EXPLANATORY MEMORANDUM TO

The Insolvency (Northern Ireland) Order 2005 (Consequential Amendments) Order (Northern Ireland) 2015

2015 No. 159

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 30 of the Insolvency (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

2. Purpose

2.1. This Order amends disqualification provisions contained in various pieces of primary and subordinate legislation which apply if an office-holder becomes bankrupt.

2.2. Forty-nine such provisions are amended with effect that either bankruptcy or being subject to a bankruptcy restrictions order will result in disqualification. In five cases reference to a bankruptcy restrictions order as grounds for disqualification is re-defined to refer to such orders made under Schedule 4A to the Insolvency Act 1986 as well as ones made under Schedule 2A to the Insolvency (Northern Ireland) Order 1989. In one case where being subject to a bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986 was already grounds for disqualification being subject to such an order under Schedule 2A to the Insolvency (Northern Ireland) Order 1989 was added.

2.3. In the remaining one case provision was amended with effect that bankruptcy will no longer result in disqualification and the office-holder will only be disqualified if he becomes subject to a bankruptcy restrictions order.

3. Background

3.1. The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)("the 2005 Order") made on 7 June 2005, amended the main piece of primary legislation applying to insolvency in Northern Ireland, the Insolvency (Northern Ireland) Order 1989, S.I. 1989/2405 (N.I. 19) by inserting a new Schedule 2A. New Schedule 2A makes it possible for the Department to apply to the High Court for a bankruptcy restrictions order.

3.2. A bankruptcy restrictions order imposes a number of insolvency based restrictions on a bankrupt for a period of between 2 to 15 years and continues in force after a bankrupt’s discharge from bankruptcy. As an alternative the Department can accept a bankruptcy restrictions undertaking from the bankrupt which will have the same effect. A bankruptcy restrictions order would be applied for or an undertaking

accepted where evidence had emerged following investigation that a bankrupt has been irresponsible, reckless or otherwise culpable.

3.3. The 2005 Order also reduced the period of time after which most bankrupts are discharged from bankruptcy from three years to one year.

3.4. These changes reflect changes made in Great Britain by the Enterprise Act 2002 (c.40)

3.5. Following the making of the Enterprise Act 2002 a review of disqualification provisions existing in legislation applying in Great Britain resulted in the making of the Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722). The aim of the review was to reduce the stigma of bankruptcy by removing unnecessary or outdated restrictions resulting from bankruptcy while ensuring that restrictions were in place for those subject to a bankruptcy restrictions order.

3.6. This Department carried out a similar exercise, by inviting all Northern Ireland Departments to review existing bankruptcy disqualification provisions in legislation under their policy control.As a result of the review a number of Departments identified bankruptcy provisons they wished to have amended.

3.7. To give effect to these amendments this Department brought into operation the Insolvency (Disqualification from Office: General) Order (Northern Ireland) 2008 (S.R. 2008 No. 94), which was made under Article 24 of the 2005 Order.

3.8. It was not possible to amend a number of the statutory provisions identified in the review using the 2008 Order due to the definition of "disqualification provisions" in Article 24 being too narrow and not covering provisions such as Regulation 5 of, and paragraph 105 of Schedule 2 to, the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004 dealing with the terms and conditions of a general medical services contract. Nor does it cover provisions dealing with the fitness of providers of certain health and social services establishments and agencies.

3.9. However, in light of recent discussions with Departmental Solicitors Office, it has transpired that the Department is able to capture these classes of office-holder, using the power under Article 30 of the 2005 Order. The power contained in Article 30 of the 2005 Order is very wide and can be used to take account of bankruptcy restrictions orders.

4. Consultation

4.1. The relevant Northern Ireland governments departments were invited to agree to the proposed amendments to the legislation for which they are responsible and asked if they wished consultation to be carried out. All Departments agreed the proposed amendments and most considered a consultation was not required. One Department asked for a limited targeted consultation. This was carried out and no replies were received

5. Equality Impact

5.1. Formal equality screening has not been carried out as the proposed provisions will not have any differential impact on any of the section 75 groups.

6. Regulatory Impact

6.1. A Regulatory Impact assessment has not been prepared for this Order as it will not impose any costs on business and will not impact on charities, social enterprise or voluntary bodies.,

7. Financial Implications

7.1. There are no identifiable costs to the public or the Assembly.

8. Section 24 of the Northern Ireland Act 1998

8.1. The provisions of this Order are considered to to 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 is in line with the Enterrpise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722) applying in GB.

11. Additional Information

11.1. Not applicable.