost of the fees that some are excused from paying.

Payment of the full amount should also focus the minds of applicants and ensure those who are serious about bankruptcy access the regime.

The Insolvency Service currently collects the official receiver's deposit from the debtor via the courts, which goes towards the overall cost of administering the bankruptcy estate. We propose that **one amount that covers both the cost of administering the application and the deposit must be paid, in full, in order for the application form to be deemed to have been submitted.**

A debtor will be able to submit an application on line or by post, and will be able to make payment of the application either on-line or at a payzone. The costs of administering an application made on paper are likely to be higher than those for an electronic application, because there would be an additional handling cost. This cost could be reflected in a fee that is set to reflect the average cost of any application, whether made electronically or on paper. Alternatively, a different fee could be set for each type of application that is based more closely on the costs associated with each. Those who choose to make an application electronically would therefore pay a lower fee that more accurately reflects the work that would be carried out administering that type

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<sup>13</sup> The Civil Proceedings Fees Order 2004 (SI 2004/3121)

<sup>14</sup> The Insolvency Proceedings (Fees) (Amendment) Order 2009

of application. In any event, to ensure that the process is self-financing, the fee(s) would have to be set at a level that ensures full cost recovery.

## **QUESTIONS**

**8. Should there be any exemptions or remissions of the application fee?**

**9. If yes, how would you suggest that the cost of any fees forgone could be met in order to keep the application process self-financing?**

**10. Do you think that there should be differential pricing of a bankruptcy application, according to whether it is made electronically or on paper?**

Further detail of the payment process can be found at Annex A.

### 4. Making the application

Where a decision has been made to apply for bankruptcy, we want to encourage those applications to be made electronically. We believe that online applications should deliver a more efficient service as well as saving valuable private and public resources. For example, details of those to whom a debtor owes money could be automatically entered into the computer system, thus facilitating speedier notifications of the bankruptcy by the OR to creditors once the bankruptcy order is made. An electronic process could make debt relief more accessible for the debtor by removing the delays currently being experienced in the courts, whilst at the same time very necessary checks could be incorporated effectively elsewhere in the bankruptcy process.

Research carried out by the Office for National Statistics and published in August 2009 shows that 70% of households in the UK have access to the internet, a total increase of over 10% from 2008<sup>15</sup>. This increase is across all the age groups<sup>16</sup>. As the Government continues its strategy to raise public awareness and access to information online, this number is likely to increase in the future.

Across England and Wales there are a number of places that provide free or low-cost access to internet facilities. The Government subsidises some 6,000 UK online centres run by libraries, community groups, colleges and local authorities providing internet access, help and support in using computers and the internet for people without a home PC. These centres service an

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<sup>15</sup> Internet Access: Households and Individuals, Statistical Bulletin, Office for National Statistics, <http://www.statistics.gov.uk/pdfdir/iahi0809.pdf>

<sup>16</sup> Ibid.

estimated three million customers a year<sup>17</sup> and 82% can be found in places considered 'areas of high deprivation'<sup>18</sup>.

However, we recognise that currently not everyone has access to a computer or the internet or is comfortable with online tools. In addition to the telephone helpline that would provide assistance and support for those completing bankruptcy application forms, we also propose **allowing applications to be made on paper forms for the time being**. More detail about how our proposals might be adapted for paper applications is contained at Annex B.

We propose that **an application for bankruptcy, whether made electronically or on paper, will not be deemed to have been accepted by the DM until the DM has received both:**

- 1. a completed application form and Statement of Affairs; and**
- 2. full payment of the fee that covers both the cost of administering the application and the official receiver's deposit.**

After the DM has acknowledged the application form, the applicant will have a maximum of ten days to make their payment. If the debtor applicant fails to make payment within this 10 day period, the application will automatically expire and could not be revived even if the debtor later makes payment. In that scenario, the debtor would have to submit a fresh application.

As part of our earlier consultation, we asked stakeholders whether a delay should be built into the application process. Many thought that a delay should be built into the process, in order to give the debtor an opportunity to reflect on his or her application, and time to seek advice or simply to think through his/her decision. An overriding majority who answered this question considered 14 days or less to be adequate.

Our research shows, however, that most individuals would have already sought advice by this stage. Building in a further delay would therefore in most cases serve no useful purpose, but could cause additional distress for those in desperate need of debt relief.

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<sup>17</sup> UK online centres: *Transformational Government for the Citizen, Research Report*. UK online centres 2006.

<sup>18</sup> Being digital – final report, June 2009; 35

## QUESTIONS

11. Should there be a facility to enable debtors to make their bankruptcy applications on paper forms?

12. Should there be a facility to enable payment to be made on line at the same time as the application form is submitted?

13. Is a maximum of 10 days an appropriate period of time to allow between receipt of acknowledgement of the application and payment of the fee that covers both the cost of administering the application and the deposit<sup>19</sup>?

14. If you have answered “no” to the previous question, what period do you consider appropriate and why?

15. Should the application form automatically expire if payment is not made within a specified period of time?

### 5. Powers and Duties of the DM

We propose that **all applications by debtors for their own bankruptcy, whether completed online or on paper, should be submitted to the DM, who alone will make a determination of the application.** We propose that on receipt of the application form, Statement of Affairs and fee, **the DM will have the power to:**

- (a) make a bankruptcy order;
- (b) refuse a bankruptcy application or refuse to make a bankruptcy order; and
- (c) ask the debtor for more information.

These powers distinguish the DM from the OR and provide clear parameters within which the DM can act, for the benefit of anyone who wishes to challenge or review a decision made by the DM.

We now examine each of these powers in detail.

#### **(a) The power to make a bankruptcy order**

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<sup>19</sup> Deposit as security for the payment of the official receiver's administration fee, to the extent that the relevant assets are insufficient for that purpose. See The Insolvency Proceedings (Fees) Order 2004.

Our policy intention is to make the process fair and accessible for those who need it, not to deny people access unnecessarily. We intend to achieve this objective by providing the applicant with as much information as possible about the process before they start to make their application. We want debtors to understand what will be required of them when they make their application, as this should encourage full disclosure of all relevant information. We will provide specific information and guidance applicable for those individuals who are or have been operating a business, either on their own or in partnership, to ensure that they will be prepared to have the required information to hand to enable them to submit an application and Statement(s).

The DM will make a bankruptcy order based on the information presented by the applicant debtor in the application form and Statement. The information supplied must therefore be current and sufficient to enable the DM to make a decision. The DM may ask the debtor for additional information before making a decision. For the debtor to be eligible for a bankruptcy order, the DM will check that:

- The debtor applicant is insolvent<sup>20</sup>; and
- The debtor applicant's Centre of Main Interest (COMI)<sup>21</sup> is in England and Wales.

If there is no reason to reject or refuse to make an order, then an order will be made.

### **(b) The power to refuse to make a bankruptcy order**

There will be circumstances where it may be appropriate for the DM to refuse to make an order in respect of a debtor's application. We propose that the DM will not make an order for bankruptcy where:

- The DM is not satisfied that the debtor's COMI is in England and Wales;
- The DM is not satisfied that the debtor is insolvent;
- The application for bankruptcy is an abuse of process.
- Information provided in the application fails to pass any checks carried out by the DM on the validity of the information in the application form;

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<sup>20</sup> The test of insolvency under the current legislation is one of liquidity (s. 272 the Insolvency Act 1986). A statement by the debtor that he is insolvent and unable to pay his or her debtors is sufficient together with a request that a bankruptcy order be made. Although the concept of a debtor being unable to pay his debts is not defined, it has been established by case law to mean the debtor cannot pay his debts as they fall due *Re Coney* [1998] BPIR 333 (the test is one of current liquidity)

<sup>21</sup> Article 3 of the EC Regulation on Insolvency Proceedings 2000.

- The debtor applicant has failed to provide any additional information needed in order to determine the application requested by the DM within the 14 day information request period

The first three provisions are designed to ensure that a bankruptcy order is only made in respect of those who are entitled to such an order. The remaining two provisions are designed to ensure that the DM does not grant bankruptcy orders based on inaccurate or misleading information.

Where the DM refuses to make an order, the DM must notify the debtor in writing of this decision and the reason.

**(c) The power to ask the debtor for more information and/or for documentary evidence in support of his or her application, to be provided within 14 days**

There will be circumstances where the DM needs to give further consideration to the application before deciding whether or not to make a bankruptcy order. The decision to reject an application or to refuse to make a bankruptcy order must be based on the information supplied by the debtor for the purpose of obtaining a bankruptcy order, backed up by the results of checks on that information. Additional information from third party sources, including creditors, will not be sought.

As checks will be carried out to verify the accuracy of information provided by the applicant debtor, additional enquiries might only be made of the debtor if the information that he/she provides is incomplete, contains inconsistencies or discrepancies, and/or is contradictory or ambiguous.

Failure to provide information to the DM on request, and within the specified period, will be treated by the DM as a withdrawal of the application by the debtor, and will result in no decision being given. The debtor will not be entitled to the return of all of the fee paid, as the cost of the work undertaken by the DM in reviewing the application would still have to be met.

Currently, the court has a discretionary and general power to stay proceedings on a bankruptcy petition<sup>22</sup>; to appoint an interim receiver or manager<sup>23</sup> ; and to appoint a trustee<sup>24</sup>.

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<sup>22</sup> Section 266(3) of the Insolvency Act 1986

<sup>23</sup> Section 286 Insolvency Act 1986

<sup>24</sup> Section 297 Insolvency Act 1986

We do not propose providing the DM with a similar discretionary and general power in respect of a debtor's application because we want to create a new administrative route into bankruptcy, not simply transfer the role that the court currently has to the DM. A discretionary and general power to stay proceedings is rightly part of a judicial process, and would not, we think, be appropriate for a DM.

We do not propose to provide the DM with the power to appoint an interim receiver in order to protect assets that might be at risk of diminution or removal in the period between an application being submitted and a bankruptcy order being made. If the DM is aware of any such assets, he/she could immediately make a bankruptcy order. This would have the effect of appointing the official receiver as receiver and manager of the bankruptcy estate, who could then take appropriate steps to protect the assets. We do not propose that the DM should have a power to appoint a trustee, because we do not envisage any circumstances in which such a power might be useful.

These powers will remain for the courts considering creditors' bankruptcy petitions.

We propose that the bankruptcy application will ask the debtor applicant if a creditor's petition has already been presented, and it will be a criminal offence to provide misleading information. If there is a petition outstanding, the debtor's application will not be allowed to proceed. The debtor could therefore simply allow the creditor's petition to proceed unchallenged or, if debt relief is needed more urgently, to reach agreement with the creditor to withdraw the petition so that a debtor's application can be made.

## **QUESTIONS**

**16. Have we suggested any powers for the Decision Maker that you think are unnecessary? If so, which powers and why might they be unnecessary?**

**17. Are there any additional powers that the Decision Maker should have? If so, what powers and why do you think these are necessary?**

**18. Within what set period of time should a debtor be required to provide further information, after which time the application will be deemed withdrawn? Please provide reasons for your choice.**

**19. Should the Decision Maker have a general power to stay a bankruptcy application? If yes, would you please explain your reasons and outline the circumstances in which you think such a power would be useful.**

**20. Should the Decision Maker have the power to appoint a trustee? If yes, would you please explain your reasons and outline the circumstances in which you think such a power would be useful.**

**21. Do you think that assets may be at risk in the period between a bankruptcy application being accepted and a bankruptcy order being made?**

**22. In order to ensure that assets at risk are protected, should the Decision Maker have the power to appoint an interim receiver in the period between a bankruptcy application being accepted and a bankruptcy order being made?**

**23. If you have answered “no” to the previous question, can you describe a better way of ensuring that such assets are protected?**

In exercising these powers, the DM will also have a duty to:

- (a) determine the application by either making the bankruptcy order or by refusing to make the bankruptcy order;
- (b) provide a reason if the decision is to refuse to make an order, thus demonstrating transparency and fairness;
- (c) base a decision to make a bankruptcy order on the balance of probabilities that the debtor is both insolvent and has his/her COMI in England and Wales and;
- (d) extend consideration of the application (up to a maximum of 14 days) to allow the debtor time to submit further information on the request of the DM in relation to anything connected with the application;

## **QUESTIONS**

**24. Do you agree with the duties we have outlined for the Decision Maker?**

**25. Have we suggested any duties that you consider are unnecessary? If so, which ones and why?**

**26. Are there any other duties the Decision Maker should have? If so, what are they and why do you think they are necessary?**

5. Making the bankruptcy order

**We propose that the DM will be required to consider a debtor's application for bankruptcy within two working days of the application being accepted by the DM, following which the DM must relay the decision to the debtor.**

The DM will have a maximum of two working days, from the time when the bankruptcy application form is properly made to the DM, in which to review and consider an application and decide whether to make the order or to refuse to make the order or to ask the debtor for more information.

During this time period, the DM will carry out checks on the information that the debtor has provided in order to assist in his/her consideration of the application for bankruptcy. These checks could include verification that the debtor's COMI is in England or Wales and therefore whether the debtor is entitled to apply for bankruptcy in this jurisdiction. Whilst such checks are carried out currently, they are generally made by the OR after the bankruptcy order has been made. Under our proposals, these checks would be carried out before a decision is taken about whether a bankruptcy order should be made.

Although debtors must meet the requirements under the Insolvency Act 1986 (as amended) that their COMI lies within England and Wales, they will not have to prove that they are physically present in England and Wales at the time they submit their application form. But, in addition to the checks outlined above, we propose that it would be a criminal offence to submit false information in support of a bankruptcy application. This, together with those checks, should help to ensure that a bankruptcy order is only made against those who are genuinely entitled to bankruptcy in England and Wales.

Once the bankruptcy order is made, the OR (not the DM) will also carry out checks, including searches of the DVLA<sup>25</sup> database and Land Registry. We believe that it is important that the debtor is actively made aware that such checks will be made on the information provided - by both the DM before a decision to grant the order is made, and by the OR afterwards. This may also focus the debtor's mind and ensure that the information he/she provides is true and as accurate as possible. We therefore propose that there be a

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<sup>25</sup> Driver Vehicle Licensing Authority

requirement for debtors to confirm on the application form that they are aware of the checks that will be made.

**We propose that if two working days has elapsed, from the point when the application is deemed to have been submitted (which would include full payment of the fee) and;**

- **checks have been made by the DM; and**
- **a withdrawal request has not been received and cannot be assumed**

**the DM must communicate the decision to the debtor, and if appropriate to do so, make the bankruptcy order.**

#### **QUESTION**

**27. Do you think that two working days, from when an application is deemed to have been submitted, is an appropriate period of time within which to require the Decision Maker to make a decision?**

We also propose that, if it becomes necessary for the DM to seek more information from the debtor to assist in the decision making process, the DM can extend consideration of a bankruptcy application pending a response from the debtor, for up to 14 days.

This should ensure that the debtor firstly has enough time to fulfil the request and the DM still has sufficient time in which to carry out checks on the new information and to consider whether a bankruptcy order ought to be made.

#### **QUESTIONS**

**28. Do you think that the two working days within which the Decision Maker is required to make a decision should be stayed if the Decision Maker stays his or her consideration of a bankruptcy application pending receipt of further information and/or evidence?**

**29. Should failure to respond to a request for further information be treated as the application being withdrawn by the debtor?**

#### **6. Review of the decision of the DM**

Although we are proposing that the court will no longer make bankruptcy orders on debtors' petitions, the court will still have an important and crucial part to play in debtor application bankruptcy cases. Firstly, after a bankruptcy order is made on a debtor's application, the entire bankruptcy procedure will

be (as it is currently) under the supervision of the court. Secondly, the court will be responsible for determining any challenges to any decision made by the DM.

During our earlier consultation, stakeholders commented on the need for an appeal process or a mechanism to enable the decision of the DM to be challenged. The OR will be able to challenge the bankruptcy order, in the same way that he/she can do currently, for example, if evidence comes to light that the bankruptcy order ought not to have been made. However, the checks that we propose building in to the application process should reduce the likelihood of such incidences.

In addition, we propose that, **if a debtor is not satisfied with the decision of the DM, he/she can, in the first instance, ask the DM to review that decision, with an ultimate right of appeal to the court<sup>26</sup>**. As the process is designed to be self-financing, the cost of reviewing the decision should be met by the debtor, which should also help to ensure that requests are only made by those who genuinely believe they were denied access for the wrong reasons.

The request to review the decision must be in a prescribed format in writing and submitted to the DM within 14 days of the date the decision has been made. We believe that this would allow the debtor enough time to consider their options and seek advice, should they wish to do so. In order to avoid spurious or ill-considered requests for a review, it is important that a request to review a decision is only made on the basis that the DM did not consider or take into account relevant facts. If this is the case, the debtor must provide evidence showing what the DM failed to consider or take into account, and explain why this evidence is material to the decision. This evidence must be supplied to the DM at the same time the request for review is made.

A debtor dissatisfied with the outcome of the review by the DM should be able to appeal to the court. The court will therefore rightly remain as an arbitrator in cases of dispute. Please see Annex C for more details of the review and appeal process.

## **QUESTION**

**30. Would 14 days be sufficient time to give to the debtor to ask the Decision Maker to review his/her decision? If not, why? How long do you think it should be?**

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<sup>26</sup> That appeal would be governed by rule 7.50 of the Insolvency Rules 1986 and Chapter 17 of the Practice Direction

## 2. Early discharge

We propose that **the provision that allows early discharge in less than one year after bankruptcy should be repealed, so that (unless the discharge period is suspended by the court) automatic discharge will occur on the first anniversary after bankruptcy.**

Discharge from bankruptcy releases bankrupts from their debts (subject to specified exceptions<sup>27</sup>). The mechanism by which discharge is granted in less than one year after bankruptcy is contained in the Insolvency Act 1986<sup>28</sup>, having been introduced on 1 April 2004 as part of the Enterprise Act 2002 (EA02).

The EA02 had two broad aims - to reduce the fear of failure and to reduce the stigma of bankruptcy. These were to be achieved by a number of provisions, including more protection for a bankrupt with an interest in a mortgaged home; a stronger regime to punish bankruptcy misconduct; and a reduction in the standard period of bankruptcy from (in most cases) three years to one year, or in specific circumstances, less than one year. This reduction has significantly reduced the time that most bankrupts have to wait before their discharge.

Discharge in less than one year (early discharge) was only intended for those bankrupts who are not at fault and who pose no risk to the public or commercial community; where all investigative and administrative matters have been dealt with; and where the bankrupt has co-operated fully with the Official Receiver<sup>29</sup>. The period remains at one year if those grounds are not satisfied.

Our evaluation of the EA02 found that the personal insolvency provisions of the EA02 have been successful, with the exception of the early discharge provision, which has not had the desired impact of reducing the stigma of bankruptcy and encouraging early rehabilitation. Yet it does involve costs for both government and creditors. This is because the Official Receiver is required to file a report at court stating that his/her investigation is unnecessary or concluded in order for the bankrupt to be granted early discharge<sup>30</sup>. Also, it was agreed when the EA02 was before Parliament that, prior to filing any notice for early discharge at court, the Official Receiver

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<sup>27</sup> Section 281 of the Insolvency Act 1986

<sup>28</sup> Section 279(2) Insolvency Act 1986

<sup>29</sup> See comments by Lord Sainsbury of Turville on 30 July 2002 during House of Lords Committee stage of EA02. Hansard column

<sup>30</sup> Section 279(2) of the Insolvency Act 1986

would notify all creditors, and any other trustee, of the intention to do so<sup>31</sup>. This was intended to ensure a proper balance between the needs of bankrupts and the rights of their creditors. There are costs to The Insolvency Service in sending out these notices and costs for creditors in responding, yet our evaluation found, no corresponding tangible benefit to bankrupts.

Following completion of the evaluation, a cost-benefit analysis was carried out on the early discharge provisions. A copy of the interim and final evaluation reports on discharge from bankruptcy can be found at Annex D. Details of the costs benefits analysis are contained in the Initial Impact Assessment at Annex F.

In summary, our detailed evaluation has shown that, although the overall impact of a reduction in the discharge period to one year has been welcomed by those affected, and will therefore be retained, the additional element of an even earlier discharge has not added anything extra. In the light of these findings, we want to move forward by putting forward legislation to repeal the early discharge provision when Parliamentary time allows.

## **QUESTIONS**

**31. Do you think that early discharge should be repealed?**

**32. If you do not think that early discharge should be repealed, what specific benefit do you think there is in keeping early discharge? Please provide figures if you can.**

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<sup>31</sup> See comments by Lord Sainsbury of Turville on 30 July 2002 during House of Lords Committee stage of EA02. Hansard column

# ANNEXES

## **Annex A: Payment of the Cost of Administering the Application (the Fee) and the Deposit**

Once an application has been submitted, a code will automatically be generated that relates specifically to that application. The debtor applicant will then be able to make payment of the total fee, either on-line or at a payzone, and will have ten days in which to do so.

Once the full fee has been paid, and the DM is notified electronically of that payment, the application is deemed to have been submitted.

If payment is not received by the DM within that ten day period, the DM must assume that the debtor has withdrawn his application and the code will no longer be valid. We believe that creating such a clear point cut-off point should ensure that costs incurred by the DM in keeping applications pending are kept to a minimum. It should also ensure that, if a debtor later decides to proceed with a bankruptcy application, a fresh application would have to be made containing more up to date information. This should avoid instances of the DM being asked to make a decision based on information that may, by that time, have become stale.

This process will apply both to paper applications and applications made electronically.

## **Annex B: Paper applications for bankruptcy**

Currently, paper forms that enable debtors to petition for their own bankruptcy can be obtained from the Court Services either through the post or in person. Completed forms are presented by the debtor in person to the court, at which point a hearing is set. Court staff ensure that the relevant sections of the form have been signed, and debtors swear a statement of truth to confirm that the information provided in their statement of affairs, which is part of the debtor petition form, is true. It is already possible for a debtor to complete the bankruptcy petition electronically but that facility is not supported by a telephone advice line and, at the moment, the completed form must be printed out and physically taken to the court. Around 8% of all debtors' petitions are completed in this way<sup>32</sup>.

### The need for paper applications for bankruptcy

We recognise firstly that not everyone will have access to a computer or the internet, and that some individuals prefer or are more comfortable with more traditional methods of application.

Under our proposals, paper bankruptcy application forms will be widely available. Information and guidance on how to complete the form will be included with the form together with a list of where the debtor can seek advice and information on how to complete the form online if they choose. We also propose that there be a telephone support service to help debtors complete applications.

### Will there always be a need for paper applications?

'*Digital Britain*', the White Paper published in June 2009, outlined the Government's digital strategy for the future. Our proposals strengthen the Government's plans to modernise and improve its services to the public through the 'digital delivery of public services'. The Government is continuing in its work to develop the digital skills of the people in Britain to participate in a 'digital future' through education and access, particularly in schools. Increasing exposure to ICT skills at an early age suggests that future generations will be more comfortable with technology and digital tools.

The debates around the procurement of public services through new technology has also included discussions considering online being the

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<sup>32</sup> The Insolvency Service statistics (unpublished)

primary means of access of public services by 2012<sup>33</sup>. In planning the online application process, we have considered our available delivery channels and how we expect service delivery to change in the future. We have therefore considered the potential to phase out postal applications, as an alternative, moving towards an age where all applications will be completed and submitted online. But we shall not do so for the time being. An assessment of this need will be built into our plan for the evaluation of the whole debtor application process.

#### Submission of paper applications

A debtor will be able to make full payment of the fee within ten days of the date he/she signs a completed application and accompanying statement. As with electronic applications, this is to ensure the information provided is a reflection of the debtor's current position.

The DM will not begin consideration of the application form until all relevant parts of the form have been completed, and the fee has been paid in full by the debtor. The debtor will have ten days in which to make full payment, although there will be no facility to pay by instalments, and it is only at the point that payment has been received that the application process will be deemed to have started.

#### Partially completed paper applications and re-submissions

We propose that paper application forms that are only partially completed will be sent back to the debtor, who will have a maximum of ten days in which to complete and return the application form to the DM. If the debtor fails to re-submit a completed application form within ten days, the DM must assume the debtor has withdrawn from the process.

To prevent the submission process being delayed for an indefinite period of time, the application form will only be returned once to a debtor, thus giving the individual one further opportunity to submit a complete application form. But we also propose that the DM should have a certain amount of discretion to accept paper applications, even if they are not fully completed. Although this discretion must be exercised carefully and narrowly, to avert claims of unfairness, we suggest that the DM should be able to consider the materiality of an omission and whether a decision can still be made on the information the debtor has provided.

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<sup>33</sup> Digital Britain – Final Report, June 2009 pp 210

Where the DM has decided to send the application back to a debtor because it is insufficiently complete, the application form will be sent to the address the debtor has listed as his/her current home address. This will provide an opportunity for the DM to verify the debtor's address and contact details. Failure to complete the application form in full a second time will mean the application must be refused.

Having said that, we believe that there should be a point at which the DM must reject an incomplete application form. We therefore propose that an application for bankruptcy on a debtor's own application can be rejected where the debtor has;

- a) not attempted to answer all the questions and provide supporting documents or information where necessary;
- b) not provided sufficient information to identify the debtor;
- c) been given a second chance to complete the application form, and has re-submitted it with details that are still incomplete or where supporting information has been requested by the DM but this is still not provided, or where the instructions/ directions of the DM have not been followed; and/or
- d) not signed or dated the application form and/ or Statement of Affairs.

Where an application has been refused or rejected, the debtor will be informed of this decision and the reason. The fee that covers the cost of administering the application will be forfeited as checks would have been carried out to identify the incomplete parts of the application.

### **Annex C: Requesting a review of the Decision Maker's decision not to make a bankruptcy order**

Those who have submitted an application and whose application has been refused should be able to make a request to the DM to review that decision. We propose that this request should be made in writing by the debtor, and conveyed either on paper or electronically on a prescribed form. The form should include:

- (a) The date the decision was made;
- (b) The name of the debtor to whom the decision relates;
- (c) The basis for the request;
- (d) Evidence to support the request.

There will be a specified period of time during which any request for review must be made, and we propose that only the debtor can make such a request.

An applicant cannot appeal to the court in respect of a decision made by the DM until and unless a request has been made for the DM to review the decision; the DM has reviewed the decision; and the DM's response to the request has been conveyed to the applicant.

The costs of both the request for review and of any appeal should, in the first instance, be met by the applicant.

**Annex D – Evaluation of the discharge provisions of the Enterprise Act 2002**

**First interim evaluation report**

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/evaluation/Discharge/Discharge.pdf>

**Second interim evaluation report**

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/evaluation/Discharge/Discharge2.pdf>

**Final evaluation report**

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/evaluation/finalreport/report.pdf>

**Annex E – Initial Impact Assessment – Debtor Application for  
Bankruptcy**

## Summary: Intervention & Options

Department /Agency:

The Insolvency Service

Title:

Impact Assessment of the proposals for the reform of the bankruptcy debtors petition process

Stage: Consultation

Version: 1.0

Date: November 2009

Related Publications: Bankruptcy: proposals for reform of the debtors petition process and the Summary of Responses to that consultation

Available to view or download at:

[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_reg](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_reg)

Contact for enquiries: Maria Isanzu

Telephone: 020 7291 6733

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

In recent years there has been an increase in the number of debtor petition bankruptcies, which currently amount to around 84% of all bankruptcy petitions. The resulting pressure on court resources has led to significant delays for debtors seeking to access much needed debt relief and delays for other civil court users. Government intervention is necessary to speed up the process for debtors, reduce the stigma attached to bankruptcy and provide earlier relief from the consequences of over-indebtedness. This can only be achieved by amending the Insolvency Act 1986.

What are the policy objectives and the intended effects?

- To reduce and possibly remove the delay between the presentation of a debtor's bankruptcy petition and the making of the bankruptcy order. The current delay adds additional financial burdens and stress to the the debtor
- To ensure that the revised process is self-financing and cheaper than the current process.
- To modernise the current debtor petition process making it an appropriate and accessible debt relief tool.

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

Two options have been considered for potential further action:

1. Do nothing

2. Reform the debtors petition process by removing the courts from the process and allowing debtors to apply directly to a dedicated decision maker

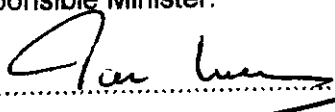
Option 2 is the preferred option as it will speed up access and reduce stress on those who wish to seek the protection of bankruptcy. This change is also expected to reduce the cost of a debtor petitioning for his or her own bankruptcy and will also free up resources at courts.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The change is expected to be made when Parliamentary time allows and it would be evaluated three years after implementation.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



Date:

10/11/09

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>The Insolvency Service</b>	<b>Title:</b> <b>Impact Assessment of the proposals for the reform of the bankruptcy debtors petition process</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1.0	<b>Date:</b> November 2009
<b>Related Publications:</b> Bankruptcy:proposals for reform of the debtors petition process and the Summary of Responses to that consultation		

### Available to view or download at:

[http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con\\_doc\\_reg](http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_reg)

**Contact for enquiries:** Maria Isanzu

**Telephone:** 020 7291 6733

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

In recent years there has been an increase in the number of debtor petition bankruptcies, which currently amount to around 84% of all bankruptcy petitions. The resulting pressure on court resources has led to significant delays for debtors seeking to access much needed debt relief and delays for other civil court users. Government intervention is necessary to speed up the process for debtors, reduce the stigma attached to bankruptcy and provide earlier relief from the consequences of over-indebtedness. This can only be achieved by amending the Insolvency Act 1986.

### What are the policy objectives and the intended effects?

- To reduce and possibly remove the delay between the presentation of a debtor's bankruptcy petition and the making of the bankruptcy order. The current delay adds additional financial burdens and stress to the the debtor
- To ensure that the revised process is self-financing and cheaper than the current process.
- To modernise the current debtor petition process making it an appropriate and accessible debt relief tool.

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

Two options have been considered for potential further action:

1. Do nothing
2. Reform the debtors petition process by removing the courts from the process and allowing debtors to apply directly to a dedicated decision maker

Option 2 is the preferred option as it will speed up access and reduce stress on those who wish to seek the protection of bankruptcy. This change is also expected to reduce the cost of a debtor petitioning for his or her own bankruptcy and will also free up resources at courts.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The change is expected to be made when Parliamentary time allows and it would be evaluated three years after implementation.

### **Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

Policy Option: 2

Description: Reform the bankruptcy debtor's petition process

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' There would be set up costs of £528,000
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 528.000</b>	5	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£</b>		<b>Total Cost (PV)</b> <b>£4.9m to £6.1m</b>
<p><b>Other key non-monetised costs</b> by 'main affected groups'</p> <p>Emphasising the consequences of bankruptcy, to ensure that gravitas is maintained under an administrative process, might result in more debtors making contact with CABx and other debt advice agencies for advice before making their application thus increasing their workload</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Removing the courts from the debtor petition process should result in savings for HMCS of £21m to £26.5m i.e. at least £21,000,000.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 21,000,000</b>		<b>Total Benefit (PV)</b> <b>£21m to £26.5m</b>
<p><b>Other key non-monetised benefits</b> by 'main affected groups'</p> <p>There will be reduced pressure on the courts and debtors will have speedier access to the debt relief afforded by bankruptcy</p>			

### Key Assumptions/Sensitivities/Risks

The calculations for the savings to HMCS are based on 2007 costings for court staff provided by HMCS. If bankruptcy numbers increase/decrease then the estimated cost will vary accordingly.

Price Base Years 07	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£128m – £185m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£157m</b>
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What is the geographic coverage of the policy/option?		England & Wales		
On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?		Insolvency Service		
What is the total annual cost of enforcement for these organisations?		£ N/A		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of	£	Decrease of	£
		<b>Net Impact</b>	<b>£</b>

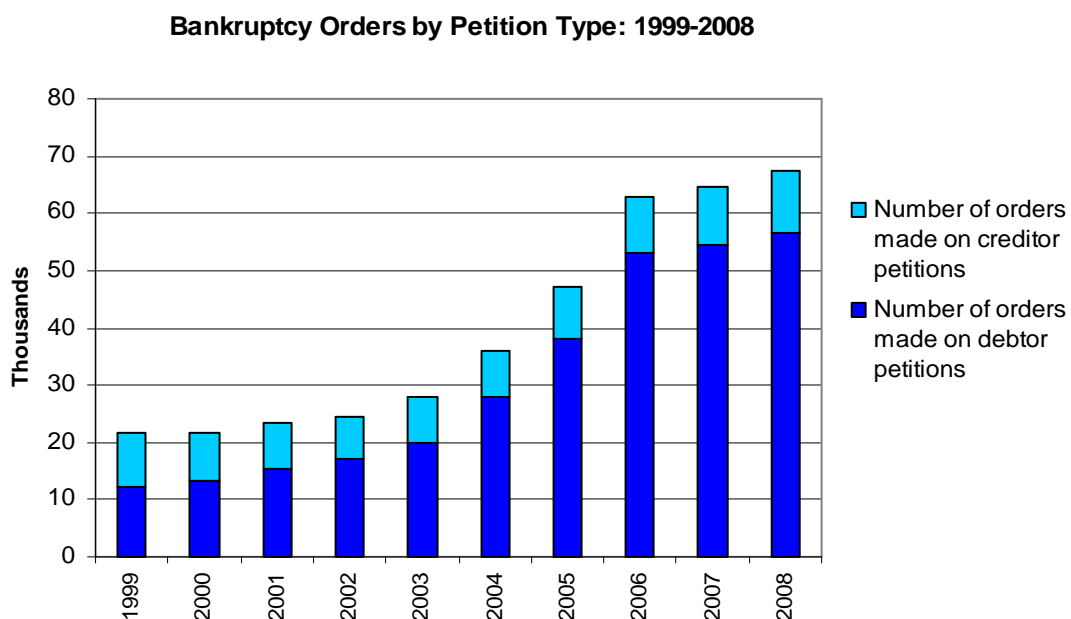
Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **INTRODUCTION**

1. Both debtors and creditors can petition for a debtor to be made bankrupt if either party believes that the debtor is no longer able to service his or her debts. When a debtor decides to go bankrupt, it is usually a last resort to prevent the individual from suffering extreme financial hardship and distress. It also ensures that any assets held are shared fairly amongst creditors. When a debtor decides to declare bankruptcy, he/she must petition the county court for the insolvency district where he/she lives.
2. One of the overall policy aims in the consultation paper is to reduce, if not remove, the delays faced by debtors between the presentation of their bankruptcy petition and the making of the bankruptcy order. This would be achieved by removing the courts from the petition process. In addition, the reduction in delays will provide faster access to debt relief for debtors, as well as free court time and resources for other areas of court work. Furthermore, the policy will ensure that the revised process is self financing and cheaper than the current process.
3. In reviewing the feasibility of this policy, various factors were explored which included a review of the increasing number of bankruptcy cases, the delays faced by debtors when filing their petitions and the social attitude towards the bankruptcy process.
4. The number of bankruptcy orders has risen since 2003 when there were 28,021 cases, of which 71% were debtors' petitions. In 2008 there were 67,428 cases, of which 83.9% were debtors' petitions
5. The following chart compares the total number of bankruptcies arising from debtors' petitions with the total number of bankruptcies based on creditor petitions over the last nine years:



Source: Insolvency Service

The latest insolvency statistics, published on 6 November 2009, show there were 35,242 individual insolvencies in England and Wales in the third quarter of 2009. This is an increase of 28.2% on the same period a year ago. This was made up of 18,347 bankruptcies (which were up 6.4% on the corresponding quarter of the previous year). For 2009, the current percentage of debtors' petition cases (out of total bankruptcies) is 85%, slightly down on the previous quarter.

### **DELAYS WITHIN THE DEBTOR PETITION PROCESS**

6. One of the main impacts of the rise in debtor petition bankruptcies and the administrative work associated with each case is the increasing delay between the time that the bankruptcy petition is presented and the time when the order is made.
7. In 2007 The Insolvency Service published a GfK NOP survey and an informal survey by District Judge Jordan was also carried out into the extent of delays faced by debtors. This research indicated that some debtors can face a wait of up to three months before their bankruptcy order is made, whilst the average waiting time is between one and two months. Further results from this research are included in Annex A of this Impact Assessment.

### **THE STIGMA ASSOCIATED WITH BANKRUPTCY**

8. In addition to the burden on the courts associated with the high number of debtor petition cases and the delays caused by the volume of cases, there is evidence to suggest that the involvement of the court in the debtor petition process also contributes to the social stigma attached to the bankruptcy process.
9. More recently The Insolvency Service published the "Enterprise Act 2002: Attitudes to Bankruptcy 2009 Update" which looked at the bankruptcy process and social attitudes towards the process. This evaluation report indicated that for all service users (including bankrupts, individuals, businesses and Insolvency Service staff), the two main elements of the process that led to the stigma surrounding bankruptcy were still attendance at court and the advertisement of the bankruptcy order. Further research into the stigma of bankruptcy are set out in Annex B of this Impact Assessment.

### **OPTIONS**

10. In October 2007 the consultation document "Bankruptcy: proposals for reform of the debtor petition process" was published, which identified three options:
  - Option 1: Do nothing
  - Option 2: The Official Receiver makes the bankruptcy orders when debtors attend at his/her local Official Receiver office.
  - Option 3: The Insolvency Service makes the bankruptcy orders administratively following electronic or postal submission of the debtor bankruptcy petitions.
11. The responses from this consultation indicated that option 3 was the most the viable way forward, moving to a system where The Insolvency Service takes over the administration of debtor's petitions and the making of the bankruptcy order. However some concerns were raised about this transition. These concerns encompassed:
  1. the need to ensure that bankruptcy remains a serious regime,
  2. the need to ensure that prospective bankrupts have sought advice before presenting their petition; and
  3. assurance of sufficient checks on a person's identity before a bankruptcy order is made.
12. Those concerns are specifically addressed in this latest consultation. The Impact Assessment and H. M. Treasury Green Book Guidance requires that all options are assessed relative to a common "base case." The base case for this impact assessment has been assumed to "do nothing." Therefore the options for reforming the process for debtor petition bankruptcies now being considered are:

## **Option 1: Do nothing.**

13. This option makes no changes to the current system for dealing with debtor petition bankruptcies. On this basis, however, the resources of the courts will continue to be overstretched in dealing with the increasing number of cases. Delays currently faced by debtors exacerbate the psychological and physiological consequences of over indebtedness, and also add to delays in other areas of civil procedure and dispute resolution and these will continue (with wide variations between courts), if not increase in length, and the stigma associated with the courts' involvement in the debtor petition process will not be alleviated.

## **Option 2: Decision Makers, appointed for that purpose by the Secretary of State, make the bankruptcy orders administratively following electronic or postal submission of the debtor bankruptcy application form.**

14. Applications for bankruptcy by debtors could be dealt with administratively, therefore removing the need for the courts to be involved in the debtor petition process and permitting them to concentrate on their primary dispute resolution function. Debtors would no longer be required to attend court hearings in respect of their petitions, and therefore the stigma attributed to attendance at court would be removed.

15. Removal of the courts' role in the petition process would also reduce, if not remove, the delays experienced by debtors when filing their petitions.

16. The effects and process of bankruptcy would remain unaltered, meaning that once an order was granted, the Official Receiver will still be required to conduct enquiries into the bankrupt's affairs. The bankruptcy restrictions imposed on bankrupts will remain unaltered and bankrupts will still be subject to Income Payment Order/Agreements and Bankruptcy Restrictions Order/Undertaking proceedings if appropriate. This option therefore seeks to streamline entry for debtors into the bankruptcy process in order to cope with the increasing case numbers and delays caused by the volume of cases, but it should be stressed that the implications of bankruptcy for the debtor will remain unaltered.

## **COSTS AND BENEFITS**

17. In analysing the costs and benefits of the current and proposed systems, it is assumed there will be no change to the amount of the deposit as security for the payment of the official receiver's administration fee (to the extent that the relevant assets are insufficient for that purpose), currently set at £360. This deposit is payable in addition to the court fee and is used to fund the processing of the bankruptcy estate following the making of the bankruptcy order.

18. The costs examined below relate only to the current court fee of £150 and the estimated costs to the Decision Maker of dealing with debtor petition cases. The costs discussed therefore relate to the processing of the bankruptcy petition up until the bankruptcy order is made and not the processing of the bankruptcy post-order, as the proposed system does not make any changes to the debtor bankruptcy process once the order has been made.

### **Costs of the current system – Her Majesty's Courts Service (HMCS) involvement in the debtor petition bankruptcy process**

19. The Insolvency Service has contacted HMCS with a view to calculating the average cost to HMCS of dealing with each debtor petition bankruptcy case. Although it is difficult to calculate an exact figure for dealing with each individual case, HMCS does have a system for measuring the time each court process takes to complete, which includes uplifts for administration and management.

20. HMCS has provided the following figures (based on 2007 calculations) in order to calculate their average cost per case:

#### **Court staff**

Average time to deal with a debtor's petition – 75.45 minutes

Average time to make the bankruptcy order – 43.41 minutes

21. Court staff time is billed at £2.42 per minute, which includes overheads such as salaries, costs, IT and accommodation.
22. Therefore, the total cost of court staff time in dealing with the issue of the debtor petition and making bankruptcy order - £2.42 x 118.86 mins = £287.64

### Judiciary

District Judge's average time to make bankruptcy order – 10 minutes

Judicial time is billed at £2.78 per minute.

23. Therefore, the total cost for judicial time in dealing with the debtor bankruptcy is £2.78 x 10 mins = £27.80

24. **In 2007 the total average cost per case to HMCS in dealing with a debtor petition and the making of the bankruptcy order is therefore £287.64 + £27.80 = £315.44**

25. Debtors are required to make a contribution to this cost, currently via payment of the court fee of £150. Based on the estimated cost to HMCS in dealing with each case being £315.44, there is a shortfall of £165.44, which HMCS makes provision for in its annual budget and which therefore is subsidised by the taxpayer in order to allow the courts to fulfil their current roles in the debtor petition process.
26. It should also be borne in mind that, although the court fee for each bankruptcy petition is £150 in each case, there are circumstances in which the courts are permitted to waive or remit payment of the court fee. The system for exemption and remission of fees is governed by Article 4 of the Civil Proceedings Fees Order 2004 (2004 No 3121). The system operates by exempting all applicants from court fees if they receive a means tested benefit such as Income Support, Income based Jobseeker's Allowance, State Pension Guarantee Credit, Working Tax Credit (but not in receipt of Child Tax Credit) or Income-related Employment and Support Allowance or if the applicant's gross salary is below a certain amount. In addition, the Order provides that fees can be reduced or remitted where it appears that payment of the court fee would result in the application suffering 'undue financial hardship'. Court staff calculate the fee exemptions and remissions based on information and evidence supplied for each individual case, taking account of internal guidance relating to the individual's income and expenditure.
27. The GfK NOP survey commissioned by The Insolvency Service asked debtors whether they paid the full court fee of £150 when petitioning for their bankruptcy. The following table highlights the differing contributions by those debtors who involved in the survey, to the court fee:

Table 3: Debtor contribution to court fees

<b>Fee amount</b>	<b>Percentage of debtors</b>
£150 (full fee)	48%
Over £100	3%
£51 to £100	1%
£50 or less	1%
Nothing	44%

### Estimated costs for the Decision Maker to deal with all debtor petition cases

28. The estimated costs associated with the transfer of debtor petition bankruptcy work from HMCS to the Decision Maker fall into the following categories:
29. Ongoing costs: The Insolvency Service estimates that the cost to the Decision Maker to process an individual debtor petition bankruptcy order will be less than the current court fee. This assessment

has been calculated by assessing the work required on each case and applying the business and staffing model currently used for Debt Relief Orders.

30. Familiarisation and set-up costs: In April 2009 The Insolvency Service implemented Debt Relief Orders (DRO), which has put in place a number of systems and procedures that can be applied to this proposal. Therefore the majority of the set-up costs for the proposed changes to the debtor petition process have been spent when developing the process for DROs. The additional costs relating to the proposed system are mainly associated with familiarising third parties about the changes to the debtor petition system. This would involve informing advice agencies, which currently aid debtors in completing petition forms, of the changes to the way in which forms are submitted. Similarly, debtors themselves will need to be aware of the change in process, and therefore leaflet and advertising campaigns would need to be used in order to inform the general public about the changes to the petition process. We estimate that the costs of familiarisation will total around £100,000, comprising the cost of production and distribution of leaflets
31. For a number of years debtors have been able to fill out their bankruptcy petition electronically. However, they have had to print off that application and physically take it to court. The Insolvency Service keeps a record of all the electronic applications and currently around 8% of applications are made using forms completed in this way. Changes to the process would also include developing the online system so that debtors can also submit their applications electronically, to the Decision Maker.
32. In addition, advice and debt relief agencies and other third parties will also need to be trained on the proposed new system, which we estimate will cost around £50,000. Finally, the system will entail development costs of £378,000, which will include the cost of developing and testing the I.T. software, as well as the licensing and application costs..

Table 4: Summary of Costs

Who is affected?	Ongoing costs	Familiarisation costs	One-off development costs	£
Debtors	Yes. The Decision Makers appointed by the Secretary of State	Yes but not significant	No	The ongoing cost is expected to be lower than the fee currently charged by the court
The Decision Makers appointed by the Secretary of State	No – as this process is designed to be self-financing the cost per case will be met by the fee charged in respect of the application.	Yes but not significant	Yes – involving leafleting and training to ensure familiarisation with the new system along with development costs.	£528,000
Advice agencies	No	Yes but not significant	Yes but not significant	£10,000
<b>Total</b>				<b>£4.9m to £6.1m</b>

Note: The costs to debtors are estimated to be £4.4m-£5.6m, based on forecasted cases and the maximum fee to be charged.

## Benefits

Debtors:

33. The changes to the debtor petition bankruptcy process would benefit debtors by allowing them to gain quicker access to debt relief. The current average waiting time for debtors is between one and two months. It is estimated that, under the proposed system, the waiting time would be reduced to one week. In October 2009 the Money Advice Trust published a report on debt and mental health<sup>1</sup> which concluded there was “*plausible evidence from longitudinal research that indebtedness is often*

<sup>1</sup> [http://www.infohub.moneyadvicetrust.org/resource.asp?r\\_id=468](http://www.infohub.moneyadvicetrust.org/resource.asp?r_id=468)

*subsequently followed by mental health problems*". By obtaining faster access to debt relief, the debtor will be relieved of the financial, psychological and physiological consequences of over-indebtedness in a shorter period of time.

- 34. Debtors would also benefit from not having to attend court in order to file their petitions and obtain their bankruptcy order, therefore reducing the stigma associated with attending court, saving time and money, as well as reducing the burden faced by some debtors associated with journeys to court.
- 35. The proposed system will also benefit HMCS by removing all debtor petition work from the courts, therefore enabling the courts to focus their funds and time on their primary function of dispute resolution and other civil procedure matters.

Creditors:

- 36. Creditors will benefit from the proposed system because the delays associated with waiting for a hearing date will be reduced, if not removed. Debtors will therefore not be forced to live off further credit whilst waiting to present their petition, and thus will not increase their debts significantly during this time. However, the savings which creditors should make and the cap on the increase of debts in view of the reduced waiting times cannot be quantified due to the significant variation in delays and variations between the circumstances of each case. The benefit to HMRC of £21m-£26.5 million in table 5 below was calculated using projected number of cases.

Table 5: Summary of Benefits

Who is affected?	Simplification	Reduction in burden	On-going benefit?	£
Debtors	Yes	Yes	Yes	Unable to quantify
HMCS	Yes	Yes	Yes	£21m to 26.5m
Creditors	Some but marginal	Yes	Yes	Unable to quantify
<b>Total</b>				<b>£21m to £26.5m</b>

**MONITORING AND EVALUATION**

- 37. Currently an evaluation plan is being drawn up. The principal aim of the proposed evaluation is to provide a comprehensive assessment of whether, to what extent and how the provisions relating to the reformed debtor petition process meet the policy objectives.
- 38. The process is intended to be self financing and therefore should not involve further additional costs once the process is set up.

**SPECIFIC IMPACT TESTS**

39. Competition Assessment

The proposed policy will have no impact on competition as the work involved in dealing with debtor bankruptcy petitions is merely being moved from one government department (HMCS) to someone who is under the control of the Secretary of State.

40. Small Firms Impact Test

The proposed policy will have no impact on small firms as the reform will only affect debtor petition bankruptcies, which relate to individuals. The majority of debts incurred by individuals petitioning for their own bankruptcy are consumer-related and therefore it can be assumed they impact mainly upon large consumer credit firms and credit card companies as opposed to small firms.

41. Legal Aid

The proposed policy will have no impact on Legal Aid as it is not available to fund debtor petition bankruptcies and the proposed system makes no changes to criminal sanctions or civil penalties.

#### 42. Sustainable Development

The proposed policy will have no direct impact on sustainable development.

#### 43. Carbon Assessment

The proposed policy will have no direct impact on carbon assessments.

#### 44. Other Environment

While the implications of this proposed system may not be so significant as to warrant a detailed impact assessment for “Sustainable Development” or “Carbon Assessment”, the following benefits would flow from the system:

- Reduction in the use of paper, in particular due to the use of an electronic method of filing for a bankruptcy petition
- Reduction in levels of unwanted paper
- Reduction in the need for travel

#### 45. Health

It is anticipated that the proposed system will have beneficial effects on the health of debtors. The adverse psychological and physiological effects of stress relating to financial circumstances are well documented, but by removing the inordinate delays in the petition process, debtors will be able to access debt relief procedures more quickly. In this way, debtors will be relieved of some of the stress of their financial situation more quickly than under the current debtor petition system.

#### 46. Equality Impact Assessments

The proposed system will not have an adverse or disproportionate effect on any person as a consequence of race, ethnic origin, religion, gender or sexual orientation. The proposal provides for electronic submission of debtor bankruptcy petitions, but any person who, for whatever reason, is unable to participate in this form of submission of petitions will still be able to submit their petition on paper via the post. The forms will be available not only from The Insolvency Service website and Official Receiver offices but also from advice agencies. There will be a telephone helpline, funded from the application fee, to help any applicants to complete their forms.

47. In addition, the removal of the requirement to attend at courts with insolvency jurisdiction in order to file a bankruptcy petition should benefit people who are unable to travel to court due to disability, cost of travelling, inability to take time off work or any other commitments which may prevent attendance at court.

48. It is envisaged that there will be no adverse equality impacts, although removing attendance at court should benefit those people who currently are unable, or find it difficult, to attend at their local court in order to file their bankruptcy petition.

#### 49. Human Rights

The proposed system does not impact upon any human rights issues.

#### 50. Rural Proofing

Under the current system, debtors must attend at their local bankruptcy court in order to petition for their own bankruptcy. The forms required to petition can be obtained from the court, printed from The Insolvency Service website or completed electronically on The Insolvency Service website and then printed. However, in all cases, the debtor must attend court in order to file the papers. The requirement to attend court personally means that, in some areas of the country, debtors must travel considerable distances in order to file their petition at a court with insolvency jurisdiction. The map below indicates the location of the courts with insolvency jurisdiction and serves to highlight the distances that debtors may have to travel in order to reach their local court. In some rural areas, there may be a lack of direct public transport and therefore debtors without a car may experience difficulty in attending court. Similarly, even if public transport is available, the cost in attending court may prove onerous for some debtors.

51. The proposed system would alleviate the problems of access to court with insolvency jurisdiction by removing the courts from the debtor petition process. Debtors will be able to choose either to

electronically submit their petitions via an online service or to submit their petitions via post, therefore removing the requirement of attendance at court and the access and costs issues associated with travel to court.

**Diagram 1: Map showing the courts with insolvency jurisdiction in England and Wales**



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

## **ANNEX A – THE DELAYS FACED BY DEBTORS**

### The Insolvency Service survey into court delays

The Insolvency Service carried out its own review of the types of delays experienced by Official Receiver offices in dealing with local courts. Official Receiver offices were asked to record court delays on cases between 5 February and 2 March 2007. Although some Official Receiver offices did not experience any delays, the results of this survey indicated that delays in some courts can be significant, with debtors waiting from one week up to several weeks, with the worst delays resulting in a wait of three months from the date of their initial petition before the bankruptcy order is made.

In addition to demonstrating the increasing delays faced by debtors, the survey also highlighted the fact that the high number of debtor petition cases has an effect on the court's effective administration of other areas of insolvency work. As a result of the increased workload associated with debtor petition cases, Official Receivers reported delays of between three days and 195 days in creditor petition bankruptcy orders being sent to offices. Similarly, Official Receivers experienced delays of between three and 18 weeks in receiving amended bankruptcy order descriptions and delays of between one week and 24 weeks in obtaining hearing dates for annulment applications, suspension of discharge applications and public examinations, which are matters more appropriate to the courts' function of dispute resolution and which have a clear impact upon the Government's ability to take action against the minority of bankrupts who fail to cooperate with the Official Receiver or have shown some aspect of misconduct.

### DJ Jordan's survey into court delays

In addition to the survey carried out by The Insolvency Service, District Judge Jordan has carried out an informal survey following a previous review by the Court Users Committee into delays in debtor petition cases. The review sought to determine the extent of delays on debtor petition cases across the courts with insolvency jurisdiction. Although the survey does not include replies from all courts with insolvency jurisdiction, it too highlights a trend in delays experienced by debtors.

In some courts, bankruptcy orders could be made on the same day as the petition was presented, whilst in other courts, the delays ranged from a few days up to eight weeks. In concluding that debtors may face significant delays in some courts, District Judge Jordan reasoned that the main reason for such delays stems from the fact that the courts' resources to deal with debtor petitions are overstretched and that court staff's time in helping debtors to complete the required paperwork is adding to the delays experienced. Delays were not caused by judges, as in many cases the judges did not even see the debtors

### GfK NOP survey entitled "Views on the Process for Petitioning for Bankruptcy"

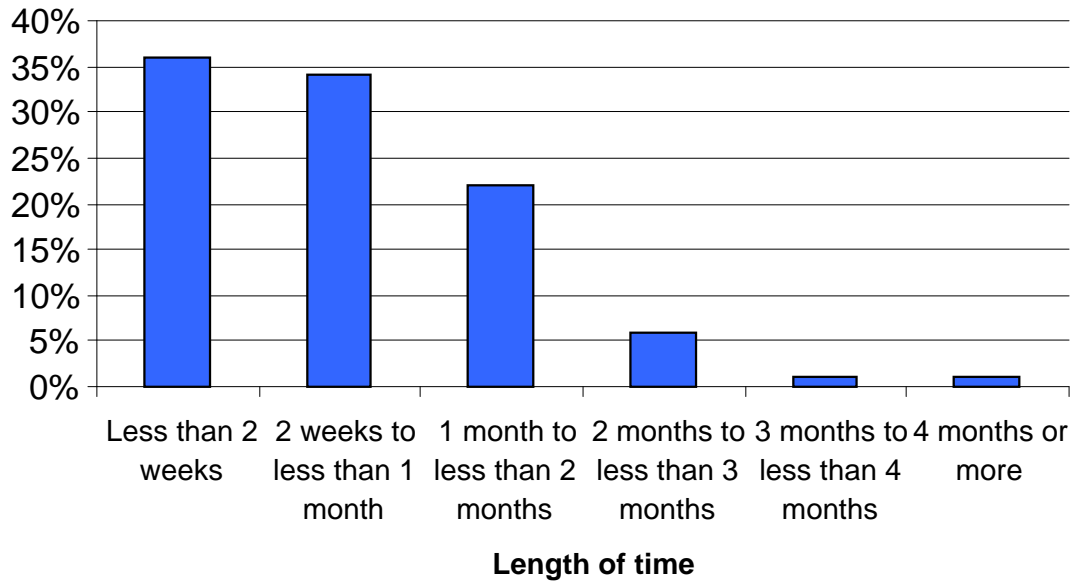
Finally, The Insolvency Service commissioned a GfK NOP survey of debtors petitioning for bankruptcy, the results of which were published in July 2007<sup>2</sup>. Based on the information provided by nearly 1,400 debtors, the average delay between the presentation of the bankruptcy petition and the time when the bankruptcy order was made was one month, although it is clear that the delays experienced varied widely and that some debtors experienced much longer delays.

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<sup>2</sup><http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/Surveydebtorspetitioningforbankruptcy.doc>

The survey reviewed responses from nearly 1,400 debtors who had been through the debtor petition bankruptcy process for their views on the process and its procedures. Debtors were asked how long they had to wait between the time when they contacted the court to arrange an appointment to file their petition and the time when the bankruptcy order was made. Of the 1,369 debtors who replied to this question, the following replies were received:

### Length of delay for debtors petitioning for their own bankruptcy



## **ANNEX B – THE STIGMA ASSOCIATED WITH BANKRUPTCY**

In addition to The Insolvency Service's own survey into bankruptcy stigma, a GfK NOP survey was carried out for The Service.<sup>3</sup> From this survey, 47% of debtors indicated that they would have filed their petition earlier if the court had not been involved in the bankruptcy process. Similarly, 42% of debtors said that they felt that the involvement of the court made the process more severe.

In addition to this survey, the Consumer Credit Counselling Service has indicated that of individuals who have contacted their service with debt problems and who were advised that bankruptcy was a solution, 58% of the individuals had not filed their bankruptcy petition within 12 months of receiving advice, mainly due to the stigma and costs associated with the process. If the court were removed from the bankruptcy process for debtor petitions, it is likely that some debtors, who are currently reluctant to file their petitions due the stigma associated with the court's involvement, would do so more quickly and thereby prevent a further increase in their indebtedness. Gazetting of the bankruptcy order will, however, remain unchanged.

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<sup>3</sup> <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/surveyofdebtors.htm>

## **Annex F – Initial Impact Assessment – Early Discharge**

## Summary: Intervention & Options

Department /Agency:

The Insolvency Service

Title:

Impact Assessment of the reform of the early discharge from bankruptcy process

Stage: Consultation

Version: 1.0

Date: November 2009

Related Publications: Enterprise Act 2002 -the Personal Insolvency Provisions:Final Evaluation Report November 2007

Available to view or download at:

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

Contact for enquiries: Maria Isanzu

Telephone: 020 7291 6733

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

The published evaluation of the Enterprise Act 2002 provisions relating to individual insolvency have shown that, with one exception, they have been successful. The exception is the early discharge from bankruptcy provisions, which has failed to: enable prompt rehabilitation of bankrupts judged to be non-culpable and fully co-operative with the Official Receiver; and reduce the stigma attached to bankruptcy.

Consequently this provision would benefit from being repealed, which can only be achieved with government intervention

What are the policy objectives and the intended effects?

The policy objectives are to reduce the financial burdens on business, The Insolvency Service, HM Revenue and Customs and HM Courts Service. Based on the 2008 bankruptcy case numbers those financial burdens are estimated as £762,654 falling on business, £1,603,405 falling on The Insolvency Service and £1,107,290 falling on HM Revenue and Customs and HM Courts Service

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

The policy options being considered are:

- 1) Do Nothing - the base case, and
- 2) Repeal the early discharge from bankruptcy provisions

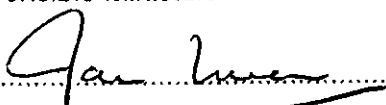
Option 2 is the preferred option because it will reduce burdens on business, The Insolvency Service, HM Revenue and Customs and HM Courts Service.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The change is expected to be made when Parliamentary time allows and it would be evaluated three years after implementation

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



Date: 10/11/09

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>The Insolvency Service</b>	<b>Title:</b> <b>Impact Assessment of the reform of the early discharge from bankruptcy process</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1.0	<b>Date:</b> November 2009
<b>Related Publications:</b> Enterprise Act 2002 -the Personal Insolvency Provisions:Final Evaluation Report November 2007		

### Available to view or download at:

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

**Contact for enquiries:** Maria Isanzu

**Telephone:** 020 7291 6733

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

The published evaluation of the Enterprise Act 2002 provisions relating to individual insolvency have shown that, with one exception, they have been successful. The exception is the early discharge from bankruptcy provisions, which has failed to: enable prompt rehabilitation of bankrupts judged to be non-culpable and fully co-operative with the Official Receiver; and reduce the stigma attached to bankruptcy.

Consequently this provision would benefit from being repealed, which can only be achieved with government intervention

### What are the policy objectives and the intended effects?

The policy objectives are to reduce the financial burdens on business, The Insolvency Service, HM Revenue and Customs and HM Courts Service. Based on the 2008 bankruptcy case numbers those financial burdens are estimated as £762,654 falling on business, £1,603,405 falling on The Insolvency Service and £1,107,290 falling on HM Revenue and Customs and HM Courts Service

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

The policy options being considered are:

- 1) Do Nothing - the base case, and
- 2) Repeal the early discharge from bankruptcy provisions

Option 2 is the preferred option because it will reduce burdens on business, The Insolvency Service, HM Revenue and Customs and HM Courts Service.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The change is expected to be made when Parliamentary time allows and it would be evaluated three years after implementation

### **Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

Policy Option: 2

Description: Reform the bankruptcy debtor's petition process

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Familiarisation and set up costs for business - The Insolvency Service, HM Revenue & Customs and HM Court Service have been estimated. These familiarisation costs will be shared with the parallel proposal to amend the debtor's petition bankruptcy process, which we estimate will total around £100,000, comprising the cost of production and distribution of leaflets.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups' Business, The Insolvency Service, HM Revenue and Customs and HM Courts Service will all make time savings by having to no longer deal with early discharge from bankruptcy cases			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' 72,060 bankruptcies (2008/09), Business £762,654, The Insolvency Service £1,603,405, HM Revenue & Customs and HM Court Services £1,107,290. No impact expected on recovery of moneys from Income Payment Order/Agreements which can be separated from the current Insolvency Service guidance on early discharge process.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£3,472,349		<b>Total Benefit (PV)</b> £3,472,349
Other <b>key non-monetised benefits</b> by 'main affected groups' Debtors: The document "Discharge from bankruptcy" identified a non-monetised benefit of the discharge period as bankrupts being allowed sufficient time to 'learn' from bankruptcy. Only 15% of those surveyed thought that a discharge period of less than one year was appropriate.			

**Key Assumptions/Sensitivities/Risks** The costings from 2006/07 cases which totalled 64,610 have been applied to case numbers in 2008/09 i.e 72,060. If bankruptcy numbers increase/decrease then the estimated cost will vary accordingly

Price Base Year 06/07	Time Period Years    10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £30m
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	Not known			
Which organisation(s) will enforce the policy?	Insolvency service			
What is the total annual cost of enforcement for these organisations?	£N/A			
Does enforcement comply with Hampton principles?	No			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£N/A			
What is the value of changes in greenhouse gas emissions?	£N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?				

<b>Impact on Admin Burdens Baseline</b> (2006/7 Prices)		(Decrease)	
Increase of    £	Decrease of    £2.9m	<b>Net Impact</b>	<b>£2.9m</b>

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

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### General Background

1. The Enterprise Act 2002 (EA02) covers three broad areas: consumers; competition; and insolvency. The insolvency provisions are split between corporate and individual insolvencies and there are six main individual insolvency provisions related to:
  - Discharge from bankruptcy;
  - Bankruptcy Restrictions Orders (BROs);
  - Bankrupt's home;
  - Contributions from income by bankrupts;
  - Individual voluntary arrangements (IVAs);
  - Sundry provisions.
2. Those provisions have been subject to rigorous evaluation and, with the exception of discharge from bankruptcy, have been found to be successful.
3. Discharge from bankruptcy releases a bankrupt from his/her debts (subject to specified exceptions<sup>1</sup>). The mechanism by which discharge is granted in less than one year after bankruptcy is contained in the Insolvency Act 1986<sup>2</sup>, having been introduced on 1 April 2004 as part of the EA02.
4. The individual insolvency provisions of the EA02 was preceded by the White Paper *Productivity and Enterprise - Insolvency: A Second Chance*, which set out:

*"Fear of failure can act as a powerful disincentive to potential entrepreneurs and the actual cost of failure can deter many whose first failure was honest from trying again. Therefore, the Government intends to legislate for a major package of reforms to personal bankruptcy, to modernise the framework and to encourage entrepreneurship and responsible risk taking, which will contribute to the creation of wealth and employment. These reforms will streamline the process and reduce the stigma for the vast majority of individuals, and encourage those who have failed, through no fault of their own, to try again."*

5. The EA02 had two broad aims:
  - to reduce the fear of failure, and
  - to reduce the stigma of bankruptcy.

This was a response to the previous situation where bankruptcy law in the UK treated everyone subject to it in the same way, irrespective of whether the bankrupt was dishonest or irresponsible or whether his/her failure was honest and above-board.

In September 2005 a paper on "Bankruptcy law and entrepreneurship"<sup>3</sup> was published which set out that "*bankruptcy law has a very pronounced effect on levels of entrepreneurship. In fact, bankruptcy laws have the most statistically and economically effect on levels of self employment*"

<sup>1</sup> Section 281 of the Insolvency Act 1986

<sup>2</sup> Section 279(2) Insolvency Act 1986

<sup>3</sup>

6. The EA02 introduced provisions whereby a bankrupt is automatically discharged one year after the commencement of bankruptcy, rather than three years (or in some circumstances two years). It also allowed discharge to occur earlier if the Official Receiver files a notice at Court stating that the investigations into the affairs and conduct of the bankrupt are unnecessary or complete.
7. Discharge in less than one year was only intended for those bankrupts who were not at fault and who pose no risk to the public or commercial community; where all investigative and administrative matters have been dealt with; and where the bankrupt had co-operated fully with the Official Receiver<sup>4</sup>. The period remains at one year if those grounds are not satisfied.
8. The evaluation of the EA02 found that the personal insolvency provisions of the EA02 have been successful, with the exception of early discharge, which has not had the desired impact of reducing the stigma of bankruptcy and encouraging early rehabilitation. Yet it does involve costs for both creditors and the government.
9. A copy of the interim and final evaluation reports on discharge from bankruptcy and all of the other insolvency provisions introduced by the EA02 can be accessed on <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/Reform.htm>
10. In summary, the detailed evaluation showed

*“The discharge provisions of the Act have been successful in removing discrimination against ‘second-time’ bankrupts (judged to be non-culpable who have fully co-operated with the Official Receiver) and have sped up the process of suspending the discharge of a bankrupt due to noncooperation where a trustee other than the Official Receiver has been appointed. However, the prompt rehabilitation of bankrupts (judged to be non-culpable who have fully co-operated with the Official Receiver) has been hindered by a bankrupt’s restricted access to the financial market, which has not improved due to lack of change in lenders’ policies. Further, the stigma associated with bankruptcy has not reduced. **The evaluation has also identified that although the reduced automatic discharge period has contributed to the prompt rehabilitation of bankrupts, the early discharge provisions may not add any extra benefit.**”*

11. Surveys conducted during the evaluation showed that bankrupts are more likely to think that automatic discharge after one year, rather than earlier discharge, gives sufficient time to ‘learn’ from bankruptcy and therefore offer a fresh start. Approximately 75 per cent of bankrupts agreed that an automatic discharge after one year offered a fresh start but less agreed that an early discharge did so (even of those who had benefitted from the provision). Furthermore, less than half of those who received early discharge agreed that the provision reduces the stigma attached to bankruptcy. The evaluation also found that any benefit the early discharge provides in terms of lifting the legal restrictions imposed under the Insolvency Act 1986 is negated by the lack of change in lender and credit reference agency policies, which denies bankrupts access to various types of financial products.
12. Further to that evaluation work, The Insolvency Service has also carried out a Cost-Benefit Analysis of the early discharge from bankruptcy provisions, a copy of which is set out in Annex A to this Impact Assessment.

## OBJECTIVE

13. The objective is to reduce the financial burdens on business, The Insolvency Service, HM Revenue & Customs and HM Court Service. In addition, the bankruptcy process in the UK should be made as efficient and effective as possible.

<sup>4</sup> See comments by Lord Sainsbury of Turville on 30 July 2002 during House of Lords Committee stage of EA02. Hansard column

## **OPTIONS**

14. The Impact Assessment and HM Treasury Green Book Guidance requires that all options are assessed relative to a common “base case.” The base case for this impact assessment has been assumed to “do nothing.” The options for early discharge provisions being considered are:

### **Option 1: Do nothing**

15. This option makes no changes to the current system.

### **Option 2: Repeal the Early Discharge from Bankruptcy Provisions**

16. The costs and benefits of the early discharge regime arise from both from the legal provisions which apply to The Insolvency Service, creditors (business and HM Revenue and Customs) and HM Court Services. There are also costs and benefits in relation to the internal guidance provided to Insolvency Service staff. The cost benefit analysis is set out in full in Annex A, albeit at 2006/7 cost levels. If the early discharge provision were repealed, the following savings could be made:

#### **General Costs**

17. The costs relate to the provision that the Official Receiver is required to file a report at court stating that his/her investigation is unnecessary or concluded in order for the bankrupt to be granted early discharge<sup>5</sup>. Also, it was agreed when the EA02 was before Parliament that, prior to filing any notice for early discharge at court, the Official Receiver would notify all creditors, and any other trustee, of the intention to do so<sup>6</sup>. This ensures a proper balance between the needs of bankrupts and the rights of their creditors. There are costs to The Insolvency Service in sending out these notices and costs for creditors in responding, yet no corresponding tangible benefit to bankrupts.

#### **Cost to the Official Receiver from statute**

18. This includes the cost of the Official Receiver preparing and issuing a notice to creditors of his intention to file a notice in court, which enables the bankrupt to be discharged in less than one year. Further costs are incurred if a creditor objects to the filing of such a notice. Other costs include filing the notice at court.

#### **Cost to the Official Receiver from internal practice**

19. Around the time of preparing and issuing the above notice to creditors, the Official Receiver also contacts the bankrupt to reassess his/her income and expenditure. If there is sufficient disposable income, the Official Receiver will obtain an Income Payment Order/Agreement prior to filing the notice at court in relation to the early discharge.

#### **Cost to business from statute**

20. This involves creditors receiving and dealing with the notice from the Official Receiver of the intention to file a notice in court, which enables the bankrupt to be discharged in less than one year. There is also an additional cost if the creditor wishes to object to the intention to file such a notice.

#### **Cost to other Government Departments from statute**

21. Crown Departments are regularly a creditor in the bankruptcy proceedings and therefore the costs referred to for business also fall on the Crown. Furthermore, Her Majesty’s Court Services have to deal with the filing of the notice.

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<sup>5</sup> Section 279(2) of the Insolvency Act 1986

<sup>6</sup> See comments by Lord Sainsbury of Turville on 30 July 2002 during House of Lords Committee stage of EA02. Hansard column

22. Further details in regard to the calculation of these costs are provided in Annex A. The costs in Table 1 are based on the bankruptcy numbers for the year 2006/07 which totalled 64,610 cases. Table 2 shows the updated costs using 2008/09 figures, when there were 72,060 bankruptcies.

Table 1: Costs of early discharge using 2006/07 cases

<b>Costs 2006/7</b>	<b>£</b>
To The Insolvency Service from statute	990,247
To The Insolvency Service from internal guidance	228,136
To business from statute	683,807
To other Government Departments from statute	992,812
<b>Total</b>	<b>£2,895,182</b>

23. The cost of the early discharge provisions to The Insolvency Service has already been identified and scored in the Admin Burden Calculator as:

<a href="#">18550</a>	6628	applying to the Court to alter the specified period at the end of which the bankruptcy is discharged
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24. According to Admin Burden Calculator, the Internal Cost per cases was £14.40 and Overhead Cost was £4.32 total £18.72. Whilst The Insolvency Service Cost Benefit Analysis indicted the cost involved was £16.67. For comparison purposes the Admin Burden Calculation of £18.72 has been used in Summary of Analysis and Evidence and as the costs to The Insolvency Service of statute in the updated table below.

Table 2: Costs of early discharge using 2008/09 cases

<b>Estimated Costs 2008/9</b>	<b>£</b>
To The Insolvency Service from statute	1,348,963
To The Insolvency Service from internal guidance	254,442
To business from statute	762,654
To other Government Departments from statute	1,107,290
<b>Total</b>	<b>£3,473,349</b>

### **Familiarisation and set-up costs:**

25. The additional costs related to changing the current system are mainly associated with familiarising Insolvency Service staff and third parties about the changes to the discharge process. This would involve informing advice agencies, debtors and creditors. It is anticipated that, if the early discharge provisions are revised, that would be in tandem with the separate proposals relating to the reform of the bankruptcy debtors' petition process where the costs have already been assessed at £100,000, and the reform of the early discharge process would not add any extra cost.

## **Benefits**

### **Option 1**

26. Nil

### **Option 2**

27. There are two main benefits potentially associated with early discharge:

#### *The shortened discharge period for bankrupts*

#### Monetised benefits

28. The shortened discharge period means that the legal restrictions imposed on a bankrupt under the Insolvency Act 1986 are lifted earlier. The main benefits are therefore the lifting of restrictions on obtaining credit, trading name and directorships.
29. As regards the lifting of the restriction on obtaining credit, the value of this to bankrupts is negated by a lack of change in lender and credit reference agency policies, which, regardless of whether automatic or early discharge is obtained, will continue to deny bankrupts access to various types of financial products (see Section 3.1 of the final evaluation report). This will also tend to offset the benefit of the lifting of the restriction on trading names – as detailed in the evaluation report despite the reduction in the discharge period, a bankrupt's ability to recommence trading is being reduced primarily by a bankrupt's restricted access to the financial market.
30. As regards the lifting of restrictions on directorships, no data is held on the level of discharged bankrupts who then take up directorship. However, assuming that the bankrupts who were formerly directors are those most likely to consider another directorship within one year of a bankruptcy order, the earlier lifting of this restriction will have minimal impact – in data available for 2006, only 0.6% of bankrupts were directors at the date of the bankruptcy order.
31. There will be a small proportion of bankrupts whose occupation is affected by bankruptcy - there are certain trades and professions where the making of a bankruptcy order will affect an individual's ability to continue in their trade or profession, e.g. Armed Forces, accountancy. Also, there are other instances in legislation, regulations, bye-laws and private club rules of restrictions which refer to the individual being a 'fit and proper person' which may disqualify an undischarged bankrupt, e.g. an individual who applies to the local police for a taxi license must be considered a 'fit and proper person'. An early discharge means that such bankrupts may be able to re-commence employment earlier.
32. However, statistics available for 2004/5, 2005/6 and 2006/7 show that 30%, 32% and 35% of bankrupts respectively<sup>7</sup> were employees. An analysis of sample data for 2004/5 shows that around 0.5% of such employee bankrupts had occupations that may be affected by bankruptcy (which equates to less than 0.2% of all bankrupts). Therefore, earlier discharge will have no impact on the vast majority of bankrupts who are employees.
33. This evidence cumulatively implies that the monetised benefits of early discharge, compared to automatic discharge after one year, are marginal. Although the bankruptcy restrictions may be lifted earlier, the policies of financial institutions mean that bankrupts are unable to enter the financial market to any meaningful extent for a considerable period after discharge. Further, only a very small proportion of bankrupts (less than 0.2%) are likely to feel any benefit from early discharge in terms of employment prospects.

### Non-monetised benefits

34. It should be borne in mind that the primary purpose of the early discharge provisions, together with the reduction in the automatic discharge period, was to enable the prompt rehabilitation of bankrupts judged to be non-culpable and who have fully co-operated with the Official Receiver. However, as identified in the evaluation report, bankrupts, regardless of their date of discharge, are more likely to think that automatic discharge after one year, rather than an earlier discharge, offers a fresh start. Further, bankrupts, regardless of their date of discharge, are more likely to think that automatic discharge after one year, rather

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<sup>7</sup> Statistics published by The Insolvency Service show that in the periods 2004/5, 2005/6 and the 9 months ended 31 December 2006, data on occupation was available on 32,193, 42,073 and 42,358 bankrupts respectively; and there were 9,528, 13,626, and 14,971 employee bankrupts respectively.

than an earlier discharge, gives sufficient time, if necessary, to 'learn' from bankruptcy. This may explain why the bankrupts, regardless of their date of discharge, are more likely to think that automatic discharge after one year, rather than an earlier discharge, offers a fresh start – perhaps less than one year is seen as insufficient time for a bankrupt to reflect on, absorb and move on from the event of bankruptcy.

35. Additionally, the early discharge provisions, together with the reduction in the automatic discharge period, were meant to help lift the stigma of bankruptcy. However, as identified in the evaluation report, the same proportion of bankrupts (around 40%) believed that the reduction in automatic discharge had reduced the stigma attached to bankruptcy and that the early discharge provisions had reduced the stigma attached to bankruptcy. Thus, early discharge does not appear to have any greater effect on reducing the stigma attached to bankruptcy than the reduction in the automatic discharge period.

36. As detailed in the evaluation report, from a bankrupt's point of view, discharge has the greatest impact on a bankrupt emotionally, and the impact is, in the vast majority of cases, positive. Early discharge is granted, on average, at around seven months, compared to 12 months under the automatic discharge provisions.

37. Therefore, as regards non-monetised benefits, the only identified potential benefit of earlier discharge is an earlier positive emotional impact on bankrupts by five months on average (although it could be argued that experiencing this earlier is of no real benefit). However, any possible benefit this may bring is overshadowed by bankrupts' opinion that automatic discharge after one year, rather than early discharge, offers a fresh start and gives sufficient time, if necessary, to 'learn' from bankruptcy.

## **MONITORING AND EVALUATION**

*The evaluation would concentrate on financial savings for creditors, The Insolvency Service, HM Revenue and Customs and HM Court Service. There would also be some qualitative evaluation – asking bankrupts if the change has had a significant effect. There is already some evidence on this in Discharge from bankruptcy –*

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/Discharge%20from%20bankruptcy.doc>

38. Currently an evaluation plan is being drawn up which will concentrate on the quantitative financial savings made by business, The Insolvency Service, HM Revenue and Customs and HM Court Services. It will also look at the qualitative aspects of the process and will draw upon the existing research "Discharge from Bankruptcy"

## **SPECIFIC IMPACT TESTS**

### 39. Competition Assessment

The proposed policy will have no impact on competition as the work involved in dealing with early discharge from bankruptcy will reduce costs for creditors, The Insolvency Service and other government departments.

### 40. Small Firms Impact Test

The proposed policy will have little or no impact on small firms.

### 41. Legal Aid

The proposed policy will have no impact on Legal Aid.

### 42. Sustainable Development

The proposed policy will have no direct impact on sustainable development.

#### 43. Carbon Assessment

The proposed policy will have no direct impact on carbon assessments.

#### 44. Other Environment

While the implications of this proposed system may not be so significant as to warrant a detailed impact assessment for “Sustainable Development” or “Carbon Assessment”, the following benefits would flow from the system:

- Reduction in the use of paper, and
- Reduction in levels of unwanted paper

#### 45. Human Rights

The proposed system does not impact upon any human rights issues.

#### 46. Rural Proofing

The proposed system does not impact upon any rural proofing issues.

#### 47. Equality Impact Assessment

The proposed system will not have an adverse or disproportionate effect on any person as a consequence of race, ethnic origin, religion, gender or sexual orientation.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annex A

### **COST ANALYSIS OF EARLY DISCHARGE**

#### ***INTRODUCTION***

The evaluation of the personal insolvency provisions of the Enterprise Act 2002 found that the introduction of early discharge provisions did not appear to have had the desired impact of reducing the stigma of bankruptcy and encouraging early rehabilitation. Although the overall impact of a reduction in the discharge period had been welcomed by those affected, the additional element of an earlier discharge for those given a “clean sheet” by the Official Receiver had not added anything extra. As this element of the legislation has not had the desired impact, there is merit in considering whether there would be some benefit in repealing the early discharge provisions. The potential benefit arises because there is a cost in administering the early discharge provisions, and if that cost outweighs any benefits of the process, the repeal of the provisions would bring about a reduction in administration burden. This annex outlines the costs and benefits of early discharge to enable a decision to be made on whether the provisions should be repealed.

A copy of The Service report on the evaluation of the individual insolvency provisions of the Enterprise Act 2002 (“the evaluation report”) can be accessed at:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/evaluation/finalreport/home.htm>

#### ***SUMMARY OF RESULTS***

The costs and benefits of the early discharge regime arise from both from the legal provisions and internal guidance. The table below summarises the estimated costs and benefits of the early discharge process:

		2004/5	2005/6	2006/7
<b>Costs arising from statute</b>	Cost to Official Receiver	£681,465	£838,938	£990,247
	Cost to business	£440,401	£563,193	£683,807
	Cost to other Government Departments	£684,704	£842,836	£992,812
	<b>Total</b>	<b>£1,806,570</b>	<b>£2,244,967</b>	<b>£2,666,866</b>
<b>Costs arising from internal guidance</b>	Cost to Official Receiver (issue of income review letter)	£157,208	£193,599	£228,316
<b>TOTAL COSTS</b>		<b>£1,963,778</b>	<b>£2,438,566</b>	<b>£2,895,182</b>
<b>Benefits arising from statute</b>	No material benefits identified – either monetised or non-monetised	-	-	-
<b>Benefits arising from internal guidance</b>	Realisations for creditors (realised over 3 years discounted to year in which associated costs incurred)	£660,750	£1,064,134	£1,284,018
<b>TOTAL BENEFITS</b>		<b>£660,750</b>	<b>£1,064,134</b>	<b>£1,284,018</b>
<b>NET TOTAL COST/BENEFIT</b>		<b>(£1,303,028)</b>	<b>(£1,374,432)</b>	<b>(£1,611,164)</b>
<b>NET STATUTORY COST/BENEFIT</b>		<b>(£1,806,570)</b>	<b>(£2,244,967)</b>	<b>(£2,666,866)</b>
<b>NET NON-STATUTORY COST/BENEFIT</b>		<b>£503,542</b>	<b>£870,535</b>	<b>£1,055,702</b>

## CONCLUSIONS

- The costs of the statutory early discharge process have risen since the introduction of the early discharge provisions and totalled nearly £3m in 2006/7. They are borne by The Insolvency Service, other Government Departments (HM Revenue & Customs and HM Court Service) and businesses. In broad terms, around 25% of the costs are borne by businesses, with the remainder being borne equally between The Insolvency Service and the other Government Departments (as a whole).
- When looking at the statutory early discharge process, no material monetised or non-monetised benefits have been identified. Earlier discharge does not result in any material benefit as on the whole, bankrupts do not act on (or are unable to act on) being granted early discharge.
- In the absence of any benefits associated with the statutory early discharge, it is clear that the statutory costs associated with early discharge are not justified.
- Although there are no significant benefits for bankrupts from early discharge, it appears to act as an 'incentive' for some to comply with the income review. This results in benefits for creditors as realisations under additional IPO/As obtained as a result of the issue of an income review letter to bankrupts. This issue of this letter could be separated from the early discharge process, but without the 'incentive' of early discharge, it would be prudent to expect the realisations to be significantly lower.
- At present, the costs of issuing the income review letter are less than the monies realised under IPO/As obtained as a result of the issue of that letter.
- However, the benefits associated with the internal process of early discharge are insufficient to justify the total costs of the early discharge provisions.

## RECOMMENDATIONS

Recommendations that were made include suggestions such as:

- That The Insolvency Service repeals the early discharge provisions.
- That The Insolvency Service explores the possibility of repealing the early discharge provisions using a LRO as a case can be made that burdens on business would be reduced.
- That The Insolvency Service continues to issue the income review letter for a trial period (say 12 months) and then carries out a cost benefit analysis to assess whether the costs of issuing are justified by any resultant IPO/As obtained.
- That The Insolvency Service considers how, if the early discharge provisions are repealed, the resources freed up will be applied.

## DETAIL

### *The early discharge process*

Section 256 of the Enterprise Act 2002 and section 279(2) of the Insolvency Act 1986 states that if, before the end of one year beginning with the commencement of bankruptcy, the Official Receiver files a notice with the Court that the conduct and affairs of a bankrupt under section 289 of the Insolvency Act 1986 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

The Insolvency Service has also introduced internal guidelines on early discharge. The Insolvency Service's internal policy is that:

- The Official Receiver should wait for 3 months after issuing the report to creditors before starting the early discharge process. The purpose of this time delay is to allow the opportunity for creditors to interact with the Official Receiver and make any representations they feel appropriate.
- An income review is run on those cases in which there is not an IPO/A in force – this involves sending a letter to the bankrupt to confirm that there have been no changes in circumstances which mean that an IPO/A may now be appropriate. If the bankrupt fails to respond to this letter within 21 days, the early discharge process stops. If a response is received within 21 days from the bankrupt, an IPO/A is sought in appropriate cases.

For the purposes of this cost-benefit analysis, a distinction has been made between the costs/benefits that arise as a result of the statute and those that arise as a result of The Service's internal policy.

## Costs

The table below summarises the nature of the costs involved in the early discharge process.

Nature of cost	On whom cost falls	Type of cost	Cost arising as a result of statute or internal policy?
Issue of income review letter	Official Receiver	Time, cost of paper, postage	Internal policy
Issue of notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Official Receiver	Time, cost of paper, postage	Statute
Dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Creditors (mainly businesses and Crown Departments) and any Insolvency practitioner appointed as trustee	Time	Statute
Objecting to intention to file notice under section 279(2) of the Insolvency Act 1986	Creditors (assumed to all be businesses <sup>8</sup> ) and any Insolvency practitioner appointed as trustee	Time, Cost of paper, postage (and court/legal costs if appeal lodged although no such cases identified to date)	Statute
Dealing with objection to intention to file notice under section 279(2) of the Insolvency Act 1986	Official Receiver	Time, cost of paper, postage	Statute
Sending 2 copies of Form 6.82 to court	Official Receiver	Time, cost of paper <sup>9</sup>	Statute
Endorsing Form 6.82 and returning one copy to the Official Receiver	Court	Time	Statute
Sending a copy of the endorsed Form 6.82 to the bankrupt	Official Receiver	Time, cost of paper, postage	Statute
Updating Individual Insolvency Register	Official Receiver (on behalf of Secretary of State)	Time	Statute

<sup>8</sup> The main Crown creditor, HM Revenue & Customs, have confirmed that they do not take any action on receipt of a notice under section 279(2) of the Insolvency Act 1986.

<sup>9</sup> Although The Insolvency Service pays per item sent via DX, all court correspondence is sent in one envelope so no extra postage cost is incurred by The Service in sending Form 6.82 to the Court.

Analysis of The Insolvency Service's records shows that since the early discharge provisions were introduced, the following levels of early discharges have been granted:

	<b>2004/5</b>	<b>2005/6</b>	<b>2006/7</b>
Number of bankruptcy orders <sup>10</sup>	37,562	53,386	64,610
Number of early discharges granted <sup>11</sup>	18,790	23,126	27,239
% of bankruptcies where early discharge granted	50.0%	43.3%	42.16%

In 2004/5, early discharge was granted in 18,790 cases. From internal records of The Insolvency Service, it appears that:

- 19,474 income review letters were sent, and 14,223 responses were received (which represents a 73% response rate). As a result of replies to the income review letter, action as regards obtaining an IPO/A was required in only 329 cases (which represents 1.7% of all income review letters sent). Income review letters are not sent in cases where an IPO/A has already been obtained, where an insolvency practitioner has been appointed as trustee, or where the circumstances of the bankrupt mean the letter is unnecessary/undesirable, e.g. ill-health of bankrupt, bankrupt is retired, etc..
- The Official Receiver sent notice of his intention to apply for early discharge in around 19,000 cases. As each bankrupt has, on average, seven creditors<sup>12</sup>, this equates to around 133,000 letters. Analysis of a sample of 1,000 RTCs (stratified by region) in 2004/5 shows that the average breakdown of creditor types in bankruptcy is as follows:

<b>Creditor type in 2004/5</b>	<b>% breakdown<sup>13</sup></b>
Businesses	95.25%
Crown	3.95%
Friends/relatives	0.89%

<sup>10</sup> Based on statistics published by The Insolvency Service (previously the DTI Statistics Directorate) (not seasonally adjusted)

<sup>11</sup> Information extracted from The Insolvency Service's internal database

<sup>12</sup> The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm>

<sup>13</sup> The breakdown does not add up to 100% due to rounding.

- The Official Receiver also sends notice of his intention to apply for early discharge to any insolvency practitioner appointed as trustee. The level of cases where an insolvency practitioner is appointed trustee is as follows:

	2004/5	2005/6	2006/7
No. of bankruptcy orders made <sup>14</sup>	37,562	53,386	64,610
No. of cases where an IP has been appointed <sup>15</sup>	4,727	5,443	5,980
% of cases where an IP has been appointed	12.6%	10.2%	9.26%

- Creditors objected in 4.5% of cases – around 855 cases - where the Official Receiver sent notice of his intention to apply for early discharge.
- The Official Receiver filed 18,790 notices of early discharge at court.

This information has been used to estimate the costs of early discharge in 2004/5.

Further, in order to estimate the costs in 2005/6 and 2006/7, figures for the number of income review letters sent, the number of notices of intention to apply for early discharge and the level of objections received have been extrapolated based on the overall level of early discharges obtained in 2005/6 and 2006/7 compared to 2004/5.

Accordingly, an estimate of costs is as follows:

<sup>14</sup> Based on statistics published by The Insolvency Service (previously the DTI Statistics Directorate) (not seasonally adjusted).

<sup>15</sup> Information based on The Insolvency Service's performance data.

2004/5 (based on internal records)

	Number issued/dealt with	Type of cost	Cost per item	Total cost
<b><i>Nature of cost to Official Receiver</i></b>				
Issue of income review letter	19,474 cases	Time (estimated at 15 minutes of A2 time <sup>16</sup> per case)	£7.83	<b>£152,384</b>
		Cost of paper	0.7708p <sup>17</sup>	<b>£150</b>
		Postage	£0.24 <sup>18</sup>	<b>£4,674</b>
Issue of notice of intention to file notice under section 279(2) of the Insolvency Act 1986	19,000 cases, which equates to 133,000 letters <sup>19</sup>	Time (estimated at 30 minutes of A2 time <sup>16</sup> per case)	£15.65	<b>£297,350</b>
		Cost of paper	0.7708p	<b>£1,025</b>
		Postage	£0.24	<b>£31,920</b>
Dealing with objection to intention to file notice under section 279(2) of the Insolvency Act 1986	855 cases	Time (estimated at 1 hour of C2 time <sup>16</sup> per case)	£50.38	<b>£43,075</b>
		Cost of paper	0.7708p	<b>£7</b>
		Postage	£0.24	<b>£205</b>
Sending 2 copies of Form 6.82 to court	18,790 cases	Time (estimated at 15 minutes of A1 time <sup>16</sup> per case)	£6.81	<b>£127,960</b>
		Cost of paper	0.7708p	<b>£145</b>
		Postage	£0.24	<b>£4,510</b>
Sending a copy of the endorsed Form 6.82 to the bankrupt	18,790 cases	Time (estimated at 15 minutes of A1 time <sup>16</sup> per case)	£6.81	<b>£127,960</b>
		Cost of paper	0.7708p	<b>£145</b>
		Postage	£0.24	<b>£4,510</b>
Updating Individual Insolvency Register	18,790 cases	Time (estimated at 5 minutes of A1 time <sup>16</sup> per case)	£2.27	<b>£42,653</b>

***Nature of cost to businesses – creditors and insolvency practitioner (as trustee)***

Creditors dealing with notice of intention to file notice under section	126,683 letters sent <sup>20</sup>	Time (estimated at 5 minutes of middle manager time <sup>21</sup> )	£3.28	<b>£415,520</b>
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<sup>16</sup> Based on an estimate provided by Official Receivers. Provincial A1, A2 and C2 time is charged at £27, £31 and £50 per hour respectively and London A1, A2 and C2 time is charged at £30, £35 and £55 per hour respectively since 1 April 2004 under the Insolvency (Amendment) Regulations 2004 No. 472. In 2004/5, 7.5% of all early charges obtained were in respect of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £27.23, £31.30 and £50.38 per hour respectively.

<sup>17</sup> Based on information provided by The Insolvency Service. A ream of paper (250 sheets) costs £1.64 + VAT. The Insolvency Service cannot recover the VAT payable although it is assumed businesses could.

<sup>18</sup> Based on information provided by The Insolvency Service.

<sup>19</sup> Assuming each bankrupt has, on average, 7 creditors. The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm>

<sup>20</sup> Assuming that 95.25% of creditors were businesses (based on the sampling exercise of reports to creditors in 2004/5) and therefore, 95.25% of the 133,000 section 279(2) notices issued were to businesses.

279(2) of the Insolvency Act 1986				
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	2,394 letters sent <sup>22</sup>	Time(estimated at 5 minutes of middle manager time <sup>21</sup> )	£3.28	<b>£7,852</b>
Objecting to intention to file notice under section 279(2) of the Insolvency Act 1986	855 cases	Time (estimated at 30 minutes of middle manager time <sup>23</sup> )	£19.67	<b>£16,818</b>
		Cost of paper	0.656p <sup>24</sup>	<b>£6</b>
		Postage	£0.24 <sup>25</sup>	<b>£205</b>

***Nature of cost to other Government Departments – HM Revenue & Customs and HM Court Service***

HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	5,254 letters sent <sup>26</sup>	Time (estimated at 5 minutes of AA time <sup>27</sup> )	£0.50	<b>£2,627</b>
HMCS endorsing Form 6.82 and returning one copy to the Official Receiver	18,790 cases	Time <sup>28</sup>	£36.30	<b>£682,077</b>

<sup>21</sup> BIS's Enterprise Directorate advised to use the compliance cost figures used for surveys, and to use this estimate. In 2004/5, the middle manager rate was £39.33 per hour.

<sup>22</sup> Assuming that trustees were appointed in 12.6% of the 19,000 cases where section 279(2) notices were issued.

<sup>23</sup> This time estimate needs to be confirmed. HM Revenue & Customs have confirmed that they do not take any action on receipt of section 279(2) notices and therefore, it is assumed that all objections are received from businesses. In 2004/5, the middle manager rate was £39.33 per hour.

<sup>24</sup> Based on information provided by The Insolvency Service. A ream of paper (250 sheets) costs £1.64 + VAT. It is assumed businesses could reclaim the VAT.

<sup>25</sup> Based on information provided by The Insolvency Service.

<sup>26</sup> Assuming that 3.95% of creditors were HMRC and therefore, 3.95% of the 133,000 section 279(2) notices issued were to HMRC.

<sup>27</sup> This is based on an estimate provided by HM Revenue & Customs. In 2004/5, the rate for an AA was £6.05 per hour.

<sup>28</sup> Confirmation of the cost to HM Court Service has been requested but not yet provided. However, from evidence previously provided by the Court Service, the administrative process associated with the making of an order takes around 15 minutes - this includes the time to locate the necessary file, checking that the order is correct and dealing with the necessary paperwork and administrative tasks – and court staff time is billed at £2.42 per minute, which includes overheads such as salaries, costs, IT and accommodation.

	Number issued/dealt with	Type of cost	Cost per item	Total cost
<b><i>Nature of cost to Official Receiver</i></b>				
Issue of income review letter	Estimated at 23,967 cases	Time (estimated at 15 minutes of A2 time <sup>29</sup> per case)	£7.83	<b>£187,662</b>
		Cost of paper	0.7708p <sup>30</sup>	<b>£185</b>
		Postage	£0.24 <sup>31</sup>	<b>£5,752</b>
Issue of notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 23,384 cases, which equates to 163,688 letters <sup>32</sup>	Time (estimated at 30 minutes of A2 time <sup>29</sup> per case)	£15.66	<b>£366,193</b>
		Cost of paper	0.7708p	<b>£1,262</b>
		Postage	£0.24	<b>£39,285</b>
Dealing with objection to intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 1,052 cases	Time (estimated at one hour of C2 time <sup>29</sup> per case)	£50.39	<b>£53,010</b>
		Cost of paper	0.7708p	<b>£8</b>
		Postage	£0.24	<b>£252</b>
Sending 2 copies of Form 6.82 to court	23,126 cases	Time (estimated at 15 minutes of A1 time <sup>29</sup> per case)	£6.81	<b>£157,488</b>
		Cost of paper	0.7708p	<b>£178</b>
		Postage	£0.24	<b>£5,550</b>
Sending a copy of the endorsed Form 6.82 to the bankrupt	23,126 cases	Time (estimated at 15 minutes of A1 time <sup>29</sup> per case)	£6.81	<b>£157,488</b>
		Cost of paper	0.7708p	<b>£178</b>
		Postage	£0.24	<b>£5,550</b>
Updating Individual Insolvency Register	23,126 cases	Time (estimated at 5 minutes of A1 time <sup>29</sup> per case)	£2.27	<b>£52,496</b>

***Nature of cost to businesses – creditors and insolvency practitioner (as trustee)***

Creditors dealing with notice of intention to file notice under	Estimated at 155,913 letters sent <sup>33</sup>	Time (estimated at 5 minutes of middle manager time <sup>34</sup> )	£3.42	<b>£533,222</b>
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<sup>29</sup> Based on an estimate provided by Official Receivers. Provincial A1, A2 and C2 time is charged at £27, £31 and £50 per hour respectively and London A1, A2 and C2 time is charged at £30, £35 and £55 per hour respectively since 1 April 2004 under the Insolvency (Amendment) Regulations 2004 No. 472. In 2005/6, 7.7% of all early charges obtained were in respect of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £27.23, £31.31 and £50.39 per hour respectively.

<sup>30</sup> Based on information provided by The Insolvency Service. A ream of paper (250 sheets) costs £1.64 + VAT. The Insolvency Service cannot recover the VAT payable although it is assumed businesses could.

<sup>31</sup> Based on information provided by The Insolvency Service.

<sup>32</sup> Assuming each bankrupt has, on average, 7 creditors. The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm>

<sup>33</sup> Assuming that 95.25% of creditors were businesses (based on the sampling exercise of reports to creditors in 2004/5) and therefore, 95.25% of the 163,688 section 279(2) notices issued were to businesses.

section 279(2) of the Insolvency Act 1986				
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 2,385 letters sent <sup>35</sup>	Time(estimated at 5 minutes of middle manager time <sup>34</sup> )	£3.42	<b>£8,157</b>
Objecting to intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 1,052 cases	Time (estimated at 30 minutes of middle manager time <sup>36</sup> )	£20.49	<b>£21,555</b>
		Cost of paper	0.656 <sup>30</sup>	<b>£7</b>
		Postage	£0.24 <sup>31</sup>	<b>£252</b>

***Nature of cost to other Government Departments – HM Revenue & Customs and HM Court Service***

HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 6,466 letters sent <sup>37</sup>	Time (estimated at 5 minutes of AA time <sup>38</sup> )	£0.52	<b>£3,362</b>
HMCS endorsing Form 6.82 and returning one copy to the Official Receiver	23,126 cases	Time <sup>39</sup>	£36.30	<b>£839,474</b>

\* The figures for 2005/6 have been estimated based on the figures for 2004/5 and extrapolated for the number of early discharges granted in 2005/6.

<sup>34</sup> BIS's Enterprise Directorate advised to use the compliance cost figures used for surveys, and to use this estimate. In 2005/6, the middle manager rate was £40.98 per hour.

<sup>35</sup> Assuming that trustees were appointed in 10.2% of the 23,384 cases where section 279(2) notices were issued.

<sup>36</sup> This time estimate needs to be confirmed. HM Revenue & Customs have confirmed that they do not take any action on receipt of section 279(2) notices and therefore, it is assumed that all objections are received from businesses. In 2005/6, the middle manager rate was £40.98 per hour.

<sup>37</sup> Assuming that 3.95% of creditors were HMRC and therefore, 3.95% of the 163,688 section 279(2) notices issued were to HMRC.

<sup>38</sup> This is based on an estimate provided by HM Revenue & Customs. In 2005/6, the rate for an AA was £6.21 per hour.

<sup>39</sup> Confirmation of the cost to HM Court Service has been requested but not yet provided. However, from evidence previously provided by the Court Service, the administrative process associated with the making of an order takes around 15 minutes - this includes the time to locate the necessary file, checking that the order is correct and dealing with the necessary paperwork and administrative tasks – and court staff time is billed at £2.42 per minute, which includes overheads such as salaries, costs, IT and accommodation.

	Number issued/dealt with	Type of cost	Cost per item	Total cost
<b><i>Nature of cost to Official Receiver</i></b>				
Issue of income review letter	Estimated at 28,230 cases	Time (estimated at 15 minutes of A2 time <sup>40</sup> )	£7.84	<b>£221,323</b>
		Cost of paper	0.7708p <sup>41</sup>	<b>£218</b>
		Postage	£0.24 <sup>42</sup>	<b>£6,775</b>
Issue of notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 27,543 cases, which equates to 192,804 letters <sup>43</sup>	Time (estimated at 30 minutes of A2 time <sup>40</sup> )	£15.68	<b>£431,874</b>
		Cost of paper	0.7708p	<b>£1,486</b>
		Postage	£0.24	<b>£46,273</b>
Dealing with objection to intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 1,239 cases	Time (estimated at one hour of C2 time <sup>40</sup> per case)	£50.44	<b>£62,495</b>
		Cost of paper	0.7708p	<b>£955</b>
		Postage	£0.24	<b>£297</b>
Sending 2 copies of Form 6.82 to court	27,239 cases	Time (estimated at 15 minutes of A1 time <sup>40</sup> )	£6.82	<b>£185,770</b>
		Cost of paper	0.7708p	<b>£210</b>
		Postage	£0.24	<b>£6,537</b>
Sending a copy of the endorsed Form 6.82 to the bankrupt	27,239 cases	Time (estimated at 15 minutes of A1 time <sup>40</sup> )	£6.82	<b>£185,770</b>
		Cost of paper	0.7708p	<b>£210</b>
		Postage	£0.24	<b>£6,537</b>
Updating Individual Insolvency Register	27,239 cases	Time (estimated at 5 minutes of A1 time <sup>40</sup> per case)	£2.27	<b>£61,833</b>

***Nature of cost to businesses – creditors and insolvency practitioner (as trustee)***

Creditors dealing with notice of intention to file notice under	Estimated at 183,646 letters sent <sup>44</sup>	Time (estimated at 5 minutes of middle manager time <sup>45</sup> )	£3.53	<b>£648,270</b>
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<sup>40</sup> Based on an estimate provided by Official Receivers. Provincial A1, A2 and C2 time is charged at £27, £31 and £50 per hour respectively and London A1, A2 and C2 time is charged at £30, £35 and £55 per hour respectively since 1 April 2004 under the Insolvency (Amendment) Regulations 2004 No. 472. In 2006/7, 8.8% of all early charges obtained were in respect of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £27.26, £31.35 and £50.44 per hour respectively.

<sup>41</sup> Based on information provided by The Insolvency Service. A ream of paper (250 sheets) costs £1.64 + VAT. The Insolvency Service cannot recover the VAT payable although it is assumed businesses could.

<sup>42</sup> Based on information provided by The Insolvency Service.

<sup>43</sup> Assuming each bankrupt has, on average, 7 creditors. The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm>

<sup>44</sup> Assuming that 95.25% of creditors were businesses (based on the sampling exercise of reports to creditors in 2004/5) and therefore, 95.25% of the 192,804 section 279(2) notices issued were to businesses.

section 279(2) of the Insolvency Act 1986				
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 2,550 letters sent <sup>46</sup>	Time (estimated at 5 minutes of middle manager time <sup>45</sup> )	£3.53	<b>£9,002</b>
Objecting to intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 1,239 cases	Time (estimated at 30 minutes of middle manager time <sup>47</sup> )	£21.17	<b>£26,230</b>
		Cost of paper	0.656p <sup>41</sup>	<b>£8</b>
		Postage	£0.24 <sup>42</sup>	<b>£297</b>

***Nature of cost to other Government Departments – HM Revenue & Customs and HM Court Service***

HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	Estimated at 7,616 letters sent <sup>48</sup>	Time (estimated at 5 minutes of AA time <sup>49</sup> )	£0.53	<b>£4,036</b>
HMCS endorsing Form 6.82 and returning one copy to the Official Receiver	27,239 cases	Time <sup>50</sup>	£36.30	<b>£988,776</b>

\* The figures for 2006/7 has been estimated based the figure for 2004/5 and extrapolated for the number of early discharges granted in 2006/7.

<sup>45</sup> BIS's Enterprise Directorate advised to use the compliance cost figures used for surveys, and to use this estimate. In 2006/7, the middle manager rate was £42.33 per hour.

<sup>46</sup> Assuming that trustees were appointed in 9.26% of the 27,543 cases where section 279(2) notices were issued.

<sup>47</sup> This time estimate needs to be confirmed. HM Revenue & Customs have confirmed that they do not take any action on receipt of section 279(2) notices and therefore, it is assumed that all objections are received from businesses. In 2006/7, the middle manager rate was £42.33 per hour.

<sup>48</sup> Assuming that 3.95% of creditors were HMRC and therefore, 3.95% of the 192,804 section 279(2) notices issued were to HMRC.

<sup>49</sup> This is based on an estimate provided by HM Revenue & Customs. In 2006/7, the rate for an AA was £6.37 per hour.

<sup>50</sup> Confirmation of the cost to HM Court Service has been requested but not yet provided. However, from evidence previously provided by the Court Service, the administrative process associated with the making of an order takes around 15 minutes - this includes the time to locate the necessary file, checking that the order is correct and dealing with the necessary paperwork and administrative tasks – and court staff time is billed at £2.42 per minute, which includes overheads such as salaries, costs, IT and accommodation.

## **Annex G - The Consultation Code of Practice Criteria**

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