EXPLANATORY MEMORANDUM TO

The Insolvency (Fees) (Amendment) Order (Northern Ireland) 2011

SR 2011 No. 14

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 361(1) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the affirmative resolution procedure.

2. Purpose

2.1. The Order amends the Insolvency (Fees) Order (Northern Ireland) 2006 (S.R. 2006 No. 54) ("the principal Order") to specify the fee payable on an application for a Debt Relief Order.

3. Background

3.1. The Debt Relief Act (Northern Ireland) 2010 ("the 2010 Act") amends the 1989 Order to enable the Official Receiver to make Debt Relief Orders in the case of eligible individuals similar to Bankruptcy Orders made by the High Court.

3.2. Application for a Debt Relief Order will be through individuals approved by competent authorities to act as intermediaries. Competent authorities will be designated by the Department and will be bodies engaged in provison of debt management or counselling services.

3.3. Article 208B (making of application for a debt relief order) inserted into the 1989 Order by the 2010 Act provides for payment of a fee in connection with an application for a debt relief order. Fees for the Official Receiver's performance of functions under that the 1989 Order can, under Article 361 of that Order, be specified by order subject to affirmative resolution. Paragraph 10 of the schedule to the 2010 Act amended Article 361 to allow fees to be likewise specified in respect of the costs of persons acting as approved intermediaries.

3.4. Treasury guidance is that where charging takes place it should be at full cost.

3.5. Article 4(1) of the principal Order already provides for fees payable to the Department in respect of the Official Receiver's performance of functions under Parts 1 to 10 of the 1989 Order to be in accordance with the provisons of Schedule 2 to the principal Order . Article 4(1) is amended by Article 3(b) of this Order to provide for the fees payable to the Department in respect of the costs of persons acting as approved intermediaries to likewise be in accordance with the provisions of Schedule 2 to the principal Order 2006.

3.6. Article 4 of this Order inserts a new item into the Table of Fees in Schedule 2 to the principal Order, setting the fee payable on an application for a Debt Relief Order for the performance by the official receiver of his functions and for payment of an amount not exceeding £10 in respect of the costs of persons acting as approved intermediaries at £90.

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. Charging a fee to applicants was one of the topics dealt with. Approximately 460 individuals and organisations were notified by letter about the consultation, including politicians and organisations engaged in providing debt advice.

4.2. A total of 22 replies were received. Out of fifteen respondents who answered a question on whether they thought payment of a moderate fee to cover the costs of the Debt Relief scheme was acceptable, thirteen thought that it was, one was against and one did not commit themselves. Thirteen respondents answered a question as to what would be a reasonable amount. Of those who suggested actual figures, one thought that the fee should be between £10 and £40, one that it should be up to £50, two that it should be the same as in England and Wales, £90, four that it should be up to £100 and one that it should be between £200 and £500.

4.3. The Department's position is that if it is to adhere to Treasury guidelines on cost recovery there is no scope for any alteration to £90 specified in the Order. The income from fees charged to applicants needs to match the cost to the Department of administering the Debt Relief scheme. It has been calculated that a £90 fee will result in the scheme breaking even at 1,000 applications per year. There is no way of knowing for certain that there will be this number of applications in the year. If the number of applications turns out to be less than 1,000 the scheme will operate at a loss, with part at least of the cost of administering it having to be met by the Department out of its funds.

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 this Order gives effect to an aspect of that policy further screening is considered unnecessary.

6. Regulatory Impact

6.1. A Regulatory Impact assessment is not considered necessary as the Order does not impose any additional costs on business, charities, social enterprise or voluntary bodies.

7. Financial Implications

7.1. The purpose of the Order is to generate revenue, part of which will be used to make payments of up to £10 per case in respect of costs incurred by persons acting as approved intermediaries, with the rest going towards helping defray the cost to the Department of adminstering the scheme.

7.2. At a level of 1,000 applications per year a £90 fee would generate fee income totalling £90,000. This would allow a payment of £10,000 to be made to the intermediaries and the £80,000 balance would cover the cost to the Department of employing staff and other incidentals to administer the scheme.

7.3. The Order is made with the concurrence of the Department of Finance and Personnel.

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 Order is not incompatible with the Convention rights, is not incompatible with Community law; does not discriminate against a person or class of person on the ground of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Articles 2 and 3 of the Order correspond to provision contained in Articles 4 and 6 of the Insolvency Proceedings (Fees) (Amendment) Order 2009, which set the fee payable on an application for a Debt Relief Order under the Debt Relief scheme in England and Wales.

11. Additional Information

11.1. Not applicable.