

2011 No. 151

INSOLVENCY

INDIVIDUALS

The Insolvency (Amendment) Rules (Northern Ireland) 2011

Made - - - - *22nd March 2011*
Coming into operation - *30th June 2011*

The Department of Justice makes the following Rules in exercise of the powers conferred by Article 359 of the Insolvency (Northern Ireland) Order 1989(a), with the concurrence of the Department of Enterprise, Trade and Investment(b), and in relation to those rules that affect court procedure, with the concurrence of the Lord Chief Justice under Article 359(1A)(c) of that Order.

In accordance with Article 360 of that Order the Department of Justice has consulted the Committee appointed to review Rules.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Amendment) Rules (Northern Ireland) 2011 and come into operation on 30th June 2011.

(2) In these Rules—

“the Department” means the Department of Enterprise, Trade and Investment;

“the principal Rules” means the Insolvency Rules (Northern Ireland) 1991(d), and any reference to a numbered Part, Rule, Schedule or form is a reference to the Part, Rule, Schedule or form so numbered in the principal Rules unless the context otherwise requires; and

“the Order” means the Insolvency (Northern Ireland) Order 1989 and any reference to a numbered Article is a reference to an Article of that Order.

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- (a) S.I. 1989/2405 (N.I. 19), Article 359 of which was amended by the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 223), section 15 of and paragraph 81 of Schedule 5 to the Constitutional Reform Act 2005 (c.4), and by Article 15(5) of and paragraph 142 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976).
- (b) Formerly the Department of Economic Development, see the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)), Article 3(5).
- (c) Article 359(1A) was inserted by the Constitutional Reform Act 2005 (c. 4), Schedule 5, Part 1, paragraphs 80 and 81.
- (d) The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364), as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No. 261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No. 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118), the Insolvency (Amendment) Rules (Northern Ireland) 2009 (S.R. 2009 No. 404) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355).

Amendments to the principal Rules

2. The principal Rules are amended as set out in Rules 3 to 30 of these Rules.

Amendment to Rule 0.2

3. In Rule 0.2 (interpretation) in paragraph (b) of the definition of “the insolvent estate” for “an individual insolvency”, substitute “a bankruptcy or a petition for bankruptcy”.

Amendment to Rule 0.3

4. In Rule 0.3—
 - (a) in paragraph (1), after “personal”, insert “or other”;
 - (b) in paragraph (3), at the end insert “except applications for debt relief orders.”; and
 - (c) in paragraph (4), after “application” where it first occurs, insert “made to the court”.

Amendment to Rule 2.056

5. In Rule 2.056—
 - (a) in paragraph (2), omit “or any authorisation under section 323 of the Companies Act”;
 - (b) for paragraph (4), substitute—

“(4) No member may be represented by—

 - (a) another member of the committee;
 - (b) a person who is at the same time representing another committee member;
 - (c) a body corporate;
 - (d) an undischarged bankrupt;
 - (e) a person to whom a moratorium period under a debt relief order applies;
 - (f) a disqualified director; or
 - (g) a person who is subject to a bankruptcy restrictions order or a debt relief restrictions order.”.
 - (c) omit paragraph (5).

Amendment to Rule 3.21

6. In Rule 3.21—
 - (a) in paragraph (2), omit “or any authorisation under section 323 of the Companies Act”;
 - (b) for paragraph (4), substitute—

“(4) No member may be represented by—

 - (a) another member of the committee;
 - (b) a person who is at the same time representing another committee member;
 - (c) a body corporate;
 - (d) an undischarged bankrupt;
 - (e) a person to whom a moratorium period under a debt relief order applies;
 - (f) a disqualified director; or
 - (g) a person who is subject to a bankruptcy restrictions order or a debt relief restrictions order”.
 - (c) omit paragraph (5).

Amendment to Rule 4.167

7. In Rule 4.167—

- (a) in paragraph (2), omit “or any authorisation under section 323 of the Companies Act”;
- (b) for paragraph (4), substitute—
 - “(4) No member may be represented by—
 - (a) another member of the committee;
 - (b) a person who is at the same time representing another committee member;
 - (c) a body corporate;
 - (d) an undischarged bankrupt;
 - (e) a person to whom a moratorium period under a debt relief order applies;
 - (f) a disqualified director; or
 - (g) a person who is subject to a bankruptcy restrictions order or a debt relief restrictions order”.
- (c) omit paragraph (5).

Insertion of new Part 5A – debt relief orders

8. After Part 5 (individual voluntary arrangements), insert Part 5A as set out in Schedule 1 to these Rules.

Amendment to Rule 6.153

9. In Rule 6.153—

- (a) for paragraph (4), substitute—
 - “(4) No member may be represented by—
 - (a) another member of the committee;
 - (b) a person who is at the same time representing another committee member;
 - (c) a body corporate;
 - (d) an undischarged bankrupt;
 - (e) a person to whom a moratorium period under a debt relief order applies;
 - (f) a disqualified director; or
 - (g) a person who is subject to a bankruptcy restrictions order or a debt relief restrictions order”.
- (b) omit paragraph (5).

Insertion of new Chapters 30, 31 and 32 of Part 6 – debt relief restrictions orders and undertakings

10. At the end of Part 6 insert—

“CHAPTER 30
DEBT RELIEF RESTRICTIONS ORDER

Interpretation

6.245. In this Chapter and in Chapter 31—

“Department” includes the official receiver acting in accordance with paragraph 1(2)(b) of Schedule 2ZB to the Order.

Application for debt relief restrictions order

6.246.—(1) Where the Department applies to the court for a debt relief restrictions order to be made in relation to a person in respect of whom a debt relief order has been made under paragraph 1 of Schedule 2ZB to the Order, the application must be supported by a report by the Department.

(2) The report must include—

- (a) a statement of the conduct by reference to which it is alleged that it is appropriate for a debt relief restrictions order to be made; and
- (b) the evidence on which the Department relies in support of the application.

(3) Any evidence in support of an application for a debt relief restrictions order provided by persons other than the Department must be by way of an affidavit.

(4) The hearing date must be no earlier than 8 weeks from the date when the court fixes the venue for the hearing.

Service on the respondent

6.247.—(1) The Department must not more than 14 days after the date on which the application is made at court serve notice of the application and the venue fixed by the court on the debtor.

(2) The notice served on the respondent must be accompanied by a copy of the application, together with copies of the report by the Department, any other evidence filed with the court in support of the application, and an acknowledgement of service.

(3) The respondent must not more than 14 days after the date on which the application is served on him file in court an acknowledgement of service of the application indicating whether or not he contests the application.

(4) Where the respondent has failed to file an acknowledgement of service and the time period for doing so has expired, the respondent may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

The debtor's evidence

6.248.—(1) If the debtor wishes to oppose the application, he must within 28 days from the date of service on him of the application and evidence of the Department, file in court any evidence which he wishes the court to take into consideration.

(2) If the debtor files evidence under paragraph (1) of this Rule, he must within 3 business days of filing it at the court, serve a copy of such evidence upon the Department.

(3) The Department must, within 14 days from receiving the copy of the debtor's evidence, file in court any further evidence in reply it wishes the court to take into consideration and must as soon as reasonably practicable serve a copy of that evidence upon the debtor.

Making a debt relief restrictions order

6.249.—(1) The court may make a debt relief restrictions order against the debtor, whether or not the latter appears and whether or not he has filed evidence in accordance with Rule 6.248.

(2) Where the court makes a debt relief restrictions order, it must send two sealed copies to the Department.

(3) As soon as reasonably practicable after receipt of the sealed copies of the order, the Department must send a sealed copy of the order to the debtor.

CHAPTER 31
INTERIM DEBT RELIEF RESTRICTIONS ORDER

Application for interim debt relief restrictions order

6.250.—(1) Where the Department applies for an interim debt relief restrictions order under paragraph 5 of Schedule 2ZB to the Order, the court must fix a venue for the hearing.

(2) Notice of an application for an interim debt relief restrictions order must be given to the debtor at least 2 business days before the hearing date unless the court directs otherwise.

The case against the debtor

6.251.—(1) The Department must file a report in court as evidence in support of any application for an interim debt relief restrictions order.

(2) The report must include evidence of the debtor's conduct which is alleged to constitute the grounds for the making of an interim debt relief restrictions order and evidence of matters which relate to the public interest in making the order.

(3) Any evidence provided in support of an application for an interim debt relief restrictions order by persons other than the Department must be by way of an affidavit.

Making an interim debt relief restrictions order

6.252.—(1) The debtor may file in court any evidence which he wishes the court to take into consideration and may appear at the hearing for an interim debt relief restrictions order.

(2) The court may make an interim debt relief restrictions order against the debtor, whether or not the latter appears, and whether or not he has filed evidence in accordance with paragraph (1) of this Rule.

(3) Where the court makes an interim debt relief restrictions order, it must, as soon as reasonably practicable, send two sealed copies of the order to the Department.

(4) As soon as reasonably practicable after receipt of the sealed copies of the order, the Department must send a sealed copy of the order to the debtor.

Application to set aside an interim debt relief restrictions order

6.253.—(1) A person subject to an interim debt relief restrictions order may apply to the court to set the order aside.

(2) An application to set aside an interim debt relief restrictions order must be supported by an affidavit stating the grounds on which the application is made.

(3) Where an application is made under paragraph (1) of this Rule, to set aside an interim debt relief restrictions order, the person making the application must not less than 5 business days before the hearing date send to the Department,—

- (a) notice of his application
- (b) notice of the venue;
- (c) a copy of his application; and
- (d) a copy of the supporting affidavit.

(4) The Department may attend the hearing and call the attention of the court to any matters which seem to it to be relevant, and may itself give evidence or call witnesses.

(5) Where the court sets aside an interim debt relief restrictions order it must, as soon as reasonably practicable, send two sealed copies of the order to the Department.

(6) As soon as reasonably practicable after receipt of the sealed copies of the order, the Department must send a sealed copy of the order to the applicant.

CHAPTER 32
DEBT RELIEF RESTRICTIONS UNDERTAKING

Acceptance of debt relief restrictions undertaking

6.254. A debt relief restrictions undertaking signed by a person in relation to whom a debt relief order has been made must be deemed to have been accepted by the Department for the purposes of paragraph 9 of Schedule 2ZB to the Order when the undertaking is signed on behalf of the Department.

Notification

6.255. As soon as reasonably practicable after a debt relief restrictions undertaking has been accepted by the Department, a copy must be sent to the person who offered the undertaking and to the official receiver.

Application under paragraph 9(3) of Schedule 2ZB to the Order to annul a debt relief restrictions undertaking

6.256.—(1) An application under paragraph 9(3)(a) or (b) of Schedule 2ZB to the Order must be supported by an affidavit stating the grounds on which it is made.

(2) The applicant must give notice of the application and the venue, together with a copy of the affidavit supporting his application to the Department at least 28 days before the hearing date.

(3) The Department may attend the hearing and call the attention of the court to any matters which seem to it to be relevant, and may itself give evidence or call witnesses.

(4) The court must send a sealed copy of any order annulling or varying the debt relief restrictions undertaking to the Department and the applicant.”.

Amendment to Rule 6A.1

11. In Rule 6A.1—

(a) after paragraph (1) insert—

“(1A) The Department must create and maintain a register of matters relating to debt relief orders in accordance with the provisions of this Part (referred to in this Part as “the register of debt relief orders”).”.

(b) for paragraph (2), substitute—

“(2) The register—

(a) referred to in paragraph 12 of Schedule 2A to the Order (referred to in this Part as “the bankruptcy restrictions register”), and

(b) of the matters specified in paragraphs (b) and (c) of Article 208W (referred to in this Part as “the debt relief restrictions register”),

must be maintained in accordance with the provisions of this Part.”.

(c) in paragraph (3), after “paragraphs (1)” insert, “(1A)”.

(d) for the cross-heading substitute “Registers of individual voluntary arrangements, debt relief orders and bankruptcy and debt relief restrictions.”.

Insertion of New Rules 6A.3A and 6A.3B

12. After Rule 6A.3, before the cross-heading for Chapter 3, insert—

“Entry of information onto the register of debt relief orders

6A.3A.—(1) This Rule is subject to Rules 5A.18, 6A.3B and 6A.6.

(2) The official receiver must cause to be entered onto the register of debt relief orders as soon as reasonably practicable after the making of a debt relief order the following information relating to the order or to the debtor in respect of whom it has been made—

- (a) as they are stated in the debtor’s application—
 - (i) the name, gender, occupation (if any) and date of birth of the debtor;
 - (ii) the debtor’s last known address;
 - (iii) the name or names in which he carries or has carried on business, if other than his true name; and
 - (iv) the nature of his business and the address or addresses at which he carries or has carried it on and whether alone or with others;
- (b) the date of the making of the debt relief order;
- (c) the reference number of the order;
- (d) the date of the end of the moratorium period; and
- (e) where a bankruptcy order has been made in the period of six years immediately prior to the date of the latest debt relief order made against the debtor (excluding for these purposes any bankruptcy order that was annulled) the date of whichever is the latest of them.

(3) Provided that information concerning a debt relief order has not been validly deleted under Rule 6A.3B, the official receiver must also cause to be entered on the register in relation to the order—

- (a) where the moratorium period is terminated early, the fact that such has happened, the date of early termination and whether the early termination is on revocation of the debt relief order or by virtue of any other statutory provision;
- (b) where the moratorium period is extended, the fact that such has happened, the date on which the extension was made, its duration and the date of the new anticipated end of the moratorium period; or
- (c) where the debtor is discharged from all qualifying debts, the date of such discharge.

Deletion of information from the register of debt relief orders

6A.3B. The Department must delete from the register of debt relief orders all information concerning a debt relief order where—

- (a) the debt relief order has been revoked; or
- (b) the debtor has been discharged from his qualifying debts;
and a period of 3 months has elapsed from the date of revocation or discharge.”.

Insertion of new Chapter 3A into Part 6A

13. After Rule 6A.5 insert—

“CHAPTER 3A

DEBT RELIEF RESTRICTIONS REGISTER

Debt relief restrictions orders and undertakings – entry of information onto the debt relief restrictions register

6A.5A.—(1) This Rule is subject to Rules 5A.18, 6A.5B and 6A.6

(2) Where an interim debt relief restrictions order or a debt relief restrictions order is made against a debtor, the Department must enter onto the debt relief restrictions register—

- (a) the name, gender, occupation (if any) and date of birth of the debtor;
- (b) the debtor’s last known address;
- (c) a statement that an interim debt relief restrictions order or, as the case may be, a debt relief restrictions order has been made against him;
- (d) the date of the making of the order and the order reference number; and
- (e) the duration of the order.

(3) Where a debt relief restriction undertaking is given by a debtor, the Department must enter onto the debt relief restrictions register—

- (a) the name, gender, occupation (if any) and date of birth of the debtor;
- (b) the debtor’s last known address;
- (c) a statement that a debt relief restrictions undertaking has been given;
- (d) the date of the acceptance of the debt relief restrictions undertaking by the Department and the reference number of the undertaking; and
- (e) the duration of the debt relief restrictions undertaking.

Deletion of information from the debt relief restrictions register – debt relief restrictions order and undertakings

6A.5B. In any case where an interim debt relief restrictions order or a debt relief restrictions order is made or a debt relief restriction undertaking has been accepted, the Department must remove from the debt relief restrictions register all information regarding that order or, as the case may be, undertaking after—

- (a) receipt of notification that the order or, as the case may be, undertaking, has ceased to have effect; or
- (b) the expiry of the order or, as the case may be, undertaking.”.

Amendment to Rule 6A.6

14. In Rule 6A.6, for paragraph (2), substitute—

“(2) Where the Department receives notice of the date of the death of a person in respect of whom information is held on any of the registers, it shall cause the fact and date of the person’s death to be entered onto each of the registers on which information in respect of the person is held.”.

Amendment to Rule 7.01

15. In Rule 7.01, after paragraph (1) insert—

“(1A) Every proceeding under Para 7A of the Order shall be headed and, with any necessary additions, be intituled—

“IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION
(DEBT RELIEF)

Re (name and short description, including any current trading name, of debtor to which the proceedings relate)”.”.

Amendment to Rule 7.02

16. In Rule 7.02, after paragraph (1) delete the full stop and insert—

“(g) applications for debt relief restrictions orders and interim debt relief restrictions orders.”.

Amendment to Rule 7.07

17.—(1) In Rule 7.07, in paragraph (1)—

(a) for sub-paragraph (a), substitute—

“(a) that the application is made under the Order;

(aa) the names of the parties;

(ab) the name of the bankrupt or the debtor who or company which is the subject of the insolvency proceedings to which the application relates;

(ac) where the court has previously allocated a number to the insolvency proceedings within which the application is made, that number;”;

(b) in sub-paragraph (b), for “relief”, substitute “remedy”.

(2) Omit paragraph (2).

Amendment to Rule 7.14

18. In Rule 7.14(2), after “113, 200,” insert “208N,”.

Amendment to Rule 7.22

19. In Rule 7.22—

(a) In the heading, after “**Article 200**” insert “, **208N and**”; and

(b) In paragraph (1), immediately before “or 337” insert “, 208N (the equivalent in relation to debt relief orders)”.

Amendment to Rule 7.27

20. In Rule 7.27, at the end of paragraph (2)(c)(iii), delete the full stop and insert—

“; and

(d) in proceedings relating to a debt relief order, by the debtor.”.

Amendment to Rule 7.36

21. In Rule 7.36, for paragraphs (1) to (3), substitute—

“(1) This Rule applies where a party to, or person affected by, any proceedings in an insolvency—

(a) applies to the court for an order allowing his costs, or part of them, incidental to the proceedings; and

(b) that application is not made at the time of the proceedings.

(2) The person concerned shall serve a sealed copy of his application—

(a) in proceedings other than proceedings relating to a debt relief order—

(i) on the responsible insolvency practitioner, and

(ii) in a winding up by the court or a bankruptcy, on the official receiver;

(b) in proceedings relating to a debt relief order, on the official receiver.

(3) The insolvency practitioner and, where appropriate, the official receiver may appear on an application to which paragraph (2)(a) applies.

(3A) The official receiver may appear on an application to which paragraph (2)(b) applies.”.

Amendment to Rule 7.37

22. In Rule 7.37—

- (a) in paragraph (1), after “the bankrupt”, insert “ or the debtor”; and
- (b) in paragraph (2), for “insolvency proceedings”, substitute “a company insolvency or bankruptcy proceedings”.

Amendment to Rule 7.58

23. At the end of Rule 7.58(1) delete the full stop and add “other than proceedings relating to a debt relief order.”.

Amendment to Rule 9.1

24. In Rule 9.1—

- (a) for paragraph (1), substitute—
 - “(1) This Part applies to applications to the court for an order under—
 - (a) Article 200 (inquiry into company’s dealings), [FORM 9.1];
 - (b) Article 208N debt relief orders – inquiry into dealings and property of debtor), [FORM 9.1]; or
 - (c) Article 337 (inquiry into bankruptcy, with respect to the bankrupt’s dealings – including Article 337 as it applies by virtue of Article 339). [FORM 9.1]”; and
- (b) for paragraph (2)(b) and (c), substitute—
 - “(b) “the applicable Article” is Article 200, 208N or 337, according to whether the affairs of a company or those of a debtor in relation to a debt relief order or an application for a debt relief order or a bankrupt or (where the application under Article 337 is made by virtue of Article 339) a debtor in bankruptcy proceedings are in question;
 - (c) the company or, as the case may be, the debtor in relation to a debt relief order or an application for a debt relief order, the bankrupt or debtor in bankruptcy proceedings concerned is “the insolvent”; and
 - (d) “the applicant”, in any application made under Article 208N, means the official receiver.”.

Amendment to Rule 9.4

25. In Rule 9.4—

- (a) for paragraph (2), substitute—
 - “(2) Unless the applicant objects, the following persons may attend the examination with the permission of the court and may put questions to the respondent (but only through the applicant)—
 - (a) any person who could have applied for an order under the applicable Article; and
 - (b) any creditor who has provided information on which the application was made under Article 200 or 337.”.
- (b) omit paragraph (4).

Amendment to Rule 9.6

26. In Rule 9.6—

- (a) in the heading, after “Article **200**” insert “, **208N and**”; and
- (b) in paragraph (3)(b), after “individual insolvency” insert “, but not in proceedings relating to debt relief orders or applications for debt relief orders,”.

Amendment to Rule 10.2

27. In Rule 10.2(1)(a), after “200,” insert “208N,”.

Amendment to Rule 10.4

28. In Rule 10.4(2), after “paragraph (1)”, insert “in connection with insolvency proceedings other than proceedings relating to debt relief orders or applications for debt relief orders,”.

Amendment to Rule 12.01

29. In Rule 12.01(2)(d)(ii), for “individual insolvency”, substitute “bankruptcy”.

Amendments to Schedule 2

30. In Schedule 2—

- (a) in the index to forms, for the entries relating to Forms 7.08, 7.09 and 9.1, substitute:
 - “7.08 Warrant of arrest etc. under Article 200, 208N or 337 of the Insolvency (Northern Ireland) Order 1989”
 - “7.09 Order for production of person arrested under warrant issued under Articles 114, 200, 208N, 335 or 337 of the Insolvency (Northern Ireland) Order 1989”
 - “9.1 Order under Article 200, 208N, or 337 of the Insolvency (Northern Ireland) Order 1989”;and
- (b) for Forms 7.08, 7.09 and 9.01, substitute the new forms so numbered as set out in Schedule 2 to these Rules.

Sealed with the Official Seal of the Department of Justice on 22nd March 2011



David Ford
Minister of Justice

I concur

Declan Morgan
Lord Chief Justice of Northern Ireland

Dated 22nd March 2011

The Department of Enterprise, Trade and Investment concurs with the foregoing Rules

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 22nd March 2011



T. Cooper
A senior officer of the
Department of Enterprise, Trade and Investment

PART 5A of the Insolvency Rules (Northern Ireland) 1991

“PART 5A DEBT RELIEF ORDERS

CHAPTER 1 Preliminary

Scope of this part: introductory and interpretation

5A.1. The Rules in this Part apply in relation to debt relief orders and applications for debt relief orders under Part 7A of the Order.

Completion and sending of documents electronically and in hard copy

5A.2. In Rules 5A.5, 5A.7, 5A.8, 5A.10, 5A.16, 5A.20 and 5A.24, a document—

- (a) is sent by electronic means, if it is sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data and entirely created, transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means but does not include electronic facsimile transmission or mobile telephonic text messaging;
- (b) is completed in electronic form, if it is a document which is created, and sent, by electronic means; and
- (c) is hard copy, if it is a document completed and sent on paper and capable of being read (but is not the product of an electronic facsimile transmission).

Excluded debts

5A.3.—(1) For the purposes of Part 7A of the Order and this Part of the Rules—

“excluded debt” means—

- (a) any fine imposed for an offence and any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings or any obligation arising under a maintenance calculation made under the Child Support (Northern Ireland) Order 1991^(a)
- (b) any obligation arising under a confiscation order made under Article 4 or 5 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990^(b) or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002^(c);
- (c) any debt or liability to which a debtor is or may become subject in respect of any sum paid or payable to the debtor as a student by way of a loan and which he receives before or after a debt relief order is made in respect of him; and
- (d) any debt which consists of a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987^(d), being in either

(a) S.I. 1991/2628 (N.I. 23)

(b) S.I. 1990/2588 (N.I. 17)

(c) 2002 c. 29

(d) S.I. 1987/2049 (N.I. 20)

case damages in respect of the death of or personal injury (including any disease or other impairment of physical or mental condition) to any person.

(2) In paragraph (1),

“fine” and “family proceedings” have the meanings given by Article 255(8).

“loan” means a loan made pursuant to—

- (a) regulations made under Article 3(1) of the Education (Student Support) (Northern Ireland) Order 1998(a), or
- (b) the Education (Student Loans) (Northern Ireland) Order 1990(b), or that Order as it continues in force by virtue of any savings made, in connection with its repeal by the Education (Student Support) (Northern Ireland) Order 1998, by an order made under Article 1(3) of that Order,

including any interest on the loan and any penalties or charges incurred in connection with it.

Application for a debt relief order – information to be in the application

5A.4.—(1) In addition to the matters referred to in Article 208B(2)(a) and (b) of the Order and subject to paragraphs (5) to (11), an application for a debt relief order under Article 208A must also state the matters set out in paragraphs (2) to (4) as they subsist at the date of the application.

(2) The application must state—

- (a) the debtor’s surname, forenames and occupation (if any);
- (b) the debtor’s gender and date of birth;
- (c) the debtor’s places of residence during the three years preceding the date of the application;
- (d) any name or names used by the debtor for any purpose, if different from the above;
- (e) the name, address and nature of any business carried on by the debtor, including any business carried on by—
 - (i) a firm or partnership of which the debtor is a member;
 - (ii) an agent or manager for the debtor or for such firm or partnership;
- (f) any other liabilities (including those imposed by an order of the court) to which the debtor is subject;
- (g) the address of the creditor to whom each debt is owed;
- (h) the total amount of the debtor’s monthly income from any source (see Rule 5A.12(1));
- (i) the sources of that income and the amount from each source;
- (j) particulars of the expenditure which the debtor claims is necessary to meet the monthly reasonable domestic needs of the debtor and the debtor’s family, including the object and the amount of that expenditure (see Rule 5A.12(2));
- (k) the total amount available from any source to meet the claimed monthly reasonable domestic needs of the debtor and his family (see Rule 5A.12(2)); and
- (l) particulars of the debtor’s property and its total estimated value (see Rule 5A.13 and 5A.14).

(3) The debtor must also state in the application—

- (a) whether or not the debtor at the date of the application—

(a) S.I. 1998/1760 (N.I. 14)
(b) S.I. 1990/1506 (N.I. 11)

- (i) has given a preference to any person during the period of two years prior to and ending with the application date;
 - (ii) has entered into a transaction with any person at an undervalue during the period of two years prior to and ending with the application date;
 - (iii) is domiciled in Northern Ireland;
 - (iv) at any time during the period of three years ending with the application date,
 - (aa) was ordinarily resident,
 - (bb) had a place of residence, or
 - (cc) carried on business,
 - in Northern Ireland;
 - (v) is an undischarged bankrupt;
 - (vi) is subject to a debt relief order;
 - (vii) has been subject to a debt relief order in the six years preceding the date of the application;
 - (viii) is subject to an interim order or a voluntary arrangement under Chapter 2 of Part 8 of the Order;
 - (ix) is subject to a bankruptcy restrictions order or undertaking or debt relief restrictions order or undertaking; or
 - (x) has made an excessive pension contribution, which must be construed in accordance with Article 315A of the Order; and
- (b) whether at the date of the application—
- (i) a bankruptcy petition has been presented by the debtor or by a creditor against the debtor;
 - (ii) a bankruptcy petition has been presented by the debtor, but the court has referred the debtor for the purpose of making an application for a debt relief order;
 - (iii) an administration order under Part 6 of the Judgments Enforcement Order (see Article 208F) is in force in respect of the debtor; and
 - (iv) any other legal action has been taken against the debtor in respect of any of the debtor's existing debts.
- (4) In the application, the debtor must also—
- (a) consent to checks being made by the official receiver for the purpose of verifying that the debtor complies with the conditions to which the making of a debt relief order is subject;
 - (b) state that the debtor is unable to pay his debts;
 - (c) request a debt relief order; and
 - (d) indicate the date on which the application is completed.
- (5) The debtor must submit to the approved intermediary such information and such documents by reference to which the information in the application, including information about each debt, the amount of the debt and the name and address of the creditor, may be substantiated.
- (6) In making the application, the debtor must in every case deduct from the amount of the debt all trade and other discounts which are available to the debtor, except any discount for immediate, early or cash settlement.
- (7) Subject to paragraph (8), where a debt was incurred or is payable in a currency other than sterling, the amount of the debt must be converted into sterling at the official exchange rate prevailing on the application date.

(8) The official exchange rate is the middle exchange rate on the London foreign exchange market at the close of business, as published for the date in question or, in the absence of any such published rate for the date in question, such rate as the official receiver determines.

(9) Where a debt consists of unpaid payments of a periodical nature, the amount of the debt must consist of any amounts due and unpaid up to the date of the application.

(10) Where at the application date any payment was accruing due, the debt must consist of so much as would have fallen due at that date, if accruing from day to day.

(11) A debtor may include a debt of which payment is not yet due at the date of the application, provided that it is for a liquidated sum payable at some certain future time.

Application for a debt relief order

5A.5.—(1) Subject to paragraphs (2) and (3), an application for a debt relief order must be completed and sent to the official receiver in electronic form and by electronic means.

(2) An application in electronic form sent by electronic means must be treated as not having been submitted unless and until its receipt has been acknowledged by the official receiver in the same form and by the same means.

(3) In the event of any malfunction or error in the operation of the electronic form or means referred to, the official receiver must notify the competent authorities and approved intermediaries—

- (a) that approved intermediaries may, for a specified period, complete and send applications in hard copy form; and
- (b) of the postal address to which such applications are to be sent and any terms or conditions to which their use is subject.

Approved Intermediary

5A.6.—(1) The approved intermediary, as and when requested by a debtor who proposes to make an application for a debt relief order through him, must create an application for a debt relief order in the name of the debtor.

(2) The approved intermediary through whom the application for a debt relief order is to be made may assist the debtor—

- (a) to identify what information is required to complete the application;
- (b) based upon the documentation and information supplied by the debtor, to ascertain whether—
 - (i) the debtor appears to have debts not exceeding the prescribed amount;
 - (ii) the debtor's surplus income does not exceed the prescribed amount; and
 - (iii) the value of the debtor's property does not exceed the prescribed amount; and
- (c) to ensure that the application (if any) is completed in full.

(3) The approved intermediary must draw the debtor's attention to—

- (a) all the conditions to which an application for, and the making of, a debt relief order is subject;
- (b) the possible consequences of the making by the debtor of any false representation or omission in the debtor's application; and
- (c) the fact that verification checks will be made for the purpose of verifying that the debtor complies with the conditions to which the making of a debt relief order is subject and the requirement for the debtor to consent to such checks being made.

(4) If and when instructed to do so by the debtor, the approved intermediary must send the application to the official receiver on behalf of the debtor.

Notice to be given by official receiver to Enforcement of Judgments Office of application for a debt relief order

5A.7. The official receiver must, immediately on receipt of an application for a debt relief order, complete and send notice to the Enforcement of Judgments Office in electronic form and by electronic means stating,

- (a) the name and current address of the debtor;
- (b) any previous addresses listed by the debtor in his application;
- (c) the date of, and the reference number allocated to, the debtor's application;
- (d) the debtor's date of birth; and
- (e) the debtor's national insurance number.

Notice to be given by official receiver to Enforcement of Judgments Office of cancellation of application for debt relief order

5A.8. —In the event of an application for a debt relief order being cancelled prior to its being considered by the official receiver in accordance with Article 208C, the official receiver must, as soon as reasonably practicable, complete and send notice to the Enforcement of Judgments Office in electronic form and by electronic means stating—

- (a) the name and current address of the debtor;
- (b) any previous addresses by the debtor in his application;
- (c) the date of, and the reference number allocated to, the debtor's application;
- (d) the debtor's date of birth;
- (e) the debtor's national insurance number; and
- (f) the date on which the application was cancelled.

Form, manner and reasons for refusal of application for debt relief order

5A.9.—(1) The official receiver must notify the debtor of his decision to refuse an application for a debt relief order in accordance with this Rule.

(2) The official receiver must send a notice in writing to the debtor stating—

- (a) that the official receiver has decided to refuse the debtor's application, and
- (b) the reason for which it has been refused.

Notice to be given by official receiver to Enforcement of Judgments Office of decision to refuse an application for a debt relief order

5A.10. —The official receiver must complete and send notice of any decision to refuse an application for a debt relief order to the Enforcement of Judgments Office in electronic form and by electronics means stating—

- (a) the name and current address of the debtor;
- (b) any previous addresses listed by the debtor in his application;
- (c) the date of, and the reference number allocated to, the debtor's application;
- (d) the debtor's date of birth;
- (e) the debtor's national insurance number; and
- (f) the date on which the official receiver decided to refuse the application.

Prescribed verification checks – conditions in paragraphs 1 to 8 of Schedule 2ZA

5.A.11.—(1) In this Rule, “credit reference agency” means a person licensed to carry on a business comprising the furnishing of information relevant to the financial standing of individuals.

(2) For the purposes of paragraphs (4) and (5) of Article 208D and the conditions specified in paragraphs 1 to 8 of Schedule 2ZA, the prescribed verification checks are those searches or enquiries specified in relation to the condition in paragraphs (3) to (8).

(3) For the purpose of verifying a debtor’s connection with Northern Ireland on the application date, verification checks made in, or with, one or more of the following—

- (a) the electoral registers for the areas in Northern Ireland in which the debtor in, and at the date of, the debtor’s application, claims to reside or to carry on business or to have resided or carried on business;
- (b) the Department’s records of bankruptcy orders made;
- (c) the register of individual voluntary arrangements;
- (d) the register of debt relief orders;
- (e) the bankruptcy restrictions register;
- (f) the debt relief restrictions register;
- (g) a credit reference agency.

(4) For the purpose of verifying that a debtor—

- (a) is not, on the determination date—
 - (i) an undischarged bankrupt;
 - (ii) subject to a bankruptcy restrictions order or undertaking;
 - (iii) subject to a debt relief restrictions order or undertaking;
 - (iv) subject to an individual voluntary arrangement; or
- (b) has not been the subject of a debt relief order in the period of 6 years ending with the determination date,

verification checks made in one or more of the records and registers specified in paragraph (5).

(5) The records and registers referred to in paragraph (4) are—

- (a) the Department’s records of bankruptcy orders made;
- (b) the register of individual voluntary arrangements;
- (c) the register of debt relief orders;
- (d) the bankruptcy restrictions register; and
- (e) the debt relief restrictions register.

(6) For the purpose of verifying—

- (a) that the debtor is not, on the determination date, subject to an interim order;
- (b) whether a debtor’s or creditor’s bankruptcy petition has been presented against the debtor prior to the determination date;
- (c) where a bankruptcy petition has been presented against the debtor prior to the determination date, whether proceedings in relation to the petition have finally been disposed of before the determination date;
- (d) where a bankruptcy petition has been presented against the debtor prior to the determination date, the status of the proceedings in relation to the petition and whether the court has referred the debtor under Article 248A(2) for the purpose of making an application for a debt relief order;
- (e) where a creditor’s bankruptcy petition has been presented against the debtor prior to the determination date, the status of the proceedings in relation to the petition

and whether the person who presented the petition has consented to the making of the application for a debt relief order,

verification checks made in, or with one or more of the sources specified in paragraph (7).

(7) The sources are—

- (a) the Department's records of deposits under Article 3 of the Insolvency (Deposits) Order (Northern Ireland) 1991^(a) paid prior to presentation of a bankruptcy petition;
- (b) the court's records;
- (c) a credit reference agency.

(8) For the purpose of verifying that—

- (a) the amount of the debtor's overall indebtedness;
- (b) the amount of the debtor's monthly surplus income; or
- (c) the total value of the debtor's property;

does not exceed the prescribed amount, verification checks made with a credit reference agency.

Determination of debtor's monthly surplus income

5A.12.—(1) For the purposes of this Part, the income of a debtor comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and (despite anything in Article 12 or 13 of the Welfare Reform and Pensions (Northern Ireland) Order 1999^(b)) any payment under a pension scheme.

(2) In determining the monthly surplus income of a debtor, the official receiver must take into account any contribution made by any member of the debtor's family to the amount necessary for the reasonable domestic needs of the debtor and his family.

Determination of value of a debtor's property

5A.13.—(1) Subject to Rule 5A.14, the official receiver in determining whether the condition in paragraph 8 of Schedule 2ZA to the Order is met must regard as a debtor's property for the purposes of this Part—

- (a) all property belonging to or vested in the debtor on the determination date, and
- (b) any property which by virtue of paragraphs (2) and (3) or Rule 5A.14 is comprised in or is treated as falling within sub-paragraph (a).

(2) References in this Part to property, in relation to a debtor, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property which is not or is deemed not for the time being to be the property of the debtor and cannot be exercised for the benefit of the debtor, and a power exercisable over or in respect of property is deemed for the purposes of this Part to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(3) For the purposes of any such provision in this Part, property belonging to or vested in the debtor so belongs or vests in him subject to the rights of any person other than the debtor (whether as a secured creditor of the debtor or otherwise) in relation to it.

(a) S.R. 1991 No. 384

(b) S.I. 1999/3147 (N.I. 11)

Particular descriptions of property to be excluded for the purpose of determining the value of a person's property

5A.14.—(1) For the purposes of Rule 5A.13, the official receiver must disregard—

- (a) subject to paragraph (2), a single domestic motor vehicle belonging to or vested in the debtor provided that—
 - (i) it has been especially adapted for use by him because he has a physical impairment that has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities; or
 - (ii) the maximum potential realisable value of the vehicle is less than the prescribed amount;
- (b) subject to paragraph (3), such tools, books and other items of equipment as are necessary to the debtor for use personally by him in his employment, business or vocation;
- (c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his family;
- (d) property held by the debtor on trust for any other person; or
- (e) any right of the debtor under an approved pension arrangement scheme within the meaning of Article 12 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(2) Where—

- (a) a vehicle is to be disregarded by the official receiver by virtue of paragraph (1)(a)(i) (adapted vehicle); and
- (b) it appears to the official receiver that the realisable value of the vehicle exceeds the cost of a reasonable replacement for it,

the official receiver must disregard only the value of a reasonable replacement.

(3) Where—

- (a) property is to be disregarded by the official receiver by virtue of paragraph (1)(b) or (c) (tools of trade, household effects, etc); and
- (b) it appears to the official receiver that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the official receiver must disregard only the value of a reasonable replacement.

(4) For the purposes of this Rule—

- (a) the prescribed amount is £1000; and
- (b) property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

(5) This Rule has effect subject to the provisions of any statutory provisions not contained in these Rules or in the Order under which any property is to be excluded from belonging to or being vested in the debtor for the purposes of the determination of a debt relief order.

Making of debt relief order – form of debt relief order

5A.15. A debt relief order must be in writing and include the following particulars—

- (a) the name and address of the debtor;
- (b) the date of, and the reference number allocated to, the debtor's application;
- (c) a list of the debtor's qualifying debts as at the application date, specifying the amount owed and the creditor's name, address and reference (if any); and
- (d) the date on which the order was made.

Other steps to be taken by official receiver or debtor upon making of the order

- 5A.16.** In addition to giving a copy of the order to the debtor, the official receiver must—
- (a) notify the approved intermediary through whom the debtor’s application was made, of the making and date of the order;
 - (b) send a copy of the order in electronic form by electronic means to the Enforcement of Judgments Office; and
 - (c) cause an entry to be made in the register of debt relief orders in accordance with Rule 6A.3A.

Prescribed information to be notified to creditor on making of debt relief order

5A.17. The official receiver must notify each creditor to whom a qualifying debt specified in the order is owed, of—

- (a) the making, the date and the reference number of the order and its effect;
- (b) the matters to which a creditor may object under Article 208K; and
- (c) the name, address and telephone number of the official receiver sending the notice and the address to which any objection under that Article may or must be sent.

Creditor’s objection

5A.18.—(1) In this Rule, “creditor” means a person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed.

(2) A creditor who wishes to object to—

- (a) the making of an order;
- (b) the inclusion of the debt in the list of the debtor’s qualifying debts; or
- (c) the details of the debt specified in the order,

must object in writing to the official receiver in accordance with this Rule.

(3) For an objection to be considered by the official receiver, it must be made during the moratorium period relating to the order and within 28 days of the date on which the creditor was notified of the making of the order and must include—

- (a) the name and address of the creditor;
- (b) the name of the debtor and the reference number of the order;
- (c) which of the matters under Article 208K the creditor objects to;
- (d) a statement indicating at least one or more of the grounds listed in paragraph (4), upon which the creditor relies;
- (e) a statement indicating the facts upon which the creditor relies, and
- (f) information and documents in support of the grounds and the facts upon which the creditor relies.

(4) The grounds are that—

- (a) there is an error in, or an omission from, something specified in the debt relief order;
- (b) a bankruptcy order has been made in respect of the debtor;
- (c) the debtor has made a proposal under Chapter 2 of Part 8 of the Order;
- (d) the official receiver should not have been satisfied that—
 - (i) the debts specified in the order were qualifying debts of the debtor as at the application date;
 - (ii) the conditions specified in Part 1 of Schedule 2ZA to the Order were met;

- (iii) the conditions specified in Part 2 of that Schedule were met or that any failure to meet such condition did not prevent him from making the order;
- (iv) the condition in paragraph 7 of that Schedule was not met at any time after the order was made;
- (v) the condition in paragraph 8 of that Schedule was not met at any time after the order was made.

(5) For the purposes of paragraph (4)(d)(iv) and (v) above, paragraphs 7 and 8 of Schedule 2ZA to the Order are to be read as if references to the determination date were references to the time in question.

Official receiver’s response to objection

5A.19.—(1) For the purpose of this Rule—

“the creditor” means the creditor specified in a debt relief order as a creditor to whom a qualifying debt is owed and who has made an objection in relation to that order under the Order and the Rules;

“the debt relief order” means the debt relief order in which the creditor is specified;

“the debtor” means the person subject to the debt relief order.

(2) If, after considering an objection in accordance with Article 208K, the official receiver is minded to revoke or amend the debt relief order, he must send to the debtor particulars of—

- (a) the objection;
- (b) the grounds and facts upon which the creditor relies; and
- (c) the address to which the debtor’s comments must be sent,

and invite the debtor to comment on them.

(3) Before deciding whether to revoke or amend the debt relief order, the official receiver must consider any comments by the debtor, provided they are made within 21 days after the particulars were sent to the debtor.

(4) The official receiver must—

- (a) within 14 days of coming to a decision specified in Article 208K(5)—
 - (i) send notice to the creditor under and in accordance with Rule 5A.20 of either the revocation or amendment of the debt relief order under Article 208L; or
 - (ii) under Rule 5A.23(b), if he would not otherwise be treated as such, treat the creditor as a person interested in any application made under Article 208M by the official receiver to the court for directions or an order in relation to any matter arising in connection with the debt relief order, to whom notice of the official receiver’s application must be sent; or
 - (iii) send notice to the creditor of the official receiver’s decision to take other steps in relation to the debtor and the steps he proposes to take; or
- (b) notify the creditor of the official receiver’s decision to do none of the above.

Procedure to be followed when revoking or amending a debt relief order

5A.20.—(1) Subject to Rule 5A.30, the official receiver must as soon as reasonably practicable after deciding to revoke a debt relief order—

- (a) send notice of the decision to revoke to—
 - (i) the debtor;
 - (ii) any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed; and
 - (iii) the Enforcement of Judgments Office; and

- (b) upon the revocation taking effect, provided that information concerning a debt relief order has not been deleted under Rule 6A.3B, cause the entry in the register of debt relief orders relating to the debt relief order to be amended accordingly.

(2) The notice of the decision to revoke to be sent to the debtor and any creditors under paragraph (1)(a)(i) and (a)(ii) must—

- (a) identify the debtor and the date and reference number of the debt relief order;
- (b) state the reasons for revocation; and
- (c) specify the date (whether under paragraph (5) or (7) of Article 208L) on or from which the revocation has effect.

(3) The notice of the decision to revoke to be sent to the Enforcement of Judgments Office under paragraph (1)(a)(iii) must be completed and sent to the Enforcement of Judgments Office in electronic form and by electronic means and must state—

- (a) the name and current address of the debtor;
- (b) the date and reference number of the debt relief order; and
- (c) the date on or from which the revocation has effect.

(4) Where—

- (a) a revocation is to take effect from a specified date; and
- (b) the official receiver thinks it appropriate to revoke the order under paragraph (7) of Article 208L with immediate effect at any time before that date,

any debtor or creditor to whom notice of the specified date has already been sent pursuant to paragraph (1), and the Enforcement of Judgments Office must be notified by the official receiver of the earlier date on which the revocation has effect.

(5) The notification of the earlier date on which revocation is to take effect to be given to the Enforcement of Judgments Office under paragraph (4) must take the form of the completion and sending to that Office by electronic means of a copy of the electronic form sent to that Office under paragraph (3), with the substitution of the earlier date on which the revocation is to take effect.

(6) Upon amendment of a debt relief order, the official receiver must as soon as reasonably practicable after the amendment—

- (a) send notice of the amendment to—
 - (i) the debtor;
 - (ii) any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed; and
 - (iii) the Enforcement of Judgments Office
- (b) in the notice of amendment to be sent to the debtor and any creditor under sub-paragraphs (a)(i) and (a)(ii)—
 - (i) identify the debtor and the date and reference number of the debt relief order;
 - (ii) specify the amendment;
 - (iii) specify the date on which the amendment was made; and
 - (iv) state the reasons for it;
- (c) in the notice of the amendment to be sent to the Enforcement of Judgments Office under sub-paragraph (a)(iii), which must be completed and sent in electronic form and by electronic means, state—
 - (i) the name and current address of the debtor;
 - (ii) the date and reference number of the debt relief order;
 - (iii) the amendment; and
 - (iv) the date on which the amendment was made; and

- (d) cause the entry in the register of debt relief orders relating to the amended debt relief order to be amended accordingly.

Notification of official receiver by debtor of matters in Article 208J(3) or (5)

- 5A.21.**—(1) As soon as reasonably practicable after the debtor becomes aware of—
- (a) an error in, or omission from, the information supplied to the official receiver in, or in support of, the application, he must notify the official receiver of—
 - (i) the nature of the error or omission; and
 - (ii) the reason for it;
 - (b) a change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application, he must notify the official receiver of—
 - (i) the nature of the change; and
 - (ii) the date of the change.
- (2) Where a debt relief order is made and—
- (a) there is an increase in the debtor’s income during the moratorium period applicable to the order, the debtor must notify the official receiver, as soon as reasonably practicable after the date of the increase, of—
 - (i) the amount of the increase;
 - (ii) the reason for it;
 - (iii) the date of the increase; and
 - (iv) its expected duration;
 - (b) the debtor acquires any property or any property is devolved upon him during that period, the debtor must notify the official receiver, as soon as reasonably practicable after the date of the acquisition or the devolution, of—
 - (i) the nature of the acquisition or devolution;
 - (ii) the date of the acquisition or devolution;
 - (iii) the reason for it; and
 - (iv) its value;
 - (c) the debtor becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date, the debtor must notify the official receiver, as soon as reasonably practicable after the date on which the debtor becomes aware of it, of—
 - (i) the nature of the error or omission;
 - (ii) the reason for it; and
 - (iii) the date on which the debtor becomes aware of it.

Persons at risk of violence – debt relief orders, debt relief restrictions orders and debt relief restrictions undertakings

- 5A.22.**—(1) For the purposes of this Rule—
- “debtor” means a person subject to a debt relief order, or a debt relief restrictions order or a debt relief restrictions undertaking; and
 - “current address” means in relation to any debtor the address of his current place of residence and any address at which he currently carries on business.

- (2) This Rule applies in any case where disclosure or continuing disclosure to other persons (whether to the public generally or to specific persons) of the current address or

whereabouts of a debtor might reasonably be expected to lead to violence against him or against a person who normally resides with him as a member of his family.

- (3) The court may, subject to paragraph (5)—
- (a) on the application of a debtor subject to a debt relief order or the official receiver in respect of such a debtor, order that—
 - (i) the details in respect of the debtor to be entered onto the register of debt relief orders under Rule 6A.3A must not include details of the debtor's current address; or
 - (ii) the details of the debtor's current address kept on the register of debt relief orders under Rule 6A.1(1A) must be removed from such register;
 - (b) on the application of a debtor subject to a debt relief restrictions order or the official receiver in respect of such a debtor, order that—
 - (i) details of the debtor's current address must be removed from any part of the court file of the proceedings in relation to the debtor which is open to inspection and be kept on a separate file not open to inspection;
 - (ii) the full title of the proceedings must be amended by the removal of the details of the debtor's current address from the description of the debtor;
 - (iii) the details in respect of the debtor to be entered onto the debt relief restrictions register under Rule 6A.5A must not include details of the debtor's current address; or
 - (iv) the details of the debtor's current address kept on the debt relief restrictions register under Rule 6A.1(2)(b) must be removed from such register;
 - (c) on the application of a debtor subject to a debt relief restrictions undertaking or the official receiver in respect of such a debtor, order that—
 - (i) the details of the debtor's current address must be excluded from the details in respect of the debtor to be entered onto the debt relief restrictions register under Rule 6A.5A; or
 - (ii) the details of the debtor's current address kept on the debt relief restrictions register under Rule 6A.1(2)(b) must be removed from such register.
- (4) Where the court makes an order under paragraph (3), it may further order that—
- (a) the full title of any proceedings; or
 - (b) the details in respect of the debtor kept on or to be entered onto the registers referred to in that paragraph,

as the case may be, must instead include such other details of the debtor's addresses or whereabouts as the court thinks just, including details of any address at which the debtor has previously resided or carried on business.

(5) In any case where an application is made by a debtor under or by virtue of this Rule, the application must be accompanied by an affidavit referring to this Rule and containing sufficient evidence to satisfy the court, that this Rule applies to or in respect of that debtor.

Application to the High Court under Article 208M

- 5A.23.** Where an application is made to the court under Article 208M—
- (a) by a person who is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for a debt relief order, if the person making the application—
 - (i) is the debtor, notice of the application to the court must be sent to the official receiver and to any creditor specified in the debt relief order or in the application for a debt relief order; or
 - (ii) is a person other than the debtor, notice of the application to the court must be sent to the official receiver and to the debtor;

- (b) by the official receiver for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order, notice of the application must be sent by the official receiver to the debtor and to any person appearing to the official receiver to have an interest in the application.

Extension of moratorium period

5A.24. Where the moratorium period applicable to a debt relief order is extended—

- (a) notice of the extension, and the period for which it is extended, must be sent,
 - (i) where extended by the court, to the official receiver, who must send a copy to the debtor subject to the debt relief order and to the creditors specified in it;
 - (ii) where extended by the official receiver, to the debtor subject to the debt relief order and to the creditors specified in it;
- (b) the official receiver must also complete and send notice of the extension to the Enforcement of Judgments Office in electronic form and by electronic means stating,
 - (i) the name and current address of the debtor;
 - (ii) the date and reference number of the debt relief order;
 - (iii) the date on which the period by which the moratorium has been extended will end;
 - (iv) whether the moratorium was extended by the court or the official receiver;
 - (v) the date on which the extension was made; and
- (c) the official receiver must cause to be entered in the register of debt relief orders that—
 - (i) such an extension has been made in relation to the debtor;
 - (ii) the date on which the extension was made;
 - (iii) its duration; and
 - (iv) the date of the anticipated end of the moratorium period.

Referral of debtor, by the High Court, to intermediary under Article 248A

5A.25. If, on the hearing of a debtor's bankruptcy petition, the court refers the debtor to an approved intermediary under Article 248A for the purposes of making an application for a debt relief order, as soon as reasonably practicable after the making of the order of referral—

- (a) the court must send to the debtor a sealed copy of the order of referral, and
- (b) the debtor must send to the approved intermediary a copy of the order and copies of the debtor's petition and statement of affairs.

Creditor's bankruptcy petition – where creditor consents to making of application for a debt relief order

5A.26.—(1) This Rule applies where prior to the determination of an application, a creditor's petition for bankruptcy has been presented against a debtor and the proceedings in relation to that petition remain before the court.

(2) In this Rule,

“the petition” means the creditor's bankruptcy petition; and

“the debt” means the debt to which the creditor's bankruptcy petition relates.

(3) If, on the hearing of the petition, the petitioner consents to the making by the debtor of an application for a debt relief order in respect of the debt—

- (a) the court must—
 - (i) refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purpose of making an application for a debt relief order in relation to the debtor and the debt noting the consent of the creditor on the order for referral;
 - (ii) stay the proceedings on the petition in relation to the debt on such terms and conditions as it thinks just; and
- (b) the debtor must send to the approved intermediary as soon as reasonably practicable after the making of the order of referral,
 - (i) a sealed copy of the order, and
 - (ii) copies of the petition and (if any), of the creditor’s statutory demand.

(4) The approved intermediary must, on receipt of the order and the copies, as soon as reasonably practicable after the application for a debt relief order has been made, send them to the official receiver endorsed with the name of the debtor and the number of the application to which they relate.

(5) If, following the reference by the court, a debt relief order is made in relation to the debt, the petition must be dismissed in relation to it unless the court otherwise directs.

Application for leave under Company Directors Disqualification (Northern Ireland) Order 2002

5A.27.—(1) An application by a person—

- (a) in relation to whom a moratorium period under a debt relief order applies, or
- (b) in respect of whom a debt relief restrictions order or undertaking is in force,

for leave (“the applicant for leave”), under Article 15 of the Company Directors Disqualification (Northern Ireland) Order 2002(a), to act as director of, or to take part or be concerned in the promotion, formation or management of a company, must be supported by an affidavit complying with this Rule.

(2) The affidavit must identify the company and specify—

- (a) the nature of its business or intended business, and the place or places where that business is, or is to be, carried on;
- (b) whether it is, or is to be, a private or a public company;
- (c) the persons who are, or are to be, principally responsible for the conduct of its affairs (whether as director, shadow directors, managers or otherwise);
- (d) the manner and capacity in which the applicant for leave proposes to take part or be concerned in the promotion or formation of the company or, as the case may be, its management; and
- (e) the emoluments and other benefits to be obtained from the directorship.

(3) If the company is already in existence, the affidavit must specify the date of its incorporation and the amount of its nominal and issued share capital; and if not, it must specify the amount, or approximate amount, of its proposed commencing share capital, and the sources from which that capital is to be obtained.

(4) Where the applicant for leave intends to take part or be concerned in the promotion or formation of a company, the affidavit must contain an undertaking by the applicant for leave that he will, within not less than 5 business days of the company being incorporated, file in court a copy of its memorandum of association and certificate of incorporation under section 15 of the Companies Act.

(a) S.I. 2002/3150 (N.I. 4)

(5) The court must fix a venue for the hearing of the application, and must give notice to the applicant for leave accordingly.

Application for leave under Company Directors Disqualification (Northern Ireland) Order 2002 – report of official receiver

5A.28.—(1) The applicant for leave must, not less than 28 days before the hearing date, give to the official receiver, notice of the venue, accompanied by copies of the application and the affidavit under Rule 5A.27.

(2) The official receiver may, not less than 14 days before the hearing date, file in court a report of any matters which he considers ought to be drawn to the court’s attention. A copy of the report must be sent by him, as soon as reasonably practicable after it is filed, to the applicant for leave.

(3) The applicant for leave may, not later than 5 business days before the hearing date, file in court a notice specifying any statements in the official receiver’s report which he intends to deny or dispute.

(4) If he gives notice under paragraph (3), he must send copies of it, not less than 4 business days before the hearing date, to the official receiver.

(5) The official receiver may appear on the hearing of the application, and may make representations and put to the applicant for leave such questions as the court may allow.

Application for leave under Company Directors Disqualification (Northern Ireland) Order 2002 – court’s order on application

5A.29.—(1) If the court grants the application for leave under Article 15 of the Company Directors Disqualification (Northern Ireland) Order 2002, its order must specify that which by virtue of the order the applicant has leave to do.

(2) The court may at the same time, having regard to any representations made by the official receiver on the hearing of the application, exercise in relation to the moratorium period or the debt relief order to which the applicant for leave is subject, any power which it has under Article 208M.

(3) Whether or not the application is granted, copies of the order must be sent by the court to the applicant and the official receiver.

Death of debtor at a time when a moratorium period under a debt relief order applies in relation to him

5A.30.—(1) This Rule applies where a debtor dies at a time when a moratorium period under a debt relief order applies in relation to him

(2) The official receiver must, as soon as reasonable practicable after receiving notice of the death of the debtor—

- (a) revoke the debt relief order;
- (b) cause a note of the fact and the date of the death to be entered on the register of debt relief orders under Rule 6A.6; and
- (c) send notice of the revocation—
 - (i) to any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed;
 - (ii) to the Enforcement of Judgments Office; and
 - (iii) to the personal representatives of the deceased debtor.

(3) In the notice of revocation, the official receiver must—

- (a) identify the debtor;
- (b) state the reason for the revocation; and

(c) specify the date on which the revocation took effect.

(4) In the notice of revocation sent to the Enforcement of Judgments Office, the debtor must be identified by stating—

(a) their name;

(b) the address at which they resided prior to their death; and

(c) the date and reference number of the debt relief order.”

SCHEDULE 2

Rule 30

Rule 7.22

Form 7.08

**Warrant of Arrest, etc under Article 200, 208N or 337
of the Insolvency (Northern Ireland) Order 1989**

*See Rule 7.1

*(HEADING AND TITLE)

To
(a) Insert address of prison 1. The Chief Constable of the Police Service of Northern Ireland
2. The Governor of Her Majesty's Prison at (a)

(b) Insert full name and address of person to be examined (b)

was required by an order of this court dated _____ to attend at this court to be examined on oath

(c) Delete as applicable (d) Insert details of documents to be produced

(c) [and] [or] [to produce documents in his possession or under his control, namely (d)

]

The said (b) has failed to attend at the appointed time (c) [and] [or] [produce the required documents]

You to whom this warrant is firstly directed are required to cause (c) [any books, papers, records, money or goods in the possession of (b) to be seized and] the said (b) to be arrested and brought before this court for examination at such time and place as the court directs. In the meantime he shall be detained and delivered to the Governor of Her Majesty's Prison at (a)

The arrest of the said (b) shall be reported to the court and its directions sought.

(e) Insert name

(c) [Anything seized you are required to cause [to be kept safely to await the written orders of the court as to its disposal] [to be delivered to, or otherwise dealt with as directed by, (e)]]

And you, the Governor of (a) Prison are required to receive (b)

And keep him in custody to await the direction or order of this Court.

Date _____

Order for Production of Person Arrested under Warrant Issued under Articles 114, 200, 208N, 335 or 337 of the Insolvency (Northern Ireland) Order 1989

*See Rule 7.1

*(HEADING AND TITLE)

The court having been notified that

(a) Insert full name of person arrested (a)

(b) Insert date

has been arrested under a warrant issued by this court on (b)

(c) Insert name of prison

It is ordered that the Governor of (c) Prison have (a)

brought in custody for examination before this court sitting at:

Date _____

Time _____ hours

Place _____

and that in the meantime he be detained and afterwards, if the court directs, be taken back to prison and detained pursuant to the warrant.

Dated _____

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Order Under Article 200, 208N or 337 of the Insolvency (Northern Ireland) Order 1989

*See Rule 7.1

*(HEADING AND TITLE)

(a) Insert full name, address and description of applicant

Upon the application of (a)

And upon hearing

And upon reading the evidence

(b) Insert full name, address and description of person to be examined

It is ordered that (b)

do attend on:

Date _____

Time _____ hours

Place _____

to be examined on oath in the above-mentioned matter

(c) Delete as applicable

(c) [and to have and produce the documents specified below (d)]

(d) Insert details of documents to be produced

Dated _____

Note:

If you fail to comply with this order without reasonable excuse having been given to and accepted by the court, a warrant may be issued for you to be arrested and brought before the court for examination.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) (“the principal Rules”). The amendments make provision in respect of debt relief orders, debt relief restrictions orders and debt relief restrictions undertakings.

The changes to the principal Rules are consequential on amendments to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (“the 1989 Order”) by the Debt Relief Act (Northern Ireland) 2010 (c. 16) (“the 2010 Act”).

Article 1 of the 2010 Act introduces a new Part 7A into the 1989 Order. Part 7A makes provision for debt relief orders. Applications for debt relief orders are made to the official receiver through an approved intermediary. A debt relief order is made in respect of qualifying debts. A debt relief order which is made in respect of qualifying debts imposes a moratorium on action in respect of the debts to which the order applies. At the end of the period of the moratorium, if the debt relief order has not been revoked, the debtor is discharged from his qualifying debts.

Articles 2 and 3 of the 2010 Act insert two new Schedules, Schedule 2ZA and Schedule 2ZB, into the 1989 Order. Schedule 2ZA sets out certain conditions with which an applicant for a debt relief order must comply in order to be eligible for a debt relief order. Schedule 2ZB introduces debt relief restrictions orders and undertakings. The Schedule to the 2010 Act makes amendments to the 1989 Order consequential to the introduction of debt relief orders and debt relief restrictions orders and undertakings.

The Rules relating to debt relief orders are made under Article 359 of the 1989 Order.

Rule 8 of these Rules inserts new Part 5A into the principal Rules by way of Schedule 1 to these Rules. Part 5A of the principal Rules sets out the matters which Part 7A of the 1989 Order either permits or requires to be prescribed by rules for the purpose of an application for, and the making of debt relief orders.

Rule 10 of these Rules inserts new Rules 6.245 to 6.256 into Part 6 of the principal Rules. The new Rules introduce debt relief restrictions orders and undertakings which correspond in almost every way to the bankruptcy restrictions orders and undertakings which are already provided for in Part 6.

Rules 11 to 14 amend the existing Rules to provide for the registration of debt relief orders and debt relief restrictions orders and undertakings. Provision is made for the insertion of new Rules 6A.3A and 6A.3B and new Rules 6A.5A and 6A.5B which make specific provision for the making of entries in, and deletion of information from the debt relief orders and debt relief restrictions registers.

Rules 3, 15 to 23, 24 to 26, 27 and 28, and 29 make amendments respectively to Part 1 (introductory provisions), Part 7 (court procedure and practice), Part 9 (examination of persons), Part 10 (official receivers), Part 12 (miscellaneous and general) of the principal Rules consequential upon the introduction of new Part 7A into the 1989 Order and new Part 5A into the principal Rules.

Rule 30 and Schedule 2 substitute new forms 7.08 (Warrant of Arrest), 7.09 (Order for Production of Persons Arrested) and 9.1 (Order to attend to be examined on oath). The new forms can be used with Article 208N to summon persons listed in that Article to appear before the High Court and for their arrest should they fail to appear.

An Impact Assessment was prepared for the Debt Relief Act (Northern Ireland) 2010. It can be viewed at www.detini.gov.uk/insolvency

