EXPLANATORY MEMORANDUM TO

THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 (CONSEQUENTIAL AMENDMENTS) ORDER 2012

2012 No. [xxxx]

1. This Explanatory Memorandum has been prepared by the Department for Business, Innovation and Skills and has been laid before Parliament by Command of Her Majesty.

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

2. Purpose of the Instrument

The purpose of this instrument is:-
To make amendments to primary and secondary legislation which already provides for disqualification of persons from office in the event of insolvency, so as to extend these disqualifications to persons subject to debt relief orders (under Part 7A of the Insolvency Act 1986), debt relief restrictions orders and debt relief restrictions undertakings and the respective interim orders (under Schedule 4Z to the Insolvency Act 1986).

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

This order requires an affirmative resolution for it to come into force.

4. Legislative Context

4.1 The Tribunals, Courts and Enforcement Act 2007 (TCEA) in Part 5, Section 108 along with Schedules 17, 18, and 19 introduced debt relief orders and debt relief restrictions orders (into the Insolvency Act 1986). There are strict qualifying conditions placed on a debtor before he/she can enter into a debt relief order and they include having total debts of less than £15,000, minimal assets and disposable income of less than £50 per calendar month. Once he/she has entered into a debt relief order, the debtor is subject to a number of restrictions that are similar to those imposed on persons who have entered bankruptcy.

4.2 This draft order makes consequential amendments to or in connection with disqualification provisions not already in Schedule 20 of the TCEA Act to take account of Debt Relief Orders (DROs) and Debt Relief Restrictions Orders (DRROs).

4.3 A debt relief restrictions order (or undertaking) addresses any culpable conduct of the debtor before or after he/she entered into a debt relief order and they are modelled on bankruptcy restrictions orders which were introduced as part of the provisions of the Enterprise Act 2002 (which came into force on the 01st April 2004).

4.4 Section 145 of the Tribunals, Courts and Enforcement Act 2007 confers a power on the Secretary of State to make any supplementary, incidental, consequential, transitory, transitional or saving provision which he considers necessary or

expedient for the purposes of, in consequence of, or for giving full effect to any provision of the Act, which includes the introduction of debt relief orders and debt relief restrictions orders (or undertakings).

4.5 The power in s.145 allows consequential amendments to any Act other than one passed after the Session in which the Tribunals, Courts and Enforcement Act 2007 (TCEA) was passed. The end of the 2006-2007 session is the cut off point for the search for relevant legislation. The Charities Act 2011 can be amended by section 145 TCEA in light of Schedule 8, Part 1, and paragraph 3 of the Charities 2011 Act.

5. Territorial Extent and Application

5.1 The section under which this instrument is made extends to England and Wales, Scotland and Northern Ireland.

5.2 The amendment in Schedule 1 of the Order extends to England and Wales only.

5.3 An amendment in Schedule 2 or 3 of the Order extends to any part of the United Kingdom to which the enactment extends.

6. European Convention on Human Rights

6.1 The Minister for Employment Relations, Consumer and Postal Affairs has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

6.2 "In my view the provisions of the Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 are compatible with the Convention Rights."

7. Policy Background

7.1 In March 2005, the consultation paper 'Relief for the Indebted – An Alternative to Bankruptcy' was issued. It built on a previous consultation during 2004 by the Department of Constitutional Affairs ('A Choice of Paths – Better Options to manage over-indebtedness and multiple debt'). It established that for some people who get into debt, the solutions that are available were not appropriate. Such people have a relatively low level of liabilities, no assets over and above a nominal amount and no surplus income with which to come to an arrangement with their creditors. This led to the introduction of debt relief orders being inserted into the Insolvency Act 1986 as part of the Tribunals, Courts and Enforcement Act 2007. The debt relief order provisions came into force in April 2009.

7.2 The debt relief order provisions also contain measures to deal with any unfit conduct by the debtor as part of the application for a debt relief order. These are debt relief restrictions orders (and undertakings) which were based on similar provisions that apply in bankruptcy, i.e. bankruptcy restrictions orders (or undertakings).

7.3 Currently a wide range of legislation places a disqualification on a person who has become bankrupt or the subject of a bankruptcy restrictions order from holding certain offices and board memberships. This Statutory Instrument will

insert further disqualification provisions which apply where the debtor has also become the subject of a debt relief order or debt relief restrictions order (or undertaking).

8. Consultation

There has been no public consultation on this measure. There has been extensive consultation with the government departments whose legislation is being amended. The Order makes minor and consequential amendments to legislation to align the effects of debt relief orders and debt relief restrictions orders (and undertakings) so that they mirror those of bankruptcy. The principles underpinning the amendments were established in the TCEA.

9. Guidance

9.1 The changes will be communicated by the Order being placed on the Insolvency Service website, and any existing 'member' or person who was interested in making an application to an affected body, would look at the respective legislation to see if they met the eligibility criteria.

9.2 There will be no detailed announcement of this minor change, dissemination would be via the Order being placed on the Insolvency Service website and guidance updated consequentially to this as part of general updates.

10. Impact

A Regulatory Impact Assessment has been prepared for this instrument. While the lion's share of the impacts are likely to fall on the public sector, this measure may have a negligible, non-monetised impact on business and civil societies.

11. Regulating Small Business

This measure may have a negligible, non-monetised impact on business and civil societies, but at a zero cost.

12. Monitoring and Review

There is no vires to insert a review clause into this order, and therefore one has not been included. Any monitoring or review of this order would be part of any overall evaluation into debt relief orders.

13. Contact

Muhunthan Vaithianathar at The Insolvency Service (Tel: 020 7637 6515 or email: Muhunthan.vaithianathar@insolvency.gsi.gov.uk) can answer any queries regarding this instrument.