EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) RULES (NORTHERN IRELAND) 2013

2013 No. 278

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department") as the Department with lead responsibility for insolvency matters in Northern Ireland, on behalf of the Department of Justice, to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Article 359 of the Insolvency (Northern Ireland) Order 1989 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Insolvency (Amendment) Rules (Northern Ireland) 2013 amend existing provisions within the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) ("the 1991 Rules"). These changes will have the effect of excluding debts in relation to the Social Fund from being scheduled in a Debt Relief Order (DRO) or provable in bankruptcy proceedings, as contained in the Insolvency (Northern Ireland) Order 1989.

3. Background

3.1. In 2011 in the case of Secretary of State and Pensions (Appellant) v Payne and another (Respondents) the Supreme Court decided that the Secretary of State for Work and Pensions could not recover overpayments and Social Fund loans from ongoing benefits following the making of a DRO. The Supreme Court also found that in this respect there was no reason to distinguish between bankruptcy and the DRO regime.

3.2. The Social Fund provides financial assistance to some of the most needy individuals in society who are in financial distress. Amounts recovered from debtors are returned to the fund and used to make loans to other needy individuals. The Supreme Court ruling came about following a challenge to the Secretary of State recouping Social Fund loans and overpayments of benefits by deduction from current benefit payments during the "moratorium" period after the making of a DRO. The Supreme Court found that such actions were a remedy in respect of a debt which may not be exercised during the moratorium, according to section 251G(2) of the Insolvency Act 1986 (the Northern Ireland equivalent is Article 208G(2) of the Insolvency (Northern Ireland) Order 1989). The Court found that such debts were similarly irrecoverable in bankruptcy cases.

3.3. In order to protect the Social Fund from bad debts resulting from claimants becoming bankrupt or obtaining DROs, the amendments made by this statutory rule exclude Social Fund loans as qualifying debts in a DRO and provable debts in bankruptcy proceedings.

4. Consultation

4.1. The proposed change has not been consulted on. It is a parity measure, the need for which has arisen following the Supreme Court ruling mentioned in paragraph 3.1. No public consultation was carried out in relation to the changes effected in England and Wales. To maintain parity an identical approach would apply in relation to Northern Ireland.

5. Equality Impact

5.1. Formal equality screening has not been carried out. Under section 74(2) of the Social Security Administration (Northern Ireland) Act 1992 the Department for Social Development has the right to recover a Social Fund award by deductions from prescribed benefits. The proposal, which is a parity measure, does not affect that right in terms of how it impacts on any of the section 75 groups. It simply prevents an unrelated event, the making of a Bankruptcy Order or DRO, from interfering with that right.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has been prepared by the Department and has established that this change will not impose any additional costs on business and will not impact on charities, social enterprise or voluntary bodies. A copy of the impact assessment will be published with the Explanatory Memorandum alongside the rule on www.legislation.gov.uk

7. Financial Implications

7.1. The measure will not involve the Government in any expenditure and will permit recovery of balances due to the Social Security Agency in respect of Social Fund loans.

8. Section 24 of the Northern Ireland Act 1998

8.1. The provisions of these Rules are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with EU 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. These Rules are in line with amendments made by the Insolvency (Amendment) Rules 2012 (S.I. 2012 No. 469) applying in England and Wales.

11. Additional Information

11.1. Not applicable.