

Committee for Enterprise, Trade and Investment

Report on the Debt Relief Bill

Together with the Minutes of Proceedings of the Committee
Relating to the Report and the Minutes of Evidence

Ordered by The Committee for Enterprise, Trade and Investment to be printed 24 June 2010
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Session 2009/2010

First Report

Powers and Membership

Powers

The Committee for Enterprise, Trade & Investment is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 46. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Enterprise, Trade & Investment and has a role in the initiation of legislation.

The Committee has power to:

- Consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on matters brought to the Committee by the Minister for Enterprise, Trade & Investment.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members.

The membership of the Committee is as follows:

Mr Alban Maginness (Chairperson) [\[1\]](#)
Mr Paul Butler (Deputy Chairperson) [\[5\]](#)

Ms Jennifer McCann
Mr Leslie Cree
Mr Daithí McKay [\[6\]](#), [\[7\]](#)

Mr David Simpson MP [\[3\]](#)
Mr Gregory Campbell MP [\[4\]](#)
Mr Stephen Moutray [\[2\]](#)
Dr Alasdair McDonnell MP
Mr Gerry McHugh
Mr Sean Neeson

[\[1\]](#) With effect from 30 June 2009 Mr Alban Maginness replaced Mr Mark Durkan.

[\[2\]](#) With effect from 14 September 2009 Mr Stephen Moutray replaced Mr Simon Hamilton.

[\[3\]](#) With effect from 14 September 2009 Mr David Simpson replaced Mr Robin Newton.

[\[4\]](#) With effect from 14 September 2009 Mr Gregory Campbell replaced Mr Jim Wells.

[\[5\]](#) With effect from the 14 September 2009 Paul Butler replaced Jennifer McCann as Deputy Chairperson

[\[6\]](#) With effect from the 31 March 2010 Mr Alan McFarland stood down from membership of the committee

[\[7\]](#) On 13th April 2010 Mr Daithí McKay was appointed as a Member of the Committee for Enterprise, Trade and Investment.

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Executive Summary

Purpose

1. The Report details the Committee for Enterprise, Trade & Investment's consideration of the Debt Relief Bill (the Bill). The Bill is intended to 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.

Principles of the Bill

2. The Committee welcomed the introduction of the Bill. The Committee who considered the principles of the Bill to be the provision of a debt relief solution to debtors with relatively low liabilities, no realisable assets and little or no disposable income with which to make contributions to creditors.

3. The Committee engaged in a public consultation exercise and consulted with a range of stakeholders with a variety of interests. Written responses were not received from any stakeholders as a result of the public consultation however the Committee also requested evidence from a number of stakeholders who had responded to the Departmental consultation on the principles of the Bill. One response was received. Oral evidence was received from Advice NI.

Key Issues

4. The Committee had concerns relating to timelines on investigations, lack of provision to cover unforeseen changes in an individual's circumstances and upper time limits of Debt Relief Restriction Orders. The Committee also sought clarity in relation to provisions in the Bill for a fee to be charged to organisations seeking to act as approved intermediaries in the provision of advice and information on debt relief.

5. The Committee considered that the key issues relating to the Bill were as follows:

- The provision of a debt relief solution to debtors who have no reasonable prospect of ever being able to pay their debts.
- The establishment of structures whereby the Department of Enterprise, Trade & Investment will be entitled to provide advice and information to the public about relief of debt and related matters or make arrangements with others to do so.

The provision of a debt relief solution to debtors who have no reasonable prospect of ever being able to pay their debts.

6. The Committee received representation from Advice NI (Appendix 3) asking for the Bill to provide clear guidance and timelines on investigations, provisions to cover unforeseen changes in an individual's circumstances and upper time limits of Debt Relief Restriction Orders. The Department responded to the Committee's concerns by clarifying details in relation to the provisions in the Bill and, in the case of unforeseen changes in an individual's circumstances, by obtaining detail on the impact of equivalent legislation in England and Wales and further information from the Minister for Enterprise, Trade & Investment (the Minister).

The establishment of structures for the provision of advice and information

7. Following representations from Advice NI, the Committee sought clarification from the Department on any plans it may have to charge a fee, as provided for in the Bill, to organisations seeking to act as approved intermediaries. The Committee was content with the Department's response that it currently has no plans to charge a fee in connection with the granting or maintenance of designation as a competent authority.

Introduction

8. The Debt Relief Bill was introduced to the Northern Ireland Assembly on 9th March 2010. The Assembly debated the principles of the Bill in the Second Stage on 23rd March 2010 when the Bill was passed to the Committee for Enterprise, Trade & Investment. The Committee sought and received the approval of the Assembly in Plenary Session to extend their consideration and scrutiny of the Bill to 2nd July 2010.

9. The Department of Enterprise, Trade & Investment conducted a public consultation from 11th February to 6th May 2009 on its proposals to legislate to set up a debt relief scheme. Departmental officials briefed the Committee about its proposals on 16th October 2009.

10. The Bill contains nine clauses and one schedule. In relation to debt relief, the Bill operates by inserting new provisions into the Insolvency (Northern Ireland) Order 1989.

11. The Committee launched a consultation on 16th April 2010.

12. In total one written evidence submission was received from Advice NI. Officials from Advice NI gave oral evidence to the Committee.

Summary of the Draft Debt Relief Bill as Presented to the Committee for Enterprise, Trade and Investment in the Committee Stage

Clause 1: Debt relief orders

13. Clause 1 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 debt relief order ("DRO"). It includes articles relating to:

- Debt Relief Orders;
- Making of an application;
- Duty of Official Receiver to consider and determine an application;
- Presumptions applicable to the determination of an application;
- Making of DROs;
- Effect of DROs on administration order;
- Moratorium from qualifying debts;
- The moratorium period;
- Discharge from qualifying debts;

- Providing assistance to Official Receiver etc.;
- Objections and investigations;
- Power of Official Receiver to revoke or amend a DRO;
- Power of High Court in relation to DROs;
- Inquiry into debtor's dealings and property;
- False representations and omissions;
- Concealment or falsification of documents;
- Fraudulent disposal of property;
- Fraudulent dealing with property obtained on credit;
- Obtaining credit or engaging in business;
- Offences: supplementary;
- Approved intermediaries;
- Debt relief restrictions offers and undertakings;
- Register of DROs; and
- Interpretation.

Clause 2: Conditions for making a debt relief order

14. Clause 2 inserts a new Schedule 2ZA into the 1989 Order. Schedule 2ZA sets out the conditions for making a debt relief order.

Clause 3: Debt relief restrictions orders and undertakings

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

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

16. 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.

17. 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.

18. 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

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

Clause 7: Commencement

20. Clause 7 contains provision for the commencement of the Bill.

Clause 8: Interpretation

21. Clause 8 contains definitions of words and phrases used in the Bill.

Clause 9: Short title

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

Schedule

23. The Schedule makes minor and consequential amendments to the Insolvency (Northern Ireland) Order 1989 and other legislation.

Summary of Consideration

24. All additional documents referred to in this section are at Appendix 4 to the report.

Clause 1: Debt relief orders

25. The Committee received representation from Advice NI asking for the Bill to provide clear guidance and timelines on investigations. They expressed concern about investigations described in paragraph 208K(5) as no timelines are given. They suggested that this could result in an investigation being carried out any time after discharge which could be several years.

26. The Department confirmed that the Bill places no limit on the time within which an investigation must be started or completed. Paragraph (6) of draft Article 208K expressly provides for the power to carry out an investigation to be exercisable after, as well as during, the moratorium period which follows the making of a Debt Relief Order. This is in line with section 251K(6) of the Insolvency Act 1986 applying in England and Wales.

27. The Department considers that no time limit should apply for the following reasons:

- Debt Relief is intended to be a highly automated, streamlined, low-cost system for dealing with low levels of debt. Investigation is to be very much the exception, not the norm, and will normally only be carried out following a complaint from a creditor. Therefore the power to carry out investigation will only affect a small minority of debtors.
- Debt Relief is to be an affordable alternative to bankruptcy. It is a statutory requirement that the Official Receiver investigates all bankruptcies unless he thinks that investigation is unnecessary. Article 262 of the Insolvency (Northern Ireland) Order 1989 places no limits on when an investigation can be carried out in a bankruptcy. The Debt Relief scheme is being set up for one specific purpose: to give those unable to afford to petition for bankruptcy access to a more affordable means to obtain relief from debt they cannot

pay. It is not an aim or purpose of the scheme that debtors should be treated differently or more leniently than they would be if they were bankrupt.

- It is expected that in practice most investigations would take place as a result of a creditor having objected to the making of a Debt Relief Order. Objections will have to be made within strict time limits.
- The Debt Relief scheme must enjoy the confidence of creditors and the public at large if it is to survive and become an acceptable means of dealing with problem debt. It is accepted that there is potential for the unscrupulous to use the scheme to avoid paying debts which they would be perfectly capable of paying. To deter such conduct it is essential to have in place a robust set of offences and penalties. To set a limit on the time within which any allegation or evidence of improper conduct could be investigated would dilute the value of that deterrent and could critically undermine confidence in the scheme.

28. The Committee was content that the Department's response adequately addresses the issues raised. However, towards the end of the Committee Stage, the Minister wrote to advise the Committee that she had decided to table an amendment to the Bill at Consideration Stage which would allow a fee to be charged to applicants in respect of the costs of persons acting as approved intermediaries. This was following advice from the Insolvency Service in England and Wales that, because most of the intermediaries will likely be salaried employees, it is better to be in a position where the proceeds of this fee can be paid to the Competent Authorities as an alternative to being paid to the intermediaries. The Committee was content to note the proposed amendment. Clause 2: Conditions for making a debt relief order.

Clause 2: Conditions for making a debt relief order

29. In relation to Schedule 2ZA Paragraph 5, which defines the six-year rule for reapplying for a DRO, Advice NI asked that an exceptional circumstances clause be added. They stated that, such a clause should take into account unforeseen changes in an individual's situation, for example, a life event such as illness or death of a partner which could mean that the person can no longer cope with their financial situation. They believe that these cases should be looked at on their merit and circumstance. Advice NI informed the Committee that the legislation in England and Wales does not contain an exceptional circumstances clause and that this has given rise to problems including examples of people being unable to cope with their financial situation.

30. The Department responded that the debt relief scheme is intended to be simple, uncomplicated and low cost. It gives individuals who otherwise could not afford it the opportunity to unburden themselves of debt which they cannot pay. The gain for the individual is not without cost to others. The making of a Debt Relief Order removes any hope that those to whom he is indebted have of recovering what is due to them. The Department's response further states that this is so even if the individual's financial circumstances improve after having been discharged from the one year moratorium which follows the making of a Debt Relief Order. The Department believes that, irrespective of the reasons for the indebtedness it would be neither fair nor equitable to those trying to make a living in business, including proprietors of small businesses, if customers were able to make repeat use of the Debt Relief scheme to run up debt and not pay it.

31. To qualify for a Debt Relief Order an individual's assets must not be worth more than £300 and they must not have more than £50 left in the month after meeting essential living expenses. Anyone who obtains a Debt Relief Order should know that if they accept further credit they will not be able to meet their obligation to repay it. The possibility of escaping any consequences arising from such conduct by applying for a further Debt Order within six years should not be open to them irrespective of the circumstances giving rise to the further indebtedness.

32. A further consideration put forward by the Department is that operation of the Debt Relief scheme will depend on assessment of applicants' circumstances by debt advisers acting as intermediaries. It would not be possible to draw up a comprehensive list of adverse circumstances which could befall an individual and to attempt to do so would be contrary to the intention of the scheme of keeping it simple and operating costs low.

33. Following the Department's response one member still had concerns that there could be exceptional circumstances where people were unable to cope with their financial situation. The Committee therefore asked the Department to obtain evidence from their counterparts in England and Wales on the impact of equivalent legislation in that jurisdiction. The Department provided the Committee with a response from the Insolvency Service stating that the Insolvency Service still believes that allowing a six-year ban on re-entry is appropriate and that it strikes the right balance between providing access to the procedure and ensuring that there is no abuse. The Insolvency Service further states that the provision is easy to understand and enables entry costs to be kept at a low level because no person has to make a subjective decision on what could count as an exceptional circumstance and that this would add significant cost to the process. The response from the Insolvency Service also states that there has been no problem identified with this provision, there are no plans to amend or alter the provision and that the provision has not been challenged.

34. As concerns remained unresolved the Committee agreed to write to the Minister to obtain her views on Clause 2 and, in particular, the possibility of the inclusion of an exceptional circumstances clause on the six-year rule. The Committee also asked the Minister to outline what would be done to assist those most vulnerable people that will not be able to apply for a second Debt Relief Order within the six-year time period.

35. The Minister responded that there are three main reasons why she believes there should not be such an amendment. Firstly, issues of equity and fairness (debtors versus lenders and traders, particularly those in small businesses). Secondly, practical difficulties in determining 'exceptional circumstances'. Thirdly, it would result in Northern Ireland legislation differing from that applying in England and Wales. The Minister also clarified the situation with regard to training that intermediaries will undergo as part of the project to help applicants budget and manage their expenditure in such a way as to avoid getting into debt again.

36. The Committee was content that the responses from the Department and the Minister adequately address the issues raised.

Clause 3: Debt relief restrictions orders and undertakings

37. The Committee received representation from Advice NI expressing concerns regarding the upper time limits of Debt Relief Restriction Orders, 9(2b). The organisation sought clarification regarding the application of the 15 year restriction and information as to how decisions will be made to enforce the 2-year or 15-year restriction and anything in between. While giving oral evidence to the Committee Advice NI agreed with the Chair that this is purely precautionary. They agreed that it would be desirable in the circumstances but not absolutely essential.

38. In response to Advice NI's concerns the Department informed the Committee that it will be possible for someone subject to a Debt Relief Order to be placed under continuing restrictions following the ending of the moratorium period which ensues after the making of a Debt Relief Order. This can happen in two ways. It can result from an application to the High Court by the Department or the Official Receiver on the Department's direction, or it can result from an undertaking to the Department given by a debtor. Paragraph 9(2) of draft Schedule 2ZB provides that a Debt Relief undertaking cannot be for less than two years and must not be for more than

15 years. This is exactly as stipulated in relation to Bankruptcy Restrictions Undertakings by paragraph 9(2) of Schedule 2A to the Insolvency (Northern Ireland) Order 1989.

39. Details of Bankruptcy Restrictions Undertakings maintained by the Insolvency Service in England and Wales are used as a guide when accepting Bankruptcy Restrictions Undertakings in Northern Ireland to determine the bracket into which the bankrupt's conduct would appropriately fall. The Department informed the Committee that it is intended to use the same information when setting time limits for Debt Relief Restrictions Undertakings, until such time as similar database has built up in England and Wales for Debt Relief Restrictions Undertakings. It will be possible to do so because the behaviours, to be taken into account under paragraph (2) of Schedule 2ZB in the Bill, when deciding whether to seek a Debt Relief Restrictions Order, will be in line with those to be taken into account under the bankruptcy provisions contained in paragraph (2) of Schedule 2A to the Insolvency (Northern Ireland) Order 1989.

40. The Committee was content that the Department's response adequately addresses the issues raised.

Schedule

41. Advice NI informed the Committee that the organisation is keen to act as an approved intermediary and sought clarity on the process and remuneration related to this. They also recommended that any registration fee identified in 248A(11a,b) be proportional to the status of the organisation seeking to become a designated body.

42. The Department informed the Committee that it currently has no plans to charge a fee in connection with the granting or maintenance of designation as a competent authority. None is charged under the corresponding provision for England and Wales (section 415A(A1) of the Insolvency Act 1986). Both provisions have been included so that the facility to charge fees is there should it ever be decided that it would be desirable to do so. In oral evidence to the Committee Advice NI agreed that, as the Department has no plans to charge a fee in connection with the granting or maintenance of designation as a competent authority, the organisation's request in this regard does not now apply.

43. The Committee was content that the Department's response adequately addresses the issues raised.

Clause by Clause Scrutiny of the Bill

Clause 1: Debt relief orders

Clause 2: Conditions for making a debt relief order

Clause 3: Debt relief restrictions orders and undertakings

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

Clause 5: Power to make consequential amendments, etc.

Clause 6: Minor and consequential amendments

Clause 7: Commencement

Clause 8: Interpretation

Clause 9: Short title

44. The Committee for Enterprise, Trade & Investment is content with clauses 1 to 9 as drafted.

Schedule

45. The Committee for Enterprise, Trade & Investment is content with the schedule as drafted.

Long Title

46. The Committee for Enterprise, Trade & Investment is content with the long title as drafted.

Appendix 1

Minutes of Proceedings of the Committee Relating to the Report

Appendix 1 – Minutes of Proceedings

16 October 2008

20 November 2008

28 May 2009

18 February 2010

11 March 2010

18 March 2010

15 April 2010

22 April 2010

13 May 2010

20 May 2010

3 June 2010

10 June 2010

17 June 2010

24 June 2010

Thursday, 16 October 2008
Room 21, Parliament Buildings, Belfast

Present: Mr Mark Durkan MP (Chairperson)
Ms Jennifer McCann (Deputy Chairperson)
Mr Leslie Cree
Mr Simon Hamilton
Mr Alan McFarland
Mr Sean Neeson
Mr Robin Newton
Mr Paul Butler
Mr Jim Wells

In Attendance: Ms Lucia Wilson (Assembly Clerk)
Mr Paul Connolly (Assistant Assembly Clerk)
Mr Stephen White (Clerical Supervisor)
Mr Jim Nulty (Clerical Officer)

10.36 a.m. The meeting opened in public session.

6. Debt Relief Bill

11.37 a.m. Officials joined the meeting.

Departmental Officials Reg Nesbitt, John Hinds and Jack Reid briefed the Committee on the Departments' proposal to introduce a Debt Relief Bill. Key issues discussed included the rationale behind the proposal, how the scheme might operate and the timeframe for its introduction.

12.07 p.m. Leslie Cree left the meeting.

12.13 p.m. Robin Newton left the meeting.

12.21 p.m. Jennifer McCann left the meeting.

12.36 p.m. Officials left the meeting.

Agreed: The Committee agreed to commission research from the Assembly Research and Library Services on the introduction of the Bill in GB.

Agreed: The Committee also agreed to write to stakeholders in the Advice sector about the proposed bill.

[Extract]

Thursday, 20 November 2008
Health And Safety Executive Headquarters, Belfast

Present: Mr Mark Durkan MP (Chairperson)
Ms Jennifer McCann (Deputy Chairperson)
Mr Leslie Cree

Mr Simon Hamilton
Mr Alan McFarland
Mr Gerry McHugh
Mr Jim Wells

In Attendance: Mr John Torney (Principal Clerk)
Mr Jim McManus (Assembly Clerk)
Mr Paul Connolly (Assistant Assembly Clerk)
Mr Stephen White (Clerical Supervisor)
Mr Jim Nulty (Clerical Officer)

Apologies: Mr Sean Neeson
Mr Robin Newton
Dr Alasdair McDonnell MP
Mr Paul Butler

10.38 a.m. The meeting opened in closed session.

11.00 a.m. The meeting went into public session

8. Draft Response on proposed Debt Relief Bill

The Committee considered its initial response to the Department's policy proposal on the Debt Relief Bill.

Agreed: A draft response, to issue from the Clerk, was agreed.

[Extract]

Thursday, 28 May 2009 Room 21, Parliament Buildings

Present: Mr Mark Durkan MP (Chairperson)
Dr Alasdair McDonnell MP
Mr Leslie Cree
Mr Alan McFarland
Mr Gerry McHugh
Mr Paul Butler
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Paul Connolly (Assistant Assembly Clerk)
Ms Sohui Yim (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Diarmaid Elder (Clerical Officer)

Apologies: Mr Simon Hamilton
Mr Robin Newton
Ms Jennifer McCann (Deputy Chairperson)
Mr Jim Wells

10.35 a.m. The meeting opened in public session.

10.50am. Alan McFarland joined the meeting.

6. Debt Relief Bill

Members received an oral briefing from Reg Nesbitt, Head of Insolvency Services, Jack Reid and Chris Nesbitt from Insolvency Services. Key issues included background of Bill, why it is necessary and timeframe/procedural needs to put the Bill into place.

Agreed: The Committee is content to allow Bill to proceed as requested.

[Extract]

Thursday, 18 February 2010 Room 30, Parliament Buildings

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

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Alan McFarland

10.33am The meeting began in public session.

4. Debt Relief Bill: Oral Briefing

10.58am The Officials joined the meeting.

The Committee received an oral briefing from Reg Nesbitt, Director DETI Insolvency Service and Jack Reid DETI Insolvency Service. Key issues included the proposed timing for the legislation, current status of the Bill and key aspects of the Bill.

11.21am The Officials left the meeting.

Agreed: Content for the Department to submit the Bill to the Executive for approval.

Agreed: To receive a full list of consultees and consultation responses from the Department.

Agreed: To write to the Social Development Committee to welcome DSD's strategy for an integrated advice service across Northern Ireland and suggest that DSD remain mindful of the DETI proposals for debt relief in the Debt Relief Bill.

[Extract]

Thursday, 11 March 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Alan McFarland
Mr Leslie Cree
Mr Sean Neeson
Ms Jennifer McCann

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Mr David Simpson MP
Mr Gregory Campbell MP
Mr Gerry McHugh

10.34 am The meeting began in public session.

3. Matters arising

Members noted the introduction of the Debt Relief Bill.

[Extract]

Thursday, 18 March 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Alan McFarland
Mr Leslie Cree
Mr Stephen Moutray
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Gregory Campbell MP
Mr David Simpson MP
Ms Jennifer McCann

10.23am The meeting began in public session.

3. Matters arising

Members discussed a draft public notice for the Debt Relief Bill and a list of key stakeholders for the Bill.

Agreed: Content with the public notice

Agreed: To write to a selection of the key stakeholders for the Bill.

Agreed: To receive an informal short presentation from the Bill Clerk before the start of next week's meeting.

[Extract]

Thursday, 15 April 2010 Soni Building, Castlereagh House, Belfast

Present: Mr Alban Maginness (Chairperson)

Mr Leslie Cree

Mr Gerry McHugh

Ms Jennifer McCann

Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)

Ms Sohui Yim (Assistant Clerk)

Mr Jim Nulty (Clerical Supervisor)

Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Paul Butler (Deputy Chairperson)

Mr David Simpson MP

Mr Gregory Campbell MP

Mr Stephen Moutray

Mr Daithí McKay

Dr Alasdair McDonnell MP

11.50am The meeting began in public session.

3. Matters arising

Members noted a draft motion to extend the Committee stage of the Debt Relief Bill.

Agreed: Content with the motion and the requested extension date.

[Extract]

Thursday, 22 April 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Daithí McKay
Dr Alasdair McDonnell MP
Mr Leslie Cree
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Mr Sean Neeson

10.35am The meeting began in public session.

7. Assembly Research Paper on Debt Relief Bill –Written briefing

Members discussed the written briefing as well as written responses on the Bill, from Advice NI, FSB, Consumer Credit Counselling Service and the NI Courts and Tribunals Service.

Agreed: To copy Advice NI's response to the Department to request its views on Advice NI's concerns.

Agreed: To receive the Department's views in time for consideration at the next meeting, 13 May.

Agreed: To have Departmental officials on stand-by at the meeting of 13 May to address the Committee's questions (if any) during consideration of the response.

[Extract]

Thursday, 13 May 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Stephen Moutray
Mr Gregory Campbell MP
Mr David Simpson MP
Dr Alasdair McDonnell MP
Mr Sean Neeson
Mr Leslie Cree
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)

Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Daithí McKay

10.04am The meeting began in public session.

5. Debt Relief Bill – Oral Evidence

12.14pm Officials joined the meeting.

Members received oral evidence from Bob Stronge, CEO, Advice NI and Sinead Campbell, Money Advice Co-ordinator. Key issue discussed included the Debt Relief Bill.

12.26pm Stephen Moutray left the meeting.

12.28pm Gregory Campbell left the meeting.

Agreed: To consider the written evidence on this item next week.

12.35pm Officials left the meeting.

[Extract]

Thursday, 20 May 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell MP
Mr Leslie Cree
Ms Jennifer McCann
Dr Alasdair McDonnell MP
Mr Gerry McHugh
Mr David Simpson MP

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Daithí McKay
Mr Stephen Moutray
Mr Sean Neeson

10.34am The meeting began in closed session.

1. Consideration of Debt Relief Bill: Internal Memo from the Examiner of Statutory Rules

Members discussed the memo.

Agreed: Content with the Examiner's comments.

10.37am The meeting opened in public session.

8. Consideration of the Debt Relief Bill – Written briefing

Members discussed the Debt Relief Bill.

11.27 am Officials from DETI's Insolvency Service joined the meeting to answer members' questions.

Jennifer McCann had reservations regarding Clause 2, Part I and suggested that the Bill might benefit from an 'exceptional circumstances clause,' as suggested by Advice NI, to take into account unforeseen changes in an individual's situation.

Agreed: To await Departmental officials' response after their discussions with their counterparts in GB regarding problems that have arisen from Debt Relief Orders in England.

11.53am The officials left the meeting.

[Extract]

Thursday, 3 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Ms Jennifer McCann
Mr Daithí McKay
Mr Gregory Campbell MP
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr Stephen Moutray
Dr Alasdair McDonnell MP
Mr Leslie Cree

10.49am The meeting began in closed session.

6. Debt Relief Bill – Consideration of additional papers: Written briefing

Members discussed a consultation document from the Department for Business, Innovation and Skills (BIS), inviting views on whether Debt Relief Order (DRO) eligibility criteria should be changed to address the issue of the pension criteria.

Agreed: To recommend that the Department take into account the outcomes of the BIS consultation when bringing forward secondary legislation on the Debt Relief Bill.

7. Debt Relief Bill: Formal Clause-by-Clause scrutiny

The Committee formally scrutinised, clause-by-clause, The Debt Relief Bill and agreed the following:

Clause 1 – Debt Relief Orders

Question put and agreed: That the Committee is content with Clause 1, as drafted.

12.05pm Members called officials from DETI's Insolvency Branch to join the meeting - Reg Nesbitt, Jack Reid and Eileen Glenn.

Clause 2 – Conditions for making a Debt Relief Order

Question put and agreed: That the Committee referred Clause 2 for further consideration.

Clause 3 – Debt Relief Restrictions, orders and undertakings

Question put and agreed: That the Committee is content with Clause 3, as drafted.

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

Question put and agreed: That the Committee is content with Clause 4, as drafted.

Clause 5 – Power to make consequential amendments

Question put and agreed: That the Committee is content with Clause 5, as drafted.

Clause 6 – Minor and consequential amendments

Question put and agreed: That the Committee is content with Clause 6, as drafted.

Clause 7 – Commencement

Question put and agreed: That the Committee is content with Clause 7, as drafted.

Clause 8 – Interpretation

Question put and agreed: That the Committee is content with Clause 8, as drafted.

Clause 9 – Short Title

Question put and agreed: That the Committee is content with Clause 9, as drafted.

Schedule – Minor and consequential amendments

Question put and agreed: That the Committee is content with the Schedule, as drafted.

Long Title

Question put and agreed: That the Committee is content with the long title, as drafted.

Agreed: That the Committee is content with all clauses, subject to no consequential amendments that may arise from amendments to Clause 2.

Agreed: To receive the Minister's view on Clause 2 of the Bill, and in particular, the proposal for an exceptional circumstances clause on the 6-year rule and also what will be done to assist those most vulnerable people that will not be able to apply for a second DRO within the 6-year time period.

Agreed: To defer consideration of Clause 2 until receiving the Minister's views.

12.20pm Officials left the meeting.

Agreed: To schedule an extra meeting, if required, to ensure the Bill meets the deadline for reporting to the Assembly.

[Extract]

Thursday, 10 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Leslie Cree
Mr Sean Neeson
Mr Gerry McHugh

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Ms Jennifer McCann

10.33am The meeting began in closed session.

7. Further Clause-by-Clause Consideration of the Debt Relief Bill: Written Briefing

Members discussed a letter from the Minister regarding her views on an amendment to Clause 2 of the Debt Relief Bill which would allow debtors to obtain another debt relief order within 6 years in exceptional circumstances.

Members had no comments on Clause 2 of the Bill.

[Extract]

Thursday, 17 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Daithí McKay
Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Stephen Moutray
Mr Leslie Cree
Mr Sean Neeson

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Ms Jennifer McCann

10.39am The meeting began in public session.

5. Consideration of the Debt Relief Bill – 1st Draft of Report: Written briefing

The Committee formally scrutinised each paragraph of the report.

Agreed: That the executive summary at paragraphs 1-7 stands part of the report.

Agreed: That the introduction at paragraphs 8-12 stands part of the report.

11.58am Daithí McKay rejoined the meeting.

Agreed: That the summary of consideration of the Bill by the Committee at paragraphs 24-43 stands part of the report.

Agreed: That the clause-by-clause consideration of the Bill at paragraphs 44-46 stands part of the report.

Agreed: That the entire report with minutes of proceedings, minutes of evidence and written evidence will be considered at next week's meeting.

[Extract]

Thursday, 24 June 2010 Room 30, Parliament Buildings

Present: Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)

Dr Alasdair McDonnell MP
Mr Gregory Campbell MP
Mr Leslie Cree
Mr Sean Neeson
Mr Gerry McHugh
Ms Jennifer McCann

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Michelle McDowell (Clerical Officer)

Apologies: Mr David Simpson MP
Mr Stephen Moutray

10. Consideration of Debt Relief Bill – Final Draft of Report: Written briefing

The Committee formally scrutinised each appendix of the final Bill report and considered a letter from the Minister stating that she is planning to table an amendment to the Bill during consideration stage and the suggested amendment.

Agreed: To note the Minister's letter and suggested amendment.

Agreed: Content to include the Minister's letter and proposed amendment in appendix 4.

Agreed: That the following papers should be appended to the Committee's report:

Minutes of Proceedings

Minutes of evidence (Hansards)

Written submissions

Memoranda and papers from DETI

The Assembly Research Paper

List of witnesses

Members considered an amendment to paragraph 28 of the Debt Relief Bill Report.

Agreed: Content that paragraph 28, as amended, stands part of the report.

Agreed: Chair to approve an extract from today's minutes which reflect the read-through of the Report.

Agreed: To lay to report in its entirety in the Assembly Business Office after today's meeting.

Agreed: To order 150 reports with a CD ROM and 35 full reports for printing.

Appendix 2

Minutes of Evidence

18 February 2010

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
Mr Jack Reid Department of Enterprise, Trade and Investment

1. 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.
2. Mr Reg Nesbitt (Department of Enterprise, Trade and Investment): Chairman, may I first congratulate you on your appointment as Chairman of the Committee?
3. The Chairperson: Thank you very much.
4. 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.
5. 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.
6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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?

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

15. The Chairperson: Therefore no one is prevented from doing that.

16. 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.

17. The Chairperson: Is that likely to be the ceiling here as well?

18. Mr Nesbitt: It is.

19. 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?

20. Mr Nesbitt: Yes.

21. The Chairperson: Do they have to accept what is stated in the application?

22. 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.

23. The Chairperson: Can the intermediaries carry out an in-depth search on a person's financial background?

24. Mr Nesbitt: Yes; they have to determine an applicant's income and expenses.

25. 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.

26. The Chairperson: Therefore you are not dealing with people who simply assert what their income is.

27. Mr Nesbitt: Certainly not.

28. The Chairperson: Proof is given to the intermediary.

29. Mr Reid: That is correct.

30. The Chairperson: Therefore the Official Receiver would work on that basis.

31. 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.

32. The Chairperson: Are you satisfied that the process will be rigorous?

33. Mr Nesbitt: Yes.

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

35. 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.

36. The Chairperson: Does that avoid all court proceedings?

37. 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.

38. Mr Nesbitt: The Official Receiver can go to the court for directions if he so desires.

39. The Chairperson: What happens at the end of the one-year moratorium?

40. 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.

41. 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.

42. 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.

43. 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.

44. The Chairperson: For the rest of their lives, in effect.

45. 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?

46. Mr Nesbitt: Yes.

47. 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.

48. 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.

49. Mr Butler: How do you work that out?

50. 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.

51. Mr Butler: Fifty pounds a month is not a great deal of money.

52. Mr Reid: I agree.

53. Mr Nesbitt: All the issues are taken into account in arriving at the £50 figure.

54. Mr Butler: Does it include family emergencies?

55. Mr Nesbitt: Yes.

56. Mr Butler: Have concerns been raised about that?

57. Mr Reid: Not in relation to bankruptcy.

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

59. 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.

60. 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.

61. 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.

62. Mr Nesbitt: Exactly.

63. The Chairperson: Including homeowners would widen that net considerably.

64. Mr Nesbitt: Yes; and homeowners have the remedy of bankruptcy.

65. The Chairperson: Yes.

66. 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?

67. 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 —

68. Mr Cree: One need not be a homeowner to pay rates.

69. 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.

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

71. The Chairperson: It is still DSD's responsibility.

72. 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.

73. Mr Cree: What about the proposed DSD debt centres?

74. 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.

75. 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.

76. 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.

77. Mr Cree: Thank you.

78. 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.

79. Mr Cree: It will be complex.

80. Mr Reid: It is similar to bankruptcy.

81. The Chairperson: However, it seems that there are safeguards to dissuade repeat offenders.

82. Mr Reid: It is designed to protect everyone.

83. Mr Nesbitt: There is a range of penalties under various headings.

84. 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?

85. 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.

86. 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?

87. Mr Nesbitt: That issue would be examined in a bankruptcy.

88. 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.

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

90. Mr Reid: Are you happy, Chairperson, for us to take the Bill forward to the Executive with a view to introducing it?

91. The Chairperson: Yes, I think that there is consensus on that.

Members indicated assent.

92. The Chairperson: That is formally agreed by the Committee.

13 May 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell
Mr Leslie Cree
Ms Jennifer McCann
Mr Stephen Moutray
Mr Sean Neeson
Mr David Simpson

Witnesses:

Ms Sinéad Campbell
Mr Bob Stronge Advice NI

93. The Chairperson (Mr A Maginness): Appearing before the Committee are Mr Bob Stronge, the chief executive of Advice Northern Ireland, and Ms Sinéad Campbell, the money advice project manager of the same organisation. Both are welcome. Departmental officials are on standby to address the Committee's concerns if necessary.

94. Mr Bob Stronge (Advice NI): Good afternoon, members. I hope that we will not keep you as long as the previous, very interesting discussion. I felt like I was back in the Economic Development Forum.

95. First, we support the Debt Relief Bill. It is an important piece of legislation that will protect very vulnerable people with whom advice networks such as ours and others deal. Sinéad Campbell will run through some of the key issues in the Bill that we feel that the Committee may want to address. After that members will have the opportunity to question us.

96. Ms Sinéad Campbell (Advice NI): The legislation aims to benefit vulnerable people who are already experiencing considerable stress due to their debt situation. Advice NI is concerned that no timelines are given for objections and investigations, as described in proposed new articles 208K(5) and (6). That could mean that an investigation could be carried out at any time after discharge, which could be several years. That could place further stress on the debtor, so Advice NI wants clear guidance and timelines for investigations.

97. Although Advice NI supports responsible spending and debtors taking ownership of their actions, it is concerned about the upper time limits of debt relief restriction orders that are referred to in paragraph 9(2)(b) of proposed new schedule 2ZA. We seek clarification regarding the application of the 15-year restriction and information on how decisions will be made to enforce the two-year or 15-year restrictions or anything in-between.

98. Paragraph 5 of proposed new schedule 2ZA clearly defines the six-year rule for reapplying for a debt relief order. Advice NI believes that an exceptional circumstances clause should be added to take account of unforeseen changes in an individual's situation; for example, a life event such as illness or the death of a partner, which may leave a person unable to cope with their financial situation. We feel that such cases should be considered on their merit and the circumstances.

99. Advice NI is keen to act as an approved intermediary and to seek clarification on the process and remuneration related to that. We also recommend that any registration fee identified in proposed new article 248A(11)(a) and (b) be proportional to the status of the organisation seeking to become a designated body.

100. I will now outline some issues that have been encountered in England and Wales. The expected take-up rate was around 36,000 claimants; however, to date, only 1,978 debt relief orders have been issued, which is less than 5.5% of the anticipated uptake. That seems to highlight the possibility that there is something fundamentally wrong with the eligibility criteria. Advice NI recommends that that issue be fully researched before debt relief orders are implemented in Northern Ireland.

101. We recognise that the estimated target group of beneficiaries is quite small, standing at approximately 1,000 people. We believe that amending the qualifying criteria slightly would lead to the legislation having a greater impact and would ensure that borderline cases do not slip through the net. We propose that the debt liability be increased to £20,000 and that the requirement to have less than £50 in surplus income should be flexible, to take circumstances into account and allow for some protection for those who fall just outside the threshold.

102. Our initial response gave the example of a single parent with four children and a surplus income of £51 who would be excluded from the order, compared with a single person who has no children and a surplus income of £49, who would be eligible. However, we envisage that the use of the common financial statement will provide some safeguards in that area.

103. Advice NI has previously highlighted concerns around the realisable assets limit of £300, which includes occupational and private pensions. Our sister organisation, AdviceUK, has found that 90% of those seeking a debt relief order had pension pots and, therefore, were excluded. A pension is necessary to provide older people with an income when they are no longer earning a regular income from employment. We seek an assurance that private and occupational pensions are not included as an asset when deciding the criteria for a debt relief order.

104. The £1,000 limit for the value of vehicles is another issue that concerns us in relation to realisable assets. Anecdotal evidence from debt advisers in our organisation suggests that average car values are above that limit. We suggest that the limit for the value of vehicles is raised to £3,000, which is equivalent to that available under bankruptcy proceedings and is more realistic.

105. We understand that in England and Wales a van that is used for business purposes will not be classed as a tool of the trade in the order and will, therefore, count towards the limit. If a client's only transport is a van, it must be worth less than £1,000. If a client owns a car for personal use and a van, the van would only be worth £300, meaning that a debt relief order is unsuitable. That is unfair and penalises tradespeople, who have been among those most affected by the economic downturn in Northern Ireland.

106. Our understanding is that in England and Wales, disability benefits count as income for applicants seeking a debt relief order. Those benefits are awarded specifically to help the recipient cope with their disability and should not be counted as income. Advice NI seeks assurance that benefits will not be regarded as income.

107. We understand that numerous changes to the guidelines have been published in England and Wales. That has created confusion among applicants and intermediaries. Advice NI seeks assurance that the Insolvency Service thoroughly researches and publishes one clear set of concise guidance on debt relief orders.

108. Since the introduction of the scheme in England and Wales there have been many problems with the online application forms. In their current format, the forms have proved difficult for the clients and intermediaries to complete. It was originally envisaged that the online forms would allow the clients to fill in some details, such as balances, and an intermediary could assist with the overall completion of the form. However, the design is such that the first page must be fully

completed before moving on to the next page. That has caused difficulties for clients and intermediaries and has resulted in the intermediaries having to complete the application form themselves. That disempowers the client and adds to the role of the intermediaries.

109. Advice NI is keen that the Insolvency Service enters into a meaningful partnership with the debt advice sector and that it does not see the voluntary sector as a cheap option. Advice NI is also keen that intermediaries are adequately remunerated for obtaining the relevant information about the debtors' affairs, forming an opinion as to whether the debtor would be eligible, ensuring that the application is completed correctly and, where appropriate, sending the form electronically to the official receiver.

110. We ask that consideration be given to the additional workload created as a result of the order assessment, as not all assessed cases will be suitable for the order. We ask also that a remuneration scheme similar to that in operation for benefit uptake campaigns with the Social Security Agency is applied. In other words, we seek a two-tier system whereby payment is made for advice and information and for applications.

111. We also have concerns over the focus on closed cases. That has the potential to move the focus from client need on to statistical outcomes. That does not fit with the current systems-thinking approach being applied across the UK. That approach is client-need driven, rather than target driven. There is a danger that the order could become more about targets and moneys than about actual client need. That should be considered in any evaluation or review of the implementation of the order.

112. Advice NI is willing to be designated as a competent authority to nominate, train and monitor the performance of the intermediaries to implement the scheme, provided that the necessary support and liaison with the Insolvency Service is available. We seek reassurance that the commercial sector is prohibited from acting as intermediaries, as the incentive might be to get the client through the door and sell them other services that may not be in their best interests.

113. Our further recommendations include reassurance that intermediaries are not held accountable for falsely declared assets by the debtor; reassurance that the initiative will not lead to further financial exclusion; the up front fee to be fixed for a three-year period, with consultation on any proposal to increase it; and that the order be reviewed annually rather than every three years. That review should take account of the impact and relationship with the debt advice sector. Advice NI is keen to engage with the Insolvency Service in the implementation and review of the order in Northern Ireland.

114. The Chairperson: Thank you; that has been helpful. You stated that proposed new article 208K(5) of the Bill provides that creditors are permitted to object to the making of debt relief orders. You also said that you would like clear guidance and timelines on the investigations. Is that in any way different to the English legislation and, if not, why should we differ on that point?

115. Mr Stronge: It is about being clear about the timelines in relation to that. That is a weakness. We looked at the experience of the order as it stands in England, so we are picking out areas where improvements could be made when making the order here.

116. The Chairperson: Has that aspect given rise to any problems in England?

117. Mr Stronge: I will have to check that.

118. The Chairperson: Is yours a more precautionary approach?

119. Mr Stronge: Yes.

120. The Chairperson: What is your view on the 15-year restriction? The Department states that it will be possible for someone who is subject to a debt relief order to be placed under continuing restrictions following the ending of the moratorium period that ensues after the making of the order. Is the point that you are making not, therefore, unnecessary?

121. Mr Stronge: The point regarding the application of the 15-year restriction is about how decisions will be made about the enforcement of that and the timelines between two and five years. It is a cautionary thing that we are —

122. The Chairperson: Is it precautionary?

123. Mr Stronge: Yes.

124. The Chairperson: So it would be desirable in the circumstances, but not absolutely essential?

125. Mr Stronge: Yes.

126. The Chairperson: Paragraph 5 of proposed new schedule 2ZA states that a person may not reapply for a debt relief order within six years. You believe that an exceptional circumstances clause should be added. Is there an exceptional circumstances clause in the English legislation?

127. Mr Stronge: There is not.

128. The Chairperson: Has that given rise to any problems?

129. Mr Stronge: It has. There have been some examples of people being unable to cope with their financial situation due to an illness or the death of a partner, for example. We are asking for some flexibility, such as an exceptional circumstances clause that may provide some relief.

130. The Chairperson: In proposed new articles 248A(11)(a) and (b) as set out in clause 4, the schedule contains minor consequential amendments to provide that the Department of Enterprise, Trade and Investment may designate approved intermediaries. I assume that you are interested in participating in that.

131. Mr Stronge: Yes.

132. The Chairperson: It appears that the Department has no plans to charge a fee in connection with the granting or maintenance of designation as a competent authority. In that sense, what you are asking for does not really apply.

133. Mr Stronge: That is fine. We were not aware of whether the Department was doing that.

134. The Chairperson: That seems to be the Department's view, unless there is any change.

135. Mr Butler: Thank you for your presentation. You mentioned the legislation in England. I am not too sure how long it has been in place there.

136. Ms S Campbell: It has been in place since April 2009, so it is early days.

137. Mr Butler: It is too early to get an independent assessment of how it has operated. I have a concern about the £50 threshold. That seems quite restrictive. What if someone has £51 or £52? Perhaps that will be dealt with in subordinate legislation. There are different views of the liability level of £20,000. I know that credit unions say that that is too high. The vehicle value limit in the legislation is £1,000, but you think that that should be £3,000.

138. Mr Stronge: It should be the same level as the bankruptcy terms.

139. Mr Butler: Is it £1,000 in the English legislation?

140. Ms S Campbell: Yes.

141. The Chairperson: However, the bankruptcy threshold is £3,000.

142. Mr Butler: Yes, and Advice NI wants it to follow the bankruptcy legislation.

143. I am also concerned about the £50 limit. How can we get around that? The legislation will obviously set some limit on it.

144. Mr Stronge: Yes, it will. That figure is calculated on the basis of whether an individual has a disposable income of £50 or more each month. When calculating a person's income, the common financial statement — that is, that a person must be allowed a certain amount to live on, to spend on food and pay their bills — must also be taken into consideration. That situation can never be got around through legislation.

145. We have given the Committee the example of a single parent with four children with a surplus income of £51 being ineligible and a single person with no children an a surplus income of £49 being eligible. If a limit must be set, it will be difficult to have flexibility and people will always be excluded. The nature of the legislation will exclude those with more of a surplus income, but that can be very unfair. It is hit and miss, and we are not sure how to find a way around that.

146. Ms J McCann: You are very welcome to the Committee. I agree that the decision should not be based on disposable income but on a person's circumstances. Benefits should also not be used to calculate a person's disposable income, because people are on benefits because they have a low income.

147. Did you say that only 5.5% of people have taken up orders in England?

148. Ms S Campbell: The information that we received from AdviceUK is that 36,000 people were expected to take up orders in England, yet only 1,978 orders were granted. That is less than 5.5% of the expected uptake.

149. Ms J McCann: Are you concerned that the same thing will happen here if the threshold is not changed?

150. Ms S Campbell: Yes.

151. Ms J McCann: I agree that some aspects of the Bill must be reconsidered.

152. Mr Stronge: AdviceUK has told us that the biggest problem is the inclusion of the £300 limit on pensions. Most people have a stakeholder pension of that amount, and it is about how a pension pot is treated. This legislation says that a pension above £300 would exclude an

individual from getting an order, even though they may not be able to access the pension until later in life. AdviceUK has told us that around 90% of those trying to claim a DRO had pension pots above £300 and were excluded as a result. There is a big issue about how benefits are treated generally and whether pensions should be included, given that they are for use in later life.

153. There is another issue with disability benefits being included as income, as they are designed to meet the particular circumstances of an individual's disability. Whether those should be included is another question.

154. The Chairperson: There are no further questions. I thank the witnesses for their participation, it has been most helpful.

155. The Committee has received a written response from the Department, and departmental officials have been present at today's meeting. I am not going to ask them to comment today, because we had quite extensive business this morning. However, if the Committee were to ask officials to appear before it next week, it would be helpful if they could attend.

20 May 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell
Mr Leslie Cree
Ms Jennifer McCann
Dr Alasdair McDonnell
Mr Gerry McHugh
Mr David Simpson

Witnesses:

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

156. The Chairperson (Mr A Maginness): We move to the Committee's consideration of the Debt Relief Bill. Part of the meeting will be recorded by Hansard. Members have copies of the relevant papers.

157. This is the initial consideration of the Bill. The purpose of the briefing is to give members the opportunity to raise any issues or concerns, or record any matters arising from the consultation process. I advise members that departmental officials are on standby if you have any questions or concerns about the Bill. I emphasise that this is not the formal clause-by-clause consideration. If there are no unresolved issues or concerns following today's consideration, the Committee can undertake formal clause-by-clause consideration at the next meeting on 3 June.

158. I advise members that their packs contain an issues table summarising issues arising during the consultation under each clause of the Bill and the Department's response to the issues raised. I remind you that the only organisation to provide a substantive response to the consultation was Advice Northern Ireland, and officials from Advice Northern Ireland provided oral evidence to the Committee at the meeting last week.

159. I now invite the Committee Clerk to take the Committee through the clauses of the Bill and the issues raised. For each clause, when the Clerk has outlined the provisions, issues raised during consultation and the Department's response, I will ask members whether they have any issues, any points that they would like to explore or any questions for the departmental officials, or whether they are content that there are no further issues to be addressed in relation to the particular clause.

160. The Committee Clerk: It is my intention to summarise the contents of the issues table. The first issue relates to clause 1, which establishes 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 debt relief order. Advice NI was concerned that no timelines are given for carrying out an investigation. In their oral evidence, Advice NI officials stated that they were looking for a precautionary approach.

161. The Department responded in its written briefing to the Committee, confirming that the Bill places no limit on the time frame within which an investigation must be completed. The Department believes that no timelines should apply for the following reasons. Debt relief is intended to be automated, streamlined and low cost. Investigations are to be the exception, and will only affect a small minority of debtors. It is not the purpose of the scheme that debtors should be treated differently or more leniently than they would if they were bankrupt. The Insolvency (Northern Ireland) Order 1989 places no limits on when an investigation can be carried out in a bankruptcy.

162. It is expected that investigations will be carried out as a result of a creditor having made an objection to the debt relief order, and objections will have to be made within strict time limits. Creditors and the public must have confidence in the debt relief scheme. Setting a time limit would dilute the value of the deterrent, and could critically undermine confidence in the scheme.

163. The Chairperson: Are there any comments? I take it that members are content with the clause. We will move on.

164. The Committee Clerk: Clause 2 sets out the conditions for making a debt relief order. Part 1 of clause 2 sets out the conditions that a debtor must meet in order to obtain a debt relief order and part 2 of clause 2 sets out specific additional conditions that the debtor must meet in order to obtain a debt relief order.

165. During consultation on part 1, which falls under clause 2, Advice NI requested that an exceptional circumstances clause be added to take into account unforeseen changes to an individual's situation. It informed the Committee that legislation in England does not contain such a clause, and that as a result there have been examples of people being unable to cope with their financial situation, due, for example, to illness or the death of a partner.

166. In its written response to the Committee, the Department stated that the debt relief scheme is intended to be simple, uncomplicated and low cost. Irrespective of the reasons for the indebtedness, it would be neither fair nor equitable to those trying to make a living in business if customers were able to make repeated use of the debt relief scheme to run up debt and not repay it.

167. To qualify for a debt relief order, an individual's assets must not be worth more than £300, and they must not have more than £50 left in the month after meeting essential living expenses. Anyone who obtains a debt relief order should know that if they accept further credit, they will not be able to meet their obligation to repay it. The possibility of escaping any consequences arising from such conduct by applying for a further debt relief order within six years should not be open to them, irrespective of the circumstances giving rise to the further indebtedness.

168. A further consideration is that the operation of the debt relief scheme will depend on assessment of applicant's circumstances by debt advisers acting as intermediaries. It would not be possible to draw up a comprehensive list of adverse circumstances that could befall an individual. To attempt to do so would be contrary to the intention of keeping the scheme simple and operating costs low.

169. Ms J McCann: I am not sure whether this is the right time to bring this up, but I cannot see any other information in the clauses. In last week's evidence session, we discussed particular benefits being taken into consideration, and Advice NI urged caution. A person's particular circumstances should be taken into consideration. For example, it was mentioned that a family of five would have more outgoings than a family of two. Therefore, something should be included about particular circumstances. Income, expenditure and the balance should be taken into consideration.

170. Mr Butler: I am not sure whether this falls under this section, but is the £50 limit —

171. The Chairperson: Is that not part of secondary legislation?

172. Mr Butler: That is what I want to know. Will that be done by subordinate legislation?

173. The Chairperson: I invite Mr Nesbitt to give us some assistance. We are discussing an exceptional circumstances clause, as requested by Advice NI. Jennifer, do you want to repeat your point?

174. Ms J McCann: I am not sure whether what we are talking about relates to this clause. However, my point is about certain benefits being taken into consideration that Advice NI feels should not be taken into consideration. For instance, if someone is sick, would the disability living allowance (DLA) be taken into account? Also, not everyone has the same income and expenditure, particularly because of family size, and because of that Advice NI said that some leeway should be given.

175. Mr Reg Nesbitt (Department of Enterprise, Trade and Investment): I think that DLA is mentioned later in our reply. Essentially, although there is a credit for it, there is also a debit, which effectively means that it is ignored. Regarding your point about a family of five, the common financial statement, which is the method that will be used to determine income and expenditure, will take the total number of family members into account. The £50 limit will only be established after all those matters are taken into account. The common financial statement will take into account the number of children in a family and allocate an expense level against them.

176. Ms J McCann: I take your point. However, if there were a sick child in a family, the family would need more money to spend on that child. Those particular circumstances would need to be taken into account. That is what Advice NI said. I do not see that that has happened.

177. Mr Nesbitt: I am not sure whether the common financial statement would deal with that.

178. Mr Jack Reid (Department of Enterprise, Trade and Investment): In practice, the common financial expenditure limits are not adhered to rigidly in the scheme in England and Wales, and we are trying to set up a similar scheme in Northern Ireland. If an applicant can justify a higher level of expenditure — for example, if their expenditure on rent was higher than allowed for by the statement because of the region in which they live — they would be allowed to add information to their application form to justify the higher than normal level of expenditure. I expect that the same would apply to what you are talking about, if a child had special dietary needs.

179. Mr Butler: Where is the £50 limit in the legislation? I appreciate that it is difficult to set some sort of limit.

180. Mr Nesbitt: It will be in the subordinate legislation.

181. The Chairperson: It does not affect the clauses that we are discussing; it will be part of the subordinate legislation, which will follow this legislation.

182. Mr Cree: Mr Reid mentioned that there will be some flexibility on the £50 limit, but DETI's response clearly says that applicants must have no more than £50. In contrast, the same response later talks about applying for a further debt order within six years. The words "should not" are used, which suggests a measure of doubt.

183. Mr Reid: There is absolutely no doubt that the legislation would prevent a person who had obtained a debt relief order from obtaining a further debt relief order within the ensuing six years. That is absolute.

184. Mr Cree: Then it should say "would". The Department's response says that it "should not" be open to them. What you are saying now is that it will not be open to them; it is definite.

185. Mr Reid: Yes, it is definite.

186. Mr Cree: Is it just loose phraseology?

187. Mr Reid: It is about the period for obtaining a debt relief order if someone has had one in the previous six years. It is in proposed new schedule 2ZA(5), on page 18 of the Bill. Under conditions for making the debt relief order, it states that:

"A debt relief order has not been made in relation to the debtor in the period of 6 years ending with the determination date."

188. Mr Cree: The word "should" is, perhaps, a little weak.

189. Mr Reid: May I check a copy of our response?

190. The Chairperson: Take your time. There is no hurry.

191. Mr Reid: Where is the sentence being queried? Is it in paragraph 3 of the response?

192. Mr Cree: I cannot tell, because we only have the response listed in a column, along with the relevant clauses, the explanation, the issues and the evidence.

193. The Chairperson: It might be helpful if you refer to that section of DETI's response and read it out.

194. Mr Cree: Yes, certainly. It is in page 3 in our pack.

195. Mr Campbell: Chairperson, do the officials have the master document that Committee members have?

196. Mr Cree: No, and members do not have a copy of the letter.

197. Mr Campbell: That may be the problem.

198. The Committee Clerk: Chairperson, I can cross-refer if you want me to.

199. The Chairperson: Yes, cross-refer then.

200. Mr Cree: We need certainty in these matters. Mr Reid made the point that although it said in the Department's response "must not have", there might be flexibility, which is quite the opposite. Later, in reference to the six-year period, it says "should not", which suggests choice.

201. Mr Nesbitt: Are you taking that from the Department's explanation for each of the clauses?

202. Mr Cree: Yes. It is the old familiar issue of "shall" and "should" and all that stuff.

203. Mr Reid: Those are two different issues. One relates to eligibility for a debt relief order —

204. Mr Cree: I understand that. It is the wording that I am challenging. If you say that it is definite that the individual must not have more than £50, and then that it will be considered in the round and will depend on the circumstances, that suggests flexibility. The other wording suggests flexibility, but you said that there will certainly be no flexibility and that it will be six years full stop.

205. Mr Reid: That is correct.

206. The Chairperson: This is in paragraph 2 on page 3 of the Department's response.

207. Mr Reid: I think that I have located the offending sentence now, which reads:

"The possibility of escaping any consequences arising from such conduct by applying for a further Debt Order within six years should not be open to them irrespective of the circumstances giving rise to the further indebtedness."

208. The Department was defending the decision to have a six-year limit. That is why the word "should" was used; we were saying that the period should not be shorter than six years.

209. Mr Cree: Surely "will" is a better word to use; it will not be open to them. "Should" suggests an uncertainty or flexibility.

210. Mr McHugh: That would not cover you in law.

211. Mr Reid: I was not trying to quote the Department's intention of what the law should be. I was trying to say why something should be what the Department has set it to be, and used the word "should" in that context.

212. Mr Cree: Do you take my point? We need to be definite about these matters and know exactly where flexibility can come in and where it cannot. Am I right in thinking that a debt relief order will not be open to someone within that six-year period?

213. Mr Reid: To give an example, it should not be legal for a person to commit an act of murder. It is a moral judgement, and it would be wrong for the law to allow a person to commit murder. I used "should" in the document in the sense that it would be wrong for the period to be less than six years.

214. Mr Cree: The criminal law is a little more definite than that.

215. Mr Reid: Yes, common law states that a person is not allowed to commit an act of murder. However, if you wanted to defend why criminal law prevents murder, you would say that it should not allow murder.

216. Mr Campbell: There is no doubt about what is in the Bill. Proposed new schedule 2ZA states:

"A debt relief order has not been made in relation to the debtor in the period of 6 years ending with the determination date."

217. There is no room for manoeuvre there. There may be some flexibility in the Department's explanatory note, but the Bill is clear.

218. Mr Nesbitt: It must be considered in the context of the answer.

219. Mr Reid: I was simply stating why that should be.

220. Mr Nesbitt: The Department is saying that it should not be open.

221. The Chairperson: Therefore, you are giving an opinion in relation to that, but the draft legislation is quite definite.

222. Ms J McCann: I do not want to make a big issue out of it, but I would like to come back to my previous point, which was on the issue of benefits being considered as assets. There are certain benefits that should not be considered as part of a person's assets, such as DLA paid to a family to care for a sick child. That child may require more heat in the house or may have special dietary needs. Does the Bill take that into consideration?

223. Mr Nesbitt: No, and I am not even sure that that will be taken into consideration in the subordinate legislation. You must look at the common financial statement to see what leeway the people who operate the system will provide to the situation.

224. The Chairperson: May we continue? I do not wish to rush members. If they are unhappy about an aspect they should just say so, because this is a legislative process.

225. The Committee Clerk: Clause 3 deals with debt relief restrictions and undertakings. It creates a regime of debt relief restrictions, orders and undertakings. Such orders may last from two to 15 years and will serve to protect the public from the culpable debtor. Advice NI expressed concerns regarding the upper time limits on debt relief restriction orders and sought clarification on the application of the 15-year restriction and information on how decisions will be made to enforce the two- to 15-year restriction.

226. The Department stated in its written response that the provisions are exactly as stipulated in relation to bankruptcy restrictions and undertakings. Details of bankruptcy restrictions and undertakings, which are maintained by the Insolvency Service in England and Wales, are used as a guide when accepting bankruptcy restrictions or undertakings in Northern Ireland to determine the bracket into which the bankrupt's conduct would appropriately fall. It is initially intended to use the same information in setting time limits for debt relief restrictions and undertakings.

227. Mr Butler: It is the same as the English legislation.

228. The Committee Clerk: Clause 4 deals with advice on relief of debt and related matters. It empowers the Department to 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. There were no issues or concerns raised during consultation in relation to Clause 4.

229. The Chairperson: OK. We will move on.

230. The Committee Clerk: Clause 5 deals with the power to make consequential amendments, etc. It allows the Department to make such supplementary, incidental, transitional, transitory or consequential provisions by order as it considers appropriate in connection with the Bill.

231. The Chairperson: I notice that some members are searching for written material about that, but where there is no contention, nothing is included. That is just for members' advice. The Committee Clerk is going through the clauses.

232. Mr Campbell: That is a relief. Some of us were going to go to Specsavers. [Laughter.]

233. The Chairperson: I should have advised the Committee about that before the Clerk started.

234. The Committee Clerk: Apologies, members.

235. There were no issues or concerns raised during consultation in relation to Clause 5.

236. Clause 6 gives effect to the schedule that contains minor and consequential amendments. There were no issues or concerns raised during consultation in relation to Clause 6.

237. Clause 7 deals with commencement. It contains provision for the commencement of the Bill. There were no issues or concerns raised during consultation in relation to Clause 7.

238. Clause 8 deals with interpretation. It contains definitions of words and phrases used in the Bill.

239. Mr Campbell: I wish to ask you about the schedule that provides for minor and consequential amendments. It is fairly clear that the Department has no intention or plans to charge a fee. However, towards the end of the departmental response, it says:

"should it ever be decided that it would be desirable to do so."

240. There is no intention at present to introduce a fee, but in what circumstances would a fee be introduced and how might that happen?

241. Mr Nesbitt: It is a question of who will be charging the fee. The clause is —

242. Mr Campbell: It is a catch-all.

243. Mr Nesbitt: It is a catch-all. It may or may not be used in the future. It is certainly not used in GB and the Department has no intention of bringing in such a charge here. I cannot even think of the circumstances in which it would.

244. Mr Campbell: I cannot either.

245. The Committee Clerk: No issues or concerns were raised during the consultation in relation to clause 8. Clause 9 gives the short title of the Bill, which, when enacted, will be known as the

Debt Relief Act (Northern Ireland) 2010. No issues or concerns were raised during the consultation in relation to clause 9.

246. There is one schedule to the Bill, which provides for minor and consequential amendments to other legislation. Advice NI recommended that any registration fee, as identified in paragraph 11(a) and 11(b) of new article 248A of the Insolvency (Northern Ireland) Order 1989 be proportional to the status of the organisation seeking to become a designated body. The new article provides the Department with the power to introduce a fee by order, subject to negative resolution, requiring those seeking to become a designated body to pay a fee. The Department responded that it has no plans to charge a fee. Advice NI was satisfied with the Department's response and agreed that its request no longer applied.

247. The Chairperson: That completes our discussion. Do members have any further comments to make? Are members content with the legislation as it stands?

248. Ms J McCann: I am still not convinced that particular circumstances should not be a provision of the Bill.

249. Mr Reid: To which part of the Bill are you referring?

250. Ms J McCann: Clause 2.

251. Mr Reid: I just want to clarify whether we have a common understanding of the provision that you are referring to. Is it conditions for making a debt relief order in proposed new schedule 2ZA?

252. Ms J McCann: Yes. Advice NI clearly told us that because special circumstances clauses were not in the debt relief legislation in England, it caused difficulties.

253. Mr Reid: Special circumstances?

254. Ms J McCann: Exceptional circumstances.

255. Mr Reid: Exceptional circumstances?

256. Ms J McCann: Yes.

257. Mr Reid: Do you think that there should be provision in the Bill to deal with exceptional circumstances?

258. Ms J McCann: Advice NI gave evidence last week stating that the lack of such a provision caused problems for people in England who were seeking debt relief orders.

259. Mr Reid: What particular type of circumstances do you have in mind?

260. Ms J McCann: It would be, perhaps, when someone is ill or has suffered the death of a partner. I believe that provision for exceptional circumstances should be included in the Bill, rather than being open to interpretation.

261. Mr Nesbitt: Is that to allow a person to claim a debt relief order?

262. Ms J McCann: Yes.

263. Mr Reid: Is that with reference to being eligible for a debt relief order once every six years, or is it to allow a person to obtain one more frequently?

264. Ms J McCann: The special circumstances provision would allow people to be eligible within the six-year period, but it would also affect what is considered as a person's assets. The £300 figure is an issue. I do not believe that a person's benefits should be considered as an asset if that benefit is used, for instance, to help someone who is sick.

265. Mr Nesbitt: Benefits can only be used as income; they cannot be considered as assets.

266. Ms J McCann: Advice NI told us that they were considered as assets.

267. Mr Reid: No. Benefits would never be considered as assets.

268. Ms J McCann: Never?

269. Mr Reid: Never. They are treated as income.

270. Ms J McCann: That is the same thing. Even if it is treated as income, the person's income would be regarded as being higher than it actually is, because that income goes out again. I would like to see more clarity in the Bill around that important issue.

271. The Chairperson: There is a difference between income and assets.

272. Mr Reid: The position is that if a person is solely reliant on state income, those state incomes are provided to meet the person's reasonable living needs. If that is a person's sole source of income, I cannot see the common financial statement ever leading to such a person being declared ineligible for a debt relief order. However, if a person has benefits plus other income, it might raise their income relative to their expenditure to above £50. If that person were to be made bankrupt, they would be expected to make a contribution to their creditors. Therefore, unfairness would be created, because a category of people would be made bankrupt and would have to pay out any excess over £50 for the benefit of their creditors, whereas people who had obtained a debt relief order would escape and would be able to keep that additional money for their own use.

273. Ms J McCann: I hear what you say. However, last week Advice NI said that because there was no such provision in the English legislation, that created problems for families, particularly families receiving particular benefits because of illness or whatever. Those benefits are being taken into consideration when identifying whether they have surplus money, but those families need that surplus money for basic needs, which is why they are getting the benefit in the first place. Do you understand where I am coming from?

274. Mr Nesbitt: I understand.

275. Mr Reid: I think that the common financial statement should take care of that.

276. Ms J McCann: It does not mention that, and that is my difficulty.

277. Mr Reid: We can contact the Insolvency Service in England and ask whether it is aware of that problem. However, we contacted the Insolvency Service in England about the disability living allowance and it clarified that if a person is in receipt of disability living allowance — for example, if a person is getting £200 for disability living allowance — it must be entered as income, but the same amount must also be entered as expenditure, and it has instructed the

intermediaries to that effect. Effectively, therefore, the allowance is disregarded. However, if a person has other income on top of the disability living allowance — for example, if he or she had an income of £300 from other sources as well as the disability living allowance —

278. Ms J McCann: I accept that. You are asking my opinion on the Bill, and that is my opinion. People from the community sector who work with families in debt have indicated that they have that difficulty with the Bill.

279. Mr Reid: I do not think that, on the whole, benefits are overgenerous, particularly jobseekers allowance and income support-type benefits, and I cannot see that a person would ever be excluded from a debt relief scheme if those benefits were measured against their family's expenditure, as assessed by the common financial statement. However, one hears anecdotal reports in the press of people on very high levels of benefit. If someone on a very high level of benefit were able to avail themselves of this scheme, questions might be raised in the public's mind as to why that person could not be expected to make a contribution or pay off some of his or her debts. This scheme will cancel a person's liability to pay their debts: their creditors will be left high and dry. If a person were on a very high level of benefits, questions might be asked as to why they should not make payments, or some degree of payment, towards past debts. Perhaps a debt management plan —

280. Ms J McCann: I have to disagree with you. I do not think that there is anyone on that high a level of benefits. Most people get benefits because they need them.

281. Mr Reid: I know that.

282. Ms J McCann: You asked whether we had any issues, and I want to have that point recorded.

283. Mr Reid: If a person is getting benefits because they need them, which, I accept, is true in the majority of cases, they should have no problem accessing the scheme because they would be able to justify their expenditure against their level of benefit.

284. Mr Nesbitt: I do not want to see anyone who has any sort of benefit and who has no other income being refused a debt relief order, provided they meet the other requirements and criteria.

285. The Chairperson: In any event, it might be difficult to define exceptional circumstances; I only raise that by way of speculation. I know what you mean, and I know what Advice NI means. However, it may be difficult to define that in legislative terms.

286. Ms J McCann: It would be even more difficult if it is not in the Bill.

287. The Chairperson: I am just wondering whether that can be included in any event. It might be difficult.

288. Mr Reid: By including it, you may actually allow people to make a claim for another debt relief order within six years.

289. The Chairperson: Within six years; that is the whole point. The first question is whether it is desirable to do that. The argument is that it is desirable to do that if there are exceptional circumstances, one of which might be the death of a partner, terrible ill health or something of that nature. I wonder whether that can be done under the legislation.

290. Mr Nesbitt: A debt relief order cannot be seen to be a method by which people can obtain credit and then have those debts cancelled, although if you were to do that every two years, there would be uproar from creditors, particularly the credit card industry.

291. Mr Reid: We considered that point with regard to the legislation. We envisaged that in any attempt to cater for difficult circumstances justifiably, earlier repeat applications to the debt relief scheme could be fraught with problems. It could create a hierarchy of suffering. If you legislate, for example, that the death of a spouse is grounds for eligibility for a debt relief order within a lesser period of time, someone might feel particularly aggrieved that the loss of their parents did not make them equally eligible for an early application. You could list hundreds of circumstances and still not capture every circumstance that could conceivably justify allowing a person to access the scheme at an earlier date.

292. Another option is to create discretion, whereby if a person has suffered particular misfortune, he or she should be eligible for the scheme at an earlier date. However, that would create formidable problems for the intermediaries assessing eligibility. It would be a subjective matter and could lead to people being treated differently under the scheme. One intermediary might feel that the person's misfortune justifies his or her earlier readmission to the scheme, while another intermediary would not.

293. The Chairperson: The aim of the provision is to prevent a person from getting another debt relief order within six years. In other words, it aims to prevent repeat applications. The argument is that there might be exceptional circumstances. If you accept that argument, the problem is how to define exceptional circumstances. First, if you accept that it is desirable for someone to have a repeat order within six years, which is an argument in itself, what are the exceptional circumstances and how are they defined? There would be strong arguments about whether they include the death of a partner or parent, serious illness, what defines a serious illness, and so on. You would get into many difficulties with the definition of exceptional circumstances. That is what I envisage. Even if you wanted to bring that in, how would you define exceptional circumstances?

294. Mr Nesbitt: It also complicates what is meant to be a simple and straightforward scheme and will increase costs.

295. The Chairperson: It does. Ms McCann, I just want to say that the Bill's purpose is not to replace existing bankruptcy rules; it is simply to give a narrow section of the population that is vulnerable and in difficult circumstances an opportunity to get relief cheaply and quickly. It is not to change the bankruptcy rules or law as it stands. Therefore, we are not dealing with the wider situation. This particular piece of legislation falls within narrow confines. I am not trying to stop you coming in, but Mr McHugh wanted to come in. I suspect that his point is germane to what you were saying. If not, I will come back to you.

296. Mr McHugh: Committees can be content with all sorts of legislation that comes through here from Europe. However, subsequently, such legislation can be detrimental to people who are trying to get on with business and so on. I am happy that we are taking time over it.

297. In relation to Jennifer's point, if it is a question of whether the time limit should be less than six years, I am not in favour of someone having an opportunity to get more credit cards to get into the same handlin again. However, if it is about parity, the legislation should improve the situation from the UK position. Jennifer is following a point that was made to us, that indicated that there may be a problem. It is for the Department to research that point and find out whether there is a problem. If there is a problem in the legislation for England, there is no point in our replicating it. That is the only point that I want to make. There is room now to accommodate the situation.

298. The Chairperson: Advice NI said that there was no such provision for exceptional circumstances with the six-year period in the English legislation. It may be useful if the officials contact their colleagues in London to find out whether that has given rise to any particular difficulties, whether they considered including such a provision and whether it was omitted, so that we could have more information to satisfy the Committee. There is an issue that needs to be addressed.

299. Mr Campbell: Further to that, could they find out whether anyone in England and Wales has challenged an attempt to get another debt relief order within a six-year period? If there has not been any attempt to do so, we would have an indication of a lack of concern. Either way, it would give us more information than we currently have.

300. The Chairperson: Yes; OK.

301. Mr Butler: I do not think that the legalisation has been in place in GB for terribly long.

302. Mr Nesbitt: It has been in place for just over a year.

303. Mr Butler: We asked Advice NI whether any assessment or analysis had been done about such problems arising.

304. Mr Nesbitt: The Money Advice Trust issues a newsletter detailing matters of concern. That is sent out to competent authorities and those matters are raised with the Insolvency Service. To date, nothing has arisen on that particular matter.

305. Mr Butler: Advice NI raised the issue of an exceptional circumstances clause, but it did not have any evidence. That may be because the legislation has only been in place for a year, but it is worth checking out.

306. Mr Nesbitt: We will check it out.

307. The Chairperson: Thank you, gentlemen, for your help.

3 June 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell
Ms Jennifer McCann
Mr Gerry McHugh
Mr Daithí McKay
Mr Sean Neeson

Witnesses:

Mr Reg Nesbitt
Mr Jack Reid Department of Enterprise, Trade and Investment
Ms Eileen Glenn

Mr Reg Nesbitt
Mr Jack Reid
Ms Eileen Glenn

308. The Chairperson (Mr A Maginness): The Committee now moves on to its formal clause-by-clause scrutiny of the Debt Relief Bill. Members' folders contain the relevant papers, including an updated version of the clause-by-clause analysis table. I will go through each of the nine clauses and one schedule serially to seek the Committee's position on each. Members will be giving their views on the clause as drafted in the Bill; to date, no amendments have been made by the Department or the Committee.

Clause 1 agreed to.

Clause 2 (Conditions for making a debt relief order)

309. The Chairperson: Is the Committee content —

310. Ms J McCann: Did you not tell me that that matter would be dealt with under subordinate legislation? Clause 2 sets out conditions that a debtor must meet in order to obtain a debt relief order. I am confused.

311. Mr Butler: It is an exceptional clause.

312. The Clerk of Bills: For clarity, what you have in front of you is the analysis table that the Committee has developed during its consideration of clauses, evidence-taking, and questions that members have put to the Department. The Committee has considered all the clauses. Today, the Chairperson will put the question formally on whether the Committee is content with each clause as drafted. The table in front of you is to guide you and ensure that, before you answer the question, you are content with the clause as drafted following those discussions. If a member wishes to seek further clarification or to suggest an alternative route or amendment, that is, of course, open to him or her at this point. If the Committee decides to support the clause as drafted, members could, of course, approach a Bill Clerk and table an amendment separately.

313. Ms J McCann: I do not see where it states that exceptional circumstances should be included in the clause.

314. The Clerk of Bills: The Department's responses relate to questions that the Committee put to it.

315. Ms J McCann: On the six-year rule?

316. The Clerk of Bills: Those responses should address issues that you have raised in addition to correspondence between the Committee and Department.

317. Mr Campbell: Previously, we raised the issue of comparable legislation in GB, which was around a year ahead of ours, and there had not really been any time to obtain feedback on it. Obviously, when the Bill is passed, and we carry out monitoring in addition to that which is carried out in GB during the extra year it will have had by then, and feedback is obtained, at what point — be it 2011 or 2012 — would there be an opportunity to revisit any of the Bill's clauses, or not, as the case may be?

318. The Chairperson: Perhaps, that is a question to put to officials.

319. The Clerk of Bills: When the Committee has taken a decision during formal clause-by-clause scrutiny and issued its report on the Bill, the next opportunity to comment on or, indeed, to propose an amendment to any clause is Consideration Stage, during which an individual member, on behalf of his or her party or otherwise, can approach a Bill Clerk and table an amendment. For the Committee to revisit its decision is more complicated. Normally, during formal clause-by-clause scrutiny, the Committee signs off its position on the Bill.

320. Mr Campbell: That is not what I asked. Assuming that the Bill is passed —

321. The Chairperson: It goes through, yes.

322. Mr Campbell: If, say, by June 2011, after the Assembly election, problems have emerged either following monitoring in Northern Ireland or in information that comes from GB — which, at that point, will have had two years' experience while we will have had one year's experience of a debt relief Act under our belts — what would it take to insert amendments at that point or beyond?

323. The Chairperson: Could I ask departmental officials to come forward to advise the Committee on that point?

324. Mr Reg Nesbitt (Department of Enterprise, Trade and Investment): Chairman, there will be a three-year review when the Bill is enacted. Obviously, in the interim between enactment and that three-year review, if GB makes any changes to its legislation, we will look at that and will probably enact any changes that it makes before the three years are up.

325. The Chairperson: Would there be an opportunity to amend the legislation before the three-year period expires?

326. Mr Nesbitt: Yes.

327. Mr Campbell: That answers any queries that I had, Chairperson. I am content as long as there is an opportunity to address any problems that might emerge.

328. Ms J McCann: My concern is about the exceptional circumstances with regard to the six-year rule. The Bill clearly states that people who have already obtained a debt relief order within a six-year period cannot apply for another one. I raised that concern at the last meeting, and nothing has changed. Will that clause be agreed as it stands?

329. Mr Nesbitt: At our meeting last week, the Committee asked us to write to the Insolvency Service in GB, which we duly did. The response that we received is with the Minister.

330. The Committee Clerk: That response is included in members' papers.

331. Ms J McCann: I ask that something about exceptional circumstances be included in that clause.

332. The Chairperson: That cannot be done at this stage, can it?

333. The Clerk of Bills: Any member can put a proposal to the Committee to recommend that the Committee seeks an amendment to that clause. That is the first question that the Chairperson would put; that the Committee supports or otherwise the proposal from the member to recommend an amendment.

334. Ms J McCann: Can I put that proposal?

335. The Chairperson: Yes, of course. That proposal is noted.

336. Mr Nesbitt: Chairperson, you may want to read the Minister's response before making the decision on whether an amendment should be tabled.

337. The Chairperson: We will look at what we have here.

338. Mr Butler: Is that the tabled response?

339. The Committee Clerk: Yes.

340. Ms J McCann: Is the Minister's response in the members' packs as well?

341. The Committee Clerk: It is the Department's response.

342. The Chairperson: The response is from Mr Woodhead, who is the head of the policy unit of the Insolvency Service.

343. Mr Campbell: Is that response labelled appendix 1?

344. The Chairperson: Yes.

345. Mr Campbell: Is that the letter that, at the bottom of page 2, asks:

"Has anyone in England or Wales challenged the six-year limit"?

346. It says that the answer is no.

347. The Chairperson: Yes. It might be worthwhile going through the letter. It refers to the letter dated 24 May, which raised four main issues, the first being the time limit for reapplying to the debt relief scheme. The letter asks:

"If it is now considered that provision should have been included in the Debt Relief legislation permitting early re-application to the Debt Relief scheme in exceptional circumstances?"

The answer is given:

"We still feel that allowing a 6 year ban on re-entry is appropriate, the period was arrived at after extensive consultation and we believe it strikes the right balance between providing access to the procedure and ensuring that there is no abuse. A further advantage of specifying such a provision is that it is easy to understand and enables the entry costs to be kept at a low level because no person has to make a subjective decision on what could count as an exceptional circumstance and this would add significant cost to the process."

348. That is the Department's rationale for sticking with what is proposed.

349. The following questions are answered:

"If any other problem with the provision barring re-entry to the scheme for six years has been identified?"

No.

If there was an omission in the legislation as regards this point how was the omission made

Not applicable.

Are there any plans to amend or alter the provision?

No.

Has anyone in England and Wales challenged the six year limit for re-entry to the scheme and if so what was the outcome?

No one has challenged this provision."

That seems to deal with the six-year ban and the exceptional circumstances.

350. Ms J McCann: I accept what is being said. We talked previously about the system being open to abuse. However, there could be special circumstances under which people need to obtain a second debt relief order. Having something about exceptional circumstances included in the Bill would provide security for those people.

351. The Chairperson: Yes.

352. Ms J McCann: The legislation is supposed to protect vulnerable people. I see no answers there. There is no detail on the cost, and, just because no one in England and Wales has challenged the provision, that does not mean that we cannot.

353. The Chairperson: Do any other members have views on that?

354. Mr Campbell: As I said, I am content with what we have, providing that, if any legitimate queries that can be substantiated emerge, those can be addressed under the three-year review. There have been no challenges yet. However, in the next couple of years there may be challenges. At least we know that this is not a closed book.

355. Mr Butler: Mr Nesbitt said that that letter is not from the Minister; it is a reply that was sent to the Minister. Should we ask for the Minister's views on the inclusion of exceptional circumstances in the clause? We do not actually know her view.

356. The Chairperson: We do not have her formal view. However, I suspect that it would be supportive of the Bill as drafted.

357. Mr Butler: It may well be. However, the issue has been raised by the Committee.

358. The Chairperson: We can ask for her views.

359. Mr Campbell: Where does that leave the timing of the Bill?

360. The Committee Clerk: Perhaps we should park this clause.

361. The Chairperson: Can we do that?

362. The Clerk of Bills: Yes.

363. The Chairperson: At least one member has strong views in relation to the inclusion of exceptional circumstances. We can park the issue. I do not believe that it will prejudice the progress of the legislation. We can still proceed and deal with the other clauses.

364. The Clerk of Bills: The question can be put formally on the other clauses subject to any consequential amendments that may be required if an amendment is made to clause 2.

365. The Chairperson: The best way of dealing with clause 2, from Ms McCann's point of view, is to put forward an amendment.

366. The Clerk of Bills: Yes.

367. The Chairperson: That gives you an opportunity to do that.

368. Ms J McCann: In no way am I trying to prevent the Bill from going through. I am conscious that it needs to go through in a timely manner, but I want to ensure that it offers protection for everyone.

369. The Chairperson: There is no need to be apologetic. That is your view as a legislator, and the Committee is right to put forward such views. We should proceed with the rest of the clauses. We will park clause 2 and come back to it.

370. Mr Neeson: We could come back to it at a special meeting next week if necessary.

371. The Chairperson: Yes; we could do that.

Clause 2 referred for further consideration.

Clauses 3 to 9 agreed to.

Schedule agreed to.

Long title agreed to.

372. The Chairperson: That has all been agreed subject to any consequential amendments that might arise from an amendment to clause 2. Is everyone clear?

373. Mr Neeson: In order not to delay the legislation, I suggest that, if necessary, we call a special meeting for next Monday or Tuesday. It will also be subject to the Minister's response.

374. Mr Butler: Are we going to seek a response from the Minister?

375. The Chairperson: I think that we should seek the Minister's view. It may be that the Minister's view is as stated in the Bill.

376. Mr Campbell: Imagine that.

377. The Chairperson: I assume that to be the position, but we need to ask the Minister nonetheless. The Minister will be aware of the arguments that Ms McCann has raised quite properly. The Minister may have a different view as a result; I do not know. That completes this item of business.

10 June 2010

Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)
Mr Paul Butler (Deputy Chairperson)
Mr Gregory Campbell
Mr Leslie Cree
Mr Gerry McHugh
Mr Stephen Moutray
Mr Sean Neeson

378. The Chairperson (Mr A Maginness): The Committee has received a letter, dated 7 June 2010, from the Minister of Enterprise, Trade and Investment on the Debt Relief Bill. The letter sets out the Minister's views on an amendment to clause 2 that would allow debtors to obtain another debt relief order within six years in exceptional circumstances.

379. I remind members that it was agreed during clause-by-clause scrutiny at last week's meeting to defer consideration of clause 2 pending the Minister's views being obtained. She has now presented those views in her letter.

Clause 2 (Conditions for making a debt relief order)

380. The Chairperson: The Minister states that there should not be such an amendment for three main reasons. First, there are issues of equity and fairness for debtors versus lenders and traders, particularly those who work in small businesses.

381. Secondly, there would be practical difficulties in determining exceptional circumstances. Thirdly, it would result in Northern Ireland's legislation differing from that in England and Wales.

382. Those are all important points. The one that strikes me as being the most difficult to deal with is how one determines what constitutes "exceptional circumstances". I do not know how one would do that or how one would frame such an amendment to clause 2. I know what Committee members are getting at, but it is very difficult to translate the concern into a legislative form that would cover the area.

383. Do members have any comments?

384. Mr Neeson: The important thing is that the legislation will be kept under review.

385. The Chairperson: In her letter, the Minister talks about a "thorough review of the operation of the scheme after it has been in operation for three years."

386. However, a review could take place before that, and there could be intervening reviews. In any case, it does not appear to be an issue that has arisen in England or Wales, even though the legislation has been operational for only a fairly short time over there.

387. Jennifer McCann is not here to give her view. Even if she were present to propose an amendment and the Committee said that it would have nothing to do with it, she would still have an opportunity to table an amendment at the next legislative stage. Therefore, it is not unfair to her if we proceed. Obviously, I do not want to obstruct anything that any Committee member wants to do.

388. Mr Cree: Jennifer is keen on including "exceptional circumstances", but, as you said, Chairperson, it would be very difficult to do so. I am also opposed to changing the legislation from that which obtains across the water, because there is logic in having consistency. Your comment about reviewing the legislation is the best way forward, because it can be reviewed at a later stage.

389. The Chairperson: The Bill is also a mechanism to provide cheaper and more effective relief for a fairly small number of people so that they might avoid the larger expense of going through bankruptcy proceedings in the High Court. It should not represent a change in bankruptcy law at large. That is not what we are dealing with, nor can we deal with it.

390. Question, That the Committee is content with the clause, put and agreed to.

Clause 2 agreed to.

391. The Chairperson: We shall consider the first draft of the report on the Debt Relief Bill at next week's Committee meeting.

Appendix 3

Written Submissions

Advice NI Response to Debt Relief Scheme (October 2006)



Date: 18th October 2006

Joan Bryans
Legislation Unit
Insolvency Service
Department of Enterprise, Trade and Investment
Fermanagh House
Ormeau Avenue
BELFAST
BT2 8NJ

Dear Joan,

Consultation on the proposal for a new Debt Relief Scheme for Northern Ireland

Advice NI welcomes the opportunity to respond to this consultation on the proposal for a New Debt Relief Scheme for Northern Ireland based on the March 2005 Relief for the Indebted Consultation for England and Wales.

Advice NI understands the existing infrastructure for debt relief needs to be addressed however there are some areas in the draft legislation we would wish to receive further clarification on.

Whilst there are a range of options available to those experiencing financial difficulty in Northern Ireland Advice NI believes that often these are not suitable for everyone and so welcome the DRO (Debt Relief Order) as an alternative.

In order to be a realistic alternative that assists those most in need; the vulnerable, those with no income and no assets the DRO must not have too many restrictions otherwise it risks being exclusionary and ineffective in targeting those who need it most.

Advice NI seeks reassurance that the credit industry will not lend irresponsibly to individuals once they have been discharged from the DRO scheme.

Response to Question Section:

(1a) Do you think payment of a moderate fee to cover the costs of the debt relief scheme is acceptable?

Advice NI members operate in disadvantaged communities and deal with some of the most vulnerable people in society, many of whom have high levels of debt and have difficulties in managing their finances.

We believe that any fees/costs under the DRO should be affordable to all especially those on income related benefits, fees are stated upfront and that there are no hidden additional costs.

Often the charges for other indebted options such as Individual Voluntary Arrangement and Bankruptcy result in the client incurring additional debt. In bankruptcy for instance the debtor has the cost of £310 to the Official Receiver, and the additional costs of £62 Court Fee and £5-10 to get the solicitor to sign the petition forms. As the DRO is targeted at people with no income and no assets any fee should be nominal otherwise it could create additional debt to the individual and/or act as a deterrent to the most vulnerable accessing the scheme.

In light of the fact that this scheme is the first of its kind in the United Kingdom we recommend that the fee is reviewed within 1 year after the introduction of the scheme in order to assess the impact it has on applications.

(1b) What do you think is a reasonable amount?

We believe the proposed fee of £100 is too high given that the majority of the people who most need to access the scheme would be unable to afford this amount. Advice NI believes the fee should be a nominal fee.

(c) If you do not think a fee of any sort should be payable, do you have any suggestion as to how the scheme might be funded?

The scheme could be funded by the government or by the credit industry, financial institutions, banks etc.

(2) Do you think entry to the scheme should be restricted to once every 6 years? If not what is an appropriate length of time?

Advice NI believes entry to the scheme could be restricted to once every six years as it fits in line with the length of time entries remain on the credit reference registrars. However, we feel that in exceptional circumstances for example, where ill health has resulted in difficulty managing finances then entry should be permitted on a more frequent basis. Cases like this should be looked at on their own merit. We suggest that in these situations entry to the scheme be permitted once every 3-4years.

We would ask that time restrictions to entry to the scheme be reviewed to assess the impact the DRO has had.

(3) Do you think that use of an approved intermediary could make the system more accessible and efficient?

Advice NI feels the use of an approved intermediary could make the system more accessible and efficient. However we feel that there must be an adequate resource of approved intermediaries so as to ensure accessibility to the scheme.

We seek assurance that approved intermediaries will be adequately trained, that there will be an accreditation procedure in place and that assessments will be carried out regularly. This will assist with ensuring standards are being met, impartiality and good practice are being delivered on and that the intermediary is acting in the best interest of the client.

Advice NI is committed to quality assurance and welcomes approval/accreditation of money advisers acting as intermediaries.

(4) What do you think the role of the intermediary should be?

The intermediary should provide services over and above the provision of advice and support. They should also;

- Gather the relevant information about the debtor's affairs and draw up a financial statement to identify the surplus income
- Advise the client on different options for dealing with the debt.
- Decide if the DRO is the best option for the client. If so the intermediary should assist them with completing the forms based on information provided i.e. proof of income, benefit and wage slips, letters etc, and then forward this information onto Official Receivers so that they can decide if the debt relief scheme is the best option for the client.

Approved intermediaries responsibilities should end when the DRO has been submitted to the Official Receiver and therefore the responsibility for deciding if a DRO is approved should lie with the Insolvency Service.

Approved intermediaries should have representation from the independent advice sector. However in order for the independent advice sector to retain its ethos the fee payment process should be kept between the Insolvency Service and the debtor so that the debtor does not think the intermediary is charging them for the DRO.

(Q5) Do you think that some funding should be made available to the intermediaries for performing this role? If so, from what source should the funds come?

We feel that funds should be made available to the intermediaries performing this role. With the ever increasing levels of debt in NI it is likely that the introduction of the DRO will have a significant impact on the adviser's caseload and the advice centres resources. This impact should be addressed by providing appropriate remuneration. Perhaps a similar process could be applied to that used by the Social Security Agency in utilising the skills and expertise of the independent advice sector to promote benefit uptake. Under this initiative the sector is paid for work carried out.

Any funding made available should not be at a cost to the individual but rather to government and the financial institutions who have contributed to the creation of over-indebtedness in NI by lending irresponsibly.

The independent advice sector is best placed to act as intermediaries as they have a culture of working in the not for profit sector, providing high quality sustainable advice and acting in the best interests of the client.

(6a) Do you think there should be a limit to the amount an individual can owe to obtain entry to the scheme?

We believe the draft legislation should be reviewed on a regular basis so that any limit set for entry onto the scheme will change according to the realities of the levels of debt in our society. Therefore if the average level of debt increases by 20% in 3 years then so too should the threshold for entry onto the scheme.

(6b) Do you think that £15,000 is an appropriate cap? If not, why is this and what would an appropriate amount be?

Whilst we feel there should be an appropriate cap in place we feel 15k is too low. Our concern is that people with no income and no assets would be unable to apply for the scheme if they had debts greater than 15k. Therefore, many who need the scheme have to find an alternative. This could result in them having to borrow more money possibly to seek bankruptcy hence adding to their debt. We would therefore request that 20k be considered as an appropriate cap to cover areas like inflation.

If a debtor comes across forgotten debts after having already disclosed debts to the Official Receiver we feel this additional debt should be permitted providing it falls within the ceiling of the cap level.

Advice NI seeks assurance that any cap is reviewed within 1 year after the introduction of the scheme in order to assess the impact the cap has had on applications.

(6C) Should secured debt be included as part of the total?

There is a lack of clarity in the consultation paper as to whether secured debt means the whole amount of debt under a secured loan or mortgage or just the arrears. Our view is that if the whole mortgage outstanding is the secured debt then this could restrict a lot of people from entering the scheme.

We would therefore ask that arrears on any secured debt be included as part of the total.

(7a) Do you think there should be a cap on the surplus income that is permitted before a debt relief order would be granted? Is £50 a realistic figure?

Whilst a cap on the surplus income is required to ensure effective operation of the scheme it must also be fair and reflect the individual case itself. We would ask that there is some flexibility to allow those who may have more surplus income to access the scheme.

For instance a single parent with 4 children who may have a surplus income of £51 per month would be exempt from applying for the scheme however a single person with surplus income of £49 would be eligible. This would appear to disadvantage those most in need. Perhaps a scheme similar to the Near Benefits scheme could be introduced to provide some protection to those who fall just outside the threshold.

Once again we would seek assurance that any cap which would be set at the outset is reviewed within a scheme one year after the introduction of the scheme.

(7b) If £50 is not a realistic, what is?

A realistic figure for surplus income could be somewhere in the region of £75-£100. The suggested figure of £50 may act as a disincentive for debtors taking up employment if disposable income would be higher than the £50 ceiling.

(8) Do you think that use of the Common Financial Statement would be an appropriate way to calculate surplus income? If not, why is this and how would you suggest surplus income be calculated?

Advice NI support the use of the Common Financial Statement as it has been approved by the Money Advice Trust and British Bankers Association and is promoted through Advice NI Wiseradviser training in Northern Ireland. We request that trigger figures are reviewed annually in to keep in line with increasing household bills and rising energy costs.

(9) Do you think that income in "NINA" cases should be defined in the same way as income in bankruptcy cases? If not why is this and how should income be calculated?

Advice NI believes that income from state benefits such as Working and Child Tax Credits, Disability Living Allowance and Attendance Allowance should not be included. These benefits are issued by Government for specific reasons and therefore should not be used for payment to creditors.

(10) Do you think the proposed limit of £300 assets is reasonable? If not what do you think a reasonable figure should be?

Advice NI believes that there should be a limit on the assets an individual owns however we feel the proposed limit of £300 is too low and would exclude many people from the scheme. We request that this is reviewed and consideration given to increasing it slightly. In addition we would ask for further clarity as to the items of modest value that would be excluded from the DRO. In bankruptcy the bankrupt is permitted to retain a car of value to up £3000. We suggest that this should also be the case with the DRO.

We seek assurance that any limit that is agreed at the outset is reviewed annually. This is to enable consideration to be given to other factors such as inflation, increases with consumer costs, higher costs of living and so on.

(11) Do you think there should be exclusions for certain property similar to that in bankruptcy?

Advice NI feels that where appropriate DRO legislation should replicate the rules of exemption in bankruptcy. In bankruptcy exempt goods include furniture and household equipment necessary for domestic needs, clothing, bedding, tools, books and other equipment necessary for employment or business.

(12) Do you agree that the order could be made administratively? If you think the court should be involved with the making of the order, why is this?

We welcome the idea of the DRO being made administratively without court involvement as this could reduce the fear created by the court process. It could also reduce the overall charge to the individual thereby making the scheme more attractive and accessible. Any process of this kind must be accountable and transparent and we seek reassurance that measures will be put in place to ensure fairness and impartiality. Also, we recommend that a checklist criteria be developed for those acting as intermediaries in order to deter unnecessary monies being lost by individuals seeking to access the scheme.

(13) Do you think the protection offered to creditors is sufficient? If not what further steps are necessary to safeguard the position of creditors?

Advice NI feel that the protection offered to creditors is sufficient.

(14) Do you think that if a debtor makes a misrepresentation in order to obtain a debt relief order there should be an enforcement action in addition to revocation of the order? If so, what type of action do you think is appropriate?

We feel that if a debtor has made a deliberate misrepresentation with their financial situation to apply for a DRO then revocation of the order should be taken. However we would ask that the debtor's personal and financial situation is investigated thoroughly by the Insolvency Service and the client's circumstances taken into consideration before revocation.

(15a) What action do you think should be taken if the debtor receives a windfall or experiences an increase in income?

Debtors should be expected to disclose any information which results in either a windfall or an increase in income during the DRO period except where there have been small increases in income or where legislative changes have resulted in benefit increases.

It should be the debtor's responsibility to inform the insolvency service of any windfall or increases in income and should not be the responsibility of the intermediary.

(15b) Do you agree that if the debtor benefits from a windfall close to the date at which the debts are due to be discharged that the order should be extended to allow the debtor time to deal with the matter? If not why is this and what steps do you think should be taken to protect the position of creditors?

We agree that the order should be extended to allow the debtor time to deal with the matter at the start as this will give both the intermediary and the debtor extra time to negotiate full and final settlements with their creditors.

(15c) What length of time do you think would constitute a reasonable period to enable the debtor to deal with his creditors?

We feel that the length of time should be as long as necessary for the debtor to meet with the intermediary and negotiate effectively with the creditor.

(15d) Do you agree that if the debtor fails to disclose a windfall prior to discharge of the debts that the discharge should be void and creditors free to take enforcement action? If not, what action do you think should be taken?

We believe that the debtor should be fully informed and understand the implications of any actions in relation to DRO's and declarations.

In terms of consultation, Advice NI would ask the Insolvency Service to consider using the tried and tested Advice NI e Consultation service as a means by which targeted organisations (and the individuals whom they provide a service to) are included in this process. Further information on the Advice NI E Consultation Service can be found at:
<http://www.adviceni.net/econsultation/default.asp> .

Contact information on this consultation response:
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Advice NI Response to Debt Relief Scheme (May 2009)



Date: 5th May 2009

Jack Reid
Legislation Unit
Insolvency Service
Department of Enterprise, Trade and Investment
Fermanagh House
Ormeau Avenue
BELFAST
BT2 8NJ

Dear Jack,

**Consultation on the proposal for a new Debt Relief Scheme
for Northern Ireland**

Advice NI welcomes the opportunity to respond to the Proposed Debt Relief Scheme for Northern Ireland Consultation on Policy. Section 1 includes background information on Advice NI and a general overview. Section 2 then identifies priorities.

Deadline: 6th May 2009

1. Advice NI:

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI exists to provide its members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, NVQ's in Advice and Guidance, Wiseradviser money advice training, social policy co-ordination and ICT development.

Membership of Advice NI is for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout Northern Ireland and providing information and advocacy services to over 117,000 people each year dealing with over 213,000 enquiries on an extensive range of matters including: social security, housing, debt, consumer and employment issues. Further information on the work of Advice NI is included in our website www.adviceni.net.

2. General Comments:

We would refer to our previous response to the Insolvency Service Consultation for a new Debt Relief Scheme for Northern Ireland dated August 2006. The points made still remain relevant and we wish the following to be read in conjunction with this (appendix 1).

At a time of increasing uncertainty many households across Northern Ireland are struggling to pay bills and make ends meet. Over the last year there has been an unprecedented increase in electricity, heating oil and gas with the average grocery bill rising by 30%. This coupled with the fact that the up rating of benefits and the national minimum wage is minimal in comparison means that people are set to find themselves in even greater hardship. On top of this it is forecasted that unemployment is set to rise, inevitably meaning even more people fall into debt.

Advice NI notes with concern that the number of people claiming unemployment benefits has increased by 2,200 to 38,400 in January 2009. The annual percentage increase in Northern Ireland 62%, was the highest since the claimant count began in January 1971.

Advisers and statistics indicate that clients are experiencing an increase in levels of debt and mortgage repossessions. A total of 3,628 mortgage arrears were issued to people struggling with repayments in Northern Ireland in 2008, a rise of 64% on the previous year. Figures from the court service show the number of writs and summonses issued rose from 2,213 in 2007. Advice NI member, Housing Rights Service, has reported a 300% increase in demand for their specialist debt service.

NI's level of redundancies has also accelerated in recent months. There were 2,777 confirmed redundancies in 2008, an increase of 45% on the 2007 figure (1,912). The latter was the lowest figure in more than a decade. Focussing solely on the level of redundancies misses the high level of under-employment and unemployment that has been occurring in the self-employed sector over the last year. NI has a higher proportion of its workforce classed as self-employed than any other UK region

Advice agencies are dealing with increasing number of clients, who have lost their jobs, are in debt and are unable to pay their mortgages. Debt queries are up 6% this year (Advice NI membership profile 2008).

Insolvency Service also reports 443 individual insolvencies in Northern Ireland in the fourth quarter of 2008. Of this figure 293 were bankruptcies and 150 were IVA's.. an increase of 38.9 % from quarter 4 in 2007. (Of this figure 30.2% increase in bankruptcies and 59.6 % increase in iva's in 12 mths.

In general Advice NI welcomes the intention for a Proposed Debt Relief Scheme as a new alternative for people experiencing over-indebtedness. However given the current state of the economy in Northern Ireland (as indicated above) and with the current economic climate set to continue many more people are going to face greater hardship and despair. It is therefore now even more pivotal than ever before that the scheme meets the needs of people who are in debt and need assistance. Below are the main areas of priority identified by Advice NI

1. Given that Debt Relief Orders only came into effect in England and Wales on 6th April 2009 Advice NI believes that Northern Ireland should review the outcomes of this scheme in other parts of the United Kingdom before it is introduced in Northern Ireland. The review should include how the scheme has worked since it's introduction in other parts of GB, how many people were eligible for the scheme, how many people narrowly missed out on being able to apply for the scheme, if the criteria for eligibility to the scheme needs to be amended and any recommendations to further improve the scheme. A thorough evaluation of the scheme is vital before the legislative content is signed off by Westminster/Assembly. We believe people in Northern deserve an effective and beneficial scheme which has been tested, evaluated and improved.
2. As highlighted in the consultation paper on page 4 'In order to keep costs as low as possible and avoid the scheme becoming a burden on the taxpayer there would be a need to involve the debt advice sector which would act as an intermediary to assess whether a case is suitable before application was made to the Official Receiver and for it only to be possible for Debt Relief orders to be submitted by intermediaries and online.
3. Whilst we welcome representation from the independent advice sector to act as intermediaries it is worth highlighting that advice centres are currently facing difficult times, dealing with increased numbers of enquiries which due to their complexity often require a higher proportion of the adviser's time to resolve. In order to genuinely engage with the debt advice sector the Department of Enterprise Trade and Investment needs to ensure a lead-time for the introduction of any Debt Relief Scheme. During this lead -in period adequate support, for example, training and systems should be provided to enable effective implementation and minimal disruption to current caseloads.
4. At present in England and Wales the Insolvency Service has been issuing guidance on the scheme for advisers, however our partners in England and Wales have informed us that this guidance has changed on numerous occasions causing confusion for advisers and making it difficult for advisers to know which is the latest version of the guidance. We seek assurance that this does not happen in Northern Ireland and that the final guidance on the proposed scheme is both accurate and timely.
5. It is our understanding that at the last minute upon consulting on the scheme for England and Wales it was decided that a private or occupational pension will count as an asset, so therefore if an individual had a pension of £300 they could not apply for a Debt Relief Order. This issue has denied many people in England and Wales who have no other options to resolve their financial difficulties from accessing the scheme.. As a pension is necessary to provide older people with

an income when they are no longer earning a regular income from employment we would seek assurance that when deciding the criteria for the DRO private/occupational pensions are not included as an asset.

6. Since the introduction of the scheme in England and Wales there have been many problems reported with the online application forms. This form as it is currently designed has been found to be very difficult for clients and intermediaries to complete. It was originally envisaged that the form which has to be completed online would allow clients to fill in some of the pages themselves, e.g. balances etc and the intermediary could assist with completion of the form. However it has since been designed so that page one needs to be fully completed before you can move onto page 2 etc... This has caused difficulties for clients and intermediaries alike, and has resulted in intermediaries having to complete the application form themselves, disempowering the client, and adding to the role of the intermediaries.

Advice NI would therefore recommend a suggested review of the scheme in England and Wales include the form filling process, so that the process is simple and straightforward before it is introduced into Northern Ireland.

7. It is our understanding that in England and Wales disability benefits count as income for applicants seeking the scheme. These benefits are awarded specifically to help the recipient cope with their disability and should not be used as income. Advice NI would seek assurance that these benefits are not used as income for applicants seeking the Debt Relief Scheme.

8. Advice NI would seek assurance that unlike the legislation for the scheme in England and Wales fee charging Debt Management companies are prohibited from involvement in the scheme in Northern Ireland.

9. Question 17d of the consultation paper asks 'do you agree that if the debtor fails to disclose a windfall prior to discharge of the debts that the discharge should be void and creditors free to take enforcement action.' In addition to Advice NI's reply to this question in our previous response we suggest that before the term of a Debt Relief Order ends the intermediary should contact the debtor to check that their circumstances have not changed, and provide both verbal and written information on the implications of not disclosing a windfall prior to discharge of debts.

10. Advice NI welcome the incorporation of the Common Financial Statement (CFS) into Debt Relief Orders (DROs) as a measure of realistic and sustainable expenditure and a way of assessing eligibility for the scheme. The account of income and expenditure used within the DRO online application is based on the CFS summary sheet. It is anticipated that the approved intermediary will already have completed a CFS with their client before they complete the DRO application.

11. In light of the above Advice NI suggest the Debt Relief Scheme is raised as an issue for discussion at the Money Advice Trust (MAT) partnership board meetings. These meetings include representatives from both the advice sector and government departments from across England, Wales, Scotland and Northern Ireland.

We hope these comments are helpful and we are keen to remain engaged with the Insolvency Service on further developments of this scheme, particularly those around the issue of the role of independent advice agencies acting as intermediaries and assisting with implementation.

In terms of consultation, Advice NI would ask the Insolvency Service to consider using the tried and tested Advice NI e Consultation service as a means by which targeted organisations (and the individuals whom they provide a service to) are included in this process. Further information on

the Advice NI E Consultation Service can be found at:
<http://www.adviceni.net/econsultation/default.asp>

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Advice NI submission re Debt Relief Orders for the ETI Committee (June 2009)

Background

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI exists to provide its members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout Northern Ireland and providing information and advocacy services to over 93,542 people each year dealing with over 200,456 enquiries on an extensive range of matters including: social security, housing, debt, consumer and employment issues. For further information, please visit www.adviceni.net.

Introduction

Advice NI welcomes the fact that the Committee for Enterprise, Trade and Investment is seeking more information on this issue and is giving the matter further scrutiny. Advice NI supports the introduction of Debt Relief Orders in NI as an accessible alternative debt resolution for individuals who are unable to afford other forms of debt relief due to the associated high costs. This Order has the potential to be a lifeline to many of the most vulnerable members of society especially in this era of 'credit crunch', 'economic crisis', and 'recession'. For this to happen we need not only for the Order to be introduced as quickly as possible but we need the Order that is introduced to be right in that it serves the purpose it sets out to achieve.

The Context

DRO legislation is being considered in the context of an economic downturn which is impacting on all groups in society not least those who have experienced a 'life event' such as redundancy

or illness and are now experiencing difficulties keeping their head above water financially. Below are some striking statistics that illustrate the extent of the debt problem.

- 1 in 33 people in work are estimated to become unemployed in 2009
- £58,350 is the average household debt
- £182m interest paid in the UK daily
- every 10 minutes a property is repossessed
- 3,000 people are made redundant every day
- 1 person every 4.35 minutes is declared bankrupt or insolvent (Credit Action May 2009)
- unemployment benefit claims increased by 2,200 to 38,400 in January 2009. The annual percentage increase in Northern Ireland 62%, was the highest since the claimant count began in January 1971
- 3,628 mortgage arrears were issued in NI in 2008, a rise of 64% on 2007
- 2,777 confirmed redundancies in 2008, an increase of 45% on 2007
- 443 individual insolvencies in Northern Ireland in the fourth quarter of 2008. - 293 were bankruptcies and 150 were IVA's.
- 60% of households have no savings or investments
- 36 Financial Exclusion Hotspots have been identified, in 15 District Council areas (Measuring and Mapping Financial Exclusion across Northern Ireland Research for The Community Foundation for Northern Ireland Autumn 2008)

DRO's – The Facts

Consultation on DRO's was first carried out in NI in October 2006 and whilst we have just completed a second period of consultation the Order has been in operation in England and Wales since April 2009. The proposed implementation in NI is 2011/early 2012.

DRO's are a non-court based alternative debt relief remedy to bankruptcy, individual voluntary arrangements and debt management plans that write off the debt where there is no realistic alternative. They are aimed at some of the most vulnerable members of society, those on low or no income who have little surplus income and few realizable assets and cannot pay their debt within a reasonable period. It is estimated that there will be 1,000 applications per year in NI.

There are 4 main qualifying conditions:

- 1) Inability to pay debts
- 2) The debt is less than £15,000 (excluding non-qualifying debts – court fines, student loans, debts as a result of fraud or family proceedings – same as bankruptcy)
- 3) Disposable income after paying for reasonable household expenses must not exceed £50
- 4) No realizable assets of more than £300 (excluding amongst others, tools and equipment necessary for use in the debtors employment and a vehicle of no more than £1,000)

The proposed upfront application fee is no more than £100 (£90 in England and Wales) and is non refundable regardless of whether the DRO is approved or rejected. Where a DRO is granted the debtor's debts are written off after one year except where there has been an increase in

income or a windfall, in which case the debtor will be given sufficient time to negotiate a repayment agreement with the creditor and the Official Receiver will revoke the Order. Failure to disclose such changes of circumstances can result in a criminal offence.

DRO applications can only be made online by an 'intermediary' (from the debt advice sector) who will have a number of roles including making an assessment of the suitability of a DRO, checking the debtors financial information, completing the online application and submitting the form to the Official Receiver. Once approved details of the Order are recorded on a public register for 15 months.

Whilst the DRO is in force the debtor cannot obtain credit over a certain amount without disclosing his status.

Once a DRO has been granted creditors listed are prohibited from taking any enforcement action. They can lodge an objection based on fact up to 28 days of the notice of the DRO being granted. Where a valid objection is made the Official Receiver can undertake an enquiry and revoke the DRO were the objection is substantiated.

DRO's can only be submitted once every 6 years.

The legislation will be reviewed 3 years after being introduced.

DRO's – The Issues

Advice NI as stated above welcomes the introduction of DRO's as a means of assisting people who have no way of recovering from their debt situation. Alternative remedies such as bankruptcy and individual voluntary arrangements are not an option for the target group due in the main to the costs involved – deposits, court fees and administration fees. The introduction of DRO's in England and Wales has not been without it's problems and we hope that NI takes the opportunity to learn from our counterpart's experiences to ensure the same issues do not arise in NI. That said we support the introduction of DRO's as early as is possible given that it is now that people need to benefit from such an initiative not in 2012 when the economy may well have contracted.

We recognize that the target group that will benefit from the proposed Order will be quite small (1,000 beneficiaries per year is estimated.) We believe that by amending the qualifying criteria slightly the legislation will have a greater impact and ensure that borderline cases do not slip through the net. We propose that the debt liability should be increased to £20,000 and that the requirement to have less than £50 worth of assets should be flexible to take account of circumstances and allow some protection for those who fall just outside the threshold. We quote an example from our initial response of the situation where a single parent with 4 children has a surplus income of £51 per month and is excluded from the Order and a single person with no children has a surplus of £49 and is eligible. We do however envisage the use of the Common Financial Statement in providing some safeguards in this area.

With regards to realizable assets it seems that in England and Wales a new element was added at the last minute to say that a private or occupational pension will count as an asset, so if your pension "pot" is over £300 then you cannot apply for a DRO. It remains unclear as to what the position is if you are in receipt of a pension e.g. its then both income and an asset. Advice NI urge the Committee to ensure pensions are not included as an asset as this will only serve to exclude many of the target group who have made efforts to be 'financially responsible.' Also, we seek reassurance that DLA and other disability benefits awarded to assist the recipient to deal with their benefits are not included as income for DRO's. In addition, Child Trust Funds and

savings from the Gateway Savings Scheme (which could be introduced in 2010 as a government initiative to provide a financial incentive for those on lower incomes to save) should be excluded as assets.

There is likely to be an issue in NI with regards to the realizable assets particularly in relation to the £1,000 limit for vehicles. Anecdotal evidence from debt advisors within our membership suggests that the average car values are over and above the limit. We suggest that the limit for vehicles is raised to £3,000 which is equivalent to that which is available under bankruptcy and is more realistic. With regards to exemptions for tools it is our understanding that in England and Wales a van used for business purposes will not be classed as a tool of the trade in a DRO. Therefore it will count towards the asset limit. If it is the client's only transport, the van must be worth less than £1,000. If the client also owns a car for personal use, a van worth over £300 will mean a DRO is unsuitable. This is unfair and penalizes tradespeople who have been amongst those most affected by the economic downturn in NI.

The voluntary debt advice sector is ideally placed to act as intermediaries for the application of DRO's as they are experienced and trained to wiseradviser standards approved by the Money Advice Trust. There is however a very weak dedicated debt/money advice infrastructure in NI which is already stretched beyond its limits. A recent report from the Money Advice Trust demonstrates the delivery and demand within Advice NI membership.

Name of organisation: Advice NI

	2007 Actuals	2008 Actuals	% difference 2007 - 2008 actuals	2009 Actuals to date (end of Feb, if possible)	2009 Forecast
Total numbers of people helped	3,309	8,418	254%	1403%	8,418
Total problems advised upon (if measured)	5672	17348	305%	2891	17348

The capacity within the sector is limited even further by the delay in the DETI tender for the provision of face to face debt advice in NI. Demand is increasing as more people find themselves being made redundant and in financial difficulty yet services to those most in need have been hampered as we await the release of the tender that was due be released at the end of 2008.

The Insolvency Service acknowledges that the debt advice sector provides value for money indicating that involving the sector will keep costs low for the taxpayer. They also suggest that the DRO will 'overall, represent a time-saving for debt advisers' whilst 'enhancing the role of debt advisers' as cases will be closed more quickly.

Advice NI is keen that the Insolvency Service enter into a meaningful partnership with the debt advice sector, that they do not see the voluntary advice sector as the 'cheap' option and that intermediaries are adequately remunerated for 'obtaining the relevant information about the debtors affairs, forming an opinion as to whether the debtor would be eligible, ensuring that the application is completed correctly and where appropriate sending the form electronically to the Official Receiver.' We ask that consideration is given to the additional workload created as a

result of DRO assessments – not all assessed cases will be suitable for DRO and that a remuneration scheme similar to that in operation for Benefit Uptake with the SSA is applied. In other words a two tier system whereby payment is made for advice and information and for applications.

Also, we have some concern over the focus on 'cases closed' which has the potential to remove the focus from client need onto statistical outcomes. This does not fit with the current 'Systems Thinking' approach which is being applied across the UK. This approach is client need driven rather than target driven. There is a danger that DRO's could become more about targets and monies than about actual client need – something which should be considered in any evaluation/review of the implementation of the Order.

One final point on this issue is that the payment to debt advisors should be offset by government and/or financial institutions and not by the debtor as this will impact on the independence of the sector and the trust relationship between the debtor and advisor.

With regards to the impact of the DRO on the debtor there is a risk of the debtor becoming financially excluded as they may find it more difficult to obtain credit. Access to affordable credit by financially excluded groups is an ongoing concern and one which should not be forgotten in this initiative. The banks and building societies should not exclude DRO beneficiaries from operating a basic bank account and instead support responsible banking practices.

One of the issues that arose in England and Wales is that last minute changes were made to the Order on which the debt advice sector did not have an opportunity to comment on. Also there have been difficulties with the online application form. We would ask that the Committee seek to influence to ensure that the similar issues do not happen in NI and that clear guidance is issued from the outset.

Advice NI is willing to be designated as competent authority to nominate, train and monitor the performance of intermediaries to implement the scheme provided the necessary support and liaison with the Insolvency Service is available. We seek reassurance that the commercial sector are prohibited from acting as intermediaries as the incentive here might be to 'get the client through the door' and sell other services which may not be in the best interest of the client.

Recommendations

1. Lessons are learned from England and Wales and DRO legislation is introduced as quickly as possible– clear, timely and accurate guidance is given on DRO's from the outset.
2. The online application process is efficient and user friendly.
3. The qualifying criteria is reviewed to increase the liability limit to £20,000; to increase the limit for vehicles to £3;000 to exclude work vans as a realizable asset; to allow flexibility/discretion on the disposable income based on circumstances.
4. Pensions are not included as assets and DLA and other disability benefits awarded to assist the recipient cope with their disability are not counted as income. Child Trust Funds and savings from the Savings Gateway Scheme are not included as assets.
5. A meaningful partnership is developed with the debt advice sector intermediaries and they are remunerated adequately (using a formula similar to that used by the SSA for Benefit Uptake) by government and/or financial institutions not by the debtor.

6. Reassurance is given that intermediaries are not held accountable for falsely declared assets by the debtor.
7. Consideration is given to the 'Systems Thinking Approach' for all initiatives.
8. Reassurance is given that the initiative will not lead to further financial exclusion.
9. The commercial debt advice sector is excluded from acting as intermediaries.
10. The upfront fee is fixed for a 3 year period and there is consultation on any proposal to increase it.
11. DRO's are reviewed annually rather than every 3 years and this review includes a review of the impact and relationship with the debt advice sector.

Contact information on this consultation response:

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Advice NI response to Debt Relief Bill (April 2010)



16th April 2010

Jim McManus
Department of Enterprise, Trade and Investment
Room 424
Parliament Buildings
Stormont
BT4 3XX

Dear Jim

Advice NI welcomes the opportunity to respond to the Proposed Debt Relief Bill. We would refer to our two previous responses in relation to the proposed Bill and this response should be read in conjunction with those. The Bill makes reference to accompanying rules which Advice NI

would like to be afforded the opportunity to respond also. Section 1 includes background information on Advice NI and a general overview. Section 2 then identifies recommendations.

Section 1: Advice NI

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI exists to provide its members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, NVO's in Advice and Guidance, Wiseradviser money advice training, social policy co-ordination and ICT development.

Membership of Advice NI is for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout Northern Ireland and providing information and advocacy services to over 107,000 people each year dealing with over 227,802 enquiries on an extensive range of matters including: social security, housing, debt, consumer and employment issues. Further information on the work of Advice NI is included in our website www.adviceni.net.

Section 2: Recommendations

Advice NI supports the introduction of Debt Relief Orders in NI as an accessible alternative debt resolution for individuals who are unable to afford other forms of debt relief due to the associated high costs. This Order has the potential to be a lifeline to many of the most vulnerable members of society especially in this era of the 'credit crunch', 'economic crisis', and 'recession'. For this to happen we need not only for the Order to be introduced as quickly as possible but also that the Order is introduced serves the purpose it sets out to achieve.

The legislation aims to benefit vulnerable people who already have experienced considerable stress due to their debt situation. Advice NI is concerned about investigations described in paragraph 208K(5) as no time lines are given. This could mean that an investigation could be carried out any time after discharge which could be several years. This could cause further stress on the debtor. Advice NI would like clear guidance and time lines on investigations.

Whilst Advice NI support responsible spending and debtors taking ownership of their actions we have concerns regarding the upper time limits of Debt Relief Restriction Orders, 9(2b). We seek clarification regarding the application of the 15 year restriction and information as to how decisions will be made to enforce the 2 year or 15 year restriction and anything in between.

Schedule 2ZA Part1 5, clearly defines the 6 year rule for reapplying for a DRO, Advice NI believe an exceptional circumstances clause should be added. Taking into account unforeseen changes in an individual's situation, for example, a life event such as illness, death of a partner which could mean that the person can no longer cope with their financial situation. We feel that these cases should be looked at on their merit and circumstance.

Advice NI is keen to act as approved intermediaries and seek clarity on the process and remuneration related to this. We would also recommend that any registration fee identified in 248A(11a,b) be proportional to the status of the organisation seeking to become a designated body.

Recommendations:

1. Lessons are learned from England and Wales and DRO legislation is introduced as quickly as possible– clear, timely and accurate guidance is given on DRO's from the outset.
2. The online application process is efficient and user friendly.
3. The qualifying criteria is reviewed to increase the liability limit to £20,000, to increase the limit for vehicles to £3,000 and to exclude work vans as a realizable asset. Also, to allow flexibility/discretion on the disposable income based on circumstances.
4. Pensions are not included as assets and DLA and other disability benefits awarded to assist the recipient cope with their disability are not counted as income. Child Trust Funds and savings from the Savings Gateway Scheme are not included as assets.
5. A meaningful partnership is developed with the debt advice sector intermediaries and they are remunerated adequately (using a formula similar to that used by the SSA for Benefit Uptake) by government and/or financial institutions not by the debtor.
6. Reassurance is given that intermediaries are not held accountable for falsely declared assets by the debtor.
7. Consideration is given to the 'Systems Thinking Approach' for all initiatives.
8. Reassurance is given that the initiative will not lead to further financial exclusion.
9. The commercial debt advice sector is excluded from acting as intermediaries.
10. The upfront fee is fixed for a 3 year period and there is consultation on any proposal to increase it.
11. DRO's are reviewed annually rather than every 3 years with the review including a review of the impact and relationship with the debt advice sector.

Advice NI is keen to engage with the Insolvency Service in the implementation and review of the DRO in Northern Ireland.

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Belfast
BT7 3FP
Tel: 028 9064 5919
Email: bob@adviceni.net
fiona@adviceni.net
kevin@adviceni.net
sinead@adviceni.net
Website: www.adviceni.net

Consumer Credit Counselling Service (April 2010)

Consumer Credit Counselling Service
6th Floor, Lynton House,
7-12 Tavistock Square,
London, WC1H 9LT
Tel: 0207 391 4580
Fax: 0207 391 4592

Mr Jim McManus
Clerk
Committee for Enterprise, Trade and Investment
Room 424
Parliament Buildings
Stormont BT4 3XX April 15 2010

Dear Jim

Thanks for your letter about the proposed Bill on introducing Debt Relief Orders to Northern Ireland.

Debbie Mills who heads up our office in Limavady will be attending the meeting for prospective competent authorities on May 14, so I shall wait to hear from her.

Yours sincerely

Delroy Corinaldi
Director of External Affairs

DEMOSA Debt Managers Standards Association (April 2010)

ML/SH

1 April 2010

Jim McManus
Committee for Enterprise, Trade and Investment
Northern Ireland Assembly
Room 424
Parliament Buildings,
Stormont, BT4 3XX

Dear Mr McManus,

Thank you for your recent letter. Unfortunately, upon reflection, I don't think I can add anything, as DEMOSA's interests lie solely in the marketing of best practice for issuers of debt management plans and IVA's.

Yours sincerely

MICHAEL LAND
CHAIRMAN

Federation of Small Businesses (FSB) (April 2010)



Northern Ireland Policy Unit
www.fsb.org.uk
Tel: 02890 326035

Cathedral Chambers
143 Royal Avenue
Belfast
BT1 1FH

Jim McManus
Clerk
Committee for Enterprise, Trade and Investment
Room 424, Parliament Buildings
Stormont, Belfast
BT4 3XX

16 April 2010

Dear Mr McManus

Re: Proposed Debt Relief Scheme for Northern Ireland

Thank you for your invitation to comment on the proposed Debt Relief Bill for Northern Ireland.

We welcome any proposals which will help to alleviate the problems of debt faced by many in the community. However, this must not mean it becomes an 'easy option' for those who have indulged in irresponsible borrowing to write off debts, which would subsequently be a concern for those left 'out-of-pocket' - often businesses who can ill afford to absorb losses or use expensive debt collection services to recover what is due to them.

However, we examined the Department's proposals during the consultation on the proposal for the scheme, and as a result we are satisfied that the implications for small businesses will be not excessive.

If we can assist further, please do not hesitate to contact us.

Yours Sincerely,

Wilfred Mitchell OBE
Northern Ireland Policy Chairman

Northern Ireland Courts and Tribunals Service (April 2010)



Jim McManus
Clerk
Committee for Enterprise, Trade and
Investment
Room 424
Parliament Buildings
Stormont
Belfast
BT4 3XX

Policy & Legislation Division
Laganside House
23-27 Oxford Street
Belfast BT1 3LA
Telephone: 028 9032 8954
Fax: 028 9072 8944

Your reference
Our reference

Date 14 April 2010

Dear Jim

Debt Relief Bill

Thank you for your letter seeking views on the Debt Relief Bill. I have been asked to reply.

We have been liaising with officials from the Department of Enterprise, Trade and Investment (DETI) regarding the content of the Bill and, in particular, the interface with procedures in the Enforcement of Judgments Office.

We are content that all such issues are either addressed in the Bill or that secondary legislation made under the Bill will make suitable provision and will continue to work with officials from DETI to this end.

Yours sincerely

MICHAEL KELLY
Principal Legal Officer

PH: 028 90 412394
E-mail: michael.kelly@courtsni.gov.uk

Appendix 4

Memoranda and Papers from DETI

Cover letter re Annex A and B (May 2009)

DETI Insolvency Service
Fermanagh House
Ormeau Avenue
Belfast BT2 8NJ
Tel: 028 90548543
Textphone: 028 9052 9304
Fax: 028 90548520
Email: jack.reid@detini.gov.uk

Jim McManus
Clerk to the ETI Committee
Room 424
Parliament Buildings
Stormont
BELFAST
BT4 3XX 22 May 2009

Dear Jim,

Proposed Debt Relief Bill – Outcome of Public Consultation

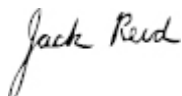
The Debt Relief Bill is being proposed to enable the Official Receiver to make orders comparable to Bankruptcy Orders made by the court, in cases where debtors cannot afford to petition for bankruptcy.

The ETI Committee previously considered the Department's proposals to set up such a scheme at a meeting held on 16 October 2008. Since then a policy consultation has been conducted.

The Committee is to deal with the Debt Relief scheme again at its meeting on 28 May 2009. We have now prepared the attached briefing at Annex A and Annex B which deals with

- The outcome of the consultation
- The proposed content of a Bill to set up a Debt Relief scheme
- Issue of a Policy Memorandum to the Executive to seek agreement to the drafting of a Bill

Yours sincerely



Jack Reid
Insolvency Service

Annex A

Proposed Debt Relief Bill Outcome of Public Consultation Briefing for Meeting of The ETI Committee On 28 May 2009

(1) Proposed Debt Relief Scheme

(2) Statutory Authority for Funding Debt Advice

1. Purpose of Briefing

(i) to inform the ETI Committee of the outcome of the policy consultation;

(ii) to consult the Committee about the proposed content of a Bill which the Minister intends to introduce to:

(a) enable the setting up of a Debt Relief scheme; and

(b) create statutory authority for funding debt advice; and

(iii) to advise that the Minister intends to submit a policy memorandum to the Executive meeting on 2 July to seek agreement to the drafting of the Bill.

2. Previous Briefing

2.1 Insolvency Service officials briefed the Committee on the proposals and a Draft Policy Consultation Document on 16 October 2008. Concerns were raised about how long it was going to take before the scheme would be operational and the impact which it might have on small businesses.

3. Background

The Debt Relief scheme

3.1 The Department of Enterprise, Trade and Investment's (DETI's) Insolvency Service proposes to set up a Debt Relief scheme similar to one which became operational in England and Wales on 6 April 2009.

3.2 Insolvency Service's policy is to maintain parity with equivalent legislation in England and Wales with Northern Ireland mirroring any policy or operational changes which may be introduced as the policy proposals bed in and any unforeseen issues arise.

3.3 The scheme addresses a fundamental inequality in the access individuals have to relief from debt burdens they cannot pay. Those who can afford the £310 deposit payable to the Insolvency Service and the £115 fee charged by the court if they are in employment, can free themselves from debt burdens they cannot pay by petitioning the High Court to be made bankrupt. Those not in a position to make these payments are denied access to this relief.

3.4 The scheme is to give individuals with moderate levels of unsecured debt which they cannot pay and who cannot afford to go bankrupt access to a more affordable and legally recognised alternative.

3.5 Departmental set up costs for the scheme are estimated at £34,000 for ICT systems and £83,000 for annual running costs.

Creation of Statutory Authority for Funding Debt Advice

3.6 DETI proposes to acquire explicit legislative authority to discharge its functions of providing advice and information about consumer matters, including advice and information about debt.

4. The Proposed Debt Relief scheme

4.1 The key features of the scheme are:

- Eligible individuals would be able to apply to the Official Receiver (an officer of the Court and official of DETI) for a Debt Relief Order
- A Debt Relief Order would provide similar relief to that provided by a Bankruptcy Order. There would be a one year moratorium protecting the debtor from legal proceedings or enforcement action in respect of debts covered by the Order. The individual's liability to repay those debts would be cancelled completely at the end of that year
- Relief would be available in respect of unsecured debts only
- While an application fee would be payable it would be set at less than one third of the cost of the deposit and fee for bankruptcy. (The application fee is £90 in England and Wales)

4.2 Other features are:

The main eligibility criteria would be that the following did not exceed amounts to be prescribed in subordinate legislation,

- Total unsecured debt (*£15,000)
- Surplus monthly income (*£50)
- Value of realisable assets (£*300)

(The figures in brackets are those for the scheme in England and Wales)

- Even if assets were comprehensively mortgaged or charged they would still be taken into account when calculating whether or not the value of the debtor's realisable assets exceeded the £300 limit. One effect is that homeowners would not be eligible for the scheme.
- Assets exempt from seizure in bankruptcy would not be taken into account in the realisable assets calculation
- It would only be possible to apply to the scheme through a debt adviser approved to act as an intermediary
- Persons or bodies would be designated by DETI to act as competent authorities to approve individuals to act as intermediaries
- Application to the scheme would have to be made on-line
- A regime of offences and penalties would apply similar to that applying in bankruptcy
- If there was evidence of culpable conduct on the debtor's part DETI, or the Official Receiver acting on DETI's directions, could apply to the Court for a Debt Relief Restrictions Order or accept an undertaking from the debtor with equivalent effect. Instead of being fully discharged at the end of the one year moratorium the debtor would be placed under continuing restrictions as regards taking credit or engaging in business under any name other than that by which he was known on the Debt Relief order. These restrictions would apply for a period lasting two to fifteen years.
- Debtors supplying false or misleading information would face criminal proceedings and the Official Receiver would be able to revoke any Debt Relief order made

- A regime of offences and penalties would apply similar to that applying in bankruptcy. Examples are,

It would be an offence punishable by a prison sentence of 12 months on summary conviction or seven years if convicted on indictment, and/or a fine, for a debtor,

(i) to wilfully conceal, destroy, mutilate or falsify books, papers or other records relating to his affairs,

(ii) to fail to disclose to anyone from whom he obtains credit of more than the prescribed amount (£500 under the scheme in England and Wales), that he is within the moratorium period following the making of a Debt Relief order, or as the case may be, that he is subject to a Debt Relief Restrictions order or that both a moratorium and Debt Relief Restrictions order are in force.

- A register of Debt Relief Orders would be maintained which would be accessible to the public
- Anyone dissatisfied with any decision by the Official Receiver in connection with a Debt Relief order or an application for one would have a right of appeal to the Court.

5. Consultation

5.1 Consultation on both the policy proposals to set up a Debt Relief scheme and creation of statutory authority to fund debt advice was carried out over the period 11 February to 6 May 2009. Consultation took the form of a letter issued to approximately 460 organisations and individuals referring to a consultation document and a list of questions placed on the DETI website. The consultation was advertised in the Belfast Telegraph, Newsletter and Irish News.

5.2 During the consultation period a meeting was held with representatives from the Federation of Small Businesses to take soundings about what impact the proposed Debt Relief scheme could be expected to have on their members. The representatives from the Federation stated that they were in favour of the scheme and recognised its benefits. They indicated that they would be agreeable to attend the ETI Committee to address any concerns the Committee might have.

6. Outcome of Consultation

6.1 A total of 22 responses were received, of which 16 were substantive ones. Of 12 respondents who commented on the overall merits of the scheme. 10 expressed themselves in favour of it, two were opposed to it.

6.2 Typical of supporting comments received were,

- Advice NI welcomes the scheme as a new alternative for those experiencing over-indebtedness
- Ballymena Borough Council fully supports the proposals going forward for legislative approval and believes that the proposals are targeted at the right people and have as far as possible attempted to minimise abuse of a system and are as far as possible fair to both debtors and creditors
- Banbridge District Council is broadly supportive of the proposal and suggests that DETI should learn from experiences of the scheme in England and Wales before legislation is passed in Northern Ireland.

- Dr. David Capper of Queens University agreed with the proposals which he saw as a sensible way of dealing with a particular kind of debtor for whom conventional bankruptcy is unnecessarily heavy handed.

6.3 Two respondents expressed concerns.

- Antrim Borough Council expressed concern about the potential for the scheme to be abused, and the impact on rates revenue.
- The Irish League of Credit Unions expressed serious concern about what it saw as the potential impact on credit unions. They were worried about increased levels of bad debt affecting the dividends and the viability of credit unions. They foresaw credit unions protecting themselves by curtailing lending to individuals who would be eligible for debt relief. They asked that in recognition of the work done by credit unions in lending to the financially excluded and to those experiencing financial difficulties credit union loans should be exempt from being written off under the Debt Relief scheme.

6.4 Three respondents referred to a Debt Relief scheme being introduced in England and Wales in April this year, and suggested holding back on legislating for a similar scheme in Northern Ireland to afford an opportunity to assess how the one for England and Wales was working out and to apply any lessons learned.

Assessment of Responses

7.1 There is no reason to believe that higher levels of abuse would exist in Northern Ireland compared to England and Wales (where a similar scheme has been brought into operation) and so justify not proceeding. There will be measures to protect against abuse. There will be a cap on total liabilities to be eligible for the scheme. An individual who has obtained a Debt Relief order will not be able to obtain another for six years. A regime of offences and penalties will apply, including ones for provision of false information in connection with the scheme.

7.2 It is not believed that the scheme will have any major impact on council income from rates. Homeowners will not be eligible for the scheme as anyone with assets worth more than £300 is barred, even if the asset is mortgaged or charged. The Northern Ireland Housing Executive pays rates for the properties let by it irrespective of whether the tenant pays or not. Tenants living in property worth less than £150,000 are not responsible for payment of rates so that they would not have arrears to be written off. The only group who would have rates arrears which could be written off under the scheme are tenants living in privately rented properties worth more than £150,000 whose tenancy agreement makes them responsible for payment of rates.

7.3 It is not considered necessary or desirable to postpone legislating for bringing in a Debt Relief scheme for Northern Ireland to see how the one in England and Wales is working out. There is pressure from Debt Advice organisations to have a scheme up and running in Northern Ireland as soon as possible to meet the needs of their clients. However there will be continuing liaison with the Insolvency Service in England and Wales and it should be possible to effect the majority of any changes which may be required through amendments to subordinate legislation.

7.4 As regards the concerns raised by the Irish League of Credit Unions, the overriding principle behind the scheme is that it is for individuals who have no reasonable prospect of being able to repay their debts. It is for those who do not pay because they cannot pay. The eligibility criteria are set in these terms. We cannot therefore see that there are any grounds for acceding to the request from the Irish League of Credit Unions. Creating an exemption for credit union debts would undermine the core policy objective of freeing individuals from a burden of debt they

cannot pay and thereby enabling them to make a fresh start. It would do so without bringing any benefits for credit unions. If a borrower lacks the means to repay a credit union the loan will not be repaid irrespective of whether it is written off under a Debt Relief scheme or not. Write off simply gives formal legal recognition to the reality that the debt is not going to be paid. However officials will meet Irish League of Credit Union representatives to consider this issue in more depth.

7.5 It is intended to apply the same universal upper limit to surplus income for eligibility under the Debt Relief scheme as in England and Wales ie not more than £50 per month. Advice NI raised the issue of whether this limit should be flexible. Advice NI argues that denying access to the scheme to a single mother with four children who has a surplus of £51 per month while allowing access to a single person with a surplus of £49 per month could appear to disadvantage those most in need. The Department is sympathetic to the requirements of those with dependants. However the Department is trying to keep the scheme as simple and straightforward as possible to keep administration costs down and to make it easier for debt advisers acting as intermediaries to fulfil their role. In calculating whether or not a £50 surplus exists a reasonable allowance for household expenses will be made, based on the number of people in the household. Policy in bankruptcy is that the trustee can apply to the Court for an Order requiring payments to be made out of income for the benefit of creditors, if there is a surplus of more than £50 after Tax, National Insurance and normal household expenses for a household of that size. The Debt Relief scheme is intended to give debtors alternative and more affordable access to relief from debt, not to place them in a better position than they would be in if they or someone else had petitioned for their bankruptcy.

7.6 Other respondents have alluded to it having emerged in England and Wales that individuals who are members of pension schemes are not able to access the Debt Relief scheme because pension funds are being treated as assets thus taking the individuals above the £300 eligibility ceiling on assets. However the reality is that individuals with pension schemes may not meet the entry criteria because a sum invested in a pension scheme is potentially an asset. It is not therefore intended to legislate to exclude pension schemes in Northern Ireland at present. However the position in England and Wales will be kept under review.

7.7 A summary of the responses to each of the questions asked in the consultation document, together with DETI's initial comments, is available on the Department's website at www.insolvencyservice.detini.gov.uk/consultees.

7.8 No comments were received on the proposed creation of statutory authority for DETI funding of debt advice.

8. Next Steps

8.1 Analysis of the responses received to the policy consultation does not show a need for any major alteration to the original policy proposals either in relation to the setting up of a Debt Relief scheme or the taking by DETI of statutory authority for funding of debt advice.

8.2 Subject to any views the Committee may have, it is intended to submit a policy memorandum to the Executive to seek the Executive's agreement to the drafting of a Bill to provide for the setting up of a Debt Relief scheme with the features described at Part 4 above, and which would include ancillary provision creating statutory authority for DETI to directly fund provision of debt advice. The scheduled date for the Executive to deal with the matter is 2 July 2009 with a fall back date of 9 July 2009..

9 Timetable to set up the Debt Relief scheme

9.1 In a letter sent to the Departmental Assembly Liaison Officer on 20 November 2008 Mr McManus, Clerk to the ETI Committee, emphasised that the Committee wished to have a Bill introduced as early as possible and would welcome provision of a detailed timetable and provision of a critical path analysis.

9.2 Allowing for the procedures to make the primary and subordinate legislation, the earliest date by which it would be possible to have a Debt Relief scheme in operation would be 31 December 2011.

There are three distinct processes involved,

- The making of the Debt Relief Act
- Drafting and making subordinate legislation, including a substantial set of Rules
- Specification, procurement and installation of ICT, and putting in place associated operational procedures

9.3 A timetable for the steps in making the primary and subordinate legislation is attached as Annex 1.

9.4 A Critical Path Analysis setting out realistic but challenging timescales for the three processes is attached as Annex 2. More detailed Gantt charts for the project can be made available on request.

22 May 2009

Annex 1

Stages/Timetable for Assembly Bill and Subordinate Legislation for Debt Relief Bill Timetable For Assembly Act

12 week policy consultation	11 February to 6 May 2009
Preparation of summary of consultation responses	7 to 19 May 2009
Preparation of submission to Minister with results of consultation, briefing for ETI Committee and policy memorandum	30 March to 15 May 2009
Committee briefing	28 May 2009
Preparation and sending of submission to Minister with Policy memorandum updated to take account of any Committee comments through to clearance by Executive	29 May to 25 June 2009
Preparation and sending of instructions to Legislative Counsel	27 April to 28 August 2009
Drafting of Bill by Legislative Counsel	1 September to 1 December 2009
Preparation of Explanatory & Financial Memorandum	7 to 30 September 2009

Settlement of Bill and EFM with Legislative Counsel	2 December 2009 to 5 January 2010
Process of obtaining authorisation under s.9 of the NI Act 1998 for Minister to sign Bill and SOS consent for Bill to deal with reserved matters	6 January to 24 February 2010
Process to obtain Minister's approval to proceed	25 February to 5 March 2010
Briefing Committee on Bill	11 March 2010
Process to obtain Executive approval to introduce Bill	16 March to 29 April 2010
OFMDFM to arrange date of introduction	3 to 21 May 2010
Process to arrange introduction of Bill	2 to 17 June 2010
First and second readings	21 to 30 June 2010
Committee Stage	1 July to 29 October 2010
Remaining passage of Bill to Royal Assent	1 November 2010 to 31 January 2011

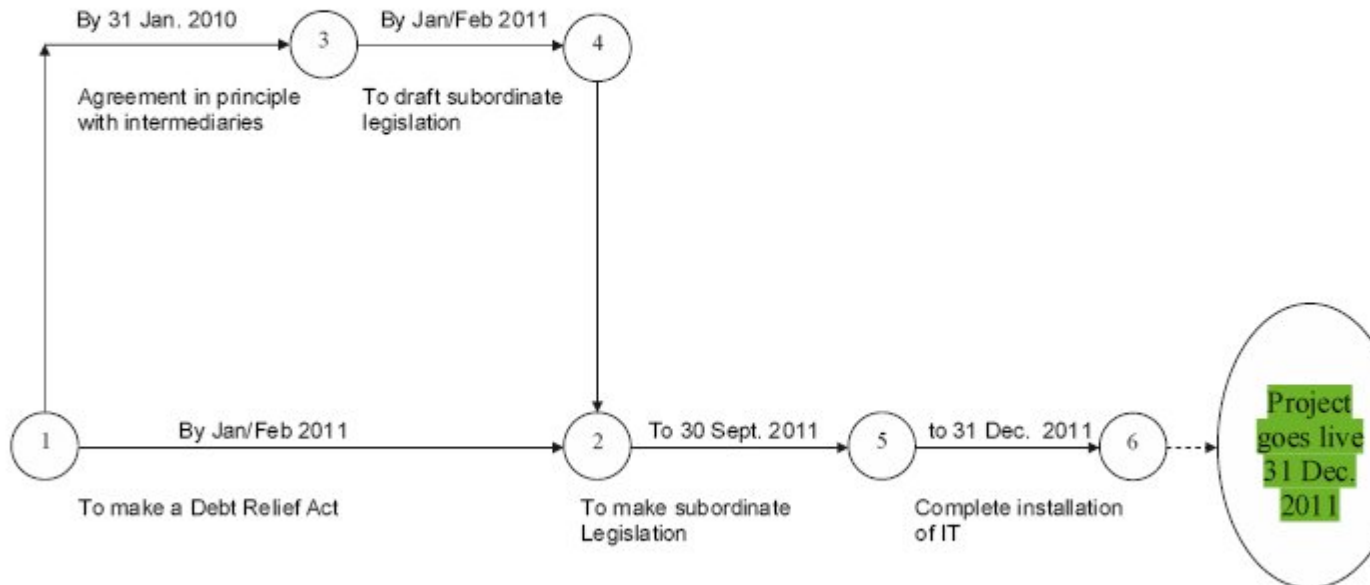
Annex 1

Timetable for Subordinate Legislation to be made by this Department

Preparation and templating of draft SR's	1 August to 30 November 2010
Departmental Solicitors to settle drafts	1 December 2010 to 31 January 2011
Obtain clearance from Minister to proceed with legislation and carry out informal consultation	18 to 31 March 2011
Conduct 4 week consultation with interested parties including Debt Advice Sector on Competent Authorities Regs	1 to 30 April 2011
Consideration of SL1 letters by ETI Committee	1 to 31 May 2011
Legislation to be made and laid	By 30 June 2011

Annex A

DEBT RELIEF SCHEME – CRITICAL PATH ANALYSIS



Annex B

Department Of Enterprise, Trade And Investment

Proposed Debt Relief scheme for Northern Ireland Summary of Responses to Policy Consultation Consultation document issued on 11 February 2009

Introduction

The consultation dealt with the Department of Enterprise, Trade and Investment's plans to set up by a Debt Relief scheme similar to one which has been set up in England and Wales.

The scheme is to assist individuals with moderate levels of unsecured debt which they have no realistic prospect of being able to repay. Such individuals may well not be in a position to afford the cost of petitioning the High Court to be made bankrupt. The scheme will offer them the alternative of being able to apply, at lower cost, to the Official Receiver for a Debt Relief order. A Debt Relief Order 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.

Setting up the scheme will require an Assembly Bill and subordinate legislation.

The proposed scheme – the Department's original plans

Under the scheme as first 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 Consultation

Consultation took place over the period 11 February to 6 May 2009. A letter referring to a consultation document and list of questions on the Department's website was issued to approximately 460 people. These comprised a range of individuals and organisations, including politicians, insolvency practitioners, and organisations listed for equality purposes. The public were informed about the consultation through advertisements in the Belfast Telegraph, Newsletter and Irish News.

During the consultation period a meeting was held with Enforcement of Judgments Office officials at their request to discuss how the scheme would interact with the work of their office. A meeting also took place with the Federation of Small Businesses to discuss what impact the scheme would have on their members. The Federation representatives stated that they were generally in favour of the scheme and recognised its benefits.

Respondents

22 replies were received.

The responses were from:-

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)

Conclusions from the Consultation

The majority of respondents who commented on the scheme generally welcomed the proposed setting up of a Debt Relief scheme. Most respondents had reservations on only a few issues. Antrim Borough Council was concerned about the possibility of the scheme being abused. The Irish League of Credit Unions expressed reservations, centred mainly on the perceived impact on credit unions.

A summary of responses to the individual questions put in the consultation document together with the Department of Enterprise, Trade and Investment's comments, is given in the table below.

It should be noted that although we received 22 responses, the total number of replies to individual questions may be less than this as not everyone who responded replied to every question.

Section 1: General Responses
Advice NI
Advice NI welcomed the scheme as a new alternative for those experiencing over-indebtedness. They observed that the scheme should not have too many restrictions as this could lead to it being exclusionary and ineffective in targeting those who need it most. Advice NI suggested that in view of the fact that a similar scheme only became operational in England and Wales on 6 April 2009 a review of that scheme, including the procedure for completing application forms, should be carried out before a Debt Relief scheme was set up in Northern Ireland. Advice NI sought an assurance that any guidance on the proposed scheme should be accurate and timely and that fee charging Debt Management companies would be prohibited from involvement in the scheme in Northern Ireland.
Antrim Borough Council
The Council expressed concerns about the proposed scheme having the potential to provide scope for abuse. They felt that the proposed writing off of debts was a cause for concern. They were also worried about the impact on rates income.
Ballymena Borough Council

Section 1: General Responses

The Council fully supports the proposal going forward for legislative approval. They believe it is targeted at the right people, minimises abuse and is fair to both debtors and creditors.

Banbridge District Council

The council expressed broad support but suggested that DETI learn from the experience in England and Wales before passing legislation for Northern Ireland.

Belfast City Council

Belfast City Council indicated its support for a Debt Relief scheme. They mentioned that they felt that gym membership and sports promoted health and well-being and expenditure on these should not automatically be treated as a luxury. The Council stated that they would like more information on the likely impact on rating revenue of the potential for arrears due from private tenants to be written off under the scheme.

Call Credit

Callcredit suggested it could simplify matters for those advancing credit if the Northern Ireland Debt Relief scheme could mirror the one in England and Wales as far as possible. DETI could also choose to draw on the experience that the Insolvency Service will have developed in putting the scheme in England and Wales in place. Callcredit suggested that information from the Debt Relief order register should be made available to credit reference agencies by means of an electronic feed.

Dr. David Capper of the School of Law, Queens University

Dr Capper was in agreement with the proposals which he saw as a sensible way of dealing with a particular kind of debtor for whom conventional bankruptcy was unnecessarily heavy handed. He recognised that the idea of a Debt Relief scheme originated in England and saw no reason to adopt a different approach in Northern Ireland. He regarded the scheme as a superior to the alternative of waiving the bankruptcy fee because it would avoid the additional expense of bankruptcy in the case of small debtors with little income or assets.

Chartered Accountants Regulatory Board

The Board stated that as a Debt Relief scheme already exists under legislation in England and Wales, they would support the proposal to make similar amendments to legislation in Northern Ireland.

Citizens Advice

Citizens Advice said that they were broadly in favour of introduction of a scheme similar to the one in England and Wales.

Housing Rights Service

The Service welcomed the proposals and supports the principles underlining them. They sought clarification about how the scheme will be publicised.

Irish League of Credit Unions

The League has serious concerns about the potential impact of the proposed Debt Relief scheme on its member credit unions. The League was worried about the

Section 1: General Responses

scheme being abused by individuals who had borrowed and spent recklessly. They suggest that the scheme is likely to lead to an increase in Credit Unions' bad debts which will impact on the dividend to members and the viability of credit unions. Credit Unions may become reluctant to lend to individuals who would meet the criteria for a Debt Relief order. As a significant portion of credit union lending is for small amounts and the scheme targets individuals with low levels of assets and liabilities the scheme is likely to have a disproportionate impact on credit unions. The League sought assurances, (i) that loans secured by shares will constitute secured debt for the purposes of the scheme and (ii) that loans secured by guarantors will be regarded as secured for the purposes of the scheme and if not, will the creditor be able to pursue the guarantor for payment. The League have asked that credit union loans be excluded from being treated as debts under the scheme.

The Law Society of Northern Ireland

The Society confirmed its support for the principles set out in the consultation and sought to ensure that it should be possible for solicitors to act as intermediaries.

Limavady Borough Council

The Council welcomed the scheme as a means of assisting people finding themselves in debt in the current financial climate.

NICVA

NICVA expressed its support for a Debt Relief scheme for people experiencing over-indebtedness. NICVA suggested that in view of the fact that a similar scheme only became operational in England and Wales on 6 April 2009 a review of that scheme, including the procedure for completing application forms, should be carried out before a Debt Relief scheme was set up in Northern Ireland. NICVA sought an assurance that fee charging Debt Management companies would be prohibited from involvement in the scheme in Northern Ireland.

Comment by Department for Enterprise, Trade and Investment

Of the 14 respondents above only 2 did not support the scheme. Three of those who supported the scheme suggested delaying a Debt Relief scheme in Northern Ireland to afford an opportunity to learn lessons from the one in operation in England and Wales. It would not be feasible to delay primary legislation as the scheme is needed to cope with the current economic downturn but many facets of the scheme will be dealt with in subordinate legislation which will be amenable to being amended. It is confirmed that the scheme by its nature will preclude fee charging Debt Management companies from acting as approved intermediaries since such intermediaries will not be allowed to charge any fee to applicants. A regime of offences and penalties will be established to deal with those abusing the scheme and entry to the scheme will be restricted to once every six years. Publicity through press notices will be arranged nearer the time the scheme is due to become operational. The Irish League of Credit Unions has put forward a case for loans due to it to be exempted from being written off as debts under the scheme. The Department does not see that this would be appropriate. 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 the credit union will not be paid whether the debt due is listed under a Debt Relief order or not.

Section 2: Summary of Responses to Individual Questions

Q.1(a) Do you think payment of a moderate fee to cover the costs of the debt relief scheme is acceptable?

15 respondents answered this question. 13 respondents agreed with payment of a moderate fee, one was against, and one did not commit themselves. Reasons in favour were that charging a fee would avoid abuse of the scheme, that it would be unreasonable to expect the public purse to bear the cost of the scheme, and that the fee would be minimal in comparison both to the debt owed and to the cost of petitioning for bankruptcy. Several replies stressed the importance of pitching the fee at the right level; not too low as this would encourage abuse and not too high as this would deter applicants, lead them into additional debt to pay the fee, or use up money which could be used to pay creditors. Citizens Advice recommended that the fee be linked to the level of disposable income allowed for in the scheme. Advice NI emphasised that there should be no hidden additional costs and proposed that the fee be reviewed within one year after the introduction of the scheme to assess its impact on applications. The NI Court Service suggested the introduction of a fee/remission exemption scheme. The Irish League of Credit Unions would not be opposed to a moderate fee but believes that credit unions should be excluded from the provisions of this scheme if it is introduced. The Housing Rights Service recommended that there be no fee for this service. Advice NI felt that as the scheme was targeted at people with no income and no assets any fee should be a nominal one.

Comment by Department for Enterprise, Trade and Investment

The majority of those who responded agreed that applicant should be charged a fee, and the Department intends to include provision for this in the Bill to set up the scheme. The actual fee amount will be set through subordinate legislation.

Q.1(b) What do you think would be a reasonable amount?

13 respondents replied to this question. Suggested amounts were ,

Answer	Number
£10 to £40	1
Up to £50	1
£90 as in England & Wales	2
Up to £100	4
£200 - £500	1

ACCA saw a need to set to address the deterrent effect of the cost of bankruptcy, and they, Citizens Advice and Banbridge District Council all suggested that the fee should be linked to the level of monthly surplus income. The Housing Rights Service felt that a £100 fee would be very steep for those on benefits or low incomes and went against the Government's commitment to providing assistance to people in debt. The recommended no fee or a reduced one of £10 to £40 and recommended that the Official Receiver should not be entitled to retain the fee if he declined an application. Advice NI stated that £100 was far too high and that the fee should be nominal. Another respondent felt £100 could well be far too high for the poorest sections of society to afford and that the fee should be based on the costs of

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administration. CCCS pointed out that the level of the fee should be consistent with that in England and Wales. The Irish League of Credit Unions were of the view that the fee should be high enough to discourage frivolous or vexatious applications. Ballymena Borough Council and NIACRO suggested a facility to pay by instalments.

Comment by Department for Enterprise, Trade and Investment

The actual amount will be included in subordinate legislation. The Department's policy is to set the fee at the same level as applicants would have to pay in England and Wales, currently £90. The Business Case shows that this would result in the scheme breaking even at a level of approximately 1,000 cases per annum, and there are projections indicating that demand will be in or around that level. It is intended that there will be a facility to pay by instalment. As administration charges will be incurred whether or not a Debt Relief order is made it is considered fair that the Official Receiver should be entitled to retain the fee even if an order is not made.

Q.1(c) If you do not think a fee of any sort should be payable, do you have any suggestion as to how the scheme might be funded?

ACCA commented that it was unlikely that the scheme could be fully funded from debtors' fees. One respondent suggested funding from the Insolvency Service budget or a levy on financial institutions. Ballymena Borough Council thought that the scheme should be self-financing and that it was appropriate that fees should cover the costs of administration. They raised the possibility of meeting any shortfall through an additional charge for consumer credit licences; otherwise central government might have to pick up the extra cost. Advice NI suggested that the scheme could be funded by the government, the credit industry, financial institutions or banks.

Comment by Department for Enterprise, Trade and Investment

The aim is that the scheme should not become a burden to the taxpayer. Our policy is therefore that the cost to the Exchequer will be offset to a greater or lesser degree through aggregate fee income being paid into the Consolidated Fund.

Q.2 Do you think entry to the scheme should be restricted to once every 6 years? If not, what length of time would be appropriate?

14 respondents replied to this question, with 12 agreeing that entry should be restricted to once every 6 years. Ballymena Borough Council suggested that thought should also be given to how many times it would be possible to apply to the scheme. Citizens Advice stated that any time limits should be flexible to accommodate unforeseen genuine changes in circumstances. Advice NI and felt that while entry could be restricted to once every six years shorter time limits should apply in certain situations, for example where ill health has resulted in financial difficulties. Cases should be looked at on their own merits. Advice NI suggested that a review of the time limits when the scheme is running would be appropriate. NIACRO referred to the need for a time limit to dissuade those wishing to take advantage of the scheme to avoid repaying their creditors and suggested that education on money management should be a compulsory element of participation on the scheme. The NI Court Service commented that while restriction to once every 6 years might be appropriate in some cases consideration could be given to requiring debtors to make further debt relief applications to the courts, as a deterrent against abuse and assurance to creditors. The Irish League of Credit

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Unions took the view that 6 years was too short, and that entry to the scheme should only be possible in exceptional circumstances.

Comment by Department for Enterprise, Trade and Investment

The Department intends to include provision in the Bill to make it impossible for anyone who has obtained a Debt Relief Order to obtain another for 6 years. It is not considered appropriate to involve the courts in dealing with applications as dealing with these is largely an administrative process based on assessment of whether eligibility conditions are met.

Q. 3 Do you think that use of an approved intermediary would make the system more accessible and efficient?

There were 16 responses to this question. 15 respondents agreed with the use of an approved intermediary to make the process clear and accessible. NIACRO commented that an intermediary would be able to filter out unsuitable applications at the outset. Both NICVA and Advice NI stressed the importance of a lead in time to prepare advice agencies in advance and train staff on the proposed new scheme. Advice NI believes that an accreditation procedure and regular assessments would be required. Three respondents raised the issue of training. ACCA saw a need for intermediaries to be trained not just in how to administer the application process and critically evaluate eligibility but also in how to encourage individuals to avoid profligate consumer behaviour in the future. Another respondent mentioned a need for assurances about the level of training to be provided to debt advisers and raised issues about funding for this. This respondent also stressed the need for careful vetting of intermediaries, and how spending of any money they would receive would be monitored. Advice NI sought assurances that intermediaries would be adequately trained, and that there would be an accreditation procedure in place with regular assessments. The Chartered Accountants Regulatory Board confined itself to asking who would approve intermediaries, what the minimum education and training requirements would be, and whether the same detailed quality assurance regime would apply as for licensed insolvency practitioners. The Irish League of Credit Unions acknowledged the merits of using an intermediary but raised concerns that it might encourage inappropriate applications which were to the detriment of creditors. They stated that no fee should be paid to the intermediaries; they should not be in a position to profit from the debtor.

Comment by Department for Enterprise, Trade and Investment

The Department agrees that it would be better if access to the scheme were to be through intermediaries and intends to legislate for this in the Bill to set up the scheme. The Department is working to set up in partnership with relevant organisations to set up the scheme.

Q.4 What do you think the role of the intermediary should be?

The 14 respondents who answered this question identified a range of roles,

- Giving advice, including general advice about debt matters.
- Determining whether the scheme is the best option for the debtor and if so, determining eligibility
- Gathering information about the debtor's affairs

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- Assisting the debtor to complete the application, including helping those with literacy/numeracy problems
- Warning the debtor to fully disclose all assets, liabilities and income and any windfalls or increases in income prior to discharge
- Encouraging individuals to avoid future profligate consumer behaviour in.
- Submission of the application.

Two respondents also suggested that intermediaries should follow up cases before the Debt Relief Order ended to confirm that the debtor's circumstances had not changed.

Comment by Department for Enterprise, Trade and Investment

The Department believes the scheme will work best if applicants have the benefit of guidance from experienced debt advisers and intends that this is how the scheme will operate. We have noted the suggestion that intermediaries follow up cases but consider that this might be a task which the Department would be better placed to undertake.

Q.5 Do you think that some funding should be made available to the intermediaries for performing this role? If so, from what source should the funds come?

All 15 respondents saw a need for funding. 4 agreed there was a need but did not suggest any source; 3 suggested that it come from the application fee; 8 thought that it should come from central government, with 2 of these respondents also suggesting financial institutions. The Housing Rights Service felt that there was a danger that linking payment to cases processed could undermine the independence of advice organisations. The Irish League of Credit Unions believes that any funding should come from the Government. They are anxious to avoid intermediaries benefitting from incentives and an industry growing up around the scheme.

Comment by Department for Enterprise, Trade and Investment

It is not believed that completing applications on to of normal interviews with debtors should result in a significantly increased workload for debt advisers. The scheme will operate in many cases be an alternative to lengthy and time-consuming correspondence with creditors. Funding is not being provided to intermediaries in England and Wales. For these reasons it is not planned to make any payment to intermediaries at present. However we are monitoring what is being done in England and Wales. Budgetary cover has been arranged for training by Insolvency Service staff.

Q.6(a) Do you think there should be a limit to the amount an individual can owe to obtain entry to the scheme?

Of the fourteen respondents who answered this question thirteen agreed that there should be a limit. ACCA felt that this would emphasise that the scheme was a last resort for impossible cases. Another respondent pointed out that the scheme was for relatively small cases which did not merit detailed investigation and where creditors had not been badly hurt by very large debts. A third respondent stated that there should be provision for the limit to be reviewed and revised upwards if necessary in the light of changing economic circumstances. Citizens Advice expressed the wish that other debt resolution schemes be introduced to assist

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clients who fall outside the limits of a Debt Relief Order. CCCS felt that a limit was needed to keep the scheme in line with insolvency legislation in the rest of the UK.

Comment by Department for Enterprise, Trade and Investment

The Department intends that there will be a limit on total indebtedness to be eligible for the scheme and to include power to set such a limit in the Bill to set up the scheme.

Q.6(b) Do you think that £15,000 is an appropriate cap? If not, why is this and what would an appropriate amount be?

Fifteen respondents answered this question. Five felt that £15,000 was appropriate; two others stated that they did not think it should be any higher. Another respondent supported an initial cap of £15,000 but suggested that this should be reviewed after 12 months and then adjusted if appropriate. 6 respondents felt that a cap of £15,000 was too low, mentioning issues such as the current economic climate and the risk of overly curtailing the number of consumers at whom the scheme is aimed. was Advice NI suggested a ceiling of £20,000, NIACRO at least £20,000 and the NI Court Service £20,000 to £25,000. The Housing Rights Service suggested a general cap of £15,000 with a discretionary higher limit in the case of individuals whose circumstances had changed dramatically. The Irish League of Credit Unions felt that the suggested cap was too high if the scheme is genuinely aimed at those who are in debt and those who genuinely need assistance.

Comment by Department for Enterprise, Trade and Investment

The Department proposes that the actual amount of the cap on liabilities should be set at £15,000 and will be placed in secondary legislation so that it can be kept under review, and, if appropriate, amended without difficulty.

Q.6(c) Should secured debt be included as part of the total?

Fifteen respondents replied to this question. Three agreed that secured debt should be included as part of the total, ten thought that it should not, and two did not commit themselves. Among the reasons stated by those who thought that secured debt should not be included were that this would be unfair to lenders who had made loans secured against property or other assets and that it should be possible to utilise equity in a house to pay debt. Conversely, others raised concerns about homeowners who now find themselves in negative equity being excluded from the scheme. The Housing Rights Service was concerned that encouraging homeowners to use equity to defray debt or provide security for it could lead to more houses being repossessed and result in significant loss to the taxpayer. Advice NI suggested that arrears on any secured debt be included, rather than the total secured debt. Ballymena Borough Council suggested that it should be possible under the scheme for homeowners to pay an additional homeowner fee of £300 to cover the cost of having their house valued. One respondent added that he would like to see any third party liability for which the debtor was insured excluded. The Irish League of Credit Unions argued that if they are, against their wishes, going to be included in the scheme, loans in a credit union secured by shares should be treated as secured loans.

Comment by Department for Enterprise, Trade and Investment

The majority of respondents were against including secured debt. To do so would complicate the scheme as it would mean that a valuation would have to be obtained

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and paid for. It is also the case that while there might be no equity in a property on the day it was valued that might change if property values rose. It is also arguable that if someone can afford to have their house valued they should not be in a scheme for people who cannot afford to petition for bankruptcy. In the interests of keeping the scheme simple and maintaining confidence among mortgagees who rely on security it is therefore intended that those with assets worth more than £300 will be excluded, even if those assets are pledged as security.

Q.7(a) Do you think there should be a cap on the surplus income that is permitted before a debt relief order would be granted? Is £50 a month a realistic figure?

Fifteen respondents replied to this question, 14 of whom clearly agreed that there should be a cap on the amount of surplus income per month. An example of the reasoning is one reply which stated that this was necessary in a scheme designed for "can't pay" debtors. 5 respondents agreed that £50 was an appropriate amount, although two suggested that this should be kept under review. Other respondents expressed concerns that £50 was too restrictive, seeking clarification on what constitutes "necessary living expenses". Advice NI advocated a flexible limit, citing the example of a single parent with four children being ineligible if their surplus income was £51 whereas a single person with surplus income of £49 would be eligible. Advice NI sought assurance that disability benefits will not count as income as they are awarded specifically to help the recipient cope with their disability. Housing Rights Service felt that the inclusion of additional pension contributions was unfair and penalised those taking responsibility for securing their financial position in retirement.

Comment by Department for Enterprise, Trade and Investment

One of the fundamental principles behind the scheme is that it is for individuals who do not have sufficient income to pay their debts. This means that there has to be an assessment of what income the individual has left after meeting essential living expenses, and whether it would be reasonable to expect the individual to make payment to their creditors out of that remainder. To ensure a simple, consistent process, a cut off point is needed, as recognised by 14 of the 15 respondents. It is proposed to allow for such a limit in the Bill, with the actual amount going in secondary legislation. At least one of the respondents alluded to it being difficult to justify a disparity in the amount between Northern Ireland and England and Wales. It is therefore proposed to follow suit and set the amount at £50.

Q.7(b) If £50 is not realistic, what is?

Out of six responses, only two suggested a different figure. Advice NI, who suggested allowing a surplus of £75 to £100, felt that £50 might act as a disincentive for debtors taking up employment if disposable income would be higher than the £50 ceiling. Citizens Advice thought that £100 would be a more reasonable limit.

Comment by Department for Enterprise, Trade and Investment

It is the Department's intention to set the level at £50 in secondary legislation and keep it under review. It will be possible to readily amend a level set in that way if appropriate.

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Q.8 Do you think that use of the Common Financial Statement would be an appropriate way to calculate surplus income? If not, why not and how would you suggest surplus income be calculated?

12 respondents replied to this question with 9 supporting the use of the Common Financial Statement. One of those who did not was the Housing Rights Service who pointed out that the CFS was based on English figures and suggested that a model should be developed to reflect the higher cost of living in Northern Ireland, for example the cost of energy and food. The other who did not support its use was the Irish League of Credit Unions who felt that the method used for calculating surplus income was flawed and luxuries should be excluded from any assessment of surplus income. NIACRO commented on the wide acceptance of the Common Financial Statement by the banking sector, finance companies, utility companies and government departments and its usefulness in ensuring that advisers were working to a consistent uniform format. CCCS suggested that it should be supplemented by the CCCS Budget Guidelines, which they state are widely accepted by the industry throughout the UK. Ballymena Borough Council proposed that Internet access be excluded as a luxury as it is government policy to make broadband accessible to all citizens.

Comment by Department for Enterprise, Trade and Investment

It is not proposed to make use of the Common Financial Statement by intermediaries mandatory, but its use would be seen as good practice. It is hoped to develop, in conjunction with Northern Ireland Statistics and Research Agency (NISRA) a modified version for Northern Ireland.

Q.9 Do you think that income in Debt Relief cases should be defined in the same way as income in bankruptcy cases? If not, why not, and how should income be defined?

There were 11 responses to this question. Respondents generally supported income being defined in the same way as in bankruptcy. As one respondent put it, the applicant is essentially bankrupt except that bankruptcy is disproportionate. 3 respondents stressed that, in their view, some or all benefits income should be excluded, since they were provided by the Government for a specific reason and should not therefore be used to make payments to creditors. The Irish League of Credit Unions felt that the definition of income should include social welfare assistance and windfall gains. Citizens Advice agreed generally but commented that assessment should be made to see if there are any areas in bankruptcy that might exclude those in most need of a Debt Relief Order. They added that guidelines should be agreed on the value of potential assets and the position on issues such as vehicles for work/care needs must be clear.

Comment by Department for Enterprise, Trade and Investment

It is intended to define income in the same way as for bankruptcy. In practice payment of benefits such as Child Benefit, Child Maintenance, Disability Living Allowance and Attendance Allowance would not be taken into account.

Q.10 Do you think the proposed limit of £300 realisable assets is reasonable? If not what do you think a reasonable figure should be?

Out of 14 responses to this question, 2 respondents thought that £300 was too low a figure, with one suggesting that £500 was more appropriate. Ballymena Borough

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Council also thought the figure low but was content for it to be used initially with a review when the scheme was up and running. Two respondents asked for clarification on the definition of "realisable assets" with the Irish League of Credit Unions stating that applicants for a Debt Relief order should not be able to finance a fairly comfortable or luxurious lifestyle. Advice NI sought clarification as to what items of modest value would be excluded from being treated as assets. Citizens Advice raised concerns as to the position of a homeowner with no equity. Another respondent questioned who would verify the debtor's assessment of the value of his assets and what time limit would be imposed on the realisation of his assets. NICVA and Advice NI both sought assurances that private and occupational pensions would not be included as an asset. CCCS questioned if this figure would be unrealistic in the case of motor vehicles and Advice NI suggested that the applicant should be allowed to retain a car of value up to £3,000, as in bankruptcy.

Comment by Department for Enterprise, Trade and Investment

We propose to legislate to provide for there to be a limit on the debtor's property with the actual amount being prescribed in secondary legislation, where it can be kept under review and readily amended. We will look into the question of how pensions should be treated.

Q.11 Do you think there should be exclusions for certain property similar to those in bankruptcy?

11 out of 12 responses supported exclusions for certain property similar to those in bankruptcy. NIACRO suggested additional exclusions such as televisions, sound systems, play stations and X-boxes especially where there are children in the family. CCCS suggested that the Debt Relief Order concentrates on debtors with no assets and little income.

Comment by Department for Enterprise, Trade and Investment

We intend to proceed on the basis that there will be exclusions for certain property similar to those in bankruptcy, and that domestic items and tools and equipment for use personally by the debtor in his business or employment will not be taken into account when determining the value of his assets.

Q.12 Do you think that it is right that the owner of a vehicle can keep it if he obtains a Debt Relief order provided that the vehicle is not worth more than £1,000?

There were 12 responses to this question and respondents broadly supported the retention of a car less worth than £1,000. ACCA only considered this appropriate where the car is needed to enable the debtor to earn a livelihood. Another respondent thought that the limit should be raised to £1,500 in cases where the car was needed for work purposes. Citizens Advice commented that this limit would need to be reviewed in line with car values and prices. Two respondents questioned what running costs such as road tax/insurance/fuel and repairs would be reasonable to take into consideration.

Comment by Department for Enterprise, Trade and Investment

It is the Department's wish that debtors living in rural areas which may not be well served by public transport should not be disadvantaged. It is therefore intended to include provision in the Bill to exclude a single vehicle for personal use from being treated as an asset if it falls below a prescribed value.

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Q.13 Do you agree that Debt Relief orders could be made administratively? If you think the court should be involved with the making of the orders, why is this?

There were 13 responses to this question, generally in support of Debt Relief Orders 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. One respondent agreed, with the caveat that the court could be involved if creditors were unhappy that the position being stated was untrue or if there was a previous history of debt avoidance. Another concurred, subject to the safeguards for creditors set out in paragraphs 65-79 of the proposal summary. The NI Court Service pointed out that the enforcement of judgements was generally an administrative matter but stated that there must be the remit to appeal to the court. Although the Irish League of Credit Unions agreed in principle, it raised concerns as to whether the powers of the Official Receiver were sufficient to make the necessary enquiries into the accuracy of the information provided by the debtor. It also questioned how a debtor can be penalised for providing false information. Advice NI recommended that checklist criteria be developed for those acting as intermediaries to prevent unnecessary monies being lost by those seeking to access the scheme.

Comment by Department for Enterprise, Trade and Investment

The idea of making the order administratively has been well received and we propose to proceed on the basis that the order will be made by the Official Receiver.

Q.14 Do you think the protection offered to creditors is sufficient? If not what further steps are necessary to safeguard the position of creditors?

There were 15 responses to this question, the majority of which agreed that the protection offered to creditors is sufficient. One respondent commented 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. A right of appeal to the court was sufficient protection. The Housing Rights Service asked for further clarification on the grounds on which an appeal to the court could be taken and who would pay the cost. They also asked for an explanation of the grounds on which a creditor can object to the making of the order, other than where the debtor had failed to disclose assets, income or liabilities. The Irish League of Credit Unions noted that details of the order will be placed on a register maintained by Insolvency Service for the duration of the order and recommended that this should remain on the register for a period of time after the order has lapsed. In addition, it should be a requirement that the debtor would need to show efforts have been made to make repayments and to deal with the creditors before the order would be granted. The NI Court Service suggested further steps to protect creditors through the advertisement and registration of the orders and including Debt Relief Orders on search certificates (bankruptcy petitions, IVAs). They expressed the view that the public search register should mirror the current bankruptcy search mechanism; consideration should be given to the Insolvency Service informing the EJO of all Notices of Applications for Debt Relief Orders. The Social Security Agency raised questions on whether it is to be considered as a creditor and whether social security overpayments and outstanding social fund loans are to be included as debts covered by Debt Relief Orders. Another respondent agreed that the creditor protection was sufficient but thought that it would be worthwhile inserting a provision into the legislation specifically preserving the rights of victims of

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fraudulent dispositions to invoke Articles 367-9 of the Insolvency (Northern Ireland) Order 1989. Another felt that there should be a right of challenge to the administering body and then the court.

Comment by Department for Enterprise, Trade and Investment

We will 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 and where necessary enables the order to be revoked. It has been decided not to advertise Bankruptcy Restrictions orders as this would create significant additional expense and publicity could deter debtors in need of the scheme. As regards the Social Security Agency the aim will be to place it in the same position as its GB equivalent, the Department for Work and Pensions.

Q.15 Do you think that if a debtor makes a misrepresentation in order to obtain a debt relief order there should be enforcement action in addition to revocation of the order? If so, what type of action do you think is appropriate?

13 respondents answered this question. CCCS were unsure if enforcement action was appropriate. Advice NI felt that the debtor's personal and financial circumstances should be investigated thoroughly by the Insolvency Service and the client's circumstances taken into consideration before revocation. Other sanctions were suggested as follows.

Criminal offence	2
Prohibition on obtaining credit for a period of years	1
Restriction Orders as with bankruptcy	2
Precluded from applying for another Debt Relief Order in the future	1
Another sanction would be appropriate; not known which best option	3
Total	8

Another respondent supported the thrust of the proposals in the consultation document but sought clarification as to whether the regime would be overseen by the official receiver. He also questioned what opportunity would be given to the debtor to argue that his conduct did not merit the imposition of such conditions; that ties in with the question as to whether such a matter would come before the official receiver or before the court. The Irish League of Credit Unions proposed criminal prosecution where there was sufficient evidence to satisfy the burden of proof; where there was not, a prohibition on this debtor obtaining credit for a period of time after the debtor has been discharged. Ballymena Borough Council thought that there should be a deterrent to misrepresentation but it should not take the form of fines or involve courts, which would further add to the costs.

Comment by Department for Enterprise, Trade and Investment

We propose that in cases where the debtor makes a misleading statement to obtain a Debt Relief order he should not benefit from the relief from enforcement it gives, and the order should be revoked. Further we consider that in appropriate cases where the misrepresentation is deliberate the debtor should be subject to prosecution.

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Q.16 Do you agree that individuals granted Debt Relief should be placed under continuing restrictions following discharge if there is evidence that they contributed to their insolvency by reckless or irresponsible behaviour?

Of the thirteen respondents who replied eleven came out in favour of continuing restrictions. One suggested that evidence of reckless or irresponsible behaviour should be referred to the Bankruptcy Master. Another suggested that it should be possible for restrictions to be lifted if the debtor was of good conduct. Ballymena Borough Council suggested extending the period for which the debtor was barred from reapplying to the scheme beyond 6 years, prohibiting him from taking credit for a set period, and recommending attendance for budget knowledge tuition. While NIACRO agreed with sanctions they had concerns that restrictions on obtaining credit could drive the debtor into the arms of unlicensed lenders.

Comment by Department for Enterprise, Trade and Investment

The aim behind the scheme is to provide affordable relief for individuals who cannot afford access to bankruptcy, not to alter or mitigate the penalties for improper behaviour. It is therefore intended to include provision in the Bill for a regime of post-discharge Restrictions Orders and Undertakings similar to that applying in bankruptcy.

Q.17(a) What action do you think should be taken if the debtor receives a windfall or experiences an increase in income?

14 respondents answered this question. 1. The debtor needs to go back to the intermediary to discuss the implications for the Debt Relief order (two respondents). 2. Material amounts should be made available to the Official Receiver. 3. The case should be converted to a bankruptcy. 4. The debtor should be given a period of time to come to an arrangement with his creditors after which the Debt Relief Order would be revoked (three respondents). 5. Within the period of the order there should be a duty to disclose (two respondents) 6. Windfalls and increases in income should be used towards payment of debts (two respondents) 7. The Irish League of Credit Unions said that creditors should have the opportunity to claim back their loan and suggested an attachment of earnings/income order. Other respondents expressed views as to what should happen if the windfall was received after discharge. 1. 50% of a windfall within 3 years should go to creditors. Increases in income unless very substantial or deliberately held back should be ignored. 2. The debtor could be allowed to retain the amount and make a fresh start or else if the windfall is £100,000 it should be used to pay the debts. 3. The Irish League of Credit Unions expressed concern about the possibility of a debtor actively postponing receipt of a windfall or increase of income until after the order has been discharged.

Comment by Department for Enterprise, Trade and Investment

We intend to provide that debtors subject to a Debt Relief order will be required to notify the Official Receiver as soon as reasonably practicable if they experience a windfall or increase in income during the period of the Debt Relief order. The debtor would then be given a period of time within which to make appropriate arrangements, following which the order would be revoked.

Q.17(b) Do you agree that if the debtor benefits from a windfall close to the date at which the debts are due to be discharged that the order

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should be extended to allow the debtor time to deal with the matter? If not why is this and what steps do you think should be taken to protect the position of creditors?

14 respondents answered this question. Ten agreed that an extension should be granted. One suggested that the case should be converted into a bankruptcy as there would have been a change of circumstances. One did not comment on the subject of an extension if the windfall was received close to the date of discharge but suggested that if a windfall occurred within 6 years after discharge it should be applied in payment of the debts. Ballymena Borough Council suggested a sliding scale be applied to post-discharge windfalls. If a £50,000 plus windfall were received in the first year £15,000 plus costs with be applied, if received in the second year, 50% of the debt plus costs, and if in the third year 25% plus costs. The Irish League of Credit Unions said that there should be a process of statutory attachment.

Comment by Department for Enterprise, Trade and Investment

We propose that in cases where the debtor experiences a windfall or increase in income close to his discharge date, it should be possible to extend the order by up to 3 months to enable him to make arrangements with his creditors

Q.17(c) What length of time do you think would constitute a reasonable period to enable the debtor to deal with his creditors?

11 respondents replied to this question. Another thought that the question was addressing the period within which debtors are required to disclose windfalls to the Official Receiver. Some respondents suggested a defined period of time,

Period	No.
28 days	1
30 days	1
3 months	2
3 to 6 months	1
6 months	1
12 to 18 months	1

The respondent who suggested 30 days suggested that this should be an initial period capable of extension by agreement between the debtor and his creditors or on application by the debtor or a creditor. Citizens Advice asked if the order would become void if a debtor received a windfall sufficient to discharge his debts within the timescale of the order, and would this negate the need to specify a timescale for a debtor to deal with his creditors (in fact, the order would have to be revoked by the Official Receiver). Advice NI felt that the time allowed should be as long as necessary to enable the debtor to meet the intermediary and negotiate effectively with the creditor. The Court Service and Banbridge District Council felt that the time allowed should depend on the circumstances of the case.

Comment by Department for Enterprise, Trade and Investment

We propose that a debtor who benefits from a windfall be given up to three months within which to make arrangements with his creditors, after which time the Order should be revoked.

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Q.17(d) Do you agree that if the debtor fails to disclose a windfall prior to discharge of the debts that the discharge should be void and creditors free to take enforcement action? If not, what action do you think should be taken?

14 respondents answered this question. 10 agreed with the proposed actions. In addition one recommended that failure to disclose a windfall should lead to prosecution. One simply said that it should make the discharge void. Belfast City Council, Advice NI and one other respondent all suggested that the intermediary should contact the debtor before the term of the Debt Relief Order ends to check that their circumstances have not changed and remind them of the implications of not providing information about windfalls or increases in income.

Comment by Department for Enterprise, Trade and Investment

We propose to provide in the Bill that if a debtor fails to disclose a windfall the order should be revoked, his discharge be void and the creditors free to take enforcement action if they choose. In addition in appropriate cases the debtor would be subject to prosecution.

Letter from DETI re Advice NI's response (May 2010)

Mr Jim McManus
Clerk to the Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
BELFAST
BT4 3XX 10 May 2010

Jim

Debt Relief Bill

The ETI Committee's request for the Department's views on issues raised in a letter from Advice NI dated 16 April 2010 has been referred to me for reply.

I referred the letter to the Department's Insolvency Service which is responsible for the Bill. They have provided the following response to the Issues raised.

1. Time limit for Investigations

I confirm that the Bill places no limit on the time within which an investigation must be started or completed. Paragraph (6) of draft Article 208K expressly provides for the power to carry out an investigation to be exercisable after as well as during the moratorium period which follows the making of a Debt Relief Order. This is in line with section 251K(6) of the Insolvency Act 1986 applying in England and Wales.

The Department considers that no time limit should apply for the following reasons:-

- Debt Relief is intended to be a highly automated, streamlined, low-cost system for dealing with low levels of debt. Investigation is to be very much the exception, not the norm, and will normally only be carried out following a complaint from a creditor. Therefore the power to carry out investigation will only affect a small minority of debtors.
- Debt Relief is to be an affordable alternative to bankruptcy, nothing more, nothing less. It is a statutory requirement that the Official Receiver investigates all bankruptcies unless he thinks that investigation is unnecessary. Article 262 of the Insolvency (Northern Ireland) Order 1989 places no limits on when an investigation can be carried out in a bankruptcy. The Debt Relief scheme is being set up for one specific purpose. It is to give those unable to afford to petition for bankruptcy access to a more affordable means to obtain relief from debt they cannot pay. It is not an aim or purpose of the scheme that debtors should be treated differently or more leniently than they would be if they were bankrupt.
- It is expected that in practice most investigations would take place as a result of a creditor having objected to the making of a Debt Relief Order. Objections will have to be made within strict time limits.
- The Debt Relief scheme must enjoy the confidence of creditors and the public at large if it is to survive and become an acceptable means of dealing with problem debt. It is accepted that there is potential for the unscrupulous to use the scheme to avoid paying debts which they would be perfectly capable of paying. To deter such conduct it is essential to have in place a robust set of offences and penalties. To set a limit on the time within which any allegation or evidence of improper conduct could be investigated would dilute the value of that deterrent and could critically undermine confidence in the scheme.

2. Duration of Debt Relief Restrictions Orders

It will be possible for someone subject to a Debt Relief Order to be placed under continuing restrictions following the ending of the moratorium period which ensues after the making of a Debt Relief Order. This can happen in two ways. It can result from an application to the High Court by the Department or the Official Receiver on the Department's direction, or it can result from an undertaking to the Department given by a debtor. Paragraph 9(2) of draft Schedule 2ZB provides that a Debt Relief undertaking cannot be for less than two years and must not be for more than fifteen years. This is exactly as stipulated in relation to Bankruptcy Restrictions Undertakings by paragraph 9(2) of Schedule 2A to the Insolvency (Northern Ireland) Order 1989.

Details of Bankruptcy Restrictions Undertakings maintained by the Insolvency Service in England and Wales are used as a guide when accepting Bankruptcy Restrictions Undertakings in Northern Ireland to determine the bracket into which the bankrupt's conduct would appropriately fall. It is intended to use the same information when setting time limits for Debt Relief Restrictions Undertakings, until such time as similar database has built up in England and Wales for Debt Relief Restrictions Undertakings. It will be possible to do so because the behaviours, to be taken into account under paragraph (2) of Schedule 2ZB in the Bill, when deciding whether to seek a Debt Relief Restrictions Order will be in line with those to be taken into account under the bankruptcy provisions contained in paragraph (2) of Schedule 2A to the Insolvency (Northern Ireland) Order 1989.

3. Length of time which must elapse before another Debt Relief Order can be applied for

The Debt Relief Scheme is intended to be simple, uncomplicated and low cost. It gives individuals who otherwise could not afford it the opportunity to unburden themselves of debt which they cannot pay. The gain for the individual is not without cost to others. The making of a Debt Relief Order removes any hope that those to whom he is indebted have of recovering what is due to them. This is so even if the individual's financial circumstances improve after he is discharged from the one year moratorium which follows the making of a Debt Relief Order. Irrespective of the reasons for the indebtedness it would on the other hand be neither fair nor equitable to those trying to make a living in business, including proprietors of small businesses, if customers were able to make repeat use of the Debt Relief scheme to run up debt and not pay it.

To qualify for a Debt Relief Order an individual's assets must not be worth more than £300 and they must not have more than £50 left in the month after meeting essential living expenses. Anyone who obtains a Debt Relief Order should know that if they accept further credit they will not be able to meet their obligation to repay it. The possibility of escaping any consequences arising from such conduct by applying for a further Debt Order within six years should not be open to them irrespective of the circumstances giving rise to the further indebtedness.

A further consideration is that operation of the Debt Relief scheme will depend on assessment of applicants' circumstances by debt advisers acting as intermediaries. It would not be possible to draw up a comprehensive list of adverse circumstances which could befall an individual and to attempt to do so would be contrary to the intention of the scheme of keeping it simple and operating costs low.

4. Recommendation that any registration fee under Article 248A(11)(a) be proportional the statue of the organisation seeking to become a designated body

The Department currently has no plans to charge a fee in connection with the grant or maintenance of designation as a competent authority. None is charged under the corresponding provision for England and Wales (section 415A(A1)) of the Insolvency Act 1986). Both provisions have been included so that the facility to charge fees is there should it ever be decided that it would be desirable to do so.

5. Recommendations made by Advice NI

(1) (a) We are working to bring in legislation to set up the Debt Relief scheme as quickly as possible, but must follow laid down procedures. We are working on the basis that the Bill to set up the Debt Relief scheme will have completed its passage through the Assembly and received Royal Assent by November 2010. This should allow us to complete the processes to make the necessary subordinate legislation by no later than June 2011.

(1)(b)As regards guidance we will look at the latest available for the scheme in England and Wales and consider how it could best be adapted or even expanded for use in Northern Ireland.

(2) The project team charged with bringing the scheme into operation will strive to provide an efficient and user friendly application process.

(3) (a) The limit on total liabilities is to be set in subordinate legislation rather than in the Bill itself. Paragraph (6) of draft Schedule 2ZA merely enables an amount to be specified by order. We are however minded that when we come to make that order it is intended to set the limit at £15,000, not £20,000. The liability limit is a subjective matter on which different people will have different opinions. Consumer Credit Counselling Service in their reply to the policy consultation

stated that they regarded £15,000 as an appropriate cap. The Irish League of Credit Unions stated that in their view £15,000 was too high and a lower cap should apply. We have to take into account the nature of the scheme. It is to be a low-cost, light touch scheme. Investigation is to be the exception rather than the rule. It would not be appropriate for the liability limit to be set above that at which there would, in bankruptcy, be a presumption in favour of investigation being carried out. As a rule of thumb, £15,000 is the level at which consideration would be given to carrying out investigation in bankruptcy cases. People with liabilities above that amount should not therefore be eligible for a scheme where there is a presumption against investigation taking place. A £15,000 ceiling is also in line with the figure for what is essentially the same scheme in England and Wales.

(3)(b) Again, whatever limit is to be set on the value of vehicles to be disregarded will be set in subordinate legislation and not by the Bill itself. To disregard a vehicle worth up to £1,000 is a major concession. It would not happen in other forms of debt recovery or insolvency proceedings. The Enforcement of Judgements Office has confirmed that they would consider taking action to seize and auction a vehicle which was worth less than £1,000. The Debt Relief scheme is for those who cannot afford the deposit and fee to petition for bankruptcy. It is for people who have not more than £300 in assets. To allow people, with cars significantly more than that amount, as suggested in Advice NI's letter, would be very difficult to justify.

(3)(c) It is intended to specify in subordinate legislation that a single domestic vehicle worth up to £1,000 can be disregarded. This could be a work van. We do not consider that it would be appropriate to exclude work vans worth more than this from being treated as assets, neither do we consider that it would be possible to disregard a car as well as a van. To do so would be contrary to having a £300 limit on assets for entry to the scheme. The reality is that the scheme is aimed at people who are on benefits or low incomes and are living in rented accommodation. It is not aimed at self-employed tradesmen with vans whose income can both peak and trough over time. The likelihood is that the financial affairs of such a person would need to be investigated. It is open to someone who has two or more vehicles to sell one and use the proceeds to petition for bankruptcy. Bankrupts are allowed to retain a van for use personally in business or employment if its value is within the limits of what is reasonable.

(3)(d) The matter of how surplus income is to be determined is another matter to be dealt with in subordinate legislation, not within the Bill itself. The bottom line is that a comparison between an applicant's income from all sources with their total expenditure is needed to determine what surplus, if any, they are left with in the month. We intend to set the figure for eligibility to the Debt Relief scheme at £50 because that is the level at which consideration would be given to asking someone who is bankrupt to pay a contribution towards their debts.

We consider that the best way of ensuring an objective, fair and impartial assessment of eligibility in relation to this particular criterion is to provide, as has been done in relation to the corresponding scheme in England and Wales, for individuals to be eligible if their surplus income is anything up to and including a fixed figure of £50. It is likewise essential that all applicants to the scheme are treated equally when it comes to determining whether their expenditure is or is not reasonable. An objective measure of what is reasonable expenditure is therefore required, and to achieve that we intend to invite intermediaries in Northern Ireland to use a version of the Common Financial Statement (CFS).

The CFS is an assessment of expenditure by category which is sponsored by the British Bankers Association, the Money Advice Trust and the Finance and Leasing Association. It is accepted by their members and by many other creditor bodies as a basis for negotiating the terms of any debt repayment. Reference to the Money Advice Trust's website shows that use of the CFS is advocated by the Office of Fair Trading, the Credit Services Association, and the Money Advice Liaison Group. It should also be noted that both the Insolvency Service in Northern Ireland and

the Insolvency Service in England and Wales already advocate the use of the CFS under a protocol for use in another form of insolvency procedure, the individual voluntary arrangement.

(4) (a) As regards pensions being treated as assets, any exclusion would be through subordinate legislation. A consultation on whether there should be any disregard of pensions is currently underway in England and Wales and is due to end on 23 June 2010.

Treatment of pensions is a complex issue, as reflected by the matters on which the consultation is seeking views, including,

- Whether it would be appropriate to ignore pensions which were not due to come into payment for a specified period of years and what that period should be
- Whether it would be appropriate to ignore pensions below a certain current value, what that value should be and how it should be determined
- Whether a pension should have to have Her Majesty's Revenue and Customs approval to be ignored

These are matters with regard to which it would not be prudent to advance ahead of what is being done in England and Wales. However if any new legislation emerges in England and Wales we will seek to bring corresponding provision into operation at the same time as the Debt Relief scheme come into operation in Northern Ireland, or if this is not possible, as soon as possible thereafter.

(4)(b) We need to arrive at a scheme which is simple and straightforward for intermediaries to deal with. We want creditors to know that if a debtor obtains a Debt Relief Order his circumstances are such that he genuinely cannot afford to pay his debts. For this reason we intend that income from all sources will be taken into account in assessing eligibility for Debt Relief. In the specific case of DLA, intermediaries will be directed to offset an equivalent amount as expenditure. The net effect will be that receipt of DLA will not affect eligibility.

(4)(c) Money in a Child Trust fund is the property of the child, and their parents or guardian would be treated as holding it in trust for the child. The money would not be taken into account in assessing the eligibility of a parent or guardian for Debt Relief. However, once a child reaches age 18 the money would be theirs outright and would be taken into account under the asset eligibility test should they apply to the Debt Relief scheme.

We confirm that it would be our intention to treat money accumulated in the Savings Gateway Scheme as an asset to be taken into account in assessing eligibility for Debt Relief. Either a person has assets of more than £300 or he does not. If he has more than £300 in assets he could make some payment to his creditors so that he should not be eligible for a scheme whose stated purpose is to provide relief for people who have no prospect of being able to pay their creditors. Money in a Savings Gateway Scheme account would be as available to pay bills as money in any other form of savings account. There is therefore no reason to treat it differently when assessing eligibility for Debt Relief.

(5) (a) A staff officer and two administrative officers will be put in place to administer a dedicated Debt Relief service in partnership with intermediaries. Insolvency Service officials have arranged to meet during May with the four organisations who have expressed an interest in being designated as competent authorities to approve intermediaries.

(5)(b) Draft Article 208U in the Bill expressly forbids intermediaries charging a fee to applicants for Debt Relief Orders.

(5)(c) There is provision in the Bill to enable a fee to be charged to applicants in respect of the costs of persons acting as intermediaries. The Insolvency Service in England and Wales is currently planning to pay over part of the revenue from application fees to the Competent Authorities by whom intermediaries are approved. Payment would be at the rate of £10 per application dealt with by the intermediaries. Officials are currently liaising with Legislative Counsel to find out if any amendment would be required to this provision in the Bill to allow a similar payment to be made to Competent Authorities in Northern Ireland.

(6) Paragraphs (8) and (9) of draft Article 208U state that an intermediary acting in good faith will not be held liable for anything done or omitted to be done in connection with an application for a debt relief order. An intermediary could not therefore be held accountable for submitting false information provided by an applicant on a Debt Relief application unless there was evidence that the intermediary knew the information to be untrue.

(7) The Debt Relief scheme incorporates a Systems Thinking dimension. A main benefit of the scheme is the contribution which it will make to debtors' psychological well-being to no longer be burdened by debt. There will be social benefits for the least well off in society. Northern Ireland legislation is as a matter of policy kept in line with that applying in England and Wales. This is to assist creditors making use of the law, especially the business community. Insolvency law also regulates the rights of debtors and creditors vis-à-vis each other. Enhancing the rights of one usually has an adverse impact on the rights of the other. There is no allocation or injection of public funds which would provide benefits for one without the other being affected. This limits the extent to which insolvency law can be used to achieve wider societal objectives such as dealing with poverty and deprivation.

(8) It is possible that the existence of the Debt Relief scheme may lead to lenders making more careful checks before advancing money to their clients.

(9) We see no reason to exclude the commercial debt advice sector from acting as intermediaries. However the fact that it is currently intended to limit any payment in respect of intermediaries' costs to £10, together with the fact that intermediaries will not be allowed to charge applicants to the Debt Relief scheme should severely limit any incentive for them to become involved. Regulations will be put in place to ensure the propriety of both intermediaries and their competent authorities. This will enable eligibility, to become an intermediary or competent authority, to be the basis of meeting objective criteria rather than being part of a particular sector.

(10)(a) Treasury guidelines are that provision of services should be charged at full cost. This commits the Department to regular review of the application fee to the Debt Relief scheme. Developments in England and Wales have to be taken into account. A £90 fee would result in costs being covered at a level in or around 1,000 cases per annum. If demand turned out to be substantially different the fee might need to be adjusted.

(10)(b) Consultation would be carried out with interested parties, including Debt Advice Organisations, on any proposal to increase the application fee.

11. Insolvency staff operating the Debt Relief scheme will carry out annual evaluations of how the scheme is performing and report to senior management at the end of the first and second years for which the scheme is in operation. The scheme will be subject to continuous monitoring in that the staff administering it will be aware of any problems which emerge or are brought to their attention and take measures along the line to correct these. However, it is intended that a formal independent evaluation should take place before the third anniversary of the scheme coming into operation.

David McCune
DETI Assembly Liaison Officer

Letter re Queries on Debt Relief Bill from Insolvency Service (June 2010)

Mr Jim McManus
Clerk to the Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
BELFAST
BT4 3XX 2 June 2010

Jim

Debt Relief Bill

The Chairman asked officials to contact their counterparts in the Insolvency Service for England & Wales in relation to issues that were raised by AdviceNI and highlighted by a Committee member; and also to enquire about any problems that have arisen.

Please see attached response from the Insolvency Service in GB, attached at Appendix 1.

David McCune
DETI Assembly Liaison Officer

Appendix 1

Mr Jack Reid
DETINI

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Date: 24 May 2010

Dear Jack

I refer to your letter (also) dated 24 May which raised four main issues

1. Time limit for reapplying to the Debt Relief Scheme

If it is now considered that provision should have been included in the Debt Relief legislation permitting early re-application to the Debt Relief scheme in exceptional circumstances?

We still feel that allowing a 6 year ban on re-entry is appropriate, the period was arrived at after extensive consultation and we believe it strikes the right balance between providing access to the procedure and ensuring that there is no abuse. A further advantage of specifying such a provision is that it is easy to understand and enables the entry costs to be kept at a low level because no person has to make a subjective decision on what could count as an exceptional circumstance and this would add significant cost to the process.

If any other problem with the provision barring re-entry to the scheme for six years has been identified?

No.

If there was an omission in the legislation as regards this point how was the omission made

Not applicable.

Are there any plans to amend or alter the provision?

No.

Has anyone in England and Wales challenged the six year limit for re-entry to the scheme and if so what was the outcome?

No one has challenged this provision.

2. Factors to be taken into account in determining a debtor's monthly surplus income

If it is now considered that provision should have been included along the lines suggested by the Committee Member

If it is now realised that there was an omission in the legislation how was the omission made?

Are there any plans to amend or alter the provision?

The issue of how to deal with State Benefits is extremely complex, for example I recently identified, with the help of our Dept for Work and Pensions, that there are currently 46 such benefits. In contrast the DRO regime is designed to be as simple as possible so as to keep costs down. Our view is that this sort of issue is better dealt with by way of guidance rather through drafting and agreeing primary/secondary legislation. As you are no doubt aware, our guidance already covers DLA and that it is initially counted as income but it is then offset by an equivalent

amount of assumed expenditure and consequently DLA is effectively excluded from the income calculation.

3. First Year Assessment

The Committee Chairperson asked me to enquire if any assessment of the Debt Relief scheme or analysis of problems has been carried out by the Insolvency Service in England and Wales following the scheme having been in operation for its first year.

We have already obtained some informal feedback which generally reflects that the regime is relatively easy to use and understand by intermediaries and debtors and is of great use to many vulnerable debtors. We do intend to formally evaluate the regime after three years (April 2012).

Competent Authorities have flagged up to us the issue of how pensions are dealt with in DROs and we currently have a live consultation on that matter, which is due to close on 23 June. Once the consultation responses are fully analysed we should have increased information on this issue which should give us a much better idea of whether any further work that might need to be done on this issue.

4. Other Matters

Can you advise what arrangements are in place to police the system to ensure that intermediaries are acting consistently in deciding whether or not to treat categories of expenditure as reasonable?

Our Intermediary Guidance clearly sets out that

"The Income and Expenditure Account is based on the summary page of the Common Financial Statement used by many debt advisors. It is anticipated that in most cases, although not in all, the intermediary will already have completed a version of the Common Financial Statement (or similar document) following initial consultation with the debtor regarding their financial affairs."

We are aware that the CCCS has its own guidance on income and expenditure which has many common features with the CFS and that as a Competent Authority in its own right the CCCS is entitled to use its own guidance. I am also aware that in the straightforward consumer IVA protocol either the CFS or CCCS guidance can be used.

It should also be remembered that the Official Receiver 'polices' the system through regular case audits and any matters that come to light through this process are discussed at the regular meetings we hold with the Competent Authorities. The meetings are also used by the Competent Authorities to highlight any issues they wish to bring to our attention. Generally we have found that such issues can be addressed through the newsletters we issue to Competent Authorities and which I have already forwarded.

Whilst I and others here appreciate many of the points made by Advice NI, we do think that they are more appropriately (and flexibly) dealt with through guidance to intermediaries rather than on the face of either primary or secondary legislation.

If a debtor was incurring higher levels of expenditure because of exceptional circumstances, such as purchase of food and comforts for a sick child or if they needed extra heating due to a medical

condition would this be accepted for the purpose of determining if their expenditure was reasonable? Is there any published guidance on this?

The CFS and CCCS figures are for guidance only and the intermediary is asked to fairly assess the debtor's income and expenditure. We feel the system is flexible enough to allow the intermediary to indicate/justify the reason if any such 'trigger' amounts are breached.

5. Other matter identified by INSS

I note that Advice NI stated that only 1,978 DROs had been made, that is the figure for the first quarter when the system was new to all. The case numbers have now increased and in the last quarter there were 5,644 DROs, which is around the level we had expected.

Yours faithfully

Andy Woodhead
A M Woodhead
Policy Unit

Letter from Minister re Clause 2 DRB (June 2010)

From the Office of the Minister



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Our Ref: DETI SUB 266/2010

Mr Alban Maginness MLA
Chairperson
Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
BELFAST
BT4 3XX

7 June 2010

Dear Alban

DEBT RELIEF BILL

I understand that when the ETI Committee met on 3 June 2010, members agreed to seek my views on Clause 2 of the Bill, and in particular, on a proposal that it should contain a provision permitting debtors to obtain another Debt Relief Order within six years in exceptional circumstances.

I see a number of difficulties with such a policy change and amendment.

Firstly, there are issues of equity and fairness.

Businesses only survive if their customers pay them for the goods and services which they provide. While Debt Relief Orders will undoubtedly contribute to the welfare and well-being of eligible individuals burdened by debt which they cannot pay, it is important not to lose sight of the fact that there will also be traders and lenders who suffer the financial loss through no fault of their own. It may be acceptable for this to happen once if someone who was previously able to pay their debts has got into circumstances where they can no longer do so.

It would likely be a very different situation where someone discovers that they were again not going to be paid because a debtor had obtained a second Debt Relief Order - in this case within six years. It is more likely to be tradesmen and small businesses who would be affected. Larger businesses and credit card companies carry out credit checks and make informed decisions as to whether to do business with someone who has obtained a Debt Relief Order.

Secondly, there would be practical difficulties.

It is debt advisers employed by organisations such as Citizens Advice who will act as intermediaries to assess debtors' eligibility to apply to the Debt Relief scheme. It would be counter-productive to our policy objective to burden intermediaries with having to make difficult, time-consuming, and therefore costly judgements as to

whether or not exceptional circumstances existed sufficient to justify a debtor obtaining another Debt Relief Order early. Eligibility could become much more judgemental, and could end up depending on which adviser was used. The alternative would be to attempt to list in subordinate legislation particular matters which would count as exceptional circumstances. Given the wide and varied catalogue of matters which can befall people and the degree to which they can impact on the individual, attempting to produce a comprehensive list would be fraught with difficulty. It seems inevitable that there would be those who would come forward to say that they had not been treated fairly.

To keep the scheme cost at an affordable level for applicants it needs to be simple and uncomplicated with clear and unambiguous guidelines for intermediaries to follow in deciding on debtor eligibility. Whether or not a person has obtained a Debt Relief Order within the previous six years is a simple question of fact. Any deviation from that would make it more difficult for intermediaries to administer the scheme resulting in the cost to applicants having to be increased to compensate the intermediaries for extra time spent.

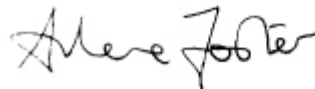
Thirdly, amendment would result in Northern Ireland's legislation differing from that applying in England and Wales.

The Insolvency Service there neither see any need for, nor have been requested to make, any amendment to the current legislation applying in England and Wales.

Given these considerations I believe that it would be better to put the legislation in place as it stands. I would, however, acknowledge the importance of monitoring the scheme's operation so that we can identify whether any need emerges for it to be amended.

I am therefore content to confirm that my Department is committed to undertaking a thorough review of the operation of the scheme after it has been in operation for three years. I would be happy to share the findings of that review with the Committee. If any changes are deemed necessary – including for example a provision to deal with exceptional circumstances - Clause 5 of the Bill would enable this to be done by subordinate legislation, subject to approval by resolution of the Assembly. This, I believe, would provide the appropriate opportunity to consider these matters in detail.

Finally, I would add that my Department is very mindful of the need to offer practical advice to those applying to the scheme. We therefore intend that intermediaries will be trained as part of the project to help applicants budget and manage their expenditure in such a way as to avoid getting into debt again.



ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Letter from Minister to Chair re Amendment to Debt Relief Bill

From the Office of the Minister



Department of
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Mr Alban Maginness
Chairperson
Enterprise, Trade and Investment Committee
Room 424
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21 June 2010

Dear Alban

DEBT RELIEF BILL

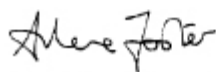
I wish to advise that I have decided to table an amendment to the Bill at Consideration stage. The amendment is of a minor nature and does not represent a change in policy.

The background to this amendment is as follows. Application to the Debt Relief scheme will only be possible through trained and experienced debt advisers acting as intermediaries approved by Competent Authorities designated by my Department. It is expected that the Competent Authorities will be organizations which are engaged in provision of debt counseling and advice, such as Citizens Advice.

Paragraph (10) of the Schedule to the Bill amends Article 361(1) of the Insolvency (Northern Ireland) Order 1989 to allow a fee to be charged to applicants in respect of the costs of persons acting as approved intermediaries.

The Insolvency Service in England and Wales have advised that with the benefit of experience it is better to be in a position where the proceeds of this fee can be paid to the Competent Authorities as an alternative to being paid to the intermediaries. This is because most of the intermediaries will likely be salaried employees, and the cost of meeting their needs in connection with the Debt Relief scheme, for example their training, will fall on the Competent Authorities.

Accordingly officials asked Legislative Counsel to prepare the draft amendment, copy attached at appendix 1. This amendment will give my Department the flexibility to make payments out of the fee income to either the intermediaries or their Competent Authorities.



ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Department's Amendments At Consideration Stage

DEBT RELIEF BILL

AMENDMENTS TO BE MOVED AT CONSIDERATION STAGE

By the Minister of Enterprise, Trade and Investment

Clause 1, Page 16, line 29

At end insert—

‘(10) The Department may, out of the proceeds of fees charged under Article 361(1)(za), make payments to competent authorities or approved intermediaries in connection with the exercise of the functions of approved intermediaries under this Part.’

Appendix 5

Research Papers

Research and Library Services



Bill Paper 24/10

22 March 2010

Debt Relief Bill

**Matthew Davies
Bursary Student
Research and Library Service**

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.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

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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[Annex A: List of Respondents to the Second Consultation](#)

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, 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 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 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

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 Bill [\[16\]](#)

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 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 is 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 is 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 consider 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)

[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://archive.niassembly.gov.uk/record/committees2009/ETI/100218_DebtReliefBill.pdf

[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

[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

[14] Summary of Responses to Policy Consultation,p.11

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

[16] 'Debt Relief, Explanatory and Financial Memorandum.' NIA Bill 9/09-EFM Session 2009-2010

Appendix 6

List of Witnesses

Mr Reg Nesbitt Department of Enterprise, Trade and Investment

Mr Jack Reid Department of Enterprise, Trade and Investment

Mr John Hinds Department of Enterprise, Trade and Investment

Mr Chris Nesbitt Department of Enterprise, Trade and Investment

Ms Eileen Glenn Department of Enterprise, Trade and Investment

Mr Bob Stronge Advice NI

Ms Sinead Campbell Advice NI