EXPLANATORY MEMORANDUM TO

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

SR 2011 No. 15

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 provide for approval by designated competent authorities of individuals to act as intermediaries in connection with applications for debt relief orders.

3. Background

3.1. The Debt Relief Act (Northern Ireland) 2010 amends the 1989 Order to enable individuals who have relatively low liabilities, and little or no surplus income or realisable assets, to apply to the Official Receiver for a Debt Relief Order with a view to being discharged from debt which they cannot pay. It is intended that Debt Relief Orders will cost less than bankruptcy thus making them more accessible for such individuals.

3.2. All applications for Debt Relief Orders will have to be made through an approved intermediary. An approved intermediary is an individual approved by a "competent authority" to act as an intermediary between persons wishing to apply for a Debt Relief Order and the Official Receiver.

3.3. Regulation 8 of these Regulations will ensure that individuals will not be eligible to be approved as intermediaries unless they have experience, education or training in the provision of debt management or debt counselling services.

3.4. The involvement of intermediaries will ensure that those wishing to apply for Debt Relief Orders will have to seek debt advice and that it is identified that they meet the eligibility criteria and that a Debt Relief Order is the most appropriate route for them. Furthermore, to keep the application fee lower than the cost of petitioning for bankruptcy it is essential that the Official Receiver has all the information that he needs to determine the application without the need to make further enquiries. This is achieved if the debtor has to seek the assistance of an intermediary to properly complete the application.

3.5. "Competent authorities" will be bodies for the time being designated by the Department for the purpose of granting approvals to individuals to act as intermediaries.

3.6. The Regulations govern the designation by the Department 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 Department 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.

3.7. The Regulations make being engaged in delivery of debt advice through trained intermediaries a condition for being designated as a competent authority. They provide that applications to the Department for designation must include information evidencing that the applicant is a fit and proper organisation to be a competent authority and and that it has the ability to act as such. As the advice sector has varied qualifications, training packages and approaches, the Regulations are drafted quite openly and include provisions dealing with what is not suitable rather than what is.

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. Approximately 460 individuals and organisations were notified by letter about the consulation, including politicians and organisions engaged in providing debt advice.

4.2. A total of 22 replies were received. Out of sixteen respondents who answered a question on whether they thought that use of an approved intermediary would lead to greater accessibility and efficiency, fifteen agreed that it would and the sixteenth was non-commital. Fourteen respondents answered a question on what the role of intermediaries should be. Main roles identified related to giving advice and gathering information, and completion and submission of applications.

4.3. In view of the consultation process detailed at 4.1 and 4.2 the Department does not deem it necessary to consult further on the draft Regulations.

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. As these Regulations simply give effect to that policy further screening is considered unnecessary.

6. Regulatory Impact

6.1. There will be implications for charities and voluntary bodies in terms of staff time taken up applying for them to become competent authorities, and in the case of their individual staff, applying to them to become intermediaries. These will be one-off exercises. Those charities and voluntary bodies which become competent authorities will also need to

assess the suitability of their staff to be approved as intermediaries and carry out on-going monitoring of their performance. Whether it will be possible for charities and voluntary bodies to meet these commitments using existing staff and hence whether any additional expenditure on their part will be required is not known. However a Regulatory Impact Assessment has not been carried out for these Regulations as they are in keeping with policy as assessed through a Regulatory Impact Assessment conducted in connection with the making of the primary legislation which identified positive benefits for organisations engaged in provision of debt advice in being able to offer the option of application for a Debt Relief Order to their client. Moreover any decision by a charity or voluntary body to apply to become a competent authority is a purely voluntary one.

6.2. The Regulations will not of themselves have any impact on business. Any impact on the public sector will depend on the extent to which fee income covers the cost of operating the Debt Relief scheme and that in turn will depend on the level of demand for it.

7. Financial Implications

7.1. The Regulations are not expected to impose any additional costs on the Department. Applications to become competent authorities which are received before the Debt Relief scheme comes into operation will be dealt with by existing staff. Applications received after the scheme comes into operation will be dealt with by staff appointed to administer the scheme generally.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that the Regulations are not incompatible with the Convention rights, are not incompatible with Community law; do not discriminate against a person or class of person on the ground of religious belief or political opinion; and do not modify an enactment in breach of seection 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. These 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.