



Bill Paper 24/10

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DEBT RELIEF BILL

This paper provides background to and an overview of the Debt Relief Bill, which was introduced into the Assembly on the 9th March 2010. The purpose of the Debt Relief Bill is to establish a Debt Relief scheme similar to the one which has been in operation in England and Wales since the 6 April 2009. The aim of Debt Relief scheme is to provide a debt relief remedy for the financially excluded who have relatively low liabilities, little surplus income and few assets, and who subsequently cannot afford the cost of petitioning for bankruptcy.

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SUMMARY OF KEY POINTS

The framework under the current law requires that individuals who are unable to pay their debts as they are due, may only free themselves of those debts through mechanisms such as a debt management plan, an Individual Voluntary Arrangement or a Bankruptcy Order. Each of these mechanisms however, require that the debtor have either sufficient funds to make monthly payments, assets to defray some of the debt or sufficient resources to cover the petition deposit to be declared bankrupt.

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 the population. It is proposed that an application for a Debt Relief Order can only be made via an intermediary, as approved by the Department.

The Bill proposes to introduce provisions for:

- The application for, and the making of, Debt Relief Orders.
- The respective duties of the Official Receiver and Debtors within the Application process
- The Conditions for making a Debt Relief Order
- The Offences linked to attempts by the debtor to misrepresent or conceal their affairs

The Bill will give the Department power to make regulations pursuant to Article 208U of the Debt Relief Bill to provide:

- (i) for the procedure for designating bodies as competent authorities;
- (ii) descriptions of individuals who are ineligible to be approved as intermediaries;
- (iii) the procedure for granting approvals and
- (iv) for the withdrawal of designations or approvals.

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INTRODUCTION

The framework under the current law requires that individuals who are unable to pay their debts, as they are due, may only free themselves of those debts through mechanisms such as a debt management plan, an Individual Voluntary Arrangement under Chapter 2 Part 8 of the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”), or a Bankruptcy Order under the Chapter 1 Part 9 of the 1989 Order. Each of these mechanisms however, require that the debtor have either sufficient funds to make monthly payments, assets to defray some of the debt or sufficient resources to cover the petition deposit to be declared bankrupt (a £345 deposit to the Department, and if they are in employment, a £115 fee to the Court).

The proposed bill seeks to provide a further workable debt relief remedy for those with insufficient disposable income to avail of the current mechanisms for assistance and where these financial barriers prevent them from alleviating relatively small levels of debt. A Debt Relief Order (DRO) will provide the individual with legal recognition that they cannot pay their debts, relief from enforcement action, and discharge from liability to pay the debts after twelve months.¹

BACKGROUND

The Department for Enterprise, Trade and Investment briefed the ETI Committee about its proposal to legislate to set up a debt relief scheme on the 16th October 2009 following a public consultation.² The Department’s original plans for the proposed scheme envisaged;

- Applicants would have to pay a fee
- Application for a Debt Relief order would only be possible through Debt Advisers acting as intermediaries
- Application would be to the Official Receiver
- There would be eligibility criteria consisting of upper limits for,
 - total unsecured debt
 - total value of assets
 - surplus monthly income
- Sanctions would be put in place to deal with anyone abusing the scheme by applying under false pretences
- To prevent serial applications to the scheme there would be a minimum period before an individual who had obtained a Debt Relief order would be eligible to re-apply under the scheme
- Culpable individuals could be placed under continuing restrictions post discharge
- An individual receiving a windfall while subject to a Debt Relief order could have his discharge postponed to give him time to make arrangements to pay his creditors

The public consultation took place on the 11th February – 6th May 2009, with the Department’s *Summary of Responses to the Policy Consultation* issued on the 15th May 2009. A further briefing with the Committee for Enterprise Trade and Investment took place on the 28th May 2009 which, according to the recording of the meeting,

¹ DETI, Proposed Debt Relief scheme for Northern Ireland, Summary of Responses to Policy Consultation. <http://www.detini.gov.uk/consultation17.pdf>

² Harsard, Minutes of Evidence, Debt Relief Bill, 18 February 2010, p.2
http://www.niassembly.gov.uk/record/committees2009/ETI/100218_DebtReliefBill.pdf

was to brief it on the outcome of the consultation, the subsequent assessment of the responses and the next steps. On the 30th July 2009, Executive Agreement for the Bill to move forward was given and the Bill was drafted. A further department brief to the Committee was made on the 18th February 2010 with regards to the drafted Bill, and the Bill was introduced to the Assembly on the 9th March 2010.

RESULTS OF CONSULTATION

The Department's Consultation sought responses from over 400 organisations and individuals on issues concerning the overall objectives and framework of the debt relief scheme. Questions regarding more specific factors in the scheme's implementation such as; the fees to be levied and the various thresholds for a debtor to qualify under the scheme were also asked. These will be included within subordinate legislation.³

Of the 22 responses to the Consultation received, a majority 'generally welcomed the proposed setting up of a Debt Relief scheme'.⁴ Concerns were raised however by two respondents. Firstly, Antrim Borough Council expressed concern with regards to the potential for the scheme to be abused and 'the impact on rates income'.⁵ On the first issue, the Department has stated that a regime of offences and penalties will be established to deal with those abusing the scheme and furthermore, entry to the scheme will be restricted to once every six years so no systematic reliance on this remedy will be allowed to develop.⁶ The second concern will be partly mitigated through a bar on homeowners, as holders of a significant asset, from being eligible for the scheme.

A separate issue, raised by the Irish League of Credit Unions suggested the scheme would have an adverse impact on their members' ability to receive monies due on loans to their clientele and as such, requested that Credit Union loans be excluded from the definition of debts under the scheme. The Department responded;

*'The scheme is intended to provide relief to people who have no reasonable prospect of being able to pay their debts. If a credit union is owed money by a person who does not have the resources to pay, it is highly unlikely that the credit union will ever be paid.'*⁷

Department Officials have further pointed out to the body representing credit unions 'that its members would protect their interests by insisting on borrowers holding a savings balance above the asset level (£300 in England & Wales) for eligibility to the scheme'.⁸

A further area addressed by the consultation concerned the practicality to making DROs administratively rather than through the Courts. There were 13 responses to this question, generally in support of DROs being made administratively. Reasons for this agreement included reduction in costs, no backlogs and avoidance of the stress and fear engendered by the court process.

In Questions 14 & 15 the Consultation document asked stakeholders whether the protection afforded to creditors was sufficient and furthermore whether debtor

³ Summary of Responses to Policy Consultation, p.9

⁴ Ibid, p.4

⁵ Ibid, p.5

⁶ Ibid, p.7

⁷ Ibid p.7

⁸ Minutes of Evidence, Debt Relief Bill, 18 February 2010, p.4

misrepresentation should result in enforcement action in addition to revocation of the order and its benefits. A majority of the 15 respondents to the latter question considered the protection to be sufficient. One respondent felt 'that creditors are likely to recover very little in these situations anyway and most creditors are likely to be large institutions that are able to bear the loss.'⁹ Within this context therefore, a right of appeal through the court system was adequate. The responses to the latter issue of enforcement were more evenly spread however, with different respondents favouring various measures. The Department responded that it would ensure that there is an appropriate and proportionate range of remedies to tackle misconduct by the debtor which incorporates a system of restrictions and offences which are included within the proposed Bill and prosecution to be a tool used when the 'misrepresentation is deliberate.'¹⁰

A more detailed summary of the Consultation is available at:

<http://www.detini.gov.uk/consultation17.pdf>

EQUIVALENT LEGISLATION IN ENGLAND AND WALES

DROs were first considered, in the context of England and Wales, in the Department for Constitutional Affairs' 2004 consultation *A Choice of Paths: better options to manage over-indebtedness and multiple debts*. At the time of this consultation process, the scheme was known as the No Income, No Asset Debt Relief Scheme (NINA). The consultation document outlined initial proposals and qualifying terms of the scheme, similar to those which would later make up the terms of the DRO proposals (outlined below). The department's consultation response document noted that 'the concept of NINA was well received.'¹¹

A subsequent consultation process began in March 2005 entitled, '*Relief for the Indebted – An Alternative to Bankruptcy*' in which it sought the views of stakeholders on a proposed new DRO procedure. A summary and analysis of responses was published in November of the same year.¹²

The primary legislation relating to the DROs is Schedules 17 – 20 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act").¹³ The detail of the Orders is contained within secondary legislation, *The Debt Relief Orders (Designation of Competent Authorities)(Amendment) Regulations 2009* and *The Insolvency (Amendment) Rules 2009*.

This NI Bill is attempting to bring equivalent measures into force in this jurisdiction so to afford individuals commensurate relief to that available in England and Wales. The proposed Bill diverges from the provisions within the 2007 Act in the following ways:

The first difference is within the first clause on DROs, Article 208F regarding the Effect of debt relief on an administration order. The 2007 Act is broader in that it covers the effect on other debt management arrangements such as DROs and debt

⁹ Summary of Responses to Policy Consultation, p.18

¹⁰ Ibid, p.19

¹¹ Department for Constitutional Affairs, Response Paper: A Choice of Paths: better options to manage over-indebtedness and multiple debts, July 2004. www.dca.gov.uk/consult/debt/responses.pdf

¹² The Insolvency Service Relief for the indebted – an alternative to bankruptcy: Summary of Responses and Government Reply, November 2005
http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/relieffortheindebtedanalternativetobankruptcyresponse.pdf.

¹³ Tribunals, Courts and Enforcement Act 2007 ;
http://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_1

repayment plans in accordance with an approved debt management scheme. Both these measures are however introduced within the 2007 Act and do not apply within this jurisdiction.

Within Article 208U, the 2007 Act includes provision that regulations made by the Secretary of State pursuant to subsection 4 of that Article concerning the designation of approved intermediaries and setting the criteria for the determination thereof, will be 'subject to annulment in pursuance of a resolution of either House of Parliament.' The NI Bill does however contain provision within Schedule 2ZB, Clause 5 that all consequential amendments made by the Department to give effect to the Act shall be subject to a draft being 'laid before and approved by resolution of the Assembly.'

The Department has also sought to enable itself or to arrange for the provision of others to provide advice and information to the public with regards to the relief of debt or any related matter which the Department considers would be of benefit to the public. The Department may also undertake and/or assist research into this area. This reflects concerns which were raised within the Consultation process that intermediaries should be able to 'encourage individuals to avoid profligate consumer behaviour in the future.'¹⁴

Finally, in terms of the punishment for the various offences outlined within the proposed Bill, the upper limits for offences on indictment mirrors those contained within the 2007 Act entirely. The upper limit for summary offences for the Bill however is 6 months, compared to the 12 months stipulated within the 2007 Act. This may be a reflection of the Consultation process where a wide range of sanctions were suggested by respondents and there was a concern not to overburden Courts with multiple and expensive cases. The Department stated in response that prosecution should result from a debtor's deliberate misrepresentation rather than just misleading statements.

PURPOSE OF THE BILL

The Department states that the Debt Relief Bill provide access to a remedy for those who can neither fund an individual voluntary arrangement nor afford the cost of petitioning for bankruptcy, and are therefore unable to free themselves from a lifetime burdened by debt they have no reasonable prospect of being able to pay. The effect of a DRO is similar to that of a Bankruptcy Order made in Court, but costs substantially less and does not involve the distribution of an estate. The Bill is aimed at those who have no income and no assets and 'estimates suggest there could be between 500 and 1,000 applications each year.'¹⁵

OVERVIEW OF THE BILL

The Bill consists of 9 clauses and 1 Schedule. As regards Debt Relief the Bill operates by inserting new provisions into the 1989 Order as follows.

Provision in Debt Relief Bill	Provisions inserted into 1989 Order
Clause 1	Part 7A
Clause 2	Schedule 2ZA
Clause 3	Schedule 2ZB

¹⁴ Summary of Responses to Policy Consultation, p.11

¹⁵ Harsard, Minutes of Evidence, Debt Relief Bill, p.3

Clause 6 and the Schedule make consequential amendments to the 1989 Order and other legislation.

The Bill proposes to introduce provisions for:

- The application for, and the making of, DROs.
- The respective duties of the Official Receiver and Debtors within the Application process.
- The Conditions for making a DRO
- The Offences linked to attempts by the debtor to misrepresent or conceal their affairs

CONTENT OF THE BILL¹⁶

Clause 1: Debt relief orders

This Clause inserts a new Part 7A into the 1989 Order, thereby establishing a new individual insolvency procedure based on the Official Receiver being able to provide eligible individuals with relief from debt through the making of a DRO.

Part 7A to the 1989 Order

Article 208A: Debt Relief Orders

This Article provides that application for a debt relief order may only be made by individuals who are unable to pay their debts. It also identifies the debts in respect of which a DRO may be made and terms them “qualifying debts”. The debts must be for an identifiable amount of money and must not be secured or fall within any description of debt prescribed by rules as excluded from being a qualifying debt.

Article 208B: Making of application

This Article prescribes the way in which an application to the Official Receiver for a DRO is to be made. The application must be made through an approved intermediary. The term “approved intermediary” is defined later in Article 208U. The Article sets out some of the detail about the individual’s affairs which must be included in a application for a DRO, and makes provision for insolvency rules made under Article 359 to prescribe the form and manner in which the application should be made and the information which must be supplied in support of it.

Article 208C: Duty of Official Receiver to consider & determine application

Once an application has been made the Official Receiver must decide whether to make, refuse or stay the application pending further enquiries. This Article describes the steps the Official Receiver should take when an application for a DRO has been made. It allows the Official Receiver to stay his consideration of the application until he receives answers to any queries he has raised with the debtor. It sets out the

¹⁶ ‘Debt Relief, Explanatory and Financial Memorandum.’ NIA Bill 9/09-EFM Session 2009-2010

circumstances in which the Official Receiver must refuse the application (if he is not satisfied that the debtor meets the criteria for a DRO) and also that he may refuse the application if it does not satisfy the requirements imposed by Article 208B or if queries raised with the debtor have not been answered to the Official Receiver's satisfaction. If the Official Receiver refuses the application he must give reasons to the debtor. If the Official Receiver does not refuse the application he must make the order.

Article 208D: Presumptions applicable to the determination of an application

In order to ensure that there is a uniform approach to the order making process and that the great majority of applications can be decided quickly, the Official Receiver must apply certain presumptions when determining an application for a DRO. This Article requires the Official Receiver to presume,

- (a) that the debtor meets the requirements for a DRO if this appears to be the case from the information supplied in the application and he has no reason to believe that the information supplied is inaccurate or that the debtor's circumstances have changed since the application date;
- (b) that the debtor meets the conditions as to eligibility set out in Schedule 2ZA providing he has no reason to believe that incomplete or inaccurate information has been supplied in the application or in support of it;
- (c) the debts specified at the date of the application are qualifying debts unless he has reason to believe otherwise.

It is expected that the involvement of authorised intermediaries in filling in and submitting application forms will result in most applications being well-founded. Article 208D allows the Official Receiver to make orders where the application appears to be in order without considering the case in any more detail. However he will be expected to look a case in far greater detail if an objection is made to the order or he discovers that for any reason it arguably should not have been made. This is thought to provide adequate protection for creditors and will ensure that the administrative costs, and hence the application fees, can be kept as low as possible.

Article 208E: Making of debt relief orders

This Article makes provision as to the form of a DRO, including some of the matters which must be included in the order, for example a list of the debtor's qualifying debts. It places the Official Receiver under a requirement to enter details of the DRO in the register of debt relief orders maintained by the Department. It makes provision for the steps which the Official Receiver must take once the order has been made, including giving a copy of the order to the debtor, and allows for rules to prescribe other steps the Official Receiver must take, in particular with regard to notifying creditors and informing them of the grounds on which they may object.

Article 208F: Effect of debt relief order on administration order

This Article provides that if a debtor is subject to an administration order made by the Enforcement of Judgment Office the administration order ceases to be in force on the making of a debt relief order.

Article 208G: Moratorium from qualifying debts

Article 208G sets out further effects of a DRO. A moratorium in relation to the debts specified in the order takes effect on the order being entered in the register. Any

petition, action or other proceeding by a creditor to whom a specified debt is owed which is pending in any court can be stayed by that court. During the moratorium creditors specified in the order are prohibited from taking proceedings to enforce their debts or presenting bankruptcy proceedings in relation to those debts, except with the leave of the High Court.

Article 208H: The moratorium period

In most cases, the moratorium period is one year from the date on which the order is entered in the register. However, the order may be terminated early, for example if the debtor's financial circumstances change so that he could make arrangements to pay creditors, or if he has been found to have provided misleading information on his application.

The Article makes provision for the moratorium period to be extended by the Official Receiver or the court and the circumstances in which an extension is permitted. Such circumstances included carrying out or completing an investigation into the debtor's affairs (only with permission of the court) or providing the debtor with an opportunity to make arrangements to pay his creditors before revoking the order.

Article 208I: Discharge from qualifying debts

Article 208I provides for the debtor to be discharged from his qualifying debts as specified in the order at the end of the moratorium period, and the circumstances in which the debtor will not be discharged from the debts – in particular if the moratorium period is terminated early. The debtor will not be discharged from any debts listed in the order that were incurred through fraud. The Article also specifies that discharge of the debtor from the debts does not release any other person from their liability for the debts.

Article 208J: Providing assistance to Official Receiver etc.

This Article sets out the requirements imposed on the debtor with regard to assisting the Official Receiver in carrying out his functions. It requires the debtor to provide the Official Receiver with information about his affairs and attend on the Official Receiver. The requirement extends so far as the Official Receiver may reasonably require in order to carry out his functions in relation to the application or the debt relief order made as a result of it. The debtor is also under a duty to notify the Official Receiver of changes in his circumstances before and during the moratorium period. He must also notify the Official Receiver if he becomes aware of any errors or omissions in his application.

Article 208K: Objections and Investigations

Creditors are permitted to object to the making of the order on specified grounds and this Article makes provision for that. In particular, the Article makes provision for any person specified in the order as a creditor to object to the making of the order or his inclusion in the order or to details of the debt specified. It also gives details of how the objection must be made and requires the Official Receiver to consider the objection. It allows the Official Receiver to carry out an investigation if it seems appropriate and gives a power to the Official Receiver to require any person to give him information and assistance.

Article 208L: Power of Official Receiver to revoke or amend a debt relief order

This Article sets out the circumstances in which the Official Receiver may revoke the order and gives him a power to amend the order during the moratorium period to correct errors and omissions. Revocation may take place when information provided by the debtor to the Official Receiver turns out to be incomplete or misleading, or where the debtor fails to comply with his duties to provide information or attend on the Official Receiver. The order may also be revoked if the Official Receiver ought not have made the order because he ought not to have been satisfied the criteria were met and also if the debtor's income and property levels change (for example following a windfall) after the order has been made and the debtor would no longer meet the criteria for obtaining an order.

Article 208M: Powers of High Court in relation to debt relief orders

This Article enables persons who are dissatisfied with the actions of the Official Receiver to apply to the High Court and for the Court to give directions or make any order it thinks fit. It also enables the Official Receiver to make an application for directions or an order in relation to any matter arising in connection with the DRO or an application for a DRO. An application to the Court may, subject to anything contained in the rules, be made at any time.

Article 208N: Inquiry into debtor's dealings and property

This Article enables the High Court, on the application of the Official Receiver, to require the debtor, the debtor's spouse, former spouse, civil partner or former civil partner or any person appearing to be able to give information or assistance to the Court to appear before the Court. There are sanctions for failure to appear without reasonable excuse – the Court may issue a warrant for the person's arrest or order the seizure of books, papers and other items. It is not expected that there will be a frequent use of this power, which is aimed at a very small number of cases where misconduct – for example the hiding of assets – is suspected and the debtor has refused to provide information to the Official Receiver.

Article 208O: False representations and omissions

In order that the Official Receiver can determine whether a DRO should be made, the debtor must provide complete and accurate information about his affairs. Similarly, the debtor remains under an obligation to provide information to the Official Receiver once the DRO is made. This Article provides that a debtor who deliberately provides false information or omits pertinent information commits an offence.

Article 208P: Concealment or falsification of documents

This Article provides that a failure to produce books, papers or other documents to the Official Receiver is an offence. Similarly, preventing such records being produced, or their concealment, destruction or falsification will also be an offence. The offence may be committed before the application for the DRO has been made, and during both the application process and the moratorium period, and it is irrelevant that the order may have been revoked subsequent to an offence being committed.

Article 208Q: Fraudulent disposal of property

To be eligible for a DRO, the debtor must meet various conditions including a limit on the value of property he owns. Article 208Q makes it an offence for a debtor who

has obtained a DRO to have disposed of any property during the two years before the application date or during the moratorium period. An offence will still be committed even if the Debt Relief Order is revoked subsequent to the property being disposed of. It will be a defence for a person charged with this offence to prove that he had no intent to defraud or to conceal the state of his affairs.

Article 208R: Fraudulent dealing with property obtained on credit

This Article makes it an offence if the debtor disposes of property obtained on credit which he has not paid for, and similarly penalises the knowing recipient of such property. No offence is committed if the disposal or acquisition was in the ordinary course of the debtor's business, but particular attention will be paid to the price paid for the property. The offence may be committed before the application for the DRO has been made, and during the application process.

Article 208S: Obtaining credit or engaging in business

This Article makes it an offence for the debtor to obtain credit (either alone or jointly with another person) to the extent of a prescribed amount, or to trade in a name other than that which the DRO was made, without disclosing his status. His status is that there is a moratorium in force in relation to his qualifying debts by virtue of a DRO or that there is a debt relief restrictions order in force in relation to him. Paragraph (5) specifies that "obtaining credit" includes obtaining goods under a hire purchase agreement and also payment in advance for the supply of goods and services.

Article 208T: Offences: supplementary

This Article sets out who may institute proceedings for an offence under this Part and the penalties imposed on a person who commits such an offence. The Article also makes it clear it is not a defence that the conduct complained of was done outside Northern Ireland.

Article 208U: Approved intermediaries

In order to obtain a debt relief order, the debtor must make his application to the Official Receiver through an approved intermediary. This Article defines an approved intermediary and makes provision for rules to specify the types of activities that should be undertaken by an intermediary.

It also states that authorisation will be granted by a competent authority designated by the Department of Enterprise, Trade and Investment to grant authorisations, and allows for regulations to make provision as to the procedure for designating persons to be competent authorities, the types of persons who may not be authorised to act as approved intermediaries, the procedure for dealing with applications to competent authorities for authorisation and the withdrawal of designation to act as a competent authority.

Article 208V: Debt relief restrictions offers and undertakings

This Article gives effect to Schedule 2ZB, which makes provision about debt relief restrictions orders. Such orders will be very similar in operation and effect to bankruptcy restriction orders which already exist.

Article 208W: Register of debt relief orders etc.

Article 208W requires the Department of Enterprise, Trade and Investment to establish and maintain a register of DROs, debt relief restrictions orders and debt relief restriction undertakings.

Article 208X: Interpretation

This Article defines the meaning of various expressions used in this Part of the Insolvency (Northern Ireland) Order 1989.

Clause 2: Conditions for making a debt relief order

Clause 2 inserts a new Schedule 2ZA into the 1989 Order. Schedule 2ZA sets out the conditions for making a DRO.

Part 1 - Conditions which must be met

This part of the schedule sets out conditions that the debtor must meet in order to obtain a DRO. The debtor must be domiciled in Northern Ireland on the application date or at any time during the period of three years ending with that date have been ordinarily resident in or carried on business in Northern Ireland. The debtor must not,

- be an un-discharged bankrupt;
- be subject to an individual voluntary arrangement;
- be subject to a bankruptcy restrictions order;
- be subject to a debt relief restrictions order;
- have had a debt relief order made within the 6 years prior to the determination date.

If the debtor has presented a bankruptcy petition a DRO can only be made if,

- (a) proceedings on that petition have been disposed of or,
- (b) the Court has referred the debtor to an intermediary under Article 248A(2) of the 1989 Order for the purposes of making an application for a debt relief order.

If a creditor has presented a petition to have the debtor made bankrupt a DRO can only be made if,

- (a) proceedings on that petition have been disposed of or,
- (b) whoever presented the petition has consented to the debtor applying for a Debt Relief Order.

The schedule imposes limits on the permitted level of overall indebtedness (the amount of which is to be prescribed in an order), a limit on the debtor's permitted surplus monthly income (also to be prescribed in an order), and a limit on the value of the debtor's property (also to be prescribed in an order).

Part 2 - Other conditions

This part of the schedule sets out other conditions which the debtor must meet in order to obtain a DRO, specifically that he must not have entered into a transaction at an undervalue or given a preference to another person within the two years prior to the application date, and the determination date. This is in order to avoid a situation

where the debtor has disposed of his assets in order to meet the permitted criteria for obtaining a debt relief order, and to protect the position of creditors.

Clause 3: Debt relief restrictions orders and undertakings

Clause 3 inserts a new Schedule 2ZB into the 1989 Order. Schedule 2ZB creates a regime of debt relief restrictions orders and undertakings.

Debtors who are guilty of misconduct that has in some way contributed to their insolvency will be subject to an enforcement regime that encompasses restrictions orders in the same way as bankruptcy. Schedule 2ZB sets out who may apply for a debt relief restrictions order or undertaking and possible grounds for obtaining one and gives details as to the timing of an application and the duration of the order or undertaking. Such orders may last from 2-15 years and will serve to protect the public from the culpable debtor. Whilst subject to a restrictions order, the debtor will remain subject to the same disabilities as those imposed by the original order – for example he will not be able to obtain credit beyond the prescribed amount without disclosing his status.

Clause 4: Advice in relation to relief of debt and related matters

Clause 4 empowers the Department of Enterprise, Trade and Investment to itself provide advice and information to the public about relief of debt and related matters or to make arrangements with others to do so. The Department is given the right to make grants or loans in connection with the provision of such advice and information.

Clause 4 also empowers the Department to either itself carry out research in relation to debt relief and related matters or to assist others in carrying out such research, including through the provision of financial assistance.

Clause 5: Power to make consequential amendments, etc.

Clause 5 allows the Department to make such supplementary, incidental, transitional, transitory, or consequential provisions by order as it considers appropriate in connection with the Bill.

Clause 6: Minor and consequential amendments

Clause 6 gives effect to the Schedule which contains minor and consequential amendments.

Clause 7: Commencement

This clause contains provision for the commencement of the Bill.

Clause 8: Interpretation

This clause contains definitions of words and phrases used in the Bill.

Clause 9: Short title

Clause 9 provides that the new legislation shall be known as the Debt Relief Act (Northern Ireland) 2010.

OPTIONS CONSIDERED

Four options were considered for alleviating the plight of those individuals burdened by debt who are unable to afford the current insolvency procedures:

- i) **Do nothing:** This option would leave vulnerable people without protection from pressure from creditors and deny them access to a way of extricating themselves from debt burdens which would be available to them if they lived in England or Wales.
- ii) **Waive deposits:** Waiving the requirement to pay a deposit in the case of people with assets of negligible value and little surplus income was rejected because;
 - (a) It would result in a two tier system with people in employment, and perhaps on a low wage, still having to pay a court fee of £115 while those not in employment could effectively petition for bankruptcy free of charge;
 - (b) A system of means testing costing over £29,000 per year would have to be put in place to check that claims for exemption from payment of a deposit were genuine;
 - (c) It is to be expected that waiver of the deposit in cases where the petitioner could not pay would result in more bankruptcies. The entire cost to the Insolvency Service of administering and advertising these extra cases would have to be borne by the taxpayer or met through an increase in fees charged by the Department against insolvency estates with assets which could be sold to raise money. This which would not be fair to the creditors in those cases. Also the Court Service would face increased costs as it is to be expected that in some of the extra cases petitioners would not have to pay a fee to cover the cost of administering their petition due to not being in employment.
- iii) **Introduce a code of practice.** This option was dismissed because it was considered highly unlikely that all lenders would sign up to a code so that it would not be effective in protecting borrowers who could not pay from being subjected to pressure to do so.
- iv) **Legislate to set up a Debt Relief scheme.** This would be a low cost, high volume scheme under which the Official Receiver would be able to make Orders similar to Bankruptcy Orders made by the Court. Applicants would have to pay a single fee set at less than one third of the cost of the deposit payable to petition for bankruptcy. The scheme would be open to debtors meeting certain eligibility conditions. Ceilings on total debt owed, monthly surplus income and assets would be established in secondary legislation. Application would only be possible through debt advisers approved to act as intermediaries. Approval would be by competent authorities designated by the Department. All applications would have to be made electronically. This Bill has as its main purpose the setting up of such a scheme.

COSTS

The cost of setting up the scheme, consisting mainly of the purchase of IT and provision of training for intermediaries, has been estimated to be in the region of £34,000. Three additional staff will be needed to operate the scheme. The annual running cost for the scheme, including salaries for the additional staff required, has been estimated at £85,000 to £86,000. Provision for these costs has been made in the Department's budget.

The effect on the public purse of the annual running cost will be offset to a greater or lesser degree by the fee income from applicants on the estimation that there will be on average 1,000 applicants per annum. The extent to which this will happen will depend on the amount of the fee (to be established in subordinate legislation) and the number of applications.

HUMAN RIGHTS AND EQUALITY IMPACT ASSESSMENT

The provisions of the Bill are considered by the Department to be compatible with the Human Rights Act 1998.

As a result of the equality impact screening which has been carried out the Department does not considered that the Bill will have any adverse or negative impact on any of the sections of the community specified in section 75 of the Northern Ireland Act 1998.

REGULATORY IMPACT ASSESSMENT

The Department considers that the proposed Bill has shown a Debt Relief scheme to be the most efficacious and effective means of providing relief for individuals burdened by debt who cannot afford to petition for bankruptcy.

ANNEX A: LIST OF RESPONDENTS TO THE CONSULTATION

Advice NI
Antrim Borough Council
Association of Chartered Certified Accountants
Arthur Boyd & Co.
Ballymena Borough Council
Banbridge District Council
Belfast City Council
Callcredit
David Capper, School of Law, Queens University
Chartered Accountants Regulatory Board
Citizens Advice
Consumer Credit Counselling Service
Craig Dunford, Barrister-at Law
Housing Rights Service
Irish League of Credit Unions
The Law Society of Northern Ireland
Limavady Borough Council
NIACRO
NICVA
Northern Ireland Court Service
Hazel Scott (Consumer Advice Centre, Belfast City Council)
The Social Security Agency (partial response)