EXPLANATORY MEMORANDUM TO

THE DEBT RELIEF ORDERS (DESIGNATION OF COMPETENT AUTHORITIES) REGULATIONS 2009

2009 No. 457

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 A person who is unable to pay his or her debts may apply for a Debt Relief Order with a view to being discharged from those debts. An application for a Debt Relief Order must be made to the official receiver through an approved intermediary. Approved intermediaries are individuals approved by a "competent authority" to act as intermediaries between persons wishing to make an application for a Debt Relief Order and the official receiver.

2.3 "Competent authority" will be a body for the time being designated by the Secretary of State for the purpose of granting approvals to individuals to act as intermediaries. The Secretary of State is given power to make regulations pursuant to section 251U of the Tribunals, Courts and Enforcement Act 2007 to provide: (i) for the procedure for designating bodies as competent authorities; (ii) descriptions of individuals who are ineligible to be approved as intermediaries; (iii) the procedure for granting approvals and (iv) for the withdrawal of designations or approvals. These Regulations make provision accordingly.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is one of a group of instruments which, in whole or in part, give effect to the introduction of Debt Relief Orders.

3.2 The other instruments are:

- The Tribunals, Courts and Enforcement Act 2007 (Commencement No.7) Order 2009
- The Tribunals, Courts and Enforcement Act 2007 (Transitional Provision) Order 2009
- The Insolvency (Amendment) Rules 2009
- The Insolvency Proceedings (Fees) (Amendment) Order 2009
- The Insolvency Proceedings (Monetary Limits) Order 2009

4. Legislative Context

4.1 The Tribunals, Courts and Enforcement Act 2007 (2007 c.15) inserted a new Part 7A into the Insolvency Act 1986 making provision for the application for, and the making of, Debt Relief Orders.

4.2 The applications must be made through approved intermediaries. The intermediaries are to be approved by bodies designated by the Secretary of State as competent authorities for this purpose. These regulations set out the procedures and conditions to which such designation will be subject

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 A Debt Relief Order is an individual insolvency solution aimed at those debtors with relatively low liabilities, no realisable assets and little or no disposable income with which to make contributions to creditors. Such a debtor is financially excluded from current debt relief solutions. It is intended that Debt Relief Orders will be cheaper to access than bankruptcy and therefore more accessible to this population. An application for a Debt Relief Order can only be made via an intermediary, that is, an experienced debt adviser approved to act as such.

7.2 The involvement of intermediaries ensures that a debtor will have to seek debt advice and that a Debt Relief Order is identified as the most appropriate route for that individual, including that the eligibility criteria are met. Furthermore to maintain the regime at a lower entry fee than bankruptcy, it is essential that the official receiver has all the information that he or she needs to determine the application without the need for further enquiries. This is achieved by the debtor having to seek the assistance of an intermediary to properly complete the application.

7.3 This instrument governs the designation by the Secretary of State of suitable organisations to act as competent authorities and in turn the approval by those organisations of suitable individuals to act as intermediaries. It is not feasible for the Secretary of State to directly approve large numbers of intermediaries and verify their suitability. Competent authorities are better placed, being closer to those individuals, to be able to determine who might be suitable.

7.4 This instrument provides for competent authorities to provide debt advice via intermediaries and to ensure those intermediaries receive training. There are further matters to declare in any application to the Secretary of State to evidence ability to act as a competent authority and demonstrate that as an organisation it is fit and proper. As the advice sector has varied qualifications, training packages and approaches, this instrument is drafted quite openly and includes provisions detailing what is not suitable rather than what is.

- ***Consolidation***

7.5 Not applicable.

8. Consultation outcome

8.1 Whilst the primary legislation was being developed The Insolvency Service carried out a formal consultation in 2005 'Relief for the Indebted – an Alternative to Bankruptcy.' Topics included the use of an intermediary. The consultation was sent to approximately 350 representatives from the advice sector, credit industry, business and the public. It was open for twelve weeks and 70 responses were received.

8.2 Of 52 responses, 50 were in favour of the use of an intermediary. 63 responses commented on how the role might work. A working group was set up which included representatives from various advice sector organisations who met on several occasions between 2005 and 2008 to discuss the role of the intermediary, training, regulation and monitoring. Minutes of the meetings were published on The Insolvency Service website concurrently until late 2008 when they were replaced with a summary.

8.3 A draft of this instrument was placed on The Insolvency Service Website on 9 September 2008.

9. Guidance

9.1 There is no specific guidance for competent authorities. Those who have expressed interest have been made aware of the criteria contained in the regulations. Similarly we have not prepared guidance for intermediaries as it is for each competent authority to approve its intermediaries in a way it sees fit whilst ensuring they comply with these regulations.

9.2 Dialogue with potential competent authorities is ongoing, any that are designated by the Secretary of State will be provided with management information relating to the performance of their intermediaries.

10. Impact

10.1 The impact on business, charities or voluntary bodies, of the Debt Relief Order provisions generally, is beneficial as detailed in the Explanatory Memoranda submitted with The Insolvency (Amendment) Rules 2009. For

this instrument, Debt Relief Orders are entirely voluntary in that applications will be made to the Secretary of State only from organisations that wish to act as competent authorities. The Insolvency Service conducted a Competition Assessment and is satisfied that the licensing arrangements imposed upon competent authorities seek to ensure applicants are fit and proper but is the least restrictive. Further details are in the Impact Assessment attached to The Insolvency (Amendment) Rules at paragraphs 5.6 to 5.13.

10.2 The impact on the public sector, of the Debt Relief Order provisions generally, is beneficial as detailed in the Explanatory Memoranda submitted with The Insolvency (Amendment) Rules 2009.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Debt Relief Order scheme will be evaluated by The Insolvency Service after three years as detailed in Annex 3 of the Impact Assessment attached to The Insolvency (Amendment) Rules 2009. If the these regulations are effective there will be sufficient numbers of intermediaries for debtors to be able to access the regime and there will be few refusals of applications as intermediaries will confirm whether the criteria are met before submitting an application. The evaluation will include seeking the opinions of debtors about the effect of the intermediaries, checking the levels of applications made incorrectly and checking the numbers and geographical spread of intermediaries.

13. Contact

Sarah O'Sullivan at The Insolvency Service Tel: 020 7291 6766 or email:sarah.osullivan@insolvency.gsi.gov.uk can answer any queries regarding this instrument.