

2009 No. 450

DEBT MANAGEMENT AND RELIEF, ENGLAND AND WALES

DEBT RELIEF ORDERS

The Tribunals, Courts and Enforcement Act 2007 (Transitional Provision) Order 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 makes the following Order in exercise of the power conferred by section 145(1) of the Tribunals, Courts and Enforcement Act 2007(a)

Citation and commencement

1. This Order may be cited as the Tribunals, Courts and Enforcement Act 2007 (Transitional Provision) Order 2009 and comes into force on 6th April 2009.

Debt relief restrictions orders

2. Where a court is considering whether or not a debt relief restrictions order should be made in relation to a debtor under Schedule 4ZB to the Insolvency Act 1986(b), it shall not take into account any conduct of the debtor before 6th April 2009.

2nd March 2009

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

(a) 2007 c.15.
(b) 1986 c.45; Schedule 4ZB is inserted by section 108(2) of and Schedule 19 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

EXPLANATORY NOTE

(This note is not part of the Order)

Section 108(1) of the Tribunals, Courts and Enforcement Act 2007 gives effect of Schedule 17 of that Act, which inserts into the Insolvency Act 1986 new Part 7A, on debt relief orders. Section 108(2) gives effect to Schedule 19 of the 2007 Act, which inserts into the Act new Schedule 4ZB (itself given effect by new section 251V of that Act, contained in new Part 7A) on debt relief restrictions orders and undertakings.

Debt relief restrictions orders may be made in respect of a debtor who is subject to a debt relief order where, broadly, the conduct of the debtor in relation to his insolvency is found to be culpable. Schedule 19 sets out who may apply for a debt relief restrictions order and possible grounds for obtaining one, and gives details as to the timing of an application and the duration of the order or undertaking. Such orders may have a duration of a minimum of 2 years and a maximum of 15 years and are intended to serve to protect the public from a culpable debtor. Whilst subject to a debt relief restrictions order, the debtor will remain subject the same disabilities as those imposed by the original debt relief order – for example he will not be able to obtain credit beyond the prescribed amount without disclosing his status.

Short of an application being made to the court for a debt relief restriction order, debtor may offer a debt relief restrictions undertaking to the Secretary of State who may accept the undertaking rather than apply for an order.

Section 145 of the Tribunals, Courts and Enforcement Act 2007, under which this Order is made, provides that the Secretary of State may, amongst other things, make any transitional provision which he considers necessary or expedient for the purpose, or in consequence of any provision of that Act. Section 251V of and Schedule 4ZB to the Insolvency Act 1986, inserted as explained above, permit the court, on the application of the Secretary of State or the official receiver acting on a direction of the Secretary of State, to make a debt relief restrictions order if it thinks appropriate to do so having regard to the conduct of a debtor either before or after the making of a debt relief order (See paragraph 2(1) of Schedule 4ZB). However, since the provisions introducing debt relief orders and debt relief restriction orders and undertakings do not come into force until 6th April 2009, this Order prevents any conduct of the debtor before that date from being taken into account by the court so as to prevent the provisions from having any possible retrospective effect.

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