

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (MONETARY LIMITS) (AMENDMENT) ORDER
(NORTHERN IRELAND) 2011

S.R. 2011 No. 000

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 362(1)(b) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. This Order amends the Insolvency (Monetary Limits) Order (Northern Ireland) 1991 (S.R. 1991 No. 386) ("the principal Order"). It specifies the maximum amounts of debt, monthly surplus income and total value of property for eligibility for a Debt Relief Order. It also specifies the maximum amount of credit which a person in respect of whom a Debt Relief Order is made may obtain without disclosing that fact.

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. Paragraph (1) of Article 208(S) inserted into the 1989 Order by Section 1 of the 2010 Act makes it an offence for a person in respect of whom a Debt Relief Order is made to obtain credit without disclosing his status. Paragraph (4) of Article 208(S) disapplies paragraph (1) if the amount of the credit is less than that specified by order under Article 362(1)(b).
- 3.3. Paragraphs 6((1), 7(1) and 8(1) of Schedule 2ZA inserted into the 1989 Order by section 2 of the 2010 Act respectively make eligibility for a Debt Relief Order conditional on the total amount of the debtor's debts (other than unliquidated debts and excluded debts), their monthly surplus income and the total value of their property not exceeding amounts specified by order under Article 362(1)(b).
- 3.4. Article 362(1)(b) of the 1989 Order is amended by paragraph 12 of the Schedule to the 2010 Act to enable the Department to specify by order amounts for the purpose of Article 208(S)(4) and of paragraphs 6 to 8 of Schedule 2ZA.
- 3.5. This Order transfers monetary limits previously specified for other purposes into a new Part 2 in the Schedule to the principal Order and inserts into a new Part 1 into that Schedule specifying amounts for the

purposes of Article 208(S)(4) of, and of paragraphs 6(1), 7(1) and 8(1) of Schedule 2ZA to, the 1989 Order.

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. Among the topics dealt with was whether upper limits on liabilities, surplus income and assets should apply in determining eligibility for a Debt Relief Order. Reference was also made to the intention not to permit persons subject to Debt Relief Order to obtain credit over a prescribed amount without disclosing their status. Approximately 460 individuals and organisations were notified by letter about the consultation, including politicians and organisations engaged in providing debt advice. A total of 22 replies were received.
- 4.2. All thirteen respondents who answered a question on whether there should be a limit on the amount an individual can owe to obtain entry to the Debt Relief scheme were in favour of one. Out of fourteen who answered about the appropriate amount eight felt that a £15,000 limit was appropriate, at least to start off. Three considered £20,000 to £25,000 a more appropriate figure. One felt that £15,000 was too high. One simply suggested that the limit could be increased, another that the figure be reviewed after 12 months.
- 4.3. All fourteen respondents who answered a question on whether there should be a cap on permitted surplus income were in favour of one. Ten commented on the amount. Six felt that a £50 limit was appropriate. One suggested £100, another £75 to £100. One simply stated that £50 was too restrictive another that the cap should be flexible.
- 4.4. Eight of those who provided views on a £300 limit on realisable assets suggested amounts. Five agreed that £300 was right, another stated that £300 seemed a little low but would do as a baseline. One suggested a slight increase, another felt that the amount should be £500.
- 4.5. None of the fourteen respondents who answered a question about the adequacy of protection for creditors had any comment on the proposed de minimis limit in relation to the offence of taking credit without disclosing being subject to a Debt Relief Order.
- 4.6. The eligibility limits for entry to the Debt Relief scheme in England and Wales are that total debt does not exceed £15,000, surplus income does not exceed £50 in the month and total assets are not worth more than £300. The consultation does not show any strong consensus or compelling reason for different figures to apply in Northern Ireland.

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 has not been prepared as the Order does not impose any additional costs on business, charities, social enterprise or voluntary bodies.

7. Financial Implications

- 7.1. None

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 grounds 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. This Order is in line with amendments made by the Insolvency Proceedings (Monetary Limits) (Amendment) Order 2009 (S.I. 2009 No. 465) applying in England and Wales.

11. Additional Information

- 11.1. Not applicable.