EXPLANATORY MEMORANDUM TO

THE INSOLVENCY ACT 1986 (DISQUALIFICATION FROM PARLIAMENT) ORDER 2011

2011 No.

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To bring Parliamentary disqualification law as it applies in Northern Ireland into line with that in England and Wales by providing that individuals who are bankrupt will only be disqualified from being members of the House of Commons or sitting or voting in the House of Lords if they become subject to a bankruptcy restrictions order or undertaking.

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

3.1 None.

4. Legislative Context

4.1 Section 427 of the Insolvency Act 1986 ("the 1986 Act"), as originally enacted, provided that an individual would be disqualified from sitting or voting in Parliament or being elected to the House of Commons if he was adjudged bankrupt by a court in England and Wales or Northern Ireland or if sequestration was awarded against his estate in Scotland. Such a Member of Parliament would lose his seat unless his bankruptcy was annulled within the first six months.

4.2 Under the Enterprise Act 2002 ("the 2002 Act") it became possible for individuals in England and Wales who were found to be culpable to be placed under continuing restrictions following discharge from bankruptcy through the making of a bankruptcy restrictions order by the courts or the giving of a bankruptcy restrictions undertaking to the Secretary of State.

4.3 The 2002 Act also amended the 1986 Act to provide that in England and Wales, a person is only disqualified from Parliament, and in the case of a Member of Parliament, only loses his seat, if he becomes subject to a bankruptcy restrictions order or gives a bankruptcy restrictions undertaking.

4.5 Similar amendments could not be made to the 1986 Act in relation to Northern Ireland until an equivalent system of bankruptcy restrictions orders and undertakings was put in place in Northern Ireland. The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) ("the 2005 Order") introduced such a system for Northern Ireland.

4.6 This Order amends the 1986 Act to bring the law applying to Parliamentary disqualification arising from bankruptcy in Northern Ireland into line with England and Wales. It also imposes notification requirements where a bankruptcy restrictions order or interim order has been made by the Northern Ireland High Court or a bankruptcy restrictions undertaking has been accepted by the Department of Enterprise, Trade and Investment.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Northern Ireland, Hugo Swire, has made the following statement regarding Human Rights:

'In my view the provisions of the Insolvency Act (Disqualification from Parliament) Order 2011 are compatible with the Convention rights.'

7. Policy background

- *What is being done and why*

7.1 A main policy objective behind the provisions dealing with personal insolvency in the 2002 Act was to recognise bankruptcy as an attendant hazard of enterprise. The policy aim was to encourage individuals who had tried and failed in business to try again with the benefit of experience gained. In the spirit of encouraging entrepreneurship, individuals who have become bankrupt but who are not culpable should not be subjected to needless or outdated restrictions and disabilities. It was in this context that the 1986 Act was amended by the 2002 Act so that bankruptcy in England and Wales no longer results in disqualification from Parliament or in a Member of Parliament losing his seat.

7.2 A second policy objective behind the 2002 Act provisions dealing with personal insolvency was to protect the public from the activities of the culpable. To this end provision for a regime of bankruptcy restrictions orders and undertakings was included. It would not be appropriate to allow a person who has been found to be culpable to continue sitting or voting in Parliament or to be elected as a Member of Parliament. It was with the object of excluding such persons from Parliament that the

1986 Act was amended by the 2002 Act to disqualify persons subject to bankruptcy restrictions orders made and undertakings given in England and Wales.

7.3 A system of bankruptcy restrictions orders and undertakings equivalent to that in England and Wales was introduced in Northern Ireland by the 2005 Order.

7.4 For bankruptcy in Northern Ireland to still result in a Member of the House of Commons or a Lord being disqualified and a Member of Parliament losing his seat would be unsatisfactory and inequitable now that a regime of bankruptcy restrictions orders and undertakings has been introduced in Northern Ireland. This Order brings the law on disqualification from Parliament as it applies in Northern Ireland into line with that in England and Wales by replacing bankruptcy as grounds for disqualification with being subject to a bankruptcy restrictions order or undertaking.

8. Consultation outcome

8.1 No consultation was necessary.

9. Guidance

9.1 This Order is not accompanied by any guidance.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

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 It is right and proper that the grounds for disqualification from Parliament should be the same throughout the UK. The Government will therefore seek to ensure that the law on disqualification as it applies in Northern Ireland will, where appropriate, be amended to reflect any changes made to the law on disqualification as it applies in England and Wales.

13. Contact

David Coleman at the Northern Ireland Office Tel: 020 7210 6576 or email: david.coleman@nio.x.gsi.gov.uk can answer any queries regarding the Order.