STATUTORY RULES OF NORTHERN IRELAND

2011 No. 15

INSOLVENCY

The Debt Relief Orders (Designation of Competent Authorities) Regulations (Northern Ireland) 2011

Made - - - -	*21st January 2011*
Coming into operation	*30th June 2011*

The Department of Enterprise, Trade and Investment(**1**) makes the following Regulations, in exercise of the powers conferred by Article 208U(4) of the Insolvency (Northern Ireland) Order 1989(**2**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Debt Relief Orders (Designation of Competent Authorities) Regulations (Northern Ireland) 2011 and come into operation on 30th June 2011.

(2) "the Department" means the Department of Enterprise, Trade and Investment.

(3) "The Order" means the Insolvency (Northern Ireland) Order 1989.

PART I

Competent authorities

Designated competent authorities

2.—(1) The Department may designate a body which appears to it to fall within paragraph (2) to be a competent authority for the purposes of granting approvals under Article 208U of the Order.

(2) A body may be designated by the Department if—

(a) it makes an application to the Department to be designated as a competent authority in accordance with the Order and these Regulations;

(b) it provides or ensures—

(i) the provision of debt management or debt counselling services through intermediaries, and

(**1**) Formerly the Department of Economic Development; S.I. 1999/283 (N.I. 1), Article 3(5)

(**2**) S.I. 1989/2405 (N.I. 19), Article 208U is inserted into the Insolvency (Northern Ireland) Order 1989 by Article 1(b) of the Debt Relief Act (Northern Ireland) 2010 (c. 16)

(ii) the provision to those intermediaries of education, training and development (including continuing education, training and development) in debt management or debt counselling services, and

(c) it appears to the Department that it is a fit and proper body to approve individuals to act as intermediaries between a person wishing to make an application for a debt relief order and the official receiver.

Application for designation as a competent authority

3.—(1) An application by a body ("the applicant body") for designation as a competent authority for the purposes of granting approvals under Article 208U of the Order ("the application") shall be made to the Department in writing and contain—

(a) the applicant body's full name;

(b) the address of its registered office or, if it has no registered office, the address of its centre of administration or principal place of business;

(c) its registered number (if any);

(d) if registered outside the United Kingdom, the state in which it is registered and the place where the register is maintained;

(e) if not registered, the nature of the applicant body;

(f) a copy of its constitution;

(g) if a charitable body, the objects or purposes of the charity (if not set out in the constitution) and—

(i) if registered as a charity, its registered number as such and (if registered outside the United Kingdom) the state in which it is registered and the place where the register is maintained, or,

(ii) if not registered as a charity, reasons why it is not so registered;

(h) a description of the applicant body's current occupation or activities;

(i) reasons why the applicant body should be considered for designation;

(j) a copy (if any) of its most recent—

(i) audited accounts and balance sheet, and

(ii) other statutorily required report;

(k) a statement of the sources of the applicant body's income over the past 24 months and of its assets and liabilities not earlier than 12 months before the day on which the application is made;

(l) details of the nature of the applicant body's connection with the provision of debt management or debt counselling services to the public;

(m) details of existing or proposed education, training and development programmes which are, or which are to be, made available to individuals who are to be approved as, or who are acting as, approved intermediaries;

(n) a description and explanation of—

(i) the procedure which the applicant body proposes to adopt for the approval of individuals to act as intermediaries;

(ii) the manner in which the applicant body will ensure that individuals meet the conditions set out in these Regulations subject to compliance with which an intermediary may be approved;

(iii) any additional criteria which the applicant body proposes to adopt against which it will assess the competence of individuals to act as intermediaries;

(o) an undertaking on the part of the applicant body that—

(i) it will not grant approval to individuals to act as intermediaries except as provided in these Regulations;

(ii) it will withdraw approvals of individuals to act as intermediaries as provided in these Regulations; and

(iii) it will adopt an accessible, effective, fair and transparent procedure for dealing with complaints about its functions as a competent authority, including complaints about —

(aa) any intermediary approved by it, or

(bb) the activities of any such intermediary;

(p) details of the procedures referred to in subparagraph (o)(iii) and how and to what extent they are or will be published;

(q) a statement that such procedures will include the giving of notice to any complainant to the applicant body under subparagraph (o)(iii) that, if dissatisfied with the applicant body's response to the complaint, the complainant may refer the complaint and the response to the Department;

(r) details of any consumer credit licence and public liability or indemnity insurance which the applicant body holds;

(s) if the applicant body holds a consumer credit licence, whether it provides cover for persons approved by it to act as, and in the course of acting as such intermediaries.

(2) The application may be accompanied by further information in support of the application; and the Department may request the applicant body to supply further information or evidence.

Fit and proper body

4.—(1) A body may not be designated a competent authority unless it is a fit and proper body to act as such.

(2) Without prejudice to the generality of paragraph (1), a body is not a fit and proper body qualified to act as a competent authority if it—

(a) has committed any offence under any statutory provision contained in insolvency legislation;

(b) has engaged in any deceitful or oppressive or otherwise unfair or improper practices, whether unlawful or not, or any practices which otherwise cast doubt upon the probity of the body; or

(c) has not carried on its activities with integrity and the skills appropriate to the proper performance of the duties of—

(i) a body which purports to ensure the provision of, or to provide, debt management or debt counselling services to the public, or

(ii) a competent authority; or

(d) has entered into a company voluntary arrangement under Part 2 of the Order.

Extent of designation

5. The Department shall designate a competent authority by sending to the applicant body a letter of designation which shall contain—

(a) a statement that the applicant body as competent authority is designated to approve persons of any description ("unlimited designation"), or

(b) a statement that the applicant body as competent authority is designated to approve persons only of a particular description ("limited designation") and the description of person to which the designation is limited.

Withdrawal of designation as competent authority

6.—(1) The Department may at any time—

(a) modify or withdraw an existing designation where a competent authority so requests or with its consent, or

(b) withdraw an existing designation where it appears to the Department that a body—

(i) is not or is no longer a fit and proper body to act as a competent authority;

(ii) has failed to comply with any provision of Part 7A of the Order or any rules, regulations or order made under it, including any failure to approve an intermediary, or failure to withdraw approval of an intermediary, in accordance with these regulations;

(iii) has furnished the Department with any false, inaccurate or misleading information.

(2) The Department may from time to time request a competent authority to supply such information or evidence about—

(a) itself and its activities as a competent authority, or

(b) any intermediary appointed by it or the activities of any such intermediary,

as may be required by it for the purpose of ensuring that the requirements of these regulations are being met.

PART II

Approval of intermediaries

Approval by competent authority

7.—(1) A competent authority may approve an individual to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver subject as follows.

(2) An individual may be approved—

(a) if the individual makes an application to a competent authority to be approved as an intermediary in accordance with the Order and these regulations; and

(b) it appears to the competent authority that the individual is a fit and proper person to act as intermediary between a person wishing to make an application for a debt relief order and the official receiver.

Ineligibility

8. Individuals of any of the following descriptions are ineligible to be approved by a competent authority to act as intermediaries—

(a) individuals convicted of any offence involving fraud or other dishonesty or violence whose convictions are not spent;