

*Status: Point in time view as at 15/12/2010. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Debt Relief Act (Northern Ireland) 2010. (See end of Document for details)*



# Debt Relief Act (Northern Ireland) 2010

2010 CHAPTER 16

An Act to make provision about the relief of debt of individuals and for connected purposes. [15th December 2010]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

VALID FROM 30/06/2011

## **Debt relief orders**

**1** In the Order of 1989—

- (a) omit the heading to Parts 8 to 10 (insolvency of individuals; bankruptcy) immediately following Article 208;
- (b) before the heading to Part 8 (individual voluntary arrangements) insert—

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“ PARTS  
7A TO 10

INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

**PART 7A**

DEBT RELIEF ORDERS

*Preliminary*

**Debt relief orders**

**208A.**—(1) An individual who is unable to pay his debts may apply for an order under this Part (“a debt relief order”) to be made in respect of his qualifying debts.

(2) In this Part “qualifying debt” means (subject to paragraph (3)) a debt which—

- (a) is for a liquidated sum payable either immediately or at some certain future time; and
- (b) is not an excluded debt.

(3) A debt is not a qualifying debt to the extent that it is secured.

(4) In this Part “excluded debt” means a debt of any description prescribed for the purposes of this paragraph.

*Applications for a debt relief order*

**Making of application**

**208B.**—(1) An application for a debt relief order must be made to the official receiver through an approved intermediary.

(2) The application must include—

- (a) a list of the debts to which the debtor is subject at the date of the application, specifying the amount of each debt (including any interest, penalty or other sum that has become payable in relation to that debt on or before that date) and the creditor to whom it is owed;
- (b) details of any security held in respect of any of those debts; and
- (c) such other information about the debtor's affairs (including his creditors, debts and liabilities and his income and assets) as may be prescribed.

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(3) The rules may make further provision as to—

- (a) the form of an application for a debt relief order;
- (b) the manner in which an application is to be made; and
- (c) information and documents to be supplied in support of an application.

(4) For the purposes of this Part an application is not to be regarded as having been made until—

- (a) the application has been submitted to the official receiver; and
- (b) any fee required in connection with the application by an order under Article 361 has been paid to such person as the order may specify.

#### **Duty of official receiver to consider and determine application**

**208C.**—(1) This Article applies where an application for a debt relief order is made.

(2) The official receiver may stay consideration of the application until he has received answers to any queries raised with the debtor in relation to anything connected with the application.

(3) The official receiver must determine the application by—

- (a) deciding whether to refuse the application;
- (b) if he does not refuse it, by making a debt relief order in relation to the specified debts he is satisfied were qualifying debts of the debtor at the application date;

but he may only refuse the application if he is authorised or required to do so by any of the following provisions of this Article.

(4) The official receiver may refuse the application if he considers that—

- (a) the application does not meet all the requirements imposed by or under Article 208B;
- (b) any queries raised with the debtor have not been answered to the satisfaction of the official receiver within such time as he may specify when they are raised;
- (c) the debtor has made any false representation or omission in making the application or on supplying any information or documents in support of it.

(5) The official receiver must refuse the application if he is not satisfied that—

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- (a) the debtor is an individual who is unable to pay his debts;
- (b) at least one of the specified debts was a qualifying debt of the debtor at the application date;
- (c) each of the conditions set out in Part 1 of Schedule 2ZA is met.

(6) The official receiver may refuse the application if he is not satisfied that each condition specified in Part 2 of Schedule 2ZA is met.

(7) If the official receiver refuses an application he must give reasons for his refusal to the debtor in the prescribed manner.

(8) In this Article “specified debt” means a debt specified in the application.

#### **Presumptions applicable to the determination of an application**

**208D.**—(1) The following presumptions are to apply to the determination of an application for a debt relief order.

(2) The official receiver must presume that the debtor is an individual who is unable to pay his debts at the determination date if—

- (a) that appears to the official receiver to be the case at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate; and
- (b) he has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.

(3) The official receiver must presume that a specified debt (of the amount specified in the application and owed to the creditor so specified) is a qualifying debt at the application date if—

- (a) that appears to him to be the case from the information supplied in the application; and
- (b) he has no reason to believe that the information supplied is incomplete or inaccurate.

(4) The official receiver must presume that the condition specified in paragraph 1 of Schedule 2ZA is met if—

- (a) that appears to him to be the case from the information supplied in the application;
- (b) any prescribed verification checks relating to the condition have been made; and
- (c) he has no reason to believe that the information supplied is incomplete or inaccurate.

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(5) The official receiver must presume that any other condition specified in Part 1 or 2 of Schedule 2ZA is met if—

- (a) that appears to him to have been the case as at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate;
- (b) any prescribed verification checks relating to the condition have been made; and
- (c) he has no reason to believe that, by virtue of a change in circumstances since the application date, the condition may no longer be met.

(6) References in this Article to information supplied in the application include information supplied to the official receiver in support of the application.

(7) In this Article “specified debt” means a debt specified in the application.

#### *Making and effect of debt relief order*

##### **Making of debt relief orders**

**208E.**—(1) This Article applies where the official receiver makes a debt relief order on determining an application under Article 208C.

(2) The order must be made in the prescribed form.

(3) The order must include a list of the debts which the official receiver is satisfied were qualifying debts of the debtor at the application date, specifying the amount of the debt at that time and the creditor to whom it was then owed.

(4) The official receiver must—

- (a) give a copy of the order to the debtor; and
- (b) make an entry for the order in the register containing the prescribed information about the order or the debtor.

(5) The rules may make provision as to other steps to be taken by the official receiver or the debtor on the making of the order.

(6) Those steps may include in particular notifying each creditor to whom a qualifying debt specified in the order is owed of—

- (a) the making of the order and its effect,
- (b) the grounds on which a creditor may object under Article 208K, and

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(c) any other prescribed information.

(7) In this Part the date on which an entry relating to the making of a debt relief order is first made in the register is referred to as “the effective date”.

#### **Effect of debt relief order on administration order**

**208F** Where—

- (a) a debt relief order is made; and
- (b) immediately before the order is made, an administration order under Part 6 of the Judgments Enforcement Order is in force in respect of the debtor,

the administration order ceases to be in force when the debt relief order is made.

#### **Moratorium from qualifying debts**

**208G.**—(1) A moratorium commences on the effective date for a debt relief order in relation to each qualifying debt specified in the order (“a specified qualifying debt”).

(2) During the moratorium, the creditor to whom a specified qualifying debt is owed—

- (a) has no remedy in respect of the debt, and
- (b) may not—
  - (i) commence a creditor's petition in respect of the debt, or
  - (ii) otherwise commence any action or other legal proceedings against the debtor for the debt,

except with the permission of the High Court and on such terms as the Court may impose.

(3) If on the effective date a creditor to whom a specified qualifying debt is owed has any such petition, action or other proceeding as mentioned in paragraph (2)(b) pending in any court, that court may—

- (a) stay the proceedings on the petition, action or other proceedings (as the case may be), or
- (b) allow them to continue on such terms as that court thinks fit.

(4) In paragraph (2)(a) and (b) references to the debt include a reference to any interest, penalty or other sum that becomes payable in relation to that debt after the application date.

(5) Nothing in this Article affects the right of a secured creditor of the debtor to enforce his security.

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### **The moratorium period**

**208H.**—(1) The moratorium relating to the qualifying debts specified in a debt relief order continues for the period of one year beginning with the effective date for the order, unless—

- (a) the moratorium terminates early; or
- (b) the moratorium period is extended by the official receiver under this Article or by the High Court under Article 208M.

(2) The official receiver may only extend the moratorium period for the purpose of—

- (a) carrying out or completing an investigation under Article 208K;
- (b) taking any action he considers necessary (whether as a result of an investigation or otherwise) in relation to the order; or
- (c) in a case where he has decided to revoke the order, providing the debtor with the opportunity to make arrangements for making payments towards his debts.

(3) The official receiver may not extend the moratorium period for the purpose mentioned in paragraph (2)(a) without the permission of the High Court.

(4) The official receiver may not extend the moratorium period beyond the end of the period of 3 months beginning after the end of the initial period of one year mentioned in paragraph (1).

(5) The moratorium period may be extended more than once, but any extension (whether by the official receiver or by the High Court) must be made before the moratorium would otherwise end.

(6) References in this Part to a moratorium terminating early are to its terminating before the end of what would otherwise be the moratorium period, whether on the revocation of the order or by virtue of any other statutory provision.

### **Discharge from qualifying debts**

**208I.**—(1) Subject to the following provisions of this Article, at the end of the moratorium applicable to a debt relief order the debtor is discharged from all the qualifying debts specified in the order (including all interest, penalties and other sums which may have become payable in relation to those debts since the application date).

(2) Paragraph (1) does not apply if the moratorium terminates early.

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(3) Paragraph (1) does not apply in relation to any qualifying debt which the debtor incurred in respect of any fraud or fraudulent breach of trust to which the debtor was a party.

(4) The discharge of the debtor under paragraph (1) does not release any other person from—

(a) any liability (whether as partner or co-trustee of the debtor or otherwise) from which the debtor is released by the discharge; or

(b) any liability as surety for the debtor or as a person in the nature of such a surety.

(5) If the order is revoked by the High Court under Article 208M after the end of the moratorium period, the qualifying debts specified in the order shall (so far as practicable) be treated as though paragraph (1) had never applied to them.

#### *Duties of debtor*

##### **Providing assistance to official receiver, etc.**

**208J.**—(1) The duties in this Article apply to a debtor at any time after the making of an application by him for a debt relief order.

(2) The debtor must—

(a) give to the official receiver such information as to his affairs,

(b) attend on the official receiver at such times, and

(c) do all such other things,

as the official receiver may reasonably require for the purpose of carrying out his functions in relation to the application or, as the case may be, the debt relief order made as a result of the application.

(3) The debtor must notify the official receiver as soon as reasonably practicable if he becomes aware of—

(a) any error in, or omission from, the information supplied to the official receiver in, or in support of, the application;

(b) any change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.

(4) The duties under paragraphs (2) and (3) apply after (as well as before) the determination of the application, for as long as the official receiver is able to exercise functions of the kind mentioned in paragraph (2).



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(5) If a debt relief order is made as a result of the application, the debtor must notify the official receiver as soon as reasonably practicable if—

- (a) there is an increase in his income during the moratorium period applicable to the order;
- (b) he acquires any property or any property is devolved upon him during that period;
- (c) he becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date.

(6) A notification under paragraph (3) or (5) must give the prescribed particulars (if any) of the matter being notified.

#### *Objections, investigations and revocation*

#### **Objections and investigations**

**208K.**—(1) Any person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed may object to—

- (a) the making of the order;
- (b) the inclusion of the debt in the list of the debtor's qualifying debts; or
- (c) the details of the debt specified in the order.

(2) An objection under paragraph (1) must be—

- (a) made during the moratorium period relating to the order and within the prescribed period for objections;
- (b) made to the official receiver in the prescribed manner;
- (c) based on a prescribed ground;
- (d) supported by any information and documents as may be prescribed;

and the prescribed period mentioned in sub-paragraph (a) must not be less than 28 days after the creditor in question has been notified of the making of the order.

(3) The official receiver must consider every objection made to him under this Article.

(4) The official receiver may—

- (a) as part of his consideration of an objection, or
- (b) on his own initiative,

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carry out an investigation of any matter that appears to the official receiver to be relevant to the making of any decision mentioned in paragraph (5) in relation to a debt relief order or the debtor.

(5) The decisions to which an investigation may be directed are—

- (a) whether the order should be revoked or amended under Article 208L;
- (b) whether an application should be made to the High Court under Article 208M; or
- (c) whether any other steps should be taken in relation to the debtor.

(6) The power to carry out an investigation under this Article is exercisable after (as well as during) the moratorium relating to the order.

(7) The official receiver may require any person to give him such information and assistance as he may reasonably require in connection with an investigation under this Article.

(8) Subject to anything prescribed in the rules as to the procedure to be followed in carrying out an investigation under this Article, an investigation may be carried out by the official receiver in such manner as he thinks fit.

#### **Power of official receiver to revoke or amend a debt relief order**

**208L.**—(1) The official receiver may revoke or amend a debt relief order during the applicable moratorium period in the circumstances provided for by this Article.

(2) The official receiver may revoke the order on the ground that—

- (a) any information supplied to him by the debtor—
  - (i) in, or in support of, the application, or
  - (ii) after the determination date,was incomplete, incorrect or otherwise misleading;
- (b) the debtor has failed to comply with a duty under Article 208J;
- (c) a bankruptcy order has been made in relation to the debtor; or
- (d) the debtor has made a proposal under Chapter 2 of Part 8 (or has notified the official receiver of his intention to do so).

(3) The official receiver may revoke the order on the ground that he should not have been satisfied—

- (a) that the debts specified in the order were qualifying debts of the debtor as at the application date;

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(b) that the conditions specified in Part 1 of Schedule 2ZA were met;

(c) that the conditions specified in Part 2 of that Schedule were met or that any failure to meet such a condition did not prevent his making the order.

(4) The official receiver may revoke the order on the ground that either or both of the conditions in paragraphs 7 and 8 of Schedule 2ZA (monthly surplus income and property) are not met at any time after the order was made. For this purpose those paragraphs are to be read as if references to the determination date were references to the time in question.

(5) Where the official receiver decides to revoke the order, he may revoke it either—

(a) with immediate effect, or

(b) with effect from such date (not more than 3 months after the date of the decision) as he may specify.

(6) In considering when the revocation should take effect the official receiver must consider (in the light of the grounds on which the decision to revoke was made and all the other circumstances of the case) whether the debtor ought to be given the opportunity to make arrangements for making payments towards his debts.

(7) If the order has been revoked with effect from a specified date the official receiver may, if he thinks it appropriate to do so at any time before that date, revoke the order with immediate effect.

(8) The official receiver may amend a debt relief order for the purpose of correcting an error in or omission from anything specified in the order.

(9) But paragraph (8) does not permit the official receiver to add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

(10) The rules may make further provision as to the procedure to be followed by the official receiver in the exercise of his powers under this Article.

### *Role of the High Court*

#### **Powers of High Court in relation to debt relief orders**

**208M.**—(1) Any person may make an application to the High Court if he is dissatisfied by any act, omission or decision of the official

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receiver in connection with a debt relief order or an application for such an order.

(2) The official receiver may make an application to the High Court for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order.

(3) The matters referred to in paragraph (2) include, among other things, matters relating to the debtor's compliance with any duty arising under Article 208J.

(4) An application under this Article may, subject to anything in the rules, be made at any time.

(5) The High Court may extend the moratorium period applicable to a debt relief order for the purposes of determining an application under this Article.

(6) On an application under this Article the High Court may dismiss the application or do one or more of the following—

- (a) quash the whole or part of any act or decision of the official receiver;
- (b) give the official receiver directions (including a direction that he reconsider any matter in relation to which his act or decision has been quashed under sub-paragraph (a));
- (c) make an order for the enforcement of any obligation on the debtor arising by virtue of a duty under Article 208J;
- (d) extend the moratorium period applicable to the debt relief order;
- (e) make an order revoking or amending the debt relief order;
- (f) make an order under Article 208N; or
- (g) make such other order as the Court thinks fit.

(7) An order under paragraph (6)(e) for the revocation of a debt relief order—

- (a) may be made during the moratorium period applicable to the debt relief order or at any time after that period has ended;
- (b) may be made on the High Court's own motion if the Court has made a bankruptcy order in relation to the debtor during that period;
- (c) may provide for the revocation of the order to take effect on such terms and at such a time as the Court may specify.

(8) An order under paragraph (6)(e) for the amendment of a debt relief order may not add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

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### **Inquiry into debtor's dealings and property**

**208N.**—(1) An order under this Article may be made by the High Court on the application of the official receiver.

(2) An order under this Article is an order summoning any of the following persons to appear before the High Court—

- (a) the debtor;
- (b) the debtor's spouse or former spouse or the debtor's civil partner or former civil partner;
- (c) any person appearing to the Court to be able to give information or assistance concerning the debtor or his dealings, affairs and property.

(3) The High Court may require a person falling within paragraph (2) (c)—

- (a) to provide a written account of his dealings with the debtor; or
- (b) to produce any documents in his possession or under his control relating to the debtor or to the debtor's dealings, affairs or property.

(4) Paragraph (5) applies where a person fails without reasonable excuse to appear before the High Court when he is summoned to do so by an order under this Article.

(5) The High Court may cause a warrant to be issued to a constable—

- (a) for the arrest of that person, and
- (b) for the seizure of any records or other documents in that person's possession.

(6) The High Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

### *Offences*

#### **False representations and omissions**

**208O.**—(1) A person who makes an application for a debt relief order shall be guilty of an offence if he knowingly or recklessly makes any false representation or omission in making the application or providing any information or documents to the official receiver in support of the application.

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(2) A person who makes an application for a debt relief order shall be guilty of an offence if—

- (a) he intentionally fails to comply with a duty under Article 208J(3) in connection with the application; or
- (b) he knowingly or recklessly makes any false representation or omission in providing any information to the official receiver in connection with such a duty or otherwise in connection with the application.

(3) It is immaterial for the purposes of an offence under paragraph (1) or (2) whether or not a debt relief order is made as a result of the application.

(4) A person in respect of whom a debt relief order is made shall be guilty of an offence if—

- (a) he intentionally fails to comply with a duty under Article 208J(5) in connection with the order; or
- (b) he knowingly or recklessly makes any false representation or omission in providing information to the official receiver in connection with such a duty or otherwise in connection with the performance by the official receiver of functions in relation to the order.

(5) It is immaterial for the purposes of an offence under paragraph (4)

- (a) whether the offence is committed during or after the moratorium period; and
- (b) whether or not the order is revoked after the conduct constituting the offence takes place.

#### **Concealment or falsification of documents**

**208P.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if, during the moratorium period in relation to that order—

- (a) he does not provide, at the request of the official receiver, all his books, papers and other records of which he has possession or control and which relate to his affairs;
- (b) he prevents the production to the official receiver of any books, papers or other records relating to his affairs;
- (c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his affairs;

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(d) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his affairs; or

(e) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his affairs.

(2) A person in respect of whom a debt relief order is made shall be guilty of an offence if—

(a) he did anything falling within sub-paragraphs (c) to (e) of paragraph (1) during the period of 12 months ending with the application date; or

(b) he did anything falling within sub-paragraphs (b) to (e) of paragraph (1) after that date but before the effective date.

(3) It shall be a defence for a person charged with an offence under this Article to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) In its application to a trading record paragraph (2)(a) has effect as if the reference to 12 months were a reference to 2 years.

(5) In paragraph (4) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

(6) It is immaterial for the purposes of an offence under this Article whether or not the debt relief order in question is revoked after the conduct constituting the offence takes place (but no offence is committed under this Article by virtue of conduct occurring after the order is revoked).

### **Fraudulent disposal of property**

**208Q.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if he made or caused to be made any gift or transfer of his property during the period between—

(a) the start of the period of 2 years ending with the application date; and

(b) the end of the moratorium period.

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(2) The reference in paragraph (1) to making a transfer of any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.

(3) It shall be a defence for a person charged with an offence under this Article to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) For the purposes of paragraph (3) a person is to be taken to have proved that he had no such intent if—

- (a) sufficient evidence is adduced to raise an issue as to whether he had such intent; and
- (b) the contrary is not proved beyond reasonable doubt.

(5) It is immaterial for the purposes of this Article whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

#### **Fraudulent dealing with property obtained on credit**

**208R.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if during the relevant period he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for it.

(2) Any other person shall be guilty of an offence if during the relevant period he acquired or received property from a person in respect of whom a debt relief order was made (the “debtor”) knowing or believing—

- (a) that the debtor owed money in respect of the property, and
- (b) that the debtor did not intend, or was unlikely to be able, to pay the money he so owed.

(3) In paragraphs (1) and (2) “relevant period” means the period between—

- (a) the start of the period of 2 years ending with the application date; and
- (b) the determination date.

(4) In the case of an offence under paragraph (1) or (2) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the debtor at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of paragraph (4) whether any property is disposed of, acquired or received in the ordinary course of



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a business carried on by the debtor, regard may be had, in particular, to the price paid for the property.

(6) It shall be a defence for a person charged with an offence under paragraph (1) to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(7) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

(8) It is immaterial for the purposes of this Article whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

### **Obtaining credit or engaging in business**

**208S.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if, during the relevant period—

- (a) he obtains credit (either alone or jointly with any other person) without giving the person from whom he obtains the credit the relevant information about his status; or
- (b) he engages directly or indirectly in any business under a name other than that in which the order was made without disclosing to all persons with whom he enters into any business transaction the name in which the order was made.

(2) For the purposes of paragraph (1)(a) the relevant information about a person's status is the information that—

- (a) a moratorium is in force in relation to the debt relief order,
- (b) a debt relief restrictions order is in force in respect of him, or
- (c) both a moratorium and a debt relief restrictions order are in force,

as the case may be.

(3) In paragraph (1) “relevant period” means—

- (a) the moratorium period relating to the debt relief order, or
- (b) the period for which a debt relief restrictions order is in force in respect of the person in respect of whom the debt relief order is made,

as the case may be.

(4) Paragraph (1)(a) does not apply if the amount of the credit is less than the amount (if any) specified by order under Article 362(1)(b).

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(5) The reference in paragraph (1)(a) to a person obtaining credit includes the following cases—

- (a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement;
- (b) where he is paid in advance (in money or otherwise) for the supply of goods or services.

#### **Offences: supplementary**

**208T.**—(1) Proceedings for an offence under this Part may only be instituted by the Director of Public Prosecutions for Northern Ireland.

(2) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting the offence was done outside Northern Ireland.

(3) A person guilty of an offence under this Part is liable to imprisonment or a fine, or both.

#### *Supplementary*

#### **Approved intermediaries**

**208U.**—(1) In this Part “approved intermediary” means an individual for the time being approved by a competent authority to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver.

(2) In this Article “competent authority” means a person or body for the time being designated by the Department for the purposes of granting approvals under this Article.

(3) Designation as a competent authority may be limited so as to permit the authority only to approve persons of a particular description.

(4) The Department may by regulations make provision as to—

- (a) the procedure for designating persons or bodies as competent authorities;
- (b) descriptions of individuals who are ineligible to be approved under this Article;
- (c) the procedure for granting approvals under this Article;
- (d) the withdrawal of designations or approvals under this Article;

and provision made under sub-paragraph (a) or (c) may include provision requiring the payment of fees.

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(5) The rules may make provision about the activities to be carried out by an approved intermediary in connection with an application for a debt relief order, which may in particular include—

- (a) assisting the debtor in making the application;
- (b) checking that the application has been properly completed;
- (c) sending the application to the official receiver.

(6) The rules may also make provision about other activities to be carried out by approved intermediaries.

(7) An approved intermediary may not charge a debtor any fee in connection with an application for a debt relief order.

(8) An approved intermediary is not liable to any person in damages for anything done or omitted to be done when acting (or purporting to act) as an approved intermediary in connection with a particular application by a debtor for a debt relief order.

(9) Paragraph (8) does not apply if the act or omission was in bad faith.

(10) The Department may, out of the proceeds of fees charged under Article 361(1)(za), make payments to competent authorities or approved intermediaries in connection with the exercise of the functions of approved intermediaries under this Part.

### **Debt relief restrictions orders and undertakings**

**208V** Schedule 2ZB (which makes provision about debt relief restrictions orders and debt relief restrictions undertakings) has effect.

### **Register of debt relief orders, etc.**

**208W** The Department must maintain a register of matters relating to—

- (a) debt relief orders;
- (b) debt relief restrictions orders; and
- (c) debt relief restrictions undertakings.

### **Interpretation**

**208X.**—(1) In this Part—

“the application date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is made to the official receiver;

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“approved intermediary” has the meaning given in Article 208U(1);

“debt relief order” means an order made by the official receiver under this Part;

“debtor” means—

- (a) in relation to an application for a debt relief order, the applicant; and
- (b) in relation to a debt relief order, the person in relation to whom the order is made;

“debt relief restrictions order” and “debt relief restrictions undertaking” means an order made, or an undertaking accepted, under Schedule 2ZB;

“the determination date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is determined by the official receiver;

“the effective date” has the meaning given in Article 208E(7);

“excluded debt” is to be construed in accordance with Article 208A;

“moratorium” and “moratorium period” are to be construed in accordance with Articles 208G and 208H;

“qualifying debt”, in relation to a debtor, has the meaning given in Article 208A(2);

“the register” means the register maintained under Article 208W;

“specified qualifying debt” has the meaning given in Article 208G(1).

(2) In this Part references to a creditor specified in a debt relief order as the person to whom a qualifying debt is owed by the debtor include a reference to any person to whom the right to claim the whole or any part of the debt has passed, by assignment or operation of law, after the date of the application for the order.”.

VALID FROM 30/06/2011

### Conditions for making a debt relief order

**2** After Schedule 2 to the Order of 1989 (powers of liquidator in a winding up) insert—

“SCHEDULE 2ZA

Conditions for making a debt relief order

**PART 1**

CONDITIONS WHICH MUST BE MET

*Connection with Northern Ireland*

- 1.—(1) The debtor—
  - (a) is domiciled in Northern Ireland on the application date; or
  - (b) at any time in the 3 years immediately preceding that date—
    - (i) was ordinarily resident, or had a place of residence, in Northern Ireland; or
    - (ii) carried on business in Northern Ireland.
- (2) The reference in sub-paragraph (1)(b)(ii) to the debtor carrying on business includes—
  - (a) the carrying on of business by a firm or partnership of which he is a member;
  - (b) the carrying on of business by an agent or manager for him or for such a firm or partnership.

*Debtor's previous insolvency history*

- 2 The debtor is not, on the determination date—
  - (a) an undischarged bankrupt;
  - (b) subject to an interim order or voluntary arrangement under Chapter 2 of Part 8; or
  - (c) subject to a bankruptcy restrictions order or a debt relief restrictions order.
- 3 A debtor's petition for the debtor's bankruptcy under Part 9—
  - (a) has not been presented by the debtor before the determination date;
  - (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
  - (c) has been so presented and proceedings in relation to the petition remain before the High Court at that date, but the Court has referred the debtor under Article 248A(2) for the purposes of making an application for a debt relief order.

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- 4** A creditor's petition for the debtor's bankruptcy under Part 9—
- (a) has not been presented against the debtor at any time before the determination date;
  - (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
  - (c) has been so presented and proceedings in relation to the petition remain before the Court at that date, but the person who presented the petition has consented to the making of an application for a debt relief order.

**5** A debt relief order has not been made in relation to the debtor in the period of 6 years ending with the determination date.

*Limit on debtor's overall indebtedness*

**6.—(1)** The total amount of the debtor's debts on the determination date, other than unliquidated debts and excluded debts, does not exceed the amount specified by order under Article 362(1)(b).

(2) For this purpose an unliquidated debt is a debt that is not for a liquidated sum payable to a creditor either immediately or at some future certain time.

*Limit on debtor's monthly surplus income*

**7.—(1)** The debtor's monthly surplus income (if any) on the determination date does not exceed the amount specified by order under Article 362(1)(b).

(2) For this purpose “monthly surplus income” is the amount by which a person's monthly income exceeds the amount necessary for the reasonable domestic needs of himself and his family.

- (3) The rules may—
- (a) make provision as to how the debtor's monthly surplus income is to be determined;
  - (b) provide that particular descriptions of income are to be excluded for the purposes of this paragraph.

*Limit on value of debtor's property*

**8.—(1)** The total value of the debtor's property on the determination date does not exceed the amount specified by order under Article 362(1)(b).

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- (2) The rules may—
  - (a) make provision as to how the value of a person's property is to be determined;
  - (b) provide that particular descriptions of property are to be excluded for the purposes of this paragraph.

## PART 2

### OTHER CONDITIONS

**9.**—(1) The debtor has not entered into a transaction with any person at an undervalue during the period between—

- (a) the start of the period of 2 years ending with the application date; and
- (b) the determination date.

(2) For this purpose a debtor enters into a transaction with a person at an undervalue if—

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
- (b) he enters into a transaction with that person in consideration of marriage or the formation of a civil partnership; or
- (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

**10.**—(1) The debtor has not given a preference to any person during the period between—

- (a) the start of the period of 2 years ending with the application date; and
- (b) the determination date.

(2) For this purpose a debtor gives a preference to a person if—

- (a) that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt, and
- (b) the debtor does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event that a debt relief order is made in relation to the debtor, will be better than the position he would have been in if that thing had not been done.”

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VALID FROM 30/06/2011

### **Debt relief restrictions orders and undertakings**

**3** After Schedule 2ZA to the Order of 1989 (inserted by section 2) (conditions for making a debt relief order) insert—

#### “SCHEDULE 2ZB

#### Debt relief restrictions orders and undertakings

##### *Debt relief restrictions order*

**1.**—(1) A debt relief restrictions order may be made by the High Court in relation to a person in respect of whom a debt relief order has been made.

(2) An order may be made only on the application of—

- (a) the Department, or
- (b) the official receiver acting on a direction of the Department.

##### *Grounds for making order*

**2.**—(1) The High Court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—

- (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding the application date for the debt relief order and ending with the date of the application for the debt relief restrictions order;
- (b) failing to produce records of that kind on demand by the official receiver;
- (c) entering into a transaction at an undervalue in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;



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- (d) giving a preference in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;
  - (e) making an excessive pension contribution;
  - (f) a failure to supply goods or services that were wholly or partly paid for;
  - (g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was unable to pay his debts;
  - (h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;
  - (i) failing to account satisfactorily to the Court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;
  - (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;
  - (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;
  - (l) fraud or fraudulent breach of trust;
  - (m) failing to co-operate with the official receiver.
- (3) The High Court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of 6 years ending with the date of the application for the debt relief order.
- (4) For the purposes of sub-paragraph (2)—
- “excessive pension contribution” shall be construed in accordance with Article 315A;
  - “preference” shall be construed in accordance with paragraph 10(2) of Schedule 2ZA;
  - “undervalue” shall be construed in accordance with paragraph 9(2) of that Schedule.

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#### *Timing of application for order*

**3** An application for a debt relief restrictions order in respect of a debtor may be made—

- (a) at any time during the moratorium period relating to the debt relief order in question, or
- (b) after the end of that period, but only with the permission of the Court.

#### *Duration of order*

**4.—(1)** A debt relief restrictions order—

- (a) comes into force when it is made, and
- (b) ceases to have effect at the end of a date specified in the order.

(2) The date specified in a debt relief restrictions order under subparagraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the order is made, or
- (b) after the end of the period of 15 years beginning with that date.

#### *Interim debt relief restrictions order*

**5.—(1)** This paragraph applies at any time between—

- (a) the institution of an application for a debt relief restrictions order, and
- (b) the determination of the application.

(2) The High Court may make an interim debt relief restrictions order if the Court thinks that—

- (a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and
- (b) it is in the public interest to make an interim debt relief restrictions order.

(3) An interim debt relief restrictions order may only be made on the application of—

- (a) the Department, or
- (b) the official receiver acting on a direction of the Department.

(4) An interim debt relief restrictions order—

- (a) has the same effect as a debt relief restrictions order, and
- (b) comes into force when it is made.

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- (5) An interim debt relief restrictions order ceases to have effect—
- (a) on the determination of the application for the debt relief restrictions order,
  - (b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or
  - (c) if the Court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.

6.—(1) This paragraph applies to a case in which both an interim debt relief restrictions order and a debt relief restrictions order are made.

(2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

#### *Debt relief restrictions undertaking*

7.—(1) A debtor may offer a debt relief restrictions undertaking to the Department.

(2) In determining whether to accept a debt relief restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8 A reference in a statutory provision to a person in respect of whom a debt relief restrictions order has effect (or who is “the subject of” a debt relief restrictions order) includes a reference to a person in respect of whom—

- (a) an interim debt relief restrictions order; or
- (b) a debt relief restrictions undertaking,

has effect.

9.—(1) A debt relief restrictions undertaking—

- (a) comes into force on being accepted by the Department, and
- (b) ceases to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or
- (b) after the end of the period of 15 years beginning with that date.

(3) On an application by the debtor the High Court may—

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- (a) annul a debt relief restrictions undertaking;
- (b) provide for a debt relief restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

*Effect of revocation of debt relief order*

**10** Unless the High Court directs otherwise, the revocation at any time of a debt relief order does not—

- (a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;
- (b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;
- (c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or
- (d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time.”.

VALID FROM 30/06/2011

**Advice in relation to relief of debt and related matters**

**4.—(1)** The Department may—

- (a) provide advice and information to the public in relation to—
  - (i) the relief of debt; and
  - (ii) any related matter which, in the opinion of the Department, may be of benefit to the public;
- (b) arrange for the provision by others of such advice and information;

and arrangements under paragraph (b) may include the provision by the Department of financial or other assistance.

**(2)** The Department may—

- (a) undertake research in relation to the matters mentioned in subsection (1) (a);
- (b) assist such research carried out by others in any manner it thinks fit, including by the provision of financial assistance.

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(3) In this section “financial assistance” means assistance by way of grants or loans on such conditions (including conditions as to repayment) as the Department may determine.

#### **Power to make consequential amendments, etc.**

5.—(1) The Department may by order make such supplementary, incidental, transitional, transitory or consequential provision as it thinks appropriate—

- (a) for the general purposes, or any particular purpose, of this Act; or
- (b) in consequence of any provision made by or under this Act or for giving full effect to it.

(2) An order under this section may amend, repeal or modify any statutory provision (including this Act).

(3) No order under this section shall be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

VALID FROM 30/06/2011

#### **Minor and consequential amendments**

6 The Schedule (which contains minor and consequential amendments) has effect.

#### **Commencement**

7.—(1) This Act (except for section 5, this section and sections 8 and 9) comes into operation on such day or days as the Department may by order appoint.

(2) An order under this section may include transitional and saving provisions.

#### **Subordinate Legislation Made**

P1 [S. 7\(1\)](#) power fully exercised: 30.6.2011 appointed by [S.R. 2011/13](#), [art. 2](#)

#### **Interpretation**

8 In this Act—

- “the Department” means the Department of Enterprise, Trade and Investment;
- “the Order of 1989” means the Insolvency (Northern Ireland) Order 1989 (NI 19);

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“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

**Short title**

**9** This Act may be cited as the Debt Relief Act (Northern Ireland) 2010.

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VALID FROM 30/06/2011

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

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**Status:**

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