EXPLANATORY MEMORANDUM TO

THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 (TRANSITIONAL PROVISION) ORDER 2009

2009 No. 450

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Tribunals, Courts and Enforcement Act 2007 (Commencement No. 7) Order 2009 brings into force those provisions of that Act relating to the application for and making of Debt Relief Orders; applications to, and the grounds upon which, the court may make Debt Relief Restrictions Orders and the powers of the Secretary of State to accept Debt Relief Restrictions Undertakings.

2.2 Applications for Debt Relief Restrictions Orders are made to the court which must grant the application if it thinks appropriate to do so having regard to the conduct of the debtor, whether before or after the making of a Debt Relief Order.

2.3 The Tribunal, Courts and Enforcement Act 2007 (Transitional Provision) Order 2009 ensures that conduct of the debtor before 6th April 2009 is not to be taken into account by the court when considering whether to grant an Order. Similar provision was made in respect of Bankruptcy Restrictions Orders.

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

3.1 This instrument is one of a group of instruments which, in whole or in part, give effect to the introduction of Debt Relief Orders and Debt Relief Restrictions Orders and Undertakings.

3.2 The other instruments are:

- The Tribunals, Courts and Enforcement Act 2007 (Commencement No.7) Order 2009
- The Insolvency (Amendment) Rules 2009
- The Debt Relief Orders (Designation of Competent Authorities) Regulations 2009
- The Insolvency Proceedings (Fees) (Amendment) Order 2009
- The Insolvency Proceedings (Monetary Limits) Order 2009

4. Legislative Context

4.1 The Order is made under the Tribunals, Courts and Enforcement Act 2007. The provisions of that Act introduce Debt Relief Orders and Debt Relief Restrictions Orders and Undertakings.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 A Debt Relief Order is an individual insolvency solution aimed at those debtors with relatively low liabilities, no realisable assets and little or no disposable income with which to make contributions to creditors. Such a debtor is financially excluded from current debt relief solutions. It is intended that Debt Relief Orders will be cheaper to access than bankruptcy and therefore more accessible to this population. Further details are contained in the Explanatory Memorandum attached to The Insolvency (Amendment) Rules 2009.

7.2 The Debt Relief Order regime includes civil and criminal penalties against those who abuse the regime. This transitional provision ensures that, where the Secretary of State is considering accepting a Debt Relief Restrictions Undertaking or the court is considering whether to make a Debt Relief Restrictions Order, any conduct of the debtor which occurred prior to the commencement date is not taken into account.

- ***Consolidation***

7.2 Not applicable.

8. Consultation outcome

8.1 The transitional provision has not been specifically consulted upon but the Debt Relief Order regime has been developed with extensive consultation with stakeholders as detailed in the Explanatory Memoranda submitted with The Insolvency (Amendment) Rules 2009.

9. Guidance

9.1 There is no specific guidance relating to this instrument. There are numerous guidance sources for Debt Relief Orders generally as detailed in the Explanatory Memoranda submitted with The Insolvency (Amendment) Rules 2009.

10. Impact

10.1 The impact on business, charities or voluntary bodies, of the Debt Relief Order provisions generally, is beneficial as detailed in the Explanatory Memoranda submitted with The Insolvency (Amendment) Rules 2009.

10.2 The impact on the public sector, of the Debt Relief Order provisions generally, is beneficial as detailed in the Explanatory Memoranda submitted with The Insolvency (Amendment) Rules 2009.

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 Nothing has been scheduled specifically for this SI but further details about the monitoring and review of the Debt Relief Order scheme are contained within the Explanatory Memoranda submitted with The Insolvency (Amendment) Rules 2009.

13. Contact

Sarah O'Sullivan at The Insolvency Service Tel: 020 7291 6766 or email:sarah.osullivan@insolvency.gsi.gov.uk can answer any queries regarding this instrument.