EXPLANATORY MEMORANDUM TO

The Debt Relief Orders (Designation of Competent Authorities) (Amendment) Regulations (Northern Ireland) 2011

SR 2011 No. 367

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department" to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Article 208U(4) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the negative resolution procedure.

2. Purpose

2.1. The Regulations are to correct deficiencies in the drafting of Regulation 8 of the Debt Relief Orders (Designation of Competent Authorities) Regulations (Northern Ireland) 2011 (S.R. 2011 No. 15) ("the principal Regulations").

3. Background

3.1. All applications for Debt Relief Orders must be made through approved intermediaries. Approval is by bodies designated by the Department of Enterprise, Trade and Investment as competent authorities for this purpose. The principal Regulations set out the procedures and conditions to which such designation will be subject.

3.2. They were made along with five other pieces of subordinate legislation, to implement the provisions of the Debt Relief Act (Northern Ireland) 2010 ("2010 Act"), The Act enabled the Department to set up a Debt Relief scheme in Northern Ireland. The scheme enables eligible individuals to obtain Debt Relief Orders from the Official Receiver costing substantially less than Bankruptcy Orders made by the Court. The scheme was successfully launched on 30 June 2011.

3.3. Regulation 8 of the principal Regulations is intended to ensure that individuals are able not to be approved as intermediaries unless they are fit and proper persons to take on the role and have experience, education or training in the provision of debt management or debt counselling services.

3.4. In paragraph (g) of Regulation 8 it is provided that individuals in respect of whom there is or has been in force a bankruptcy restrictions order or undertaking under the Insolvency Act 1986 are ineligible to be intermediaries. However, that Act only applies in Northern Ireland, England and Wales. The need to include reference to Scottish legislation was overlooked. These Regulations are intended to recitfy this deficiency.

3.5. In paragraph (k) of Regulation 8 it is provided that individuals who are patients within the meaning of the relevant mental health legislation

applying in Northern Ireland are ineligible to be intermediaries. There is nothing to prevent someone who is a patient or lacks capacity within the meaning of the corresponding legislation applying in the rest of the UK being eligible to be approved as an intermediary in Northern Ireland. An amendment is needed to correct this.

4. Consultation

4.1. During the development of the primary legislation a formal policy consultation was carried out over the period 11 February to 6 May 2009. Topics included the use of an intermediary.

5. Equality Impact

5.1. None .

6. Regulatory Impact

6.1. None.

7. Financial Implications

7.1. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. These Regulations do not contravene section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. None.

10. Parity or Replicatory Measure

10.1. This statutory rule will correct deficiencies in the Debt Relief (Designation of Competent Authorities) Regulations (Northern Ireland) 2011 (S.R. 2011 No. 15) ("the principal Regulations"). The principal Regulations correspond to the Debt Relief Orders (Designation of Competent Authorities) Regulations 2009 (S.I. 2009 No. 457) which came into force in England and Wales on 6 April 2009.

11. Additional Information

11.1. Not applicable.