

DEBT RELIEF ACT (NORTHERN IRELAND) 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Debt Relief Act (Northern Ireland) 2010 which received Royal Assent on 15 December 2010. They have been prepared by the Department of Enterprise, Trade and Investment in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The procedures under the current law which individuals can use to free themselves from burdensome debts can only be accessed by those with funds or assets which can be sold to raise funds.
4. Individuals unable to pay their debts as they fall due can attempt to set up an individual voluntary arrangement under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”). This will give them extra time to pay their creditors in full or in part. An arrangement is only feasible if the individual has assets which can be sold to raise money, or income over and above what they need to live on which they can use to pay their creditors by instalment.
5. Individuals who have no prospect of being able to pay their debts can petition the Northern Ireland High Court to be declared bankrupt. A Bankruptcy Order gives protection against action by creditors for a one year period, at the end of which the individual will, subject to certain exceptions, be fully discharged from liability for their debts.
6. Individuals petitioning to be made bankrupt have to pay a £345 deposit to the Department, and if they are in employment, a £115 fee to the Court.
7. Those who can neither fund an individual voluntary arrangement nor afford the cost of petitioning for bankruptcy are left without access to a remedy which they can use to free themselves from a lifetime burdened by debt they have no reasonable prospect of being able to pay.

8. A Debt Relief scheme was brought into operation in England and Wales on 6 April 2009 to assist individuals in this position. This scheme enables individuals who cannot afford to petition for bankruptcy to apply instead to the Official Receiver for a Debt Relief Order provided they meet certain eligibility conditions (in Northern Ireland the Official Receiver is an official of this Department and an officer of the Court). A Debt Relief Order has similar effect to a Bankruptcy Order made by the Court but costs substantially less.

9. The Debt Relief scheme is not simply tantamount to a cheaper form of bankruptcy as it does not involve the distribution of an estate.

10. The fact that the current remedies for debt in Northern Ireland can be outside a debtor's financial reach means that there is a need for a similar scheme in Northern Ireland.

11. A further matter is that the Department wishes to acquire specific statutory power to enable it to provide information and advice to the public on debt relief and related matters. The Department intends to undertake this function by engaging organisations specialising in provision of debt advice to act on its behalf under contract, or to be able to provide them with financial assistance for the purpose.

CONSULTATION

12. The Department carried out a public consultation on its proposals during the period 11 February to 6 May 2009. A letter was issued to over 400 individuals and organisations referring to a consultation document and list of questions on the Department's website. Meetings were also held with the Enforcement of Judgments Office to discuss how the Debt Relief scheme would interact with any action being taken by them, with the Federation of Small Businesses to discuss whether the scheme would have any impact on their members and with the Irish League of Credit Unions to discuss how the interests of their member unions could be safeguarded.

13. A total of 22 responses to the consultation were received. The majority of respondents gave a general welcome to the setting up of a Debt Relief scheme, although some had reservations about specific issues. One local Council expressed concern that the scheme could be abused by unscrupulous debtors and might have a negative impact on rate collection. The Irish League of Credit Unions was worried about the possible impact on their members' ability to recover monies due on loans to their clientele. No comments were received on the Department's proposal to acquire specific statutory power enabling it to provide information and advice on debt relief.

OVERVIEW

14. The Act contains 9 sections and 1 Schedule. As regards Debt Relief the Act operates by inserting new provisions into the 1989 Order as follows.

Provision in Debt Relief Act	Provisions inserted into 1989 Order
Section 1	Part 7A
Section 2	Schedule 2ZA
Section 3	Schedule 2ZB

Section 6 and the Schedule make consequential amendments to the 1989 Order and other legislation.

COMMENTARY ON SECTIONS

Section 1: Debt relief orders

This Section inserts a new Part 7A into the 1989 Order, thereby establishing a new individual insolvency procedure based on the Official Receiver being able to provide eligible individuals with relief from debt through the making of a debt relief order (“DRO”).

Part 7A to the 1989 Order

Article 208A: Debt Relief Orders

This Article provides that application for a debt relief order may only be made by individuals who are unable to pay their debts. It also identifies the debts in respect of which a DRO may be made and terms them “qualifying debts”. The debts must be for an identifiable amount of money and must not be secured or fall within any description of debt prescribed by rules as excluded from being a qualifying debt.

Article 208B: Making of application

This Article prescribes the way in which an application to the Official Receiver for a DRO is to be made. The application must be made through an approved intermediary. The term “approved intermediary” is defined later in Article 208U. The Article sets out some of the detail about the individual’s affairs which must be included in a application for a DRO, and makes provision for insolvency rules made under Article 359 to prescribe the form and manner in which the application should be made and the information which must be supplied in support of it.

Article 208C: Duty of Official Receiver to consider and determine application

Once an application has been made the Official Receiver must decide whether to make, refuse or stay the application pending further enquiries. This Article describes the steps the Official Receiver should take when an application for a DRO has been made. It allows the Official Receiver to stay his consideration of the application until he receives answers to any queries he has raised with the debtor. It sets out the circumstances in which the Official Receiver must refuse the application (if he is not satisfied that the debtor meets the criteria for a DRO) and also that he may refuse the application if it does not satisfy the requirements imposed by Article 208B or if queries raised with the debtor have not been answered to the Official Receiver's satisfaction. If the Official Receiver refuses the application he must give reasons to the debtor. If the Official Receiver does not refuse the application he must make the order.

Article 208D: Presumptions applicable to the determination of an application

In order to ensure that there is a uniform approach to the order making process and that the great majority of applications can be decided quickly, the Official Receiver must apply certain presumptions when determining an application for a DRO. This Article requires the Official Receiver to presume,

(a) that the debtor meets the requirements for a DRO if this appears to be the case from the information supplied in the application and he has no reason to believe that the information supplied is inaccurate or that the debtor's circumstances have changed since the application date;

(b) that the debtor meets the conditions as to eligibility set out in Schedule 2ZA providing he has no reason to believe that incomplete or inaccurate information has been supplied in the application or in support of it;

(c) that the debts specified at the date of the application are qualifying debts unless he has reason to believe otherwise.

It is expected that the involvement of authorised intermediaries in filling in and submitting application forms will result in most applications being well-founded. Article 208D allows the Official Receiver to make orders where the application appears to be in order without considering the case in any more detail. However he will be expected to look a case in far greater detail if an objection is made to the order or he discovers that for any reason it arguably should not have been made. This is thought to provide adequate protection for creditors and will ensure that the administrative costs, and hence the application fees, can be kept as low as possible.

Article 208E: Making of debt relief orders

This Article makes provision as to the form of a DRO, including some of the matters which must be included in the order, for example a list of the debtor's qualifying debts. It places the Official Receiver under a requirement to enter details of the DRO in the register of debt relief orders maintained by the Department. It makes provision for the steps which the Official

Receiver must take once the order has been made, including giving a copy of the order to the debtor, and allows for rules to prescribe other steps the Official Receiver must take, in particular with regard to notifying creditors and informing them of the grounds on which they may object.

Article 208F: Effect of debt relief order on administration order

This Article provides that if a debtor is subject to an administration order made by the Enforcement of Judgment Office the administration order ceases to be in force on the making of a debt relief order.

Article 208G: Moratorium from qualifying debts

Article 208G sets out further effects of a DRO. A moratorium in relation to the debts specified in the order takes effect on the order being entered in the register. Any petition, action or other proceeding by a creditor to whom a specified debt is owed which is pending in any court can be stayed by that court. During the moratorium creditors specified in the order are prohibited from taking proceedings to enforce their debts or presenting bankruptcy proceedings in relation to those debts, except with the leave of the High Court.

Article 208H: The moratorium period

In most cases, the moratorium period is one year from the date on which the order is entered in the register. However, the order may be terminated early, for example if the debtor's financial circumstances change so that he could make arrangements to pay creditors, or if he has been found to have provided misleading information on his application.

The Article makes provision for the moratorium period to be extended by the Official Receiver or the court and the circumstances in which an extension is permitted. Such circumstances included carrying out or completing an investigation into the debtor's affairs (only with permission of the court) or providing the debtor with an opportunity to make arrangements to pay his creditors before revoking the order.

Article 208I: Discharge from qualifying debts

Article 208I provides for the debtor to be discharged from his qualifying debts as specified in the order at the end of the moratorium period, and the circumstances in which the debtor will not be discharged from the debts – in particular if the moratorium period is terminated early. The debtor will not be discharged from any debts listed in the order that were incurred through fraud. The Article also specifies that discharge of the debtor from the debts does not release any other person from their liability for the debts.

Article 208J: providing assistance to Official Receiver etc.

This Article sets out the requirements imposed on the debtor with regard to assisting the Official Receiver in carrying out his functions. It requires the debtor to provide the Official Receiver with information about his affairs and attend on the Official Receiver. The requirement extends so far as the Official Receiver may reasonably require in order to carry out his functions in relation to the application or the debt relief order made as a result of it.

The debtor is also under a duty to notify the Official Receiver of changes in his circumstances before and during the moratorium period. He must also notify the Official Receiver if he becomes aware of any errors or omissions in his application.

Article 208K: Objections and Investigations

Creditors are permitted to object to the making of the order on specified grounds and this Article makes provision for that. In particular, the Article makes provision for any person specified in the order as a creditor to object to the making of the order or his inclusion in the order or to details of the debt specified. It also gives details of how the objection must be made and requires the Official Receiver to consider the objection. It allows the Official Receiver to carry out an investigation if it seems appropriate and gives a power to the Official Receiver to require any person to give him information and assistance.

Article 208L: Power of Official Receiver to revoke or amend a debt relief order

This Article sets out the circumstances in which the Official Receiver may revoke the order and gives him a power to amend the order during the moratorium period to correct errors and omissions. Revocation may take place when information provided by the debtor to the Official Receiver turns out to be incomplete or misleading, or where the debtor fails to comply with his duties to provide information or attend on the Official Receiver. The order may also be revoked if the Official Receiver ought not have made the order because he ought not to have been satisfied the criteria were met and also if the debtor's income and property levels change (for example following a windfall) after the order has been made and the debtor would no longer meet the criteria for obtaining an order.

Article 208M: Powers of High Court in relation to debt relief orders

This Article enables persons who are dissatisfied with the actions of the Official Receiver to apply to the High Court and for the Court to give directions or make any order it thinks fit. It also enables the Official Receiver to make an application for directions or an order in relation to any matter arising in connection with the DRO or an application for a DRO. An application to the Court may, subject to anything contained in the rules, be made at any time.

Article 208N: Inquiry into debtor's dealings and property

This Article enables the High Court, on the application of the Official Receiver, to require the debtor, the debtor's spouse, former spouse, civil partner or former civil partner or any person appearing to be able to give information or assistance to the Court to appear before the Court. There are sanctions for failure to appear without reasonable excuse – the Court may issue a warrant for the person's arrest or order the seizure of books, papers and other items. It is not expected that there will be a frequent use of this power, which is aimed at a very small number of cases where misconduct – for example the hiding of assets – is suspected and the debtor has refused to provide information to the Official Receiver.

Article 208O: False representations and omissions

In order that the Official Receiver can determine whether a DRO should be made, the debtor must provide complete and accurate information about his affairs. Similarly, the debtor remains under an obligation to provide information to the Official Receiver once the DRO is made. This Article provides that a debtor who deliberately provides false information or omits pertinent information commits an offence.

Article 208P: Concealment or falsification of documents

This Article provides that a failure to produce books, papers or other documents to the Official Receiver is an offence. Similarly, preventing such records being produced, or their concealment, destruction or falsification will also be an offence. The offence may be committed before the application for the DRO has been made, and during both the application process and the moratorium period, and it is irrelevant that the order may have been revoked subsequent to an offence being committed.

Article 208Q: Fraudulent disposal of property

To be eligible for a DRO, the debtor must meet various conditions including a limit on the value of property he owns. Article 208Q makes it is an offence for a debtor who has obtained a DRO to have disposed of any property during the two years before the application date or during the moratorium period. An offence will still be committed even if the Debt Relief Order is revoked subsequent to the property being disposed of. It will be a defence for a person charged with this offence to prove that he had no intent to defraud or to conceal the state of his affairs.

Article 208R: Fraudulent dealing with property obtained on credit

This Article makes it an offence if the debtor disposes of property obtained on credit which he has not paid for, and similarly penalises the knowing recipient of such property. No offence is committed if the disposal or acquisition was in the ordinary course of the debtor's business, but particular attention will be paid to the price paid for the property. The offence may be committed before the application for the DRO has been made, and during the application process.

Article 208S: Obtaining credit or engaging in business

This Article makes it an offence for the debtor to obtain credit (either alone or jointly with another person) to the extent of a prescribed amount, or to trade in a name other than that which the DRO was made, without disclosing his status. His status is that there is a moratorium is in force in relation to his qualifying debts by virtue of a DRO or that there is a debt relief restrictions order in force in relation to him. Paragraph (5) specifies that "obtaining credit" includes obtaining goods under a hire purchase agreement and also payment in advance for the supply of goods and services.

Article 208T: Offences: supplementary

This Article sets out who may institute proceedings for an offence under this Part and the penalties imposed on a person who commits such an offence. The Article also makes it clear it is not a defence that the conduct complained of was done outside Northern Ireland.

Article 208U: Approved intermediaries

In order to obtain a debt relief order, the debtor must make his application to the Official Receiver through an approved intermediary. This Article defines an approved intermediary and makes provision for rules to specify the types of activities that should be undertaken by an intermediary.

It states that authorisation will be granted by a competent authority designated by the Department of Enterprise, Trade and Investment to grant authorisations, and allows for regulations to make provision as to the procedure for designating persons to be competent authorities, the types of persons who may not be authorised to act as approved intermediaries, the procedure for dealing with applications to competent authorities for authorisation and the withdrawal of designation to act as a competent authority.

It authorises the Department to use fees charged to applicants in respect of the costs of persons acting as approved intermediaries to make payments to competent authorities or approved intermediaries in connection with the exercise by approved intermediaries of functions under Part 7A of the 1989 Order.

Article 208V: Debt relief restrictions orders and undertakings

This Article gives effect to Schedule 2ZB, which makes provision about debt relief restrictions orders. Such orders will be very similar in operation and effect to bankruptcy restriction orders which already exist.

Article 208W: Register of debt relief orders etc.

Article 208W requires the Department of Enterprise, Trade and Investment to establish and maintain a register of DROs, debt relief restrictions orders and debt relief restriction undertakings.

Article 208X: Interpretation

This Article defines the meaning of various expressions used in this Part of the Insolvency (Northern Ireland) Order 1989.

Section 2: Conditions for making a debt relief order

Section 2 inserts a new Schedule 2ZA into the 1989 Order. Schedule 2ZA sets out the conditions for making a debt relief order.

Part 1 - Conditions which must be met

This part of the schedule sets out conditions that the debtor must meet in order to obtain a DRO. The debtor must be domiciled in Northern Ireland on the application date or at any time during the period of three years ending with that date have been ordinarily resident in or carried on business in Northern Ireland. The debtor must not,

- be an undischarged bankrupt;
- be subject to an individual voluntary arrangement;
- be subject to a bankruptcy restrictions order;
- be subject to a debt relief restrictions order;
- have had a debt relief order made within the 6 years prior to the determination date.

If the debtor has presented a bankruptcy petition a Debt Relief Order can only be made if,

- (a) proceedings on that petition have been disposed of or,
- (b) the Court has referred the debtor to an intermediary under Article 248A(2) of the 1989 Order for the purposes of making an application for a debt relief order.

If a creditor has presented a petition to have the debtor made bankrupt a Debt Relief Order can only be made if,

- (a) proceedings on that petition have been disposed of or,
- (b) whoever presented the petition has consented to the debtor applying for a Debt Relief Order.

The schedule imposes limits on the permitted level of overall indebtedness (the amount of which is to be prescribed in an order), a limit on the debtor's permitted surplus monthly income (also to be prescribed in an order), and a limit on the value of the debtor's property (also to be prescribed in an order).

Part 2 - Other conditions

This part of the schedule sets out other conditions which the debtor must meet in order to obtain a DRO, specifically that he must not have entered into a transaction at an undervalue or given a preference to another person within the two years prior to the application date, and the determination date. This is in order to avoid a situation where the debtor has disposed of his assets in order to meet the permitted criteria for obtaining a debt relief order, and to protect the position of creditors.

Section 3: Debt relief restrictions orders and undertakings

Section 3 inserts a new Schedule 2ZB into the 1989 Order. Schedule 2ZB creates a regime of debt relief restrictions orders and undertakings.

Debtors who are guilty of misconduct that has in some way contributed to their insolvency will be subject to an enforcement regime that encompasses restrictions orders in the same way as bankruptcy. Schedule 2ZB sets out who may apply for a debt relief restrictions order or undertaking and possible grounds for obtaining one and gives details as to the timing of an application and the duration of the order or undertaking. Such orders may last from 2-15 years and will serve to protect the public from the culpable debtor. Whilst subject to a restrictions order, the debtor will remain subject to the same disabilities as those imposed by the original order – for example he will not be able to obtain credit beyond the prescribed amount without disclosing his status.

Section 4: Advice in relation to relief of debt and related matters

Section 4 empowers the Department of Enterprise, Trade and Investment to itself provide advice and information to the public about relief of debt and related matters or to make arrangements with others to do so. The Department is given the right to make grants or loans in connection with the provision of such advice and information.

Section 4 also empowers the Department to either itself carry out research in relation to debt relief and related matters or to assist others in carrying out such research, including through the provision of financial assistance.

Section 5: Power to make consequential amendments, etc.

Section 5 allows the Department to make such supplementary, incidental, transitional, transitory, or consequential provisions by order as it considers appropriate in connection with the Act.

Section 6: Minor and consequential amendments

Section 6 gives effect to the Schedule which contains minor and consequential amendments.

Section 7: Commencement

This section contains provision for the commencement of the Act.

Section 8: Interpretation

This section contains definitions of words and phrases used in the Act.

Section 9: Short title

Section 9 provides for the Act to be known as the Debt Relief Act (Northern Ireland) 2010.

*This Notes refer to the Debt Relief Act (Northern Ireland) 2010 (c.16)
which received Royal Assent on 15 December 2010*

HANSARD REPORTS

15. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction of the Act to the Committee for Enterprise, Trade and Investment	18 February 2010
First Stage – Introduction to the Assembly	9 March 2010
Second Stage debate	23 March 2010
Committee Stage – evidence from Advice NI	13 May 2010
Committee Stage – general consideration of sections and Schedule	20 May 2010
Committee Stage – formal section by section scrutiny of the Act; agreement given to sections 1, 3 to 9 and Schedule, and section 2 referred for further consideration	3 June 2010
Committee Stage – section 2 agreed	10 June 2010
Committee Stage – consideration of Committee's draft report	17 June 2010
Committee's report on the Act – Report number 67/09/10R	24 June 2010
Consideration Stage in the Assembly	5 October 2010
Further Consideration Stage	1 November 2010
Final Stage	9 November 2010
Royal Assent	15 December 2010

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