



Northern Ireland
Assembly

**COMMITTEE FOR
ENTERPRISE, TRADE AND
INVESTMENT**

**OFFICIAL REPORT
(Hansard)**

Debt Relief Bill

18 February 2010

NORTHERN IRELAND ASSEMBLY

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INVESTMENT**

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Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Leslie Cree
Dr Alasdair McDonnell
Mr Gerry McHugh
Mr Stephen Moutray
Mr Sean Neeson
Mr David Simpson

Witnesses:

Mr Reg Nesbitt) Department of Enterprise, Trade and Investment
Mr Jack Reid)

The Chairperson (Mr A Maginness):

I welcome Mr Reg Nesbitt and Mr Jack Reid from the Insolvency Service of the Department of Enterprise, Trade and Investment. Gentlemen, I will ask you to make your presentation, after which members will ask you questions.

Mr Reg Nesbitt (Department of Enterprise, Trade and Investment):

Chairman, may I first congratulate you on your appointment as Chairman of the Committee?

The Chairperson:

Thank you very much.

Mr Nesbitt:

For your benefit and for that of any other member who is new to the Committee, I will outline our previous engagements with the Committee and then provide a résumé of the Bill's provisions and the stage that we are at.

On 16 October 2008, we briefed the Committee about the Department's proposal to legislate to set up a debt-relief scheme, and advised that we were planning to carry out a public consultation. On 28 May 2009, we informed the Committee of the outcome of the consultation and provided a detailed outline of what we proposed to include in a Bill to set up a debt-relief scheme. The Committee agreed to the Minister's seeking Executive agreement to the drafting of a Bill.

Executive agreement was given on 30 July 2009, and a Bill has since been drafted and agreed; the Minister has sent the Committee a copy of it along with the explanatory and financial memorandum. The Bill's main purpose is to enable the Department to set up a scheme to address the difficulty that the least well-off have in accessing relief from debt burdens. It is possible to get relief from debts that one cannot pay — but only if one can afford it. That is done by petitioning the Northern Ireland High Court to be made bankrupt; however, one will have to pay a £345 deposit, payable to the Insolvency Service, and a £115 fee to the court. Bankruptcy provides one year's protection against action by one's creditors. At the end of the year, one's liability to pay most categories of unsecured debt will be completely cancelled. Those who cannot afford to pay the deposit and fee will be left burdened by debt, possibly for the rest of their lives. It has been recognised that the making of an order to relieve debt on a debtor's application is a purely administrative task that could be carried out by the Official Receiver at far lower cost.

The central theme of the Bill is to give individuals who are burdened by debt the right to apply to the Official Receiver for what is termed a debt-relief order, which will have a similar effect to a bankruptcy order that is made by the court. That is set within the confines of arriving at a scheme that is simple, straightforward and cheap to administer, and, at the same time, of striking a balance between the need to assist the least well-off to become financially rehabilitated and protecting creditors' interests.

Application for a debt-relief order will be possible only through a trained debt advisor. That will provide an opportunity for applicants' financial circumstances to be assessed and for checks to be made to ensure that they meet the eligibility criteria that will apply. Debt advisors will have to be approved by the competent authorities that the Department designates. Strict eligibility criteria will apply: the scheme is for people with debts at the lower end of the scale. A ceiling on total debts will, therefore, be set in subordinate legislation. The scheme is for people with no prospect of being able to pay their debts. Ceilings will, therefore, be set in subordinate legislation on the total value of the assets that applicants are allowed to have and on the surplus income that they may have left over after meeting essential living expenses.

Bankruptcy, with its emphasis on investigation, will remain as the more appropriate remedy for people with higher levels of debt and for homeowners. Homeowners will, in practice, be barred from the scheme, because their house will be treated as an asset even if in negative equity. A debt-relief order will provide a one-year moratorium that protects the debtor against legal proceedings or enforcement action by their creditors. Liability to repay debts that are covered by the order will be completely cancelled at the end of that year. A fee will be payable to the Official Receiver, but it is intended that that will be less than one third of what it costs to petition for bankruptcy. The fee will go towards the cost to the Department for administering the scheme, which is estimated at between £80,000 and £90,000 a year. The set-up cost, mainly to provide IT processes to operate the scheme, is estimated to be about £100,000 and is covered by the Department's budget.

The scheme incorporates measures to prevent it being abused by those out to defraud their creditors, including the establishment of a regime of offences and penalties. The scheme will offer timely relief to those affected by the recession. Estimates suggest that there could be between 500 and 1,000 applicants to it each year. The Bill to set up the scheme is exactly as outlined to the Committee on 28 May 2009. It is also, for the most part, in parity with legislative provision that is included in the Tribunals, Courts and Enforcement Act 2007, under which a similar scheme was set up in England and Wales that came into operation on 6 April 2009.

Extensive consultation that was carried out between February 2009 and May 2009 produced 22 responses, 16 of which were substantive. Of the 12 respondents who commented on the merits of the scheme, only two opposed it from a particular standpoint: one opponent was a council that

was concerned about the effect on its rating revenue; the other was a body representing credit unions. However, examination shows that the effect on rating revenue should be minimal; for one thing, the scheme will not be open to homeowners. It was pointed out to the body representing credit unions that its members could protect their interests by insisting on borrowers holding a savings balance above the asset level for eligibility to the scheme.

We now need, through our Minister, to seek Executive approval for the Bill to be introduced in the Assembly. We hope that the matter can be dealt with on 11 March 2010 if an Executive meeting takes place on that day. We intend for the Bill to be introduced on 22 March 2010; it is important that the Bill be introduced on that date so that it is not delayed. We are seeking the Secretary of State's consent to have reserved matters included in the Bill in the shape of offences and penalties; we do not expect there to be any difficulties with that.

The Chairperson:

Thank you for your presentation. I wish to ask you about the general thrust of the Bill. It is to provide a cheaper, more efficient and effective way of dealing with debt rather than going through High Court bankruptcy proceedings, and it is aimed at people with a lower level of debt than the unlimited range of debt in High Court bankruptcy proceedings. Is that the thrust of the Bill?

Mr Nesbitt:

A person can still apply for an ordinary bankruptcy if they owe more than £750. That is enshrined in legislation.

The Chairperson:

Therefore no one is prevented from doing that.

Mr Nesbitt:

No one is prevented from going into bankruptcy if that is what they desire; if they have enough assets, they may want to go down that route. The Debt Relief Bill is for people who have no income and no assets. In England, the upper ceiling for liabilities is £15,000, so the Bill will probably affect people on very low incomes, who do not have a house, probably live in rented accommodation, and have probably run up credit card debts to a ceiling of £15,000.

The Chairperson:

Is that likely to be the ceiling here as well?

Mr Nesbitt:

It is.

The Chairperson:

A debt-relief order seems to be given on the basis of an application, which is filled out by authorised intermediaries. Is that right?

Mr Nesbitt:

Yes.

The Chairperson:

Do they have to accept what is stated in the application?

Mr Nesbitt:

The Official Receiver will, generally speaking, accept what is on an application, because intermediaries are their primary contact. Those intermediaries are normally debt advisers; they could be from a citizens' advice bureau or from Advice Northern Ireland, for example. They give advice every day, so they will guide the applicant. They will decide the proper route for the applicant because they have to satisfy the criteria; therefore the advisers will need some training so that they can identify whether an applicant qualifies for the scheme.

The Chairperson:

Can the intermediaries carry out an in-depth search on a person's financial background?

Mr Nesbitt:

Yes; they have to determine an applicant's income and expenses.

Mr Jack Reid (Department of Enterprise, Trade and Investment):

The intermediaries, who will be trained debt advisers, will be required to look at documentary proof of the applicant's income to verify that their circumstances are as stated in the application form.

The Chairperson:

Therefore you are not dealing with people who simply assert what their income is.

Mr Nesbitt:

Certainly not.

The Chairperson:

Proof is given to the intermediary.

Mr Reid:

That is correct.

The Chairperson:

Therefore the Official Receiver would work on that basis.

Mr Reid:

It is not the Official Receiver who works on that basis; it is a preliminary process carried out before the application is submitted to the Official Receiver. One of the intermediaries' roles is to examine documentary proof of income.

The Chairperson:

Are you satisfied that the process will be rigorous?

Mr Nesbitt:

Yes.

The Chairperson:

If an order is granted, a one-year moratorium would come into effect from the date that the application is granted.

Mr Reid:

It comes into effect from the date that the making of a debt-relief order is entered in a register of debt-relief orders. That should happen shortly after the making of an order.

The Chairperson:

Does that avoid all court proceedings?

Mr Reid:

No. A creditor who objects to what is taking place or to the Official Receiver's handling of a case can apply to the court, which will have a range of options available to it, including revoking an order.

Mr Nesbitt:

The Official Receiver can go to the court for directions if he so desires.

The Chairperson:

What happens at the end of the one-year moratorium?

Mr Reid:

The cancellation of debts takes place as in bankruptcy; however, in the case of a debt-relief order, only debts that have been listed and covered by the order will be cancelled. If a debtor were to forget about a debt, he or she would still be liable. Bankruptcy cancels all debts, subject to certain statutory exceptions. Debt relief covers those debts that the debtor has listed in his application.

Mr Nesbitt:

If knowledge of a debt that pushed the debtor over the £15,000 ceiling came to the attention of the Official Receiver, he may revoke the order within the moratorium period.

The Chairperson:

The Bill covers those who have no assets or whose income is very low or non-existent and who cannot cover outstanding debts.

Mr Nesbitt:

Yes; it covers people who are unlikely ever to be able to repay debts that would be a millstone round their neck for quite a long time.

The Chairperson:

For the rest of their lives, in effect.

Mr Butler:

The last time you were here you said that the eligibility criteria related to people who did not have a surplus of £50 a month?

Mr Nesbitt:

Yes.

Mr Butler:

How can you distinguish between a family and a single person? A £50 surplus seems a stringent criterion. Advice NI had some concerns about that as the figure is quite small.

Mr Reid:

Frankly, our intention is that the £50 surplus limit would apply, irrespective of family size. The scheme should not place the debtor in a better position than they would be in bankruptcy; it should give people who meet the criteria cheaper and easier access to relief from their debt. In bankruptcy, if a person has a surplus income of more than £50 a month, they are liable, irrespective of the size of their family, to have deductions made from their income for the benefit of their creditors. Therefore, it would not be fair or reasonable to give people under this scheme the ability to retain a higher level of income.

Mr Butler:

How do you work that out?

Mr Reid:

It is worked out through the common financial statement, which is used to assess a person's needs and takes into account their dependents.

Mr Butler:

Fifty pounds a month is not a great deal of money.

Mr Reid:

I agree.

Mr Nesbitt:

All the issues are taken into account in arriving at the £50 figure.

Mr Butler:

Does it include family emergencies?

Mr Nesbitt:

Yes.

Mr Butler:

Have concerns been raised about that?

Mr Reid:

Not in relation to bankruptcy.

Mr Nesbitt:

I do not think that we can depart from the normal bankruptcy rules; this is just another form of bankruptcy.

Mr Neeson:

It is unfair to exclude homeowners from the scheme. Many of my elderly constituents who go into nursing homes have to sell their homes to pay for their upkeep. It is a question of Northern Ireland adopting the Scottish scheme for free personal care for the elderly. The qualifying threshold is very low indeed.

Mr Nesbitt:

Once houses are included and the scheme is expanded into other areas, massive expense is run up. Bankruptcy is an expensive business for the Department to administer — it must be investigated for a start. Although such cases can be investigated, the general trend is not to do so. For example, attendant charges would involve getting a qualified person to determine a house's value after mortgages and charges.

The Chairperson:

My understanding is that the Bill is aimed at a small, specific number of people with no assets and on no or very low income.

Mr Nesbitt:

Exactly.

The Chairperson:

Including homeowners would widen that net considerably.

Mr Nesbitt:

Yes; and homeowners have the remedy of bankruptcy.

The Chairperson:

Yes.

Mr Cree:

There has been a need for such a debt-relief scheme for some time. However, I am concerned about protection for others. What scope is there to prevent repeat offences, such as the accumulation of rates bills, which was flagged up in the consultation? Could the scheme be manipulated to avoid paying other debts, for instance, to credit unions? How will the scheme link into debt-advice centres run by the Department for Social Development?

Mr Nesbitt:

If no homeowners are involved, the rate dilemma disappears. Most of the applicants will not be homeowners; therefore rates will not come into it. The only way that rates might enter into consideration —

Mr Cree:

One need not be a homeowner to pay rates.

Mr Reid:

We have checked the position regarding Housing Executive tenants. The Housing Executive

pays rates, irrespective of whether the tenant pays them or not. Therefore, the scheme would not result in councils losing rating revenue. Only private tenants whose property value is above a certain ceiling — I think that it is £100,000 — can be eligible to pay rates, and then only if the tenancy agreement states that they are liable for the rates. Hence, there should not be a huge loss of revenue.

Mr Cree:

A tenancy agreement that did not deal with the issue of rates would be unusual.

The Chairperson:

It is still DSD's responsibility.

Mr Reid:

I mean that there will not be a loss of rating revenue because a landlord is responsible for paying rates; however, that raises other issues: is the debt-relief scheme being used as a means to avoid paying rent and rates arrears to a landlord? The scheme is aimed at people who cannot pay bad debts whether the scheme exists or not. Someone whose income allows them a surplus of just £50 a month will not be in a position to pay off an outstanding rates bill of several hundred pounds.

Mr Cree:

What about the proposed DSD debt centres?

Mr Reid:

It will be possible for anyone who meets the criteria to become a competent authority to apply to the Department to be designated as such; that would include advice centres.

Mr Cree:

There could be repeat offences. If a debt-relief order was issued and the slate was wiped clean after one year, the same difficulty could arise a year later.

Mr Reid:

The person will not be able to apply for a further debt-relief order for six years in order to avoid the problem of serial applications.

Mr Cree:

Thank you.

Mr Reid:

A further measure will be put in place called a debt-relief restrictions order: if there is evidence of culpable conduct, such as making repeat applications, it will be possible to apply to the courts to have the person placed under restrictions to stop him doing people out of money.

Mr Cree:

It will be complex.

Mr Reid:

It is similar to bankruptcy.

The Chairperson:

However, it seems that there are safeguards to dissuade repeat offenders.

Mr Reid:

It is designed to protect everyone.

Mr Nesbitt:

There is a range of penalties under various headings.

Mr McHugh:

It is certainly complex; the more one works at it the less sensible it seems. Whom does the Bill help most, and how many will it help, because it excludes more and more people. However, the debt-relief scheme is being brought into effect because of the amount of credit-card debt accumulated by people who had absolutely nothing in the first place. Indeed, during the boom time banks gave 100% loans to people who did not have the ability to repay them; the banks should not have done that. Is the Bill targeted at those people?

Mr Nesbitt:

The Bill is largely for people who cannot afford to make themselves bankrupt because they have

very low income or no assets; they live in rented property and will not be able to pay off their debts. There is no point in creditors chasing debtors and not obtaining a result. The Bill is designed to relieve the unnecessary pressure under which those people are placed. It will also help the credit industry, because it will stop wasting money chasing bad debts.

Mr McHugh:

There is also almost an acceptability of the present practice of people providing services to run as long as you can and pay no one. We do not necessarily want to encourage that either, because those who are genuinely trying to work are in trouble every day because of it. There is that side of the whole issue. With regard to establishing proof of ownership, there is always the question of proof of disposal of property, whether someone sold a house, and what they did with the money. Will that feature in the Bill?

Mr Nesbitt:

That issue would be examined in a bankruptcy.

Mr Reid:

There will be scope for creditors to bring to the attention of the Official Receiver evidence that a person transferred ownership of a house or did something with the proceeds that they perhaps should not have. One of the receiver's roles will be to investigate such matters. There will also be a question on the application form about the past transfer of property, and a person will be committing a criminal offence if he does not declare that truthfully.

The Chairperson:

Thank you for your attendance. It is a complex area on which your advice has been very helpful.

Mr Reid:

Are you happy, Chairperson, for us to take the Bill forward to the Executive with a view to introducing it?

The Chairperson:

Yes, I think that there is consensus on that.

Members indicated assent.

The Chairperson:

That is formally agreed by the Committee.