

2009 No. 457

INSOLVENCY, ENGLAND AND WALES

DEBT RELIEF ORDERS

**The Debt Relief Orders (Designation of Competent Authorities)
Regulations 2009**

<i>Made</i> - - - -	<i>2nd March 2009</i>
<i>Laid before Parliament</i>	<i>4th March 2009</i>
<i>Coming into force</i> - -	<i>6th April 2009</i>

The Secretary of State, in exercise of the powers conferred by section 251U(4) of the Insolvency Act 1986(a) makes the following Regulations:—

Citation, commencement and interpretation

1. These Regulations may be cited as the Debt Relief Orders (Designation of Competent Authorities) Regulations and come into force on 6th April 2009.
2. “The Act” means the Insolvency Act 1986.

PART I

Competent authorities

Designated competent authorities

3.—(1) The Secretary of State may designate a body which appears to him to fall within paragraph (2) to be a competent authority for the purposes of granting approvals under section 251U of the Act.

(2) A body may be designated by the Secretary of State if—

- (a) it makes an application to the Secretary of State to be designated as a competent authority in accordance with the Act and these Regulations;
- (b) it provides or ensures—
 - (i) the provision of debt management or debt counselling services through intermediaries, and

(a) 1986 c.45. Section 251U is inserted by section 108(1) of, and Schedule 17 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

- (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 Secretary of State 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

4.—(1) An application by a body (“the applicant body”) for designation as a competent authority for the purposes of granting approvals under section 251U of the Act (“the application”) shall be made to the Secretary of State 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 of its most recent—
 - (i) audited accounts and balance sheet, and
 - (ii) other statutorily required report,
 if any;
- (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 Secretary of State;
- (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 Secretary of State may request the applicant body to supply further information or evidence.

Fit and proper body

5.—(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 enactment 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 1 of the Act.

Extent of designation

6. The Secretary of State 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

7.—(1) The Secretary of State 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 Secretary of State 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 Act 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 Secretary of State with any false, inaccurate or misleading information.

(2) The Secretary of State 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 him or her for the purpose of ensuring that the requirements of these regulations are being met.

PART II

Approval of intermediaries

Approval by competent authority

8.—(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 Act 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

9. 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;
- (b) individuals who have committed any offence in any enactment contained in insolvency legislation;
- (c) individuals who, in the course of carrying on any trade, profession or vocation or in the course of the discharge of any functions relating to any office or employment have engaged in any deceitful or oppressive or otherwise unfair or improper practices, whether unlawful or not, or which otherwise cast doubt upon their probity;
- (d) individuals who have no experience, education or other training in the provision of debt management or debt counselling services;

- (e) individuals who have not acted with the independence, integrity and the skills appropriate to the proper performance of the duties of a provider of debt management or debt counselling services or of an approved intermediary;
- (f) undischarged bankrupts;
- (g) individuals in respect of whom there is or has been in force a bankruptcy restrictions order or undertaking or an interim bankruptcy restrictions order or undertaking or any bankruptcy restrictions order or undertaking made under the Insolvency (Northern Ireland) Order 1989(a) or the Bankruptcy (Scotland) Act 1985(b)
- (h) individuals to whom a moratorium period applies or in respect of whom a debt relief order or application for a debt relief order, has been made;
- (i) individuals in respect of whom there is or has been in force a debt relief restrictions order or undertaking or an interim debt relief restrictions order or undertaking;
- (j) individuals who are or have been subject to a disqualification order or undertaking accepted under the Company Directors Disqualification Act 1986(c) or to a disqualification order made under Part 11 of the Companies (Northern Ireland) Order 1989(d) or to a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002(e)
- (k) individuals who are patients within meaning of section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003(f) or have had a guardian appointed to them under the Adults with Incapacity (Scotland) Act 2000(g);
- (l) individuals who lack capacity within the meaning of the Mental Health Capacity Act 2005(h) to act as intermediaries between a person wishing to make an application for a debt relief order and the official receiver;
- (m) individuals who, subject to any exemption from the requirement to possess or be covered by a relevant consumer credit licence which would otherwise apply to or in relation to them, neither possess nor are validly covered by such a licence; and
- (n) individuals who are not covered, either individually or by way of a group policy, by public liability or personal indemnity insurance.

Applications to a competent authority for approval to act as intermediary

10.—(1) Applications to a competent authority by an individual for approval to act as an intermediary shall be in writing and contain—

- (a) the individual's full name and address, date of birth and gender;
- (b) any name or names used by the applicant for any purpose, if different from the above;
- (c) a description of the individual's current occupation or activities;
- (d) a description giving reasons why the individual should be considered suitable for approval;
- (e) whether the individual is a member of a relevant body and if so which;
- (f) the individual's educational and professional qualifications;
- (g) the source of the individual's income and the individual's current financial status;
- (h) details of the individual's expertise in the provision of debt management or debt counselling services including details of any education, training and development which

(a) S.I. 1989/2405 (N.I. 19).
 (b) 1986 c.66.
 (c) 1986 c.46.
 (d) S.I. 1989/2404 (N.I. 18).
 (e) S.I.2002/3150 (N.I. 4).
 (f) 2003 asp 3.
 (g) 2000 asp 4.
 (h) 2005 c.9.

the individual has undergone and any qualifications the individual has acquired in connection with the provision of debt management or debt counselling services;

- (i) details of any consumer credit licence which the individual has in place or of any exemption claimed by him or her from the requirement to possess or be covered by such a licence (as the case may be), or, if none, how the individual proposes to secure that he or she has in place, or is validly covered by, a consumer credit licence;
- (j) details of any public liability or personal indemnity insurance which the individual has in place, or, if none, how the individual proposes to secure that he or she has in place, or is validly covered by, appropriate public liability or personal indemnity insurance;
- (k) copies of—
 - (i) documents confirming the individual's name, address and date of birth;
 - (ii) material relating to the educational, training and development experience referred to in sub-paragraph (h);
 - (iii) material relating to the individual's professional or other qualifications.

(2) In this regulation, "relevant body" means a body concerned with the regulation of persons who provide or ensure the provision of debt management or debt counselling services.

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

Procedure for withdrawal of approval to act as intermediary

11. A competent authority shall withdraw an approval to act as intermediary from any individual—

- (a) where the individual so requests or with the individual's consent;
- (b) where it becomes clear to the competent authority after approval that the individual—
 - (i) was ineligible at the time of approval, or
 - (ii) has become ineligible for approval;
 - (iii) is at any time not or no longer a fit and proper person to act as intermediary;
 - (iv) has failed to comply with any provision of Part 7A of the Act or any rule, regulations or orders made under it, including these regulations;
 - (v) has furnished the competent authority with any false, inaccurate or misleading information.

(2) The competent authority may from time to time request an approved intermediary to supply such information or evidence about that intermediary or his or her activities as may be required by that authority for the purpose of ensuring that the requirements of these Regulations are being met.

Pat McFadden

Minister of State for Employment Relations and Postal Affairs
Department for Business, Enterprise & Regulatory Reform

2nd March 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 251U (approved intermediaries) of the Insolvency Act 1986, inserted by the Tribunals, Courts and Enforcement Act 2007. That Act inserted a new Part 7A into the Insolvency Act 1986 making provision for applications for, and making of, debt relief orders. An application for a debt relief order must be made to the official receiver through an approved intermediary. Approved intermediaries are individuals approved by a competent authority to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver. “Competent authority” means a body for the time being designated by the Secretary of State for the purpose of granting approvals to individuals to act as intermediaries. The Secretary of State is given power to make regulations pursuant to section 251U 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.

Regulations 3 to 7 in Part 1 of the Regulations make provision for the designation of competent authorities by the Secretary of State. Regulation 3 sets out the grounds for the designation of competent authorities by the Secretary of State. Regulation 4 describes the manner and form of the application for designation. Regulation 5 limits designations to bodies which are fit and proper bodies as defined by the regulations. Regulation 6 makes provision for the extent of the designation, which may be limited or unlimited. Regulation 7 makes provision for the modification or withdrawal of a designation.

Regulations 8 to 11 in Part 2 of the Regulations make provision for the approval of intermediaries by competent authorities. Regulation 8 makes provision for fit and proper persons to be approved to act as intermediaries. Regulation 9 provides descriptions of individuals deemed not to be fit and proper persons and therefore not to be approved by competent authorities to act as intermediaries. Regulation 10 describes the manner and form of an application for approval to act. Regulation 11 makes provision for the withdrawal of approval.

An impact assessment on debt relief orders was prepared for the debt relief order provisions of the Tribunal, Courts and Enforcement Act 2007. It may be consulted on the website: www.dca.gov.uk/consult/debt/debt.htm and www.insolvency.gov.uk htm.

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STATUTORY INSTRUMENTS

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