

## **EXPLANATORY MEMORANDUM TO**

### **The Insolvency (Amendment) Rules (Northern Ireland) 2011**

#### **SR 2011 No. 151**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department"), as the Department with lead responsibility for insolvency matters in Northern Ireland, on behalf of the Department of Justice, to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 359 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. These Rules amend the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) ("the principal Rules"), which lay down procedural rules governing the administration of company and individual insolvencies. Changes are required to the principal Rules, to establish detailed procedure for the operation of a new Debt Relief Scheme.
- 2.2. The amendments provide the rules for giving effect to the introduction of Debt Relief Orders, Debt Relief Restrictions Orders and Debt Relief Restrictions Undertakings.

#### **3. Background**

- 3.1. Insolvency Rules are made by the Department of Justice with the concurrence of this Department and, where the Rules affect court procedure, as these Rules do, the Lord Chief Justice, having consulted the Committee appointed to review Rules. Overall responsibility for insolvency policy rests with this Department.
- 3.2. These Rules form part of a group of statutory rules giving effect to the introduction of Debt Relief Orders, Debt Relief Restrictions Orders and Debt Relief Restrictions Undertakings by new Part 7A and Schedules 2ZA and 2ZB inserted into the 1989 Order by the Debt Relief Act (Northern Ireland) 2010.
- 3.3. The new provisions inserted into the 1989 Order enable the Official Receiver to make Debt Relief Orders in the case of eligible individuals. A Debt Relief Order is an individual insolvency solution aimed at debtors who cannot afford to petition for bankruptcy and who have relatively low liabilities, no realisable assets and little or no disposable income with which to make payments to creditors. The fee payable on an application for a Debt Relief Order will be substantially less than what it would cost to petition for bankruptcy.

- 3.4. An application for a Debt Relief Order will only be possible through experienced debt advisers who have been approved by designated competent authorities to act as intermediaries. This is to ensure that debtors will have received debt advice before deciding that an application for a Debt Relief Order would be the best option. To qualify for a Debt Relief Order a person must meet certain criteria including limits on the levels of their assets, liabilities and surplus income.
- 3.5. On receipt of the application and on payment of a fee, which will be substantially less than what it would cost to petition for bankruptcy, the Official Receiver will decide whether to make a Debt Relief Order, based on whether the criteria have been met. If an Order is made the debtor and all qualifying creditors are notified. After a period of, usually, one year, during which the debtor is protected against action by creditors whose debts are listed in the Order, the debtor is discharged from those liabilities.
- 3.6. Creditors are able to object to the making of the Order. Should a valid objection be raised, or should the debtor's circumstances change so that he or she could make a significant contribution to his or her creditors, the Official Receiver can revoke the Order, leaving the debtor to negotiate repayments with his or her creditors.
- 3.7. Debtors found to be culpable of specified behaviour can be kept under continuing restrictions as regards taking credit or the name in which they can trade after they have been discharged from a Debt Relief Order through the making of a Debt Relief Restrictions Order by the Court or the giving of a Debt Relief Restrictions Undertaking to the Department.
- 3.8. The Rules determine in detail, amongst other things, the form and manner in which: - (a) applications are to be made for Debt Relief Orders; (b) Debt Relief Orders are made by the official receiver; (c) notice is to be given of the making of such an Order; (d) objections may be made by creditors; (e) applications may be made by or on behalf of the Department for Debt Relief Restrictions Orders; (f) registers of Debt Relief Orders made and revoked are to be kept.
- 3.9. The Rules also include provisions governing the activities of the approved intermediaries and provisions in relation to Debt Relief Restrictions Orders and Undertakings.

#### **4. Consultation**

- 4.1. During development of the primary legislation, a formal policy consultation was carried out over the period 11 February to 6 May 2009. Approximately 460 individuals and organisations were notified by letter about the consultation, including politicians and organisations engaged in providing debt advice.
- 4.2. It is not considered necessary to consult separately on these Rules as they merely establish necessary detail, following on from the policy enshrined in the primary legislation.

#### **5. Equality Impact**

- 5.1. A screening exercise on the policy proposals carried out during development of the primary legislation did not show any adverse or

differential impact on any of the groups listed in section 75 of the Northern Ireland Act 1998.

## **6. Regulatory Impact**

- 6.1. A Regulatory Impact assessment was prepared for the primary legislation. A separate Regulatory Impact assessment has not been prepared as these Rules will not impose any additional costs on business and will not impact on charities, social enterprise or voluntary bodies.

## **7. Financial Implications**

- 7.1. None.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The provisions of these Rules are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with European Union Law and Convention Rights as defined in the Human Rights Act 1998.

## **9. EU Implications**

- 9.1. Not applicable.

## **10. Parity or Replicatory Measure**

- 10.1. These Rules are in line with amendments made by the Insolvency (Amendment) Rules 2009 (S.I. 2009 No. 642) which apply in England and Wales.

## **11. Additional Information**

- 11.1. Not applicable.