EXPLANATORY MEMORANDUM TO

The Debt Relief (2010 Act) (Transitional Provision) Order (Northern Ireland) 2011

S.R. 2011 No. 000

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 section 5 (1) of the Debt Relief Act (Northern Ireland) 2011 ("the 2011 Act") and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. This Order provides that in considering whether to make a debt relief restrictions order or in determining whether to accept a debt relief restrictions undertaking the Court in the one case, and the Department in the other, is to take into account only the debtor's conduct subsequent to the date on which provision in the 2011 Act permitting the making of such orders and the acceptance of such undertakings was commenced.

3. Background

3.1. The 2011 Act enables individuals who cannot pay their debts to apply to the official receiver for a debt relief order provided they meet certain eligibility conditions.

3.2. The debtor is protected from action by creditors listed in a debt relief order during a moratorium, which follows the making of the order and normally lasts for one year. The debtor's liability for those debts is extinguished when the moratorium ends.

3.3. Under new Schedule 2ZB inserted into the Insolvency (Northern Ireland) Order 1989 by Section 3 of the 2011 Act, the Department, or the official receiver acting on the direction of the Department, can apply to the High Court to have a person in respect of whom a debt relief order has been made placed under a debt relief restrictions order . The application can be made during the moratorium period, or, with the permission of the Court, after it has ended. As an alternative, a debtor can offer a debt relief restrictions undertaking to the Department.

3.4. Debt relief restrictions orders and undertakings remain in force for between two to fifteen years. While they are in force the person subject to them is under restrictions as regards taking credit or the name in which they can engage in business. Breach of these restrictions is a criminal offence.

3.5. Paragraph (2) of Schedule 2ZB provides that the 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 before or after the making of the debt relief order.

3.6. With reference to the requirement to have regard to the debtor's conduct before the debt relief order was made, this Order provides that the Court is not to take into account conduct prior to XX XXXX 2011. The Order likwise provides in determining whether to accept a debt relief restrictions undertaking from a debtor the Department is not to take into account a debtor's conduct prior to that date. The XX XXXX 2011 is the date on which the provision in the 2011 Act which enable the Court to make debt relief restrictions orders and the Department to accept debt relief restrictions undertakings was commenced.

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 consulation, including politicians and organisations engaged in providing debt advice.

4.2. Consultees were asked if they agreed that individuals granted Debt Relief should be placed under continuing restrictions following discharge if there was evidence that they had contributed to their insolvency by reckless or irresponsible behaviour. Out of thirteen who answered eleven were in favour of continuing restrictions.

4.3. It is not considered necessary to consult separately on this Order as it does nothing more than prevent the power to impose restrictions on debtors for culpable conduct being applied retrospectively.

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. This Order simply makes transitional provisions in relation to an aspect of the resulting primary legisation, hence no further screening is considered necessary.

6. Regulatory Impact

6.1. A Regulatory Impact assessment has not been prepared as the Order 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 this order are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with

Community 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. This Order has similar effect to the Tribunals, Courts and Enforcement Act 2007 (Transitional Provision) Order 2009 (S.I. 2009 No. 450).

11. Additional Information

11.1. Not applicable.