Number 44 *of* 2012

PERSONAL INSOLVENCY ACT 2012

REVISED

Updated to 10 May 2022

This Revised Act is an administrative consolidation of the *Personal Insolvency Act 2012*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), enacted 4 May 2022, and all statutory instruments up to and including the *Personal Insolvency Act 2012 (Prescribed Financial Statement) (Amendment) Regulations 2022* (S.I. No. 228 of 2022), made 10 May 2022, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

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PERSONAL INSOLVENCY ACT 2012

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Personal Insolvency Acts 2012 to 2021: this Act is one of a group of Acts included in this collective citation (*Personal Insolvency (Amendment) Act 2021* (10/2021), s. 18(2)). The Acts in this group are:

- *Personal Insolvency Act 2012* (44/2012)
- *Finance Act 2013* (8/2013), s. 100(3)
- *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), ss. 37 to 40, s. 41(4), Part 8 and s. 1 (insofar as it relates to those sections and that Part)
- *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 9
- *Personal Insolvency (Amendment) Act 2015* (32/2015)
- *Personal Insolvency (Amendment) Act 2021* (10/2021)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at

www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Personal Insolvency (Amendment) Act 2021* (10/2021)
- *Data Protection Act 2018* (7/2018)
- *Personal Insolvency (Amendment) Act 2015* (32/2015)
- *Freedom of Information Act 2014* (30/2014)
- *Companies (Miscellaneous Provisions) Act 2013* (46/2013)
- *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013)
- *Land and Conveyancing Law Reform Act 2013* (30/2013)
- *Finance Act 2013* (8/2013)

All Acts up to and including *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), enacted 4 May 2022, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Personal Insolvency Act 2012 (Prescribed Financial Statement) (Amendment) Regulations 2022* (S.I. No. 228 of 2022)
- *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2022* (S.I. No. 215 of 2022)
- *Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2022* (S.I. No. 214 of 2022)
- *Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2022* (S.I. No. 213 of 2022)
- *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) (Amendment) Regulations 2022* (S.I. No. 18 of 2022)
- *Personal Insolvency Act 2012 (Prescribed Fees) (Amendment) Regulations 2020* (S.I. No. 678 of 2020)
- *Personal Insolvency Act 2012 (Prescribed Fees) (Amendment) Regulations 2017* (S.I. No. 609 of 2017)
- *Personal Insolvency Act 2012 (Worth of Motor Vehicle) Regulations 2017* (S.I. No. 594 of 2017)
- *Personal Insolvency Act 2012 (Renewal of Authorisation of Personal Insolvency Practitioners) Regulations 2016* (S.I. No. 226 of 2016)
- *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2015* (S.I. No. 620 of 2015)
- *Personal Insolvency Act 2012 (Written Statement Disclosing All of the Debtor's Financial Affairs) Regulations 2015* (S.I. No. 416 of 2015)
- *Supreme Court, Court of Appeal and High Court (Fees) Order 2014* (S.I. No. 492 of 2014)
- *Circuit Court (Fees) (No. 2) Order 2014* (S.I. No. 491 of 2014)
- *Personal Insolvency Act 2012 (Prescribed Fees) (No. 2) Regulations 2014* (S.I. No. 459 of 2014)
- *Personal Insolvency Act 2012 (Regulatory Disclosure Statement of a Personal Insolvency Practitioner) Regulations 2014* (S.I. No. 319 of 2014)
- *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014* (S.I. No. 259 of 2014)
- *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2014* (S.I. No. 141 of 2014)
- *Supreme Court and High Court (Fees) Order 2014* (S.I. No. 24 of 2014)
- *Circuit Court (Fees) Order 2014* (S.I. No. 23 of 2013)
- *Supreme Court and High Court (Fees) (No. 2) Order 2013* (S.I. No. 466 of 2013)
- *Personal Insolvency Act 2012 (Prescribed Fees in Bankruptcy Matters) Regulations 2013* (S.I. No. 465 of 2013)
- *Personal Insolvency Act 2012 (Part 4) (Commencement) Order 2013* (S.I. No. 462 of 2013)
- *Personal Insolvency Act 2012 (Additional Information to be contained in the Registers) Regulations 2013* (S.I. No. 356 of 2013)
- *Personal Insolvency Act 2012 (Notification in relation to Excludable Debt) Regulations 2013* (S.I. No. 337 of 2013)
- *Personal Insolvency Act 2012 (Procedures for the Conduct of Creditors' Meetings) Regulations 2013*(S.I. No. 335 of 2013)

- *Personal Insolvency Act 2012 (Schedule of Creditors) Regulations 2013* (S.I. No. 334 of 2013)
- *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2013* (S.I. No. 333 of 2013)
- *Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2013* (S.I. No. 332 of 2013)
- *Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2013* (S.I. No. 331 of 2013)
- *Personal Insolvency Act 2012 (Value above which a debtor must not transfer, lease, grant security over, or otherwise dispose of any interest in property) Regulations 2013* (S.I. No. 330 of 2013)
- *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2013* (S.I. No. 329 of 2013)
- *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2013* (S.I. No. 326 of 2013)
- *Personal Insolvency Act 2012 (Written Statement Disclosing All of the Debtor's Financial Affairs) Regulations 2013* (S.I. No. 312 of 2013)
- *Personal Insolvency Act 2012 (Commencement) (No. 3) Order 2013* (S.I. No. 285 of 2013)
- *Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013* (S.I. No. 247 of 2013)
- *Personal Insolvency Act 2012 (Personal Insolvency Practitioner Authorisation and Renewal of Authorisation Prescribed Fees) Regulations 2013* (S.I. No. 246 of 2013)
- *Supreme Court and High Court (Fees) Order 2013* (S.I. No. 239 of 2013)
- *Personal Insolvency Act 2012 (Authorisation of Approved Intermediaries) Regulations 2013* (S.I. No. 216 of 2013)
- *Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013* (S.I. No. 209 of 2013)
- *Personal Insolvency Act 2012 (Establishment Day) Order 2013* (S.I. No. 64 of 2013)
- *Personal Insolvency Act 2012 (Commencement) (No. 2) Order 2013* (S.I. No. 63 of 2013)
- *Personal Insolvency Act 2012 (Part 6) (Commencement) Order 2013* (S.I. No. 14 of 2013)

All statutory instruments up to and including *Personal Insolvency Act 2012 (Prescribed Financial Statement) (Amendment) Regulations 2022* (S.I. No. 228 of 2022), made 10 May 2022, were considered in the preparation of this revision.

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PERSONAL INSOLVENCY ACT 2012

REVISED

Updated to 10 May 2022

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9. Functions of Insolvency Service.
10. Composition of Insolvency Service.
11. Director.
12. Staff of Insolvency Service.
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18. Appearance before Committee of Dáil Éireann established to examine, etc., appropriation accounts, etc.

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21. Advances by Minister to Insolvency Service.

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27. Initiation of Debt Relief Notice process.

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30. Consideration by Insolvency Service of application under *section 29*.

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32. Contents of Debt Relief Notice.

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34. Duration of Debt Relief Notice.

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74A. Approval of proposed Debt Settlement Arrangement where only one creditor.

75. Steps to be taken by personal insolvency practitioner following approval of proposal for Debt Settlement Arrangement.

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80. Operation of terms of Debt Settlement Arrangement.

81. General duties and obligations of debtor arising under *Chapter 3*.

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84. Debt Settlement Arrangement deemed to have failed after 6 month arrears default.

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87. Grounds of challenge by creditor to coming into effect of Debt Settlement Arrangement.

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143. Amendment of section 7 of Bankruptcy Act 1988.

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149. Amendment of section 39 of Bankruptcy Act 1988.

150. Insertion into Bankruptcy Act 1988 of new sections 44A and 44B.

151. Amendment of section 45 of Bankruptcy Act 1988.

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153. Amendment of section 58 of Bankruptcy Act 1988.

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155. Insertion into Bankruptcy Act 1988 of new section 65A.

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164. Authorisation to carry on practice as personal insolvency practitioner or refusal to authorise.

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PART 2

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Asset Covered Securities Act 2001	2001, No. 47
Bankruptcy Act 1988	1988, No. 27
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010	2010, No. 24
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Consumer Credit Act 1995	1995, No. 24
Courts Act 1973	1973, No. 26
Courts Act 1977	1977, No. 11
Courts and Court Officers Act 1995	1995, No. 31
Courts and Court Officers Act 2002	2002, No. 15
Courts and Court Officers Act 2009	2009, No. 36
Courts (Establishment and Constitution) Act 1961	1961, No. 39
Courts of Justice Act 1924	1924, No. 10
Courts of Justice Act 1947	1947, No. 25
Courts (Supplemental Provisions) Act 1961	1961, No 39
Credit Union Act 1997	1997, No. 15
Data Protection Acts 1998 and 2003	
Deeds of Arrangement Act 1887	50 & 51 Vict. c. 57
Family Home Protection Act 1976	1976, No. 27
Family Law (Maintenance of Spouses and Children) Act 1976	1976, No. 11
Financial Emergency Measures in the Public Interest (Amendment) Act 2011	2011, No. 39
Freedom of Information Acts 1997 and 2003	
Law Reform Commission Act 1975	1975, No. 3
Local Government (Charges) Act 2009	2009, No. 30
Local Government (Household Charge) Act 2011	2011, No. 36
Local Government Act 2001	2001, No. 37
Multi-Unit Developments Act 2011	2011, No. 2

Netting of Financial Contracts Act 1995	1995, No. 25
Nursing Homes Support Scheme Act 2009	2009, No. 15
Proceeds of Crime Acts 1996 and 2005	
Property Services (Regulation) Act 2011	2011, No. 40
Public Service Management (Recruitment and Appointments) Act 2004	2004, No. 3
Public Service Superannuation (Miscellaneous Provisions) Act 2004	2004, No. 7
Social Welfare Consolidation Act 2005	2005, No. 26
Statistics Act 1993	1993, No. 21
Statute of Limitations 1957	1957, No. 6
Statutory Declarations Act 1938	1938, No. 37
Taxes Consolidation Act 1997	1997, No. 39

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PERSONAL INSOLVENCY ACT 2012

REVISED

Updated to 10 May 2022

AN ACT TO AMEND THE LAW RELATING TO INSOLVENCY, TO AMEND THE BANKRUPTCY ACT 1988, TO PROVIDE FOR THE ESTABLISHMENT AND FUNCTIONS OF A BODY TO BE KNOWN AS SEIRBHÍS DÓCMHAINNEACHTA NA hÉIREANN OR, IN THE ENGLISH LANGUAGE, THE INSOLVENCY SERVICE OF IRELAND, AND, IN PARTICULAR, IN THE INTERESTS OF THE COMMON GOOD (INCLUDING THE STABILITY OF THE FINANCIAL SYSTEM IN THE STATE)AND HAVING REGARD TO THE FOLLOWING OBJECTIVES—

(*a*)THE NEED TO AMELIORATE THE DIFFICULTIES EXPERIENCED BY DEBTORS IN DISCHARGING THEIR INDEBTEDNESS DUE TO INSOLVENCY AND THEREBY LESSEN THE ADVERSE CONSEQUENCES FOR ECONOMIC ACTIVITY IN THE STATE,

(*b*)THE NEED TO ENABLE CREDITORS TO RECOVER DEBTS DUE TO THEM BY INSOLVENT DEBTORS TO THE EXTENT THAT THE MEANS OF THOSE DEBTORS REASONABLY PERMITS, IN AN ORDERLY AND RATIONAL MANNER, AND

(*c*)THE NEED TO ENABLE INSOLVENT DEBTORS TO RESOLVE THEIR INDEBTEDNESS (INCLUDING BY DETERMINING THAT DEBTS STAND DISCHARGED IN CERTAIN CIRCUMSTANCES) IN AN ORDERLY AND RATIONAL MANNER WITHOUT RECOURSE TO BANKRUPTCY, AND TO THEREBY FACILITATE THE ACTIVE PARTICIPATION OF SUCH PERSONS IN ECONOMIC ACTIVITY IN THE STATE,

TO PROVIDE FOR ADDITIONAL MECHANISMS AND ARRANGEMENTS RELATING TO INSOLVENCY TO FACILITATE THE ACHIEVEMENT OF THOSE OBJECTIVES, TO PROVIDE FOR THE APPOINTMENT, FUNCTIONS, POWERS AND JURISDICTION OF NEW JUDGES OF THE CIRCUIT COURT TO BE STYLED SPECIALIST JUDGES OF THE CIRCUIT COURT AND, FOR THAT PURPOSE, TO AMEND THE COURTS (ESTABLISHMENT AND CONSTITUTION) ACT 1961 AND THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961 AND CERTAIN OTHER ENACTMENTS, TO PROVIDE FOR THE REGULATION, SUPERVISION AND DISCIPLINE OF PERSONAL INSOLVENCY PRACTITIONERS, AND TO PROVIDE FOR CONNECTED MATTERS.

[26*th December*, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Editorial Notes:

E1 Fees prescribed and exempted in respect of proceedings under Act (30.10.2014) by *Supreme Court, Court of Appeal and High Court (Fees) Order 2014* (S.I. No. 492 of 2014), art. 7(1), in effect as per art. 1(2).

E2 Fees prescribed and exempted in respect of proceedings under Act (30.10.2014) by *Circuit Court (Fees) (No. 2) Order 2014* (S.I. No. 491 of 2014), art. 5, in effect as per art. 1(2).

E3 Power granted to Court to adjourn certain proceedings to facilitate making of proposal for Personal Insolvency Arrangement under Act (31.07.2013) by *Land and Conveyancing Law Reform Act 2013* (30/2013), s. 2(2), S.I. No. 289 of 2013.

E4 Entitlement of persons who have entered into a Debt Settlement Arrangement or a Personal Insolvency Arrangement, or who hold a relevant residential property in trust for creditors pursuant to the terms of a Debt Settlement Arrangement or a Personal Insolvency Arrangement, to apply to Revenue Commissioners for deferral of local property tax provided by *Finance (Local Property Tax) Act 2012* (52/2012), s. 133B, as inserted (13.03.2013) by *Finance (Local Property Tax) (Amendment) Act 2013* (4/2013), s. 13(d), commenced on enactment.

E5 Previous affecting provision: fees in respect of proceedings under Act prescribed (3.02.2014) by *Supreme Court and High Court (Fees) Order 2014* (S.I. No. 24 of 2014), art. 7 and sch. 1, part 2 (items 74 and 75), in effect as per art. 1(2); (30.10.2014) by *Supreme Court, Court of Appeal and High Court (Fees) Order 2014* (S.I. No. 492 of 2014), art. 11, in effect as per art. 1(2).

E6 Previous affecting provision: fees in respect of proceedings under Act prescribed (3.02.2014) by *Circuit Court (Fees) Order 2014* (S.I. No. 23 of 2014), art. 5 and sch. part 4, items 1-3, in effect as per art. 1(2); revoked (30.10.2014) by *Circuit Court (Fees) (No. 2) Order 2014* (S.I. No. 491 of 2014), art. 6, in effect as per reg. 1(2).

E7 Previous affecting provision: fees in respect of proceedings under Act prescribed (3.12.2013) by *Supreme Court and High Court (Fees) (No. 2) Order 2013* (S.I. No. 466 of 2013), arts. 2, 6 and sch. 1 part 3 (items 73 - 74), in effect as per art. 1(2); revoked (3.02.2013) by *Supreme Court and High Court (Fees) Order 2014* (S.I. No. 24 of 2014), art. 11, in effect as per art. 1(2).

E8 Previous affecting provision: fees prescribed in respect of proceedings under Act (10.07.2013) by *Supreme Court and High Court (Fees) Order 2013* (S.I. No. 239 of 2013), arts. 2, 3, 7 and sch. 1 part 3 (items 73 - 74), in effect as per art. 1(2); revoked (3.12.2013) by *Supreme Court and High Court (Fees) (No. 2) Order 2013* (S.I. No. 466 of 2013), reg. 10, in effect as per art. 1(2).

PART 1

Preliminary and General

Short title and commencement.

1.— (1) This Act may be cited as the Personal Insolvency Act 2012.

(2) This Act shall come into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

Annotations

Editorial Notes:

E9 Power pursuant to section exercised (3.12.2013) by *Personal Insolvency Act 2012 (Part 4) (Commencement) Order 2013* (S.I. No. 462 of 2013).

2. The 3rd day of December, 2013 is fixed as the day on which Part 4 of the Personal Insolvency Act 2012 (No. 44 of 2012) shall come into operation.

E10 Power pursuant to section exercised (31.07.2013) by *Personal Insolvency Act 2012 (Commencement) (No. 3) Order 2013* (S.I. No. 285 of 2013).

2. The 31st day of July 2013 is fixed as the day on which the following provisions of the Personal Insolvency Act 2012 (No. 44 of 2012) shall come into operation:

(*a*) section 13;

(*b*) sections 26 to 46;

(*c*) sections 48 to 125.

E11 Power pursuant to section exercised (1.03.2013) by *Personal Insolvency Act 2012 (Commencement) (No. 2) Order 2013* (S.I. No. 63 of 2013).

2. The 1st day of March 2013 is fixed as the day on which the following provisions of the Personal Insolvency Act 2012 (No. 44 of 2012) shall come into operation:

(*a*) Part 1 (other than section 6);

(*b*) Part 2 (other than section 13);

(*c*) sections 25 and 47;

(*d*) sections 126 to 141;

(*e*) Part 5;

(*f*) Schedules 2 and 3.

E12 Power pursuant to section exercised (18.01.2013) by *Personal Insolvency Act 2012 (Part 6) (Commencement) Order 2013* (S.I. No. 14 of 2013).

2. The 18th day of January 2013 is fixed as the day on which Part 6 of the Personal Insolvency Act 2012 (No. 44 of 2012) shall come into operation.

Interpretation.

2.— (1) In this Act—

"appropriate court" shall be construed in accordance with *section 5*;

"bankruptcy" shall be construed in accordance with the Bankruptcy Act 1988;

"bankruptcy payment order" means an order made pursuant to section 85D of the Bankruptcy Act 1988;

"civil partner", in relation to a person, means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 but does not include a civil partner who is living separately from the person;

"connected person", in relation to a person, shall be construed in accordance with *subsection (2)*;

"creditor", in relation to a debt, means a natural or legal person to whom a debtor owes that debt or to whom the debtor otherwise has a liability in respect of that debt;

F1**[**"Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016[45] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);**]**

"debtor", in relation to a debt, means a natural person who—

(*a*) owes a debt to a creditor, or

(*b*) otherwise has a liability to a creditor;

"Debt Settlement Arrangement" means—

(*a*) an arrangement entered into by a debtor, or

(*b*) an arrangement for which a proposal is made,

under *Chapter 3* of *Part 3*;

"domestic support order" means—

(*a*) an order which is an antecedent order for the purposes of the Family Law (Maintenance of Spouses and Children) Act 1976,

(*b*) an order which by virtue of any statutory provision is enforceable in the State as if it were an antecedent order under the Family Law (Maintenance of Spouses and Children) Act 1976,

(*c*) an order which is an antecedent order within the meaning of section 43 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, and

(*d*) an order which is an antecedent order for the purposes of sections 176 to 186 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

"electronic means" includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic means of transmission of data and other forms of related technology by means of which data is transmitted;

"establishment day" means the day appointed under *section 7*;

"excludable debt", in relation to a debtor, means any:

(*a*) liability of the debtor arising out of any tax, duty, levy or other charge of a similar nature owed or payable to the State;

(*b*) amount payable by the debtor under the Local Government (Charges) Act 2009;

(*c*) amount payable by the debtor under the Local Government (Household Charge) Act 2011;

(*d*) liability of the debtor arising out of any rates due to the local authority (within the meaning of the Local Government Act 2001);

(*e*) debt or liability of the debtor in respect of moneys advanced to the debtor by the Health Service Executive under the Nursing Homes Support Scheme Act 2009;

(*f*) debt due by the debtor to any owners' management company in respect of annual service charges under section 18 of the Multi-Unit Developments Act 2011 or contributions due under section 19 of that Act;

[45] OJ No. L 119, 4.5.2016, p.1

(*g*) debt or liability of the debtor arising under the Social Welfare Consolidation Act 2005;

"excluded debt", in relation to a debtor, means any:

(*a*) liability of the debtor arising out of a domestic support order;

(*b*) liability of the debtor arising out of damages awarded by a court (or another competent authority) in respect of personal injuries or wrongful death arising from the tort of the debtor;

(*c*) debt or liability of the debtor arising from a loan (or forbearance of a loan) obtained through fraud, misappropriation, embezzlement or fraudulent breach of trust;

(*d*) debt or liability of the debtor arising by virtue of a court order made under the Proceeds of Crime Acts 1996 and 2005 or by virtue of a fine ordered to be paid by a court in respect of a criminal offence;

"insolvency arrangement" means a Debt Relief Notice, Debt Settlement Arrangement or a Personal Insolvency Arrangement;

"Insolvency Service" means the Insolvency Service of Ireland established by *section 8*;

"insolvent", in relation to a debtor, shall be construed as meaning that the debtor is unable to pay his or her debts in full as they fall due;

"Minister" means the Minister for Justice and Equality;

F2**[**"Official Assignee" has the same meaning as it has in the Bankruptcy Act 1988;**]**

F3**[**"personal data" means personal data within the meaning of—

(*a*) the Data Protection Regulation, or

(*b*) Part 5 of the Data Protection Act 2018;**]**

"Personal Insolvency Arrangement" means—

(*a*) an arrangement entered into by a debtor, or

(*b*) an arrangement for which a proposal is made,

under *Chapter 4* of *Part 3*;

"personal insolvency practitioner" means a person authorised under *Part 5* to act as a personal insolvency practitioner;

"prescribed" means prescribed by regulations under *section 3*;

"principal private residence" means a dwelling in which the debtor ordinarily resides and includes—

(*a*) any building or structure, or

(*b*) any vehicle or vessel (whether mobile or not),

together with any garden or portion of ground attached to and occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling;

"protective certificate" means a certificate issued by the appropriate court pursuant to *Chapter 3* or *Chapter 4* of *Part 3*;

"relative", in relation to a person, means a brother, sister, parent, spouse or civil partner of the person or a child of the person or of the spouse or civil partner;

"relevant pension arrangement" means:

(*a*) a retirement benefits scheme, within the meaning of section 771 of the Taxes Consolidation Act 1997, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of that Act;

(*b*) an annuity contract or a trust scheme or part of a trust scheme for the time being approved by the Revenue Commissioners under section 784 of the Taxes Consolidation Act 1997;

(*c*) a PRSA contract, within the meaning of section 787A of the Taxes Consolidation Act 1997, in respect of a PRSA product, within the meaning of that section;

(*d*) a qualifying overseas pension plan within the meaning of section 787M of the Taxes Consolidation Act 1997;

(*e*) a public service pension scheme within the meaning of section 1 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004;

(*f*) a statutory scheme, within the meaning of section 770(1) of the Taxes Consolidation Act 1997, other than a public service pension scheme referred to in *paragraph (e)*;

(*g*) such other pension arrangement as may be prescribed by the Minister, following consultation with the Ministers for Finance, Social Protection and Public Expenditure and Reform;

"secured creditor", in relation to a debt, means a creditor of the debtor who holds, in respect of his or her debt, security (other than a guarantee or pledge referred to in section 35(8) of the Credit Union Act 1997) in or over property of the debtor;

"secured debt" means a debt the payment for which is secured by security in or over any asset or property of any kind;

"security" means, in relation to a debt, any means of securing payment of the debt and includes—

(*a*) a mortgage, judgment mortgage, charge, lien, pledge, hypothecation or other security interest or encumbrance or collateral in or over any property (whether real or personal and including choses-in-action),

(*b*) an assignment by way of security, and

(*c*) an undertaking or agreement by any person (including a solicitor) to give or create a security interest in property;

"solvent", with respect to a debtor, means that the debtor is not insolvent;

"specified creditor", in relation to a protective certificate, means a person specified in a protective certificate as being the person to whom a particular debt is owed;

"specified debt", in relation to a protective certificate, means a debt that is specified in that protective certificate as being subject to that certificate;

"spouse", in relation to a person, does not include a spouse who is living separately from the person;

"unsecured creditor", in relation to a debt, means any creditor who is not a secured creditor;

"unsecured debt" means a debt in respect of which payment is not secured by security.

(2) Any question whether a person is connected with another shall be determined in accordance with the following provisions of this paragraph (any provision that one

person is connected with another person being taken to mean also that that other person is connected with the first-mentioned person):

(i) a person is connected with an individual if that person is a relative of the individual;

(ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust;

(iii) a person is connected with any person with whom he or she is in partnership;

(iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it;

(v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(3) In this Act a reference to an asset includes an interest in an asset and a reference to a liability includes an interest in a liability.

(4) For the purposes of *sections 26(2)(f)(i)*, *87(g)* and *120(g)*, a debtor enters into a transaction with another person at an undervalue if he or she—

(*a*) makes a gift to, or otherwise enters into a transaction with, that other person on terms that provide for the debtor to receive no consideration, or

(*b*) enters into a transaction with that other person, the value of which, in money or money's worth, is significantly greater than the value, in money or money's worth, of the consideration provided by that other person.

(5) For the purposes of *sections 26(2)(f)(ii)*, *87(h)* and *120(h)*, a debtor gives a preference to another person if—

(*a*) the other person is a creditor of the debtor to whom a debt (other than an excluded debt or an excludable debt) is owed, or is a surety or guarantor for any such debt, and

(*b*) the debtor does any thing (including the granting of security), or suffers any thing to be done, which has the effect of putting that other person into a position which, in the event that the insolvency arrangement concerned is issued or comes into effect, as the case may be, would be better than the position in which that other person would have been if that thing had not been done or suffered to be done.

Annotations

Amendments:

F1 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 221(a)(i), S.I. No. 174 of 2018.

F2 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 41(4), S.I. No. 463 of 2013.

F3 Substituted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 221(a)(ii), S.I. No. 174 of 2018.

Regulations and orders.

3.— (1) The Minister or, as the case may be, the Insolvency Service, may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

(2) A regulation under this Act may contain such incidental, supplementary and consequential provisions as the Minister or, as the case may be, the Insolvency Service, considers necessary or expedient for the purposes of the regulations.

(3) Every regulation and order (other than an order referred to in *section 1(2)*) made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Annotations

Editorial Notes:

E13 Power pursuant to section exercised (10.05.2022) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) (Amendment) Regulations 2022* (S.I. No. 228 of 2022).

E14 Power pursuant to section exercised (29.04.2022) by *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2022* (S.I. No. 215 of 2022).

E15 Power pursuant to section exercised (29.04.1992) by *Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2022* (S.I. No. 214 of 2022).

E16 Power pursuant to section exercised (29.04.1992) by *Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2022* (S.I. No. 213 of 2022).

E17 Power pursuant to section exercised (1.01.2021) by *Personal Insolvency Act 2012 (Prescribed Fees) (Amendment) Regulations 2020* (S.I. No. 678 of 2020), in effect as per reg. 1(2).

E18 Power pursuant to section exercised (1.02.2018) by *Personal Insolvency Act 2012 (Worth of Motor Vehicle) Regulations 2017* (S.I. No. 594 of 2017), in effect as per reg. 1(2).

E19 Power pursuant to section exercised (1.01.2018) by *Personal Insolvency Act 2012 (Prescribed Fees) (Amendment) Regulations 2017* (S.I. No. 609 of 2017), in effect as per reg. 1(2).

E20 Power pursuant to section exercised (5.05.2016) by *Personal Insolvency Act 2012 (Renewal of Authorisation of Personal Insolvency Practitioners) Regulations 2016* (S.I. No. 226 of 2016).

E21 Power pursuant to section exercised (22.12.2015) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2015* (S.I. No. 620 of 2015).

E22 Power pursuant to section exercised (5.10.2015) by *Personal Insolvency Act 2012 (Written Statement Disclosing All of the Debtor's Financial Affairs) Regulations 2015* (S.I. No. 416 of 2015), in effect as per reg. 2.

E23 Power pursuant to section exercised (9.07.2014) by *Personal Insolvency Act 2012 (Regulatory Disclosure Statement of a Personal Insolvency Practitioner) Regulations 2014* (S.I. No. 319 of 2014).

E24 Power pursuant to section exercised (13.06.2014) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014* (S.I. No. 259 of 2014).

E25 Power pursuant to section exercised (3.12.2013) by *Personal Insolvency Act 2012 (Prescribed Fees in Bankruptcy Matters) Regulations 2013.* (S.I. No. 465 of 2013).

E26 Power pursuant to section exercised (16.09.2013) by *Personal Insolvency Act 2012 (Additional Information to be contained in the Registers) Regulations 2013* (S.I. No. 356 of 2013).

E27 Power pursuant to section exercised (2.09.2013) by *Personal Insolvency Act 2012 (Notification in relation to Excludable Debt) Regulations 2013* (S.I. No. 337 of 2013).

E28 Power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Schedule of Creditors) Regulations 2013* (S.I. No. 334 of 2013).

E29 Power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Value above which a debtor must not transfer, lease, grant security over, or otherwise dispose of any interest in property) Regulations 2013* (S.I. No. 330 of 2013).

E30 Power pursuant to section exercised (8.07.2013) by *Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013* (S.I. No. 247 of 2013).

E31 Power pursuant to section exercised (4.07.2013) by *Personal Insolvency Act 2012 (Personal Insolvency Practitioner Authorisation and Renewal of Authorisation Prescribed Fees) Regulations 2013* (S.I. No. 246 of 2013).

E32 Power pursuant to section exercised (21.06.2013) by *Personal Insolvency Act 2012 (Authorisation of Approved Intermediaries) Regulations 2013* (S.I. No. 216 of 2013).

E33 Power pursuant to section exercised (21.06.2013) by *Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013* (S.I. No. 209 of 2013).

E34 Previous affecting provision: power pursuant to section exercised (14.01.2022) by *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) (Amendment) Regulations 2022* (S.I. No. 18 of 2022); revoked (29.04.2022) by *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2022* (S.I. No. 215 of 2022), reg. 3.

E35 Previous affecting provision: power pursuant to section exercised (13.10.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) (No. 2) Regulations 2014* (S.I. No. 459 of 2014); revoked (22.12.2015) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2015* (S.I. No. 620 of 2015), reg. 7.

E36 Previous affecting provision: power pursuant to section exercised (18.03.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2014* (S.I. No. 141 of 2014); revoked (13.10.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) (No. 2) Regulations 2014* (S.I. No. 459 of 2014), reg. 8.

E37 Previous affecting provision: power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2013* (S.I. No. 333 of 2013); revoked (29.04.2022) by *Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2022* (S.I. No. 215 of 2022), reg. 3.

E38 Previous affecting provision: power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2013* (S.I. No. 332 of 2013); revoked (29.04.2022) by *Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2022* (S.I. No. 214 of 2022), reg. 3.

E39 Previous affecting provision: power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2013* (S.I. No. 331 of 2013); revoked (29.04.2022) by *Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2022* (S.I. No. 213 of 2022), reg. 3.

E40 Previous affecting provision: power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2013* (S.I. No. 329 of 2013); revoked (13.03.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2014* (S.I. No. 141 of 2014), reg. 7.

E41 Previous affecting provision: power pursuant to section exercised (28.08.2013) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2013* (S.I. No. 326 of 2013); revoked (13.06.2014) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014* (S.I. No. 259 of 2014), reg. 5.

E42 Previous affecting provision: power pursuant to section exercised (9.08.2013) by *Personal Insolvency Act 2012 (Written Statement Disclosing All of the Debtor's Financial Affairs) Regulations 2013* (S.I. No. 312 of 2013); revoked (5.10.2015) by *Personal Insolvency Act 2012 (Written Statement Disclosing All of the Debtor's Financial Affairs) Regulations 2015* (S.I. No. 416 of 2015), reg. 10.

Expenses.

4.— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Appropriate court.

5.— (1) In this Act "appropriate court" means—

(*a*) where the application is made under *Chapter 3* or *4* of *Part 3*, and the total liabilities of a debtor determined on the basis of the Prescribed Financial Statement completed by the debtor concerned in respect of the application concerned are in excess of €2,500,000, the High Court, and

(*b*) in any other case, the Circuit Court.

F4**[**(2) An application to the Circuit Court under this Act shall be made in the circuit in which—

(*a*) the debtor to whom the application relates is residing at the time of the making of the application or has resided within one year of the time of the making of the application, or

(*b*) the debtor to whom the application relates has a place of business at the time of the making of the application or has had a place of business within one year of the time of the making of the application.**]**

(3) An application to the Circuit Court under this Act may be made—

(*a*) in such office of, or attached to, the Circuit Court within the circuit concerned,

(*b*) in such combined court office (within the meaning of section 14 of the Courts and Court Officers Act 2009) within the circuit concerned, or

(*c*) in such office of the Courts Service, within the circuit concerned, designated by the Courts Service for the purpose of this Act,

as may be prescribed by rules of court.

Annotations

Amendments:

F4 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 43, S.I. No. 286 of 2013.

Repeals.

6.— F5**[**...**]**

Annotations

Amendments:

F5 Section not commenced; repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

PART 2

Insolvency Service

Annotations

Editorial Notes:

E43 Personal Insolvency Service excluded from definition of public bodies in *Freedom of Information Act 2014* (30/2014) in so far as it relates to performance of its functions under Part 2 (ss. 7-24) (other than insofar as it relates to records concerning the general administration of those functions) (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 6 and sch. 1 part 1(r), commenced as per s. 1(2), subject to transitional provisions in s. 1(3) and (4).

Establishment day.

7.— The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

Annotations

Editorial Notes:

E44 Power pursuant to section exercised (1.03.2013) by *Personal Insolvency Act 2012 (Establishment Day) Order 2013* (S.I. No. 64 of 2013).

2. The 1st day of March 2013 is appointed as the establishment day for the purposes of the Personal Insolvency Act 2012 (No. 44 of 2012).

Establishment of Insolvency Service.

8.— (1) On the establishment day there shall stand established a body to be known, in the English language, as the Insolvency Service of Ireland or, in the Irish language, as Seirbhís Dócmhainneachta na hÉireann to perform the functions conferred on it by or under this Act.

(2) The Insolvency Service shall be a body corporate with perpetual succession and, without prejudice to the generality of the foregoing, may sue and be sued in its corporate name.

(3) The Insolvency Service shall—

(*a*) subject to this Act, be independent in the exercise of its functions under this Act, and

(*b*) have all powers that are necessary or expedient for, or incidental to, the performance of those functions.

(4) The seal of the Insolvency Service may be authenticated by—

(*a*) the signature of the Director, F6**[**or**]**

(*b*) the signature of a member of the staff of the Insolvency Service authorised by the Director to act in that behalf.

(5) Judicial notice shall be taken of the seal of the Insolvency Service and, accordingly, every document—

(*a*) purporting to be a document made by the Insolvency Service, and

(*b*) purporting to be sealed with the seal of the Insolvency Service authenticated in accordance with *subsection (4)*,

shall be received in evidence and be deemed to be such document without further proof unless the contrary is proved.

(6) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the

Insolvency Service by the Director or any person generally or specially authorised by the Director in that behalf.

Annotations

Amendments:

F6 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 44, S.I. No. 286 of 2013.

Functions of Insolvency Service.

9.— (1) Subject to this Act, the principal functions of the Insolvency Service shall be to—

(*a*) monitor the operation of the arrangements relating to personal insolvency provided for in this Act,

(*b*) consider applications for Debt Relief Notices in accordance with *Chapter 1* of *Part 3*,

(*c*) process applications for protective certificates in accordance with *Chapter 3* or *4* of *Part 3*,

(*d*) maintain the Registers established under *section 133*,

F7**[**(*e*) promote public awareness and understanding of matters relating to personal insolvency, and provide information on the working of this Act and of the Bankruptcy Act 1988, and on related matters including those specified in *paragraphs (jb)*, *(jc)* and *(jd)*,**]**

(*f*) advise the Minister on any matter relating to its functions,

F8**[**(*g*) in accordance with *section 47*—

(i) authorise a person or class of persons to perform the functions of an approved intermediary,

(ii) supervise and regulate persons or classes of persons authorised to perform the functions of an approved intermediary,**]**

(*h*) in accordance with *Part 5*—

(i) authorise individuals to carry on practice as personal insolvency practitioners,

(ii) supervise and regulate persons practising as personal insolvency practitioners,

(iii) perform such functions as are assigned to the Insolvency Service under that Part,

(*i*) prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses under *section 23*,

(*j*) arrange for the provision of such education and training, in relation to the performance by them of their functions under this Act, of approved intermediaries, personal insolvency practitioners and other persons, as it thinks fit,

F9**[**(*ja*) subject to section 60(3) of the Bankruptcy Act 1988, administer the functions assigned to the Official Assignee by the Bankruptcy Act 1988 or any other enactment,**]**

F10**[**(*jb*) compile, collect, analyse and disseminate information and statistics on the operation of this Act and of the Bankruptcy Act 1988,

(*jc*) monitor and analyse developments, as respects the situation of insolvent debtors and trends in, and patterns of, debtor and creditor behaviour,

(*jd*) develop strategies for communicating with the public aimed at promoting the use of insolvency arrangements and enhancing their effective application,**]**

(*k*) contribute to the development of policy in the area of personal insolvency, and

(*l*) carry out any other duties and exercise any other powers assigned to it by or under this Act.

(2) The Insolvency Service may disseminate, to such extent and in such manner as it considers appropriate, information relating to the services it provides under this Act.

(3) The Insolvency Service may, subject to this Act, do anything which it considers necessary or expedient to enable it to perform its functions.

(4) Any function of the Insolvency Service may, without prejudice to its general responsibilities under this Act, be performed through or by the Director or any member of its staff duly authorised in that behalf by the Director.

(5) The Director or a member of staff of the Insolvency Service who performs any of its functions is presumed in any proceedings to have been authorised by it to do so on its behalf, unless the contrary is shown.

Annotations

Amendments:

F7 Substituted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 2(a), S.I. No. 414 of 2015.

F8 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 45, S.I. No. 286 of 2013.

F9 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 38, S.I. No. 463 of 2013.

F10 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 2(b), S.I. No. 414 of 2015.

Composition of Insolvency Service.

10.— The Insolvency Service shall consist of—

(*a*) the Director of the Insolvency Service appointed under *section 11*, and

(*b*) such members of staff of the Insolvency Service appointed under this Part.

Director.

11.— (1)(*a*) There shall be a Director of the Insolvency Service who shall be known, and is referred to in this Act, as the "Director".

(*b*) Subject to *subsection (13),* the Director shall hold office for such period, not exceeding 5 years from the date of his or her appointment under this section, as may be determined by the Minister.

(*c*) A person who has held office as Director shall be eligible for re-appointment but shall not hold office for periods the aggregate of which exceeds 10 years.

(2) Subject to *subsections (12)* and *(13)*, the Director shall—

(*a*) be appointed by the Minister on the recommendation of the Director of the Public Appointments Service after a competition for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004 has been held on behalf of the Minister, and

(*b*) have the appropriate experience, qualifications, training and expertise for the appointment.

(3) The Director shall—

(*a*) manage and control generally the Insolvency Service's staff, administration and business,

(*b*) be responsible to the Minister for the performance of his or her functions, and

(*c*) perform such other functions (if any) as may be required by the Minister or as may be authorised under this Act.

(4) The Director may be removed or suspended from office by the Minister for stated reasons.

(5) The Director shall provide the Minister with such information, including financial information, in respect of the performance of the Director's functions as the Minister may require.

(6) The Director shall not hold any other office or position in respect of which remuneration is payable, or carry on any business, trade or profession, without the approval of the Minister.

(7) Such of the functions of the Director as the Director may specify may, with the consent of the Minister, be performed by such member or members of the staff of the Insolvency Service as the Director may authorise for that purpose, and that member or those members of staff shall be accountable to the Director for the performance of the functions so delegated.

(8) The Director shall be accountable to the Minister for the performance of functions delegated by him or her in accordance with *subsection (7)*.

(9) The Director may, with the consent of the Minister in writing, revoke a delegation made in accordance with this section.

(10) The functions referred to in *subsection (7)* do not include a function delegated by the Minister to the Director subject to a condition that the function shall not be delegated by the Director to anyone else.

(11) If the Director—

(*a*) dies, resigns or is removed from office, or

(*b*) is for any reason temporarily unable to continue to perform his or her functions,

the Minister may designate such member or members of the staff of the Insolvency Service as he or she considers appropriate to perform the functions of the Director until—

(i) in the circumstances mentioned in *paragraph (a)*, an appointment is made in accordance with *subsection (2)*,

(ii) in the circumstances mentioned in *paragraph (b)*, the Director is able to resume the performance of his or her functions, or

(iii) the Minister decides to revoke or alter a designation made under this subsection.

(12) The Minister may, before the establishment day, designate a person to be appointed Director.

(13) If, immediately before the establishment day, a person stands designated by the Minister under *subsection (12)*—

(*a*) the Minister shall appoint that person to be the first Director, and

(*b*) for the purposes of *subsection (1)(b)*, the date of that person's designation under *subsection (12)* shall be deemed to be the date of his or her appointment under this section.

Staff of Insolvency Service.

12.— (1) The Minister may, after consultation with the Insolvency Service, appoint such number of persons to be members of the staff of the Insolvency Service as may be approved by the Minister for Public Expenditure and Reform.

(2) The Minister shall, after consultation with the Insolvency Service and with the consent of the Minister for Public Expenditure and Reform, determine the grades of the staff of the Insolvency Service and the numbers of staff in each grade.

(3) Each appointment under this section shall be—

(*a*) on such terms and conditions relating to remuneration as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine, or

(*b*) on such other terms and conditions as may be determined by the Insolvency Service and approved by the Minister with the consent of the Minister for Public Expenditure and Reform.

Superannuation.

13.— (1) The Insolvency Service F11**[**may**]**, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, make a scheme or schemes for the granting of superannuation benefits to or in respect of the Director and such of its staff as it thinks fit.

(2) A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) The Insolvency Service may, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, make a scheme amending a scheme under this section including a scheme under this subsection.

(4) A scheme under this section shall, if approved by the Minister with the consent of the Minister for Public Expenditure and Reform, be carried out by the Insolvency Service in accordance with its terms.

(5) A scheme under this section shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.

(6) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable pursuant to a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Public Expenditure and Reform, whose decision shall be final.

(7) No superannuation benefits shall be granted by the Insolvency Service to or in respect of a person on ceasing to be the Director or a member of the staff of the Insolvency Service otherwise than—

(*a*) in accordance with a scheme or schemes under this section, or

(*b*) with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform.

(8) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(9) *Subsection (8)* shall, with all necessary modifications, apply to an amendment to a scheme under this section as it applies to a scheme under this section.

(10) In this section—

"amending", in relation to a scheme under this section, includes revoking the scheme;

"superannuation benefit" means any pension, gratuity or other allowance payable to or in respect of a person ceasing to be the Director or a member of the staff of the Insolvency Service.

Annotations

Amendments:

F11 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 46, S.I. No. 286 of 2013.

Strategic plans.

14.— (1) The Insolvency Service shall, as soon as practicable after the establishment day and, in any case, within 6 months after that day, and thereafter within 6 months before each third anniversary of the establishment day, prepare and submit to the Minister, for approval by the Minister with or without amendment, a strategic plan for the Insolvency Service for the ensuing 3 year period.

(2) A strategic plan shall—

(*a*) comply with any directions issued from time to time by the Minister in respect of the form and manner of the plan's preparation,

(*b*) set out the key objectives, outputs and related strategies of the Insolvency Service, including the use of resources, and

(*c*) have regard to the need to ensure the most beneficial, effective and efficient use of the Insolvency Service's resources.

(3) The Minister shall, as soon as practicable after the strategic plan has been so approved, cause a copy of the strategic plan to be laid before each House of the Oireachtas.

Business plan.

15.— (1) Subject to this section, the Insolvency Service shall, in each year—

(*a*) prepare and adopt a business plan in respect of that year or of such other period as may be determined by the Minister, and

(*b*) submit the plan to the Minister.

(2) A business plan shall—

(*a*) indicate the activities of the Insolvency Service for the period to which the business plan relates,

(*b*) contain estimates of the number of employees of the Insolvency Service for the period and the business to which the plan relates, and

(*c*) accord with policies and objectives of the Minister and the Government as they relate to the functions of the Insolvency Service.

(3) In preparing the business plan, the Insolvency Service shall have regard to the strategic plan in operation at that time approved under *section 14*.

(4) The Insolvency Service shall submit to the Minister with a business plan a statement of its estimate of the income and expenditure relating to the plan that is consistent with the moneys estimated to be available to the Insolvency Service for the period to which the business plan relates.

Reports by the Insolvency Service.

16.— (1) Not later than 4 months after the end of each financial year, the Insolvency Service shall make a written report (in this section referred to as the "annual report") to the Minister on the performance of the functions of the Insolvency Service during that year.

(2) The annual report submitted under *subsection (1)* shall be in such form and shall include information in respect of such matters as the Insolvency Service thinks appropriate or as the Minister may direct.

(3) The Insolvency Service—

(*a*) may make any other reports that it considers appropriate for drawing to the Minister's attention matters relating to the functions of the Insolvency Service that have come to its notice and that, in its opinion, should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Minister, and

(*b*) shall make a report on any matter if so requested by the Minister.

(4) The Insolvency Service shall give to the Minister such other information as the Minister may require in respect of—

(*a*) the performance by the Insolvency Service of its functions and its policies in respect of such performance,

(*b*) any specific document or account prepared by it, or

(*c*) the annual report or any report referred to in *subsection (3)*.

(5) For the purposes of *subsection (1)*, the period between the establishment day and the following 31 December shall be deemed to be a financial year.

(6) Not later than 2 months after receiving an annual report submitted under *subsection (1)*, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

(7) The Insolvency Service shall publish its annual report in such form and manner as it considers appropriate as soon as practicable after *subsection (6)* has been complied with in respect of the report.

(8) The Minister may, if he or she considers it appropriate to do so, cause a copy of a report submitted under *subsection (3)*—

(*a*) to be laid before each House of the Oireachtas, and

(*b*) where *paragraph (a)* has been complied with, published in such form and manner as he or she considers appropriate.

Accounts and audit.

17.— (1) The Insolvency Service shall—

(*a*) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be specified by the Minister, and

(*b*) provide to the Minister any information which the Minister may require regarding those estimates and also regarding the proposals and plans of the Insolvency Service in respect of a period specified by the Minister.

F12**[**(2) Subject to *subsection (2A)*, the Insolvency Service shall keep in such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts—

(*a*) of moneys received and spent by the Insolvency Service, including an income and expenditure account and a balance sheet, and

(*b*) relating to the functions of the Official Assignee under the Bankruptcy Act 1988 or any other enactment.

(2A) Accounts which are required to be maintained by the Official Assignee under the Bankruptcy Act 1988 in relation to the estates of bankrupts or in respect of unclaimed dividends shall be kept in such a manner that monies or securities or interest accrued or earned thereon in relation to the estates of bankrupts or unclaimed dividends are not intermingled with monies otherwise held by the Insolvency Service.**]**

(3)(*a*) The accounts of the Insolvency Service shall be approved by it as soon as practicable (but not later than 3 months after the end of the accounting period to which they relate) and submitted by it to the Comptroller and Auditor General for audit.

(*b*) A copy of the accounts and the report of the Comptroller and Auditor General on them shall be presented to the Minister as soon as practicable, and the Minister shall cause a copy of the accounts and report to be laid before each House of the Oireachtas.

(4)(*a*) The Insolvency Service, the Director and any relevant member of the staff shall, whenever so required by the Minister, permit any person appointed by the Minister to examine the accounts of the Insolvency Service in respect of any financial year or other period and shall facilitate any such examination, and the Insolvency Service shall pay to the Minister such fee for the examination as may be fixed by the Minister.

(*b*) In this subsection, "relevant member of the staff" means a member of the staff of the Insolvency Service to whom duties relating to those accounts have been duly assigned.

Annotations

Amendments:

F12 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 39, S.I. No. 463 of 2013.

Appearance before Committee of Dáil Éireann established to examine, etc., appropriation accounts, etc.

18.— (1) The Director shall, whenever required in writing by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

(*a*) the regularity and propriety of the transactions recorded, or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Insolvency Service is required by this Act to prepare,

(*b*) the economy and efficiency of the Insolvency Service in the use of resources,

(*c*) the systems, procedures and practices employed by the Insolvency Service for the purpose of evaluating the effectiveness of its operations, and

(*d*) any matter affecting the Insolvency Service referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or any other report of the Comptroller and Auditor General (in so far as the report relates to a matter specified in *paragraph (a)*, *(b)* or *(c)*) that is laid before Dáil Éireann.

(2) In giving evidence to the Committee under this section, the Director shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy.

Appearance before other committees of Houses of Oireachtas.

19.— (1) The Director shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Insolvency Service as is required by the Committee and, for that purpose, shall provide the Committee with such information (including documents) as it specifies and as is in the possession of, or is available to, the Director.

(2) The Director is not required to give an account before a Committee of any matter that is or has been or may at a future time be the subject of—

(*a*) a decision or determination by the Insolvency Service in respect of a particular person, or

(*b*) proceedings before a court or tribunal in the State.

(3) The Director shall, if of the opinion that *subsection (2)* applies to a matter about which he or she is requested to give an account before a Committee, inform the Committee of that opinion and the reasons for the opinion.

(4) The information required under *subsection (3)* to be given to the Committee shall be given in writing unless it is given when the Director is before the Committee.

(5) If, on being informed of the Director's opinion about a matter, the Committee decides not to withdraw its request, the High Court may, on application under *subsection (6)*, determine whether *subsection (2)* applies to the matter.

(6) An application for a determination under *subsection (5)* may be made in a summary manner to the High Court by—

(*a*) the Director not later than 21 days after being informed by the Committee of its decision not to withdraw its request, or

(*b*) the chairperson of the Committee acting on its behalf.

(7) Pending the determination of an application under *subsection (6)*, the Director shall not attend before the Committee to give an account of the matter to which the application relates.

(8) If the High Court determines that *subsection (2)* applies to the matter, the Committee shall withdraw its request relating to the matter, but if the High Court

determines that *subsection (2)* does not apply, the Director shall attend before the Committee to give an account of the matter.

(9) In this section, "Committee" means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 18(1)*, the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann), or a subcommittee of such a committee.

Power to charge and recover fees.

20.—F13**[**(1) Subject to *subsection (5)*, the Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall, prescribe by regulations the fees to be paid to it and when they fall due in respect of—

(*a*) (i) the performance of functions,

(ii) the provision of services, and

(iii) the carrying on of activities,

by it under this Act, and

(*b*) the performance of functions by the Official Assignee under the Bankruptcy Act 1988 or any other enactment.**]**

(2) Without prejudice to the generality of *subsection (1)*, the Insolvency Service's power under that subsection to prescribe fees includes the power to provide for exemptions from the payment of fees, or waiving, remitting or refunding fees (in whole or in part), in different circumstances or classes of circumstances or in different cases or classes of cases.

(3) Fees received under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.

(4) The Insolvency Service may recover as a simple contract debt in any court of competent jurisdiction, from a person by whom the fee is payable, any amount due and owing to the Insolvency Service in respect of a fee charged under this section.

(5) In making regulations pursuant to this section the Insolvency Service may have regard to—

(*a*) the expenses incurred by it, or

(*b*) the expenses which it is anticipated will be incurred by it,

in performing its functions under this Act F14**[**or in the performance by the Official Assignee of his or her functions under the Bankruptcy Act 1988 or any other enactment**]**, so that so much of those expenses as it considers appropriate are recovered from fees to be charged pursuant to such regulations.

Annotations

Amendments:

F13 Substituted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 40(a), S.I. No. 463 of 2013.

F14 Inserted (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 40(b), S.I. No. 463 of 2013.

Editorial Notes:

E45 Power pursuant to section exercised (1.01.2021) by *Personal Insolvency Act 2012 (Prescribed Fees) (Amendment) Regulations 2020* (S.I. No. 678 of 2020), in effect as per reg. 1(2).

E46 Power pursuant to section exercised (1.01.2018) by *Personal Insolvency Act 2012 (Prescribed Fees) (Amendment) Regulations 2017* (S.I. No. 609 of 2017), in effect as per reg. 1(2).

E47 Power pursuant to section exercised (22.12.2015) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2015* (S.I. No. 620 of 2015).

E48 Power pursuant to section exercised (3.12.2013) by *Personal Insolvency Act 2012 (Prescribed Fees in Bankruptcy Matters) Regulations 2013* (S.I. No. 465 of 2013).

E49 Power pursuant to section exercised (4.07.2013) by *Personal Insolvency Act 2012 (Personal Insolvency Practitioner Authorisation and Renewal of Authorisation Prescribed Fees) Regulations 2013* (S.I. No. 246 of 2013).

E50 Previous affecting provision: power pursuant to section exercised (13.10.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) (No. 2) Regulations 2014* (S.I. No. 459 of 2014); revoked (22.12.2015) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2015* (S.I. No. 620 of 2015), reg. 7.

E51 Previous affecting provision: power pursuant to section exercised (13.13.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2014* (S.I. No. 141 of 2014); revoked (13.10.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) (No. 2) Regulations 2014* (S.I. No. 459 of 2014), reg. 8.

E52 Previous affecting provision: power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2013* (S.I. No. 329 of 2013); revoked (13.03.2014) by *Personal Insolvency Act 2012 (Prescribed Fees) Regulations 2014* (S.I. No. 141 of 2014), reg. 7.

Advances by Minister to Insolvency Service.

21.— The Minister shall advance to the Insolvency Service out of moneys provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of expenditure by the Insolvency Service in the performance of its functions.

F15**[**Retention of information by Insolvency Service

21A.— F16**[...]]**

Annotations

Amendments:

F15 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 47, S.I. No. 286 of 2013.

F16 Deleted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 221(b), S.I. No. 174 of 2018.

Restriction of Freedom of Information Acts 1997 and 2003.

22.—F17**[...]**

Annotations

Amendments:

F17 Repealed (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 5 and sch. 4 part 1, commenced as per s. 1(2), subject to transitional provisions in s. 1(3) and (4).

Guidelines on reasonable standard of living, reasonable living expenses for debtors.

23.— (1) The Insolvency Service shall, for the purposes of *sections 26*, *65(4)* and *99(4)* and section 85D (as inserted by *section 157*) of the Bankruptcy Act 1988, prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses.

(2) Before issuing guidelines under *subsection (1)*, the Insolvency Service shall consult with the Minister, the Minister for Finance, the Minister for Social Protection and such other persons or bodies as the Insolvency Service considers appropriate or as the Minister may direct.

(3) In preparing guidelines to be issued under *subsection (1)*, the Insolvency Service shall have regard to—

(*a*) such measures and indicators of poverty set out in Government policy publications on poverty and social inclusion as the Insolvency Service considers appropriate,

(*b*) such official statistics (within the meaning of the Statistics Act 1993) and surveys relating to household income and expenditure published by the Central Statistics Office as the Insolvency Service considers appropriate,

(*c*) the Consumer Price Index (All Items) published by the Central Statistics Office or any equivalent index published from time to time by that Office,

(*d*) such other information as the Insolvency Service considers appropriate for the performance of its functions under this section,

(*e*) differences in the size and composition of households, and the differing needs of persons, having regard to matters such as their age, health and whether they have a physical, sensory, mental health or intellectual disability, and

(*f*) the need to facilitate the social inclusion of debtors and their dependants, and their active participation in economic activity in the State.

(4) Guidelines issued under *subsection (1)* may provide examples of—

(*a*) expenses that may be allowed as reasonable living expenses, and

(*b*) expenses that may not be allowed as reasonable living expenses.

(5) The Insolvency Service shall make guidelines issued under *subsection (1)* available to members of the public on its website.

(6) Subject to *subsection (7)*, the Insolvency Service shall issue guidelines under *subsection (1)* at intervals of such length, not being more than one year, as it considers appropriate.

(7) Failure by the Insolvency Service to comply with *subsection (6)* shall not render invalid for the purposes of this Act the guidelines most recently issued by it under this section.

Insolvency Service may communicate by electronic means.

24.— Nothing in this Act shall be construed as preventing the Insolvency Service, in the performance of its functions under this Act, from sending or receiving documents or other information, or otherwise communicating, by electronic means.

PART 3

Insolvency Arrangements

Chapter 1

Debt Relief Notices

Interpretation of *Chapter 1*.

25.— In this Chapter—

"Act of 1995" means the Consumer Credit Act 1995;

"application date" means the date on which an application under *section 29* for a Debt Relief Notice is made to the Insolvency Service;

"approved intermediary" means a person authorised under *section 47* to perform the functions of an approved intermediary under this Chapter;

F18**[**"debt", in relation to a debtor, means a debt for a liquidated sum that, on the application date, is payable either immediately or at some certain future time;**]**

"Debt Relief Notice" means a Debt Relief Notice issued under *section 31*;

"Debt Relief Notice process" in relation to a debtor, means the process that commences with the submission of a written statement by the debtor under *section 27(1)* and which concludes, as the case may be, when—

(*a*) the debtor's application for a Debt Relief Notice is withdrawn, deemed to be withdrawn or refused, in accordance with this Chapter, or

(*b*) the Debt Relief Notice issued in relation to that debtor ceases to have effect in accordance with this Chapter;

"qualifying debt" in relation to a debtor, means a debt other than an excluded debt and—

(*a*) includes the following:

(i) credit card debt;

(ii) an overdraft or an unsecured loan from a bank or other entity regulated by the Central Bank of Ireland which carries on business in the State and is regulated by the Central Bank of Ireland;

(iii) debt for payment of one or more than one bill in respect of rent, utilities or telephone;

(iv) liquidated debts incurred by the debtor as surety for another person, F19**[**...**]**

(*b*) subject to *sections 35(9)* and *46*, may include a secured debt, and

(*c*) does not include an excludable debt, unless it is a permitted debt;

"specified creditor" shall be construed in accordance with *section 32(c)(ii)* and references to a specified creditor include a reference to any person to whom the right

to claim the whole or any part of a specified qualifying debt concerned passes, by assignment or operation of law, after the application date concerned;

"specified debtor" means a person who is the subject of a Debt Relief Notice and, in relation to a particular Debt Relief Notice, means the person who is the subject of that Notice in accordance with *section 32(a)*;

"specified qualifying debts" shall be construed in accordance with *section 32(b)*;

"supervision period" shall be construed in accordance with *section 34* and includes a supervision period as extended under that section;

"termination", in relation to a Debt Relief Notice, means its termination by order of a court under *section 43* or *44*.

Annotations

Amendments:

F18 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 9(a), commenced on enactment as per s. 11(4).

F19 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 48, S.I. No. 286 of 2013.

Eligibility criteria for a Debt Relief Notice.

26.— (1) Subject to the provisions of this Chapter, a debtor shall not be eligible for the issue of a Debt Relief Notice unless an application for such a Notice is made on his or her behalf in accordance with *section 29*, and he or she satisfies the eligibility criteria specified in *subsection (2)*.

(2) Subject to this section, the eligibility criteria referred to in *subsection (1)* are that the debtor, on the application date:

(*a*) has qualifying debts that amount to F20**[**€35,000**]** or less;

(*b*) has net disposable income, calculated in accordance with *subsection (5)*, of €60 or less a month;

(*c*) has assets, calculated in accordance with *subsection (6)*, worth F21**[**€1,500**]** or less;

(*d*) is domiciled in the State or, within one year before the application date, has ordinarily—

(i) resided in the State, or

(ii) had a place of business in the State;

(*e*) is, taking into account the factors referred to in *subsection (7)*, insolvent and has no likelihood of becoming solvent within the period of 3 years commencing on the application date, while also maintaining a reasonable standard of living for himself or herself and his or her dependants;

(*f*) has not, during the period of 2 years ending on the application date—

(i) entered into a transaction with a person at an undervalue that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue), or

(ii) given a preference to a person that has had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference);

(*g*) is not ineligible under *subsection (4)* or *(8)* for the issue of a Debt Relief Notice.

(3) Where *section 135* has been applied—

(*a*) references in *paragraphs (a)* and *(c)* of *subsection (2)* to a debtor's debts and assets, and

(*b*) references in *subsection (6)(b)(i)* to the debtor's savings,

shall be construed as referring to the amounts concerned after such set-off.

(4) F22**[**...**]**

(5) For the purposes of *subsection (2)(b)*—

(*a*) "net disposable income" means the income available to a debtor, calculated in accordance with *paragraph (b)*, less the deductions referred to in *paragraph (c)*,

(*b*) the following, in relation to a debtor, shall be taken into account in calculating his or her income—

(i) his or her salary or wages,

(ii) the welfare benefits (other than child benefit) of which he or she is in receipt,

(iii) his or her income from a pension,

(iv) contributions from other household members, and

(v) any other income available to him or her,

and

(*c*) the following (where applicable), in relation to a debtor, shall be deducted from the sum calculated under *paragraph (b)*:

(i) his or her reasonable living expenses;

(ii) income tax payable by him or her;

(iii) social insurance contributions payable by him or her;

(iv) payments made by him or her in respect of excluded debts;

(v) payments made by him or her in respect of excludable debts that are not permitted debts;

(vi) such other levies and charges on the specified debtor's income as may be prescribed.

(6) In calculating a debtor's assets for the purposes of *subsection (2)(c)*—

(*a*) the value of an asset shall be taken to be its market value, irrespective of any mortgage, charge or other security to which it is subject,

(*b*) the items which shall be taken into account include—

(i) savings;

(ii) subject to *paragraph (c)(iii)*, vehicles;

(iii) shares;

(iv) property (real and personal),

(*c*) the following shall not be taken into account:

(i) the following items, to a total value that does not exceed €6,000—

(I) household equipment and appliances that are reasonably necessary to maintain a reasonable standard of living for the debtor and his or her dependants, and

(II) books, tools and other items of equipment used by him or her that are reasonably necessary in his or her employment, business or vocation;

(ii) one item of personal jewellery to a value not exceeding €750 or such other value as the Minister may prescribe, where the cost of purchase of that item is not included in the qualifying debts of the debtor for the purposes of *subsection (2)(a)*;

(iii) one motor vehicle, where that motor vehicle is reasonably necessary in order for him or her to carry out his or her everyday activities and—

(I) is worth €2,000 or less, or is worth such other amount as the Minister may prescribe, where the cost of purchase of that item is not included in the qualifying debts of the debtor for the purposes of *subsection (2)(a)*, or

(II) where the debtor, or his or her dependant, has a disability, has been specially designed or adapted for use by the debtor or that dependant, as the case may be;

(iv) where the debtor or his or her dependant is attending a course of primary or second-level education, books, materials and other items of equipment that are reasonably necessary to enable the debtor or that dependant, as the case may be, to participate in and complete that course,

(v) any interest in or entitlement under a relevant pension arrangement unless *subsection (12)* applies.

(7) The factors to be taken into account for the purposes of *subsection (2)(e)* are—

(*a*) the current liabilities of the debtor,

(*b*) the contingent and prospective liabilities of the debtor and (insofar as is ascertainable) the times at which such liabilities will become due for payment,

(*c*) the current and prospective assets and income of the debtor, and

(*d*) guidelines issued under *section 23*.

(8) A debtor is ineligible for the issue of a Debt Relief Notice where—

(*a*) he or she has ever been a specified debtor,

(*b*) he or she has applied for a protective certificate under *Chapter 3* or *4* within the period of 12 months ending on the application date,

(*c*) he or she, as a debtor, is, as of the application date, a party to a Debt Settlement Arrangement or a Personal Insolvency Arrangement which is in effect,

(*d*) he or she, as a debtor, has successfully completed a Debt Settlement Arrangement or a Personal Insolvency Arrangement within the period of 5 years ending on the application date,

(*e*) subject to *subsection (9)*, he or she has applied for bankruptcy and the petition concerned has not been adjudicated before the application date,

(*f*) subject to *subsection (10)*, a creditor has, before the application date, petitioned to make the debtor bankrupt but the hearing concerned has not yet taken place,

(*g*) he or she has, before the application date, been adjudicated bankrupt and the adjudication has not been annulled or discharged,

(*h*) he or she is, as of the application date, a discharged bankrupt subject to a bankruptcy payment order,

(*i*) he or she is, as a debtor, subject, as of the application date, to an arrangement under the control of the court under Part IV of the Bankruptcy Act 1988, or

(*j*) he or she has been discharged from bankruptcy within the period of 5 years ending on the application date.

(9) *Subsection (8)(e)* shall not apply where the petition concerned—

(*a*) has not been presented before the date on which the application for the Debt Relief Notice is determined under *section 31*,

(*b*) has been so presented, but proceedings on the petition have been finally disposed of before that date, or

(*c*) has been so presented and proceedings in relation to the petition remain before the High Court at that date, but the Court has referred the person for the purposes of making an application for a Debt Settlement Arrangement or Personal Insolvency Arrangement.

(10) *Subsection (8)(f)* shall not apply where the petition concerned—

(*a*) has not been presented against the person before the application date,

(*b*) has been so presented, but proceedings on the petition have been finally disposed of before that date, or

(*c*) has been so presented and proceedings in relation to the petition remain before the Court at that date, but the making of an application for a Debt Relief Notice has been consented to by the creditor or the person who presented the petition on the creditor's behalf.

(11) In determining what constitutes reasonable living expenses or a reasonable standard of living for the purposes of this section, regard shall be had to guidelines issued under *section 23*.

(12) Where this subsection applies and a debtor has an interest in or entitlement under a relevant pension arrangement which would, if the debtor performed an act or exercised an option, cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(*a*) an income, or

(*b*) an amount of money other than income,

in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that debtor shall be considered as being in receipt of such income or amount of money.

(13) *Subsection (12)* applies where the debtor—

(*a*) is entitled at the date of the making of the application for a Debt Relief Notice,

(*b*) was entitled at any time before the date of the making of the application for a Debt Relief Notice, or

(*c*) will become entitled within 6 months of the date of the making of the application for a Debt Relief Notice,

to perform the act or exercise the option referred to in *subsection (12)*.

Annotations

Amendments:

F20 Substituted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 3, S.I. No. 414 of 2015.

F21 Substituted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 2, S.I. No. 305 of 2021.

F22 Deleted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 9(b), commenced on enactment as per s. 11(4).

Editorial Notes:

E53 Power pursuant to subs. (6)(c)(iii)(I) exercised (1.02.2018) by *Personal Insolvency Act 2012 (Worth of Motor Vehicle) Regulations 2017* (S.I. No. 594 of 2017), in effect as per reg. 1(2).

Initiation of Debt Relief Notice process.

27.— (1) A debtor who wishes to become a specified debtor shall submit to an approved intermediary a written statement disclosing all of the debtor's financial affairs, which statement shall include—

(*a*) such information as may be prescribed in relation to—

(i) his or her creditors,

(ii) his or her debts and other liabilities,

(iii) his or her assets, and

(iv) the efforts made by him or her to reach an alternative repayment arrangement with his or her creditors, and

(*b*) such other information as may be prescribed.

(2) Following receipt of the information referred to in *subsection (1)*, the approved intermediary shall hold a meeting with the debtor and, at that meeting, provide, on the basis of the information, the debtor with the following information and advice—

(*a*) whether the debtor satisfies the criteria specified in *section 26(2)*,

(*b*) the general effect of making an application under *section 29*, and the consequences, including any adverse consequences, for the debtor in the event of his or her becoming a specified debtor,

(*c*) the other option or options (if any) available to him or her for addressing his or her financial difficulties including, in particular, becoming party to a Debt Settlement Arrangement, Personal Insolvency Arrangement or bankruptcy, and the general effect of choosing one or more than one of those options,

(*d*) the fee (if any) that is prescribed for making an application under *section 29*.

F23**[**(2A) For the purposes of *subsection (2)*, "meeting" means a consultation between the approved intermediary and the debtor held in accordance with any regulations made under this section and at which—

(*a*) both are present in person at the same time and in the same place, or

(*b*) both are not present in person in the same place, but each is able, by means of electronic communications technology, to speak to, to see and to hear the other.

(2B) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the directions, shall, make regulations in relation to the holding and conduct of meetings referred to in *paragraph (a)* or *(b)* of *subsection (2A)*.

(2C) Without prejudice to the generality of *subsection (2B)*, regulations under that subsection may provide for—

(*a*) the circumstances in which a meeting referred to in *subsection (2A)(b)* shall not be held,

(*b*) the form of electronic communications technology that shall not be used in a meeting referred to in *subsection (2A)(b)*, and

(*c*) the conduct of meetings referred to in *subsection (2A)*.

(2D) In making regulations under this section the Insolvency Service shall have regard to:

(*a*) the need to protect debtors and creditors who are or may become specified debtors or specified creditors;

(*b*) the importance of—

(i) ensuring effective access to, and participation in, meetings referred to in *subsection (2A)* by debtors, and

(ii) supporting the development of a relationship of trust and mutual confidence between debtors and approved intermediaries;

(*c*) the need, including having regard to the financial situation of debtors, to ensure efficiency and timeliness in the holding of meetings referred to in *subsection (2A)*;

(*d*) the differing needs of debtors (including having regard to age, health, resources, geographical location, access to private or public transport, access to and familiarity with electronic communications technology, working hours and family and other obligations, including caring obligations) in respect of their participation in a meeting referred to in *subsection (2A)*;

(*e*) the need to ensure that public confidence in the operation of the Debt Relief Notice process is maintained;

(*f*) any other factor that the Insolvency Service considers relevant in ensuring the effective conduct of meetings referred to in *subsection (2A)*.

(2E) In this section, 'electronic communications technology', in relation to a meeting referred to in *subsection (2A)(b)*, means technology that enables real time transmission and real time two-way audio-visual communication.**]**

(3) Where the debtor, following the meeting referred to in *subsection (2)*, wishes to apply for a Debt Relief Notice, he or she shall confirm that fact in writing to the approved intermediary.

F24**[**(4) The debtor, as soon as practicable after he or she has made the confirmation referred to in *subsection (3)*, shall—

(*a*) provide information that fully discloses his or her financial affairs to the approved intermediary, and

(*b*) give his or her written consent to the—

(i) making by the approved intermediary of an enquiry under *subsection (9)*, and

(ii) disclosure by the approved intermediary of personal data of the debtor, to the extent necessary for such an enquiry.**]**

(5) The approved intermediary, on receipt of the information referred to in *subsection (4)*, shall examine that information and, having regard to the obligation of the debtor under *subsections (7)* and *(8)*, assist the debtor in completing a Prescribed Financial Statement.

(6) On completion of a Prescribed Financial Statement under *subsection (5)*, the approved intermediary, if he or she is of the opinion that—

F25**[**(*a*) the information contained in the debtor's Prescribed Financial Statement is true and accurate in all material respects, and**]**

(*b*) the debtor satisfies the eligibility criteria specified in *section 26(2)*,

shall prepare a statement to that effect.

(7) A debtor who participates in the Debt Relief Notice process (including a debtor who becomes a specified debtor), is at all times under an obligation to act in good faith and to co-operate fully in the process.

(8) A person referred to in *subsection (7)*, in his or her dealings with the approved intermediary concerned, shall—

(*a*) make full and honest disclosure to that approved intermediary of all of his or her assets, income and liabilities and of all other circumstances that are relevant to that process,

(*b*) comply with any reasonable request from the approved intermediary to provide assistance, documents and information, including any debt, tax, employment, business, social welfare or other financial records, necessary for the application of the process to the debtor's case or the performance of the approved intermediary's functions, and

(*c*) ensure that, to the best of his or her knowledge, the Prescribed Financial Statement completed under this section is true, accurate and complete.

F24**[**(9) The approved intermediary may, for the purposes of *subsections (5)* and *(6)*, make such enquiries as he or she considers appropriate to verify the value of a debt or other liability disclosed by the debtor under this section.

(10) Where a creditor who receives an enquiry from the approved intermediary pursuant to this section does not furnish the information requested within 21 days of the making of the enquiry, the approved intermediary shall be entitled for the purposes of *subsection (6)* to presume that the value of the debt or liability concerned is that disclosed by the debtor.**]**

Annotations

Amendments:

F23 Inserted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 3, S.I. No. 305 of 2021.

F24 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 49, S.I. No. 286 of 2013.

F25 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 9(c), commenced on enactment as per s. 11(4).

Creditor consent required for issue of Debt Relief Notice in respect of excludable debt.

28.— (1) A Debt Relief Notice shall be issued in respect of an excludable debt only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the issue of such a Debt Relief Notice.

(2) Where a debtor who wishes an application under *section 29* to be made on his or her behalf wishes the Debt Relief Notice concerned to be issued in respect of an excludable debt, the approved intermediary concerned shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—

(*a*) such information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and

(*b*) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the Debt Relief Notice being issued in respect of the debt.

(3) A creditor shall comply with a request under *subsection (2)(b)* within 21 days of receipt of the notification under that subsection.

(4) Where a creditor does not comply with *subsection (3)*, the creditor shall be deemed to have consented to the issue of a Debt Relief Notice in respect of the debt concerned.

(5) In this Chapter, "permitted debt" means an excludable debt to which *subsection (1)* applies.

Application for Debt Relief Notice.

29.— (1) An application for a Debt Relief Notice may only be made—

(*a*) on behalf of a debtor who has made the confirmation referred to in *section 27(3)*, and

(*b*) by an approved intermediary who is satisfied, in relation to that debtor, of the matters referred to in *paragraphs (a)* and *(b)* of *section 27(6)*.

(2) An application referred to in *subsection (1)* shall be made to the Insolvency Service, shall be in such form as may be prescribed by the Insolvency Service and shall be accompanied by such fee (if any) as may be prescribed and the following documents—

(*a*) a copy of the statement made by the approved intermediary under *section 27 (6)*;

(*b*) a document signed by the debtor confirming that he or she satisfies the eligibility criteria specified in *section 26(2)*;

F26**[**(*c*) the Prescribed Financial Statement completed under *section 27*, in relation to which the statement referred to in *paragraph (a)* was made, and a statutory declaration made by the debtor confirming that the Prescribed Financial

Statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;**]**

(*d*) a schedule of the creditors of the debtor and the F26**[**debts concerned, as specified in the Prescribed Financial Statement referred to in *paragraph (c)***]**, stating in relation to each such creditor—

(i) the amount of each debt due to that creditor,

(ii) whether the creditor concerned is a secured creditor and, if so, the details of any security held in respect of the debt concerned, and

(iii) where the debt is an excludable debt, whether that debt is a permitted debt within the meaning of section *28*;

(*e*) the debtor's written consent to—

(i) the disclosure to the Insolvency Service,

(ii) the processing by the Insolvency Service, and

(iii) the disclosure by the Insolvency Service to creditors of the debtor concerned,

of personal data of that debtor, to the extent necessary in respect of the Debt Relief Notice process;

(*f*) the debtor's written consent to the making of any enquiry under *section 30* relating to the debtor by the Insolvency Service;

(*g*) a document signed by the debtor stating whether, to the best of his or her knowledge, there is any judgment or court order in force against him or her which relates to a debt which is a qualifying debt;

(*h*) such other information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed.

(3) A debtor on whose behalf an application under *subsection (1)* has been made shall notify the approved intermediary concerned as soon as practicable if the debtor becomes aware of—

(*a*) any error in, or omission from, the information supplied to the Insolvency Service in, or in support of, the application;

(*b*) any material change in his or her circumstances between the application date and the date on which the application is reviewed under *section 31(2)* that would affect the debtor's eligibility for the issue of a Debt Relief Notice.

(4) An approved intermediary who receives information under *subsection (3)* shall, without delay, furnish that information to the Insolvency Service.

(5) An application under this section may be withdrawn by the approved intermediary at any time prior to the issue of a Debt Relief Notice under *section 31*.

Annotations

Amendments:

F26 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 50, S.I. No. 286 of 2013.

F27 Inserted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 4, not commenced as of date of revision.

Modifications (not altering text):

C1 Prospective affecting provision: subs. (2)(c) amended by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 4, not commenced as of date of revision.

F26**[**(*c*) the Prescribed Financial Statement completed under *section 27*, in relation to which the statement referred to in *paragraph (a)* was made, and a statutory declaration F27**[**or a confirmation of truth**]** made by the debtor confirming that the Prescribed Financial Statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;**]**

C2 Reference to personal data construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 165, S.I. No. 17 of 2018.

Reference to personal data in enactment

165. Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

(*a*) the Data Protection Regulation, and

(*b*) Part 5.

Consideration by Insolvency Service of application under *section 29*.

30.— (1) For the purpose of its consideration of an application under *section 29*, the Insolvency Service shall be entitled to request from the approved intermediary any further information it requires and to defer further consideration of the application until such information is furnished to it.

(2) Where an approved intermediary fails to provide the information requested by the Insolvency Service under *subsection (1)* within 14 days or such longer period as the Insolvency Service may permit, the application shall be deemed to be withdrawn.

(3) Subject to *subsection (4)*, in considering the application for a Debt Relief Notice, the Insolvency Service shall make such enquiries as it considers necessary to satisfy itself that—

(*a*) the approved intermediary is a person entitled under this Act to act as an approved intermediary, and

(*b*) having regard to the information received under *section 29* and *subsection (1)* the debtor satisfies the eligibility criteria specified in *section 26(2)*.

(4) Subject to *subsections (5)* to *(7)*, for the purposes of *subsection (3)* the Insolvency Service shall be entitled to presume that the debtor satisfies the eligibility criteria for a Debt Relief Notice set out in *section 26(2)* if the documents required under *section 29* to accompany the application have accompanied it and the Insolvency Service has no reason to believe that the information supplied in or in support of the application, including information furnished to it under *section 29(4)*, is incomplete or inaccurate.

(5) The Insolvency Service may make such enquiries as it considers appropriate to verify the completeness or accuracy of any matter referred to in the Prescribed Financial Statement of the debtor or in relation to the assets, liabilities, income or expenditure of the debtor.

(6) Without prejudice to the generality of *subsection (5)* the matters in respect of which the Insolvency Service may make an enquiry include the following:

(*a*) particulars relating to bank accounts, securities or other accounts held, solely or jointly, by or for the benefit of the debtor with financial institutions or financial intermediaries in the State or abroad;

(*b*) particulars relating to assets of the debtor and the value of such assets;

(*c*) particulars of the liabilities of the debtor;

(*d*) the employment and income of the debtor;

(*e*) payments received by the debtor from the Department of Social Protection, other Departments of State, local authorities or other State bodies or agencies, and whether or not such payments are made as agent of any other person;

(*f*) taxes or charges imposed by or under statute paid or owed by the debtor, whether within or outside the State and refunds in respect of such taxes and charges which are or may become due to the debtor.

(7) Nothing in this section shall be construed as requiring the Insolvency Service to make an enquiry in any case.

(8) A person who receives an enquiry from the Insolvency Service pursuant to this section shall furnish the information requested as soon as practicable.

(9) Notwithstanding anything contained in any enactment, for the purposes of the performance of the functions of the Insolvency Service under this Chapter, information held by the Department of Social Protection, other Departments of State, the Revenue Commissioners, local authorities or other State bodies or agencies in relation to a debtor may be furnished to the Insolvency Service.

Referral of application to appropriate court for issue of Debt Relief Notice.

31.— (1) Where the Insolvency Service, following its consideration under *section 30*—

(*a*) is satisfied that an application under *section 29* is in order, it shall—

(i) issue a certificate to that effect,

F28**[**(ii) furnish that certificate together with a copy of the application and the supporting documentation (other than the documents referred to in *section 29(2)(e)* and *(f)*) to the appropriate court, and**]**

(iii) notify the approved intermediary to that effect, and

(*b*) is not so satisfied, it shall notify the approved intermediary to that effect.

(2) Where the appropriate court receives the application and accompanying documentation pursuant to *subsection (1)(a)*, it shall consider the application and documentation and, subject to *subsection (3)*—

(*a*) if satisfied that the criteria specified in *section 26(2)* have been satisfied, shall issue a Debt Relief Notice in respect of the debts specified in the application under *section 29* which it is satisfied are qualifying debts, and

(*b*) if not so satisfied, shall refuse to issue a Debt Relief Notice.

(3) The appropriate court, where it requires further information or evidence for the purpose of its arriving at a decision under *subsection (2)*, may hold a hearing, which hearing shall be on notice to the Insolvency Service and the approved intermediary concerned.

(4) F29**[**...**]**

(5) The registrar of the appropriate court shall notify the Insolvency Service where the appropriate court—

(*a*) issues a Debt Relief Notice under this section,

(*b*) refuses an application under *subsection (2)(b)*, or

(*c*) decides to hold a hearing referred to in *subsection (3)*.

(6) In considering an application under this section the appropriate court shall be entitled to treat a certificate issued by the Insolvency Service under *subsection (1)* as evidence of the matters certified therein.

Annotations

Amendments:

F28 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 51(a), S.I. No. 286 of 2013.

F29 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 51(b), S.I. No. 286 of 2013.

Contents of Debt Relief Notice.

32.— A Debt Relief Notice issued under *section 31* shall specify—

(*a*) the debtor who is the subject of the Notice,

(*b*) the debts ("specified qualifying debts"), referred to in *section 31(2)*, in respect of which the Notice has been issued, and

(*c*) in relation to each specified qualifying debt—

(i) the value of the debt on the application date, and

(ii) the creditor ("specified creditor") to whom it is owed.

Duties of Insolvency Service on issue of Debt Relief Notice.

33.— (1) On receiving the notification referred to in *section 31(5)(a)*, the Insolvency Service shall, as soon as practicable—

(*a*) notify the approved intermediary concerned that the Debt Relief Notice has been issued,

(*b*) send the notice referred to in *subsection (2)* to the specified debtor,

(*c*) send the notice referred to in *subsection (3)* to each specified creditor, and

(*d*) comply with *subsection (4)*.

(2) A notice under *subsection (1)(b)* shall inform the specified debtor of the issue of a Debt Relief Notice in respect of which he or she is the specified debtor, and shall be accompanied by—

(*a*) a copy of the Notice, and

(*b*) a statement of the obligations during the supervision period of a specified debtor under this Chapter.

(3) A notice under *subsection (1)(c)* shall inform the specified creditor concerned of the issue of a Debt Relief Notice in respect of which he or she is a specified creditor, and shall be accompanied by—

(*a*) a copy of the Notice,

(*b*) a statement of the specified qualifying debt or debts in respect of which he or she is the specified creditor,

(*c*) a statement of his or her right under *section 43* to object to the inclusion, in the Debt Relief Notice, of a specified qualifying debt referred to in *paragraph (b)*, and

(*d*) a copy of the Prescribed Financial Statement completed under *section 27*.

(4) The Insolvency Service complies with this subsection by recording on the Register of Debt Relief Notices—

(*a*) the fact that the Debt Relief Notice has been issued,

(*b*) the date on which the Debt Relief Notice was issued,

(*c*) the name and address of the specified debtor concerned, and

(*d*) such other details as may be prescribed under *section 133(3)(b)*.

Duration of Debt Relief Notice.

34.— (1) Subject to this section, the period for which a Debt Relief Notice shall remain in effect ("supervision period") is the period of 3 years from the date on which its issue is recorded under *section 33(4)*.

(2) The appropriate court, on application to it by the Insolvency Service, may extend the supervision period where it is satisfied that such extension is necessary in order to allow the Insolvency Service to—

(*a*) carry out or complete an investigation under *section 40*, or

(*b*) take any other action it considers necessary (whether as a result of such an investigation or otherwise) in relation to the Notice concerned.

(3) The appropriate court may extend the supervision period for the purposes of determining an application under *section 42*, *43* or *44*.

(4) Notwithstanding *subsections (1)* to *(3)*, a Debt Relief Notice shall cease to have effect on the date—

(*a*) on which the termination of the Notice, under *section 42*, *43* or *44*, takes effect, or

(*b*) on which it ceases to have effect under F30**[***section 37(3)* (as amended by section 55 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013)**]**.

(5) The registrar of the appropriate court shall notify the Insolvency Service F31**[**...**]** where a supervision period is extended under *subsection (2)* or *(3)* or under *section 41(3)(c)*, *42(3)(c)*, *43(5)(b)* or *44(4)(b)*.

(6) On receiving the notification referred to in *subsection (5)*, the Insolvency Service shall—

(*a*) send a notice to the specified debtor and each specified creditor, informing them of the extension, and

(*b*) record the extension in the Register of Debt Relief Notices.

Annotations

Amendments:

F30 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 52(a), S.I. No. 286 of 2013.

F31 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 52(b), S.I. No. 286 of 2013.

Effect of issue of Debt Relief Notice.

35.— (1) Subject to this section, a specified creditor shall not, during the supervision period concerned—

(*a*) initiate any legal proceedings in relation to a specified qualifying debt,

(*b*) take any step to prosecute any such legal proceedings already initiated,

(*c*) take any step to secure or recover payment of a specified qualifying debt,

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor in respect of a specified qualifying debt,

F32**[**(*e*) take any step to recover goods in the possession or custody of the debtor, unless title to the goods is vested in the specified creditor or the specified creditor holds security over the goods,**]**

(*f*) contact the specified debtor regarding payment of a specified qualifying debt, otherwise than at the request of the debtor, or

(*g*) in relation to an agreement with the specified debtor, other than a security agreement, by reason only that the debtor is insolvent or that the Debt Relief Notice concerned is in effect—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(2) A specified creditor shall not, during the supervision period concerned, in respect of a specified qualifying debt, present, apply for or proceed with—

(*a*) a bankruptcy petition relating to the debtor, or

(*b*) a summons under section 8 of the Bankruptcy Act 1988.

(3) Without prejudice to *subsections (1)* and *(2)*, during the supervision period concerned, no other proceedings, execution or other legal process in respect of a specified qualifying debt may be commenced or continued against the specified debtor or his or her property, except with the leave of the appropriate court and subject to any order that the court may make to stay such proceedings, execution or other legal processes for such period as the court deems appropriate, but this subsection shall not operate to prohibit the commencement or continuation of any criminal proceedings against the debtor.

(4) Notwithstanding *subsection (1)*, the fact that a Debt Relief Notice is in effect in relation to a specified debtor shall not operate to prevent a specified creditor taking the actions referred to in *subsection (1)* as respects another person who has guaranteed a debt of the specified debtor concerned.

(5) Notwithstanding *subsection (1)*, the fact that a Debt Relief Notice is in effect under this Chapter in relation to a specified debtor shall not operate to prevent a specified creditor taking the actions referred to in *subsection (3)* as respects a person who has jointly contracted with the specified debtor concerned or is jointly liable with that specified debtor to the specified creditor and that other person may sue or be sued in respect of the contract without joining the specified debtor.

(6) *Subsections (4)* and *(5)* do not apply where a Debt Relief Notice, or a protective certificate issued under *Chapter 3* or *4*, is in effect as respects the other person.

(7) The Deeds of Arrangement Act 1887 does not apply to a Debt Relief Notice.

(8) While a Debt Relief Notice remains in effect under this Chapter, the information referred to in *section 33(4)*, and a record of any extension under this Chapter of the supervision period concerned, shall remain on the Register of Debt Relief Notices.

(9) Nothing in this section shall affect the right of a secured creditor to enforce or otherwise deal with his or her security.

Annotations

Amendments:

F32 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 53, S.I. No. 286 of 2013.

General obligations of debtor arising under this Chapter.

36.— (1) A specified debtor, during the supervision period concerned, shall inform the Insolvency Service as soon as practicable—

(*a*) of any material change in the specified debtor's circumstances, in particular an increase or decrease in the extent of his or her assets, liabilities or income, and

(*b*) where the specified debtor becomes aware of any inaccuracy or omission in his or her Prescribed Financial Statement or any other information provided, or documents submitted, by him or her, or on his or her behalf, to the Insolvency Service.

(2) F33**[**A specified debtor**]** who, during the supervision period concerned, receives a gift or payment worth €500 or more shall surrender to the Insolvency Service 50 per cent of the value of that gift or payment.

(3) F33**[**Subject to *subsection (4),***]** a specified debtor whose income increases by €400 or more per month during the supervision period concerned shall surrender to the Insolvency Service 50 per cent of that increase.

(4) The reference in *subsection (3)* to a specified debtor's income is a reference to his or her income as stated in the information provided, or documents submitted by him or her, or on his or her behalf, under *section 29*, less the following deductions (where applicable):

(*a*) income tax;

(*b*) social insurance contributions;

(*c*) payments made by him or her in respect of excluded debts;

(*d*) payments made by him or her in respect of excludable debts that are not permitted debts;

(*e*) such other levies and charges on the specified debtor's income as may be prescribed.

(5) F34**[**...**]**

(6) A sum surrendered to the Insolvency Service under *subsection (2)* or *(3)* shall be dealt with in accordance with *section 38*.

(7) A specified debtor, during the supervision period concerned, shall not, either alone or with any other person, obtain credit in an amount of more than €650 from any person without informing that person that he or she is a specified debtor.

Annotations

Amendments:

F33 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 54(a), (b), S.I. No. 286 of 2013.

F34 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 54(c), S.I. No. 286 of 2013.

Payment by specified debtor of portion of specified debts.

37.— (1) A specified debtor may, at any time during the supervision period concerned, pay a sum to the Insolvency Service in accordance with this section.

F35**[**(2) Where—

(*a*) a sum is paid by a specified debtor under this section, or surrendered by him or her under *subsection (2)* or *(3)* of *section 36*, that is, or

(*b*) the aggregate of the sums so paid or so surrendered is,

in an amount that is not less than 50 per cent of the total value of the specified qualifying debts concerned, *subsection (3)* shall apply.

(3) Where this subsection applies—

(*a*) the Debt Relief Notice concerned shall cease to have effect,

(*b*) the specified debtor shall stand discharged from all of the specified qualifying debts, and

(*c*) the Insolvency Service shall, within 3 months of the date on which *paragraph (a)* or *(b)*, as the case may be, of *subsection (2)* applies, remove from the Register of Debt Relief Notices all information recorded in it in respect of the Debt Relief Notice.**]**

Annotations

Amendments:

F35 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 55, S.I. No. 286 of 2013.

Treatment by Insolvency Service of sums received under *section 36* or *37*.

38.— (1) The Insolvency Service, on receipt of a sum under *subsection (2)* or *(3)* of *section 36* or under *section 37*, shall deal with that sum in accordance with this section.

(2) On receipt of a sum referred to in *subsection (1)*, the Insolvency Service shall, subject to *subsection (3)*—

(*a*) apportion that sum, on a *pari passu* basis, among the specified creditors to whom a specified qualifying debt that is a permitted debt is owed, and

(*b*) within one month of such receipt, transmit to each such specified creditor payment of the sum apportioned to that creditor under *paragraph (a)*.

(3) Where, following a payment or payments to specified creditors under *subsection (2)* or *subsection (4)*, as the case may be, all of the specified qualifying debts referred to in *subsection (2)* have been paid in full, the Insolvency Service shall, in relation to a sum referred to in *subsection (1)*—

(*a*) apportion that sum, on a *pari passu* basis, among the remaining specified creditors concerned, and

(*b*) within one month of such receipt, transmit to each such specified creditor payment of the sum apportioned to that creditor under *paragraph (a)*.

(4) Where the Insolvency Service—

(*a*) has apportioned a sum to a specified creditor under *subsection (2)(a)* or *(3)(a)*, as the case may be, and

(*b*) after reasonable efforts, is unable to locate that specified creditor,

it shall apportion the sum referred to in *paragraph (a)* among the specified creditors referred to in *subsection (2)(a)* or *(3)(a)*, as the case may be, whom it has succeeded in locating and, within one month of doing so, shall transmit to each such specified creditor payment of the sum so apportioned.

(5) Where a specified qualifying debt is secured, the Insolvency Service, in apportioning a sum to the specified creditor concerned under *subsection (2)(a)*, *(3)(a)* or *(4)*, shall disregard the value of the security held by the specified creditor for that debt.

Power to amend Debt Relief Notice.

39. F36**[**(1)**]** An appropriate court may, on application to it by the Insolvency Service made during the supervision period concerned, order the amendment of a Debt Relief Notice where it is satisfied that such an amendment is necessary in order to address an ambiguity in, or to rectify an error in or omission from, that Notice.

F36**[**(2) An application under *subsection (1)* shall be on notice to the specified debtor and each specified creditor.**]**

Annotations

Amendments:

F36 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 56, S.I. No. 286 of 2013.

Investigation by Insolvency Service.

40.— (1) The Insolvency Service may, during the supervision period concerned, carry out, in accordance with this section, an investigation of any matter that appears to it to be relevant to the arriving at a decision to exercise its powers under this Chapter.

(2) *Subsections (5)* to *(9)* of *section 30* apply to an investigation under this section as they apply to an enquiry under that section.

Application by Insolvency Service for direction of court.

41.— (1) The Insolvency Service may, during the supervision period concerned, make an application to the appropriate court for directions in relation to a matter arising in connection with a Debt Relief Notice, including a matter relating to the specified debtor's compliance with an obligation under *section 36.*

(2) An application under *subsection (1)* shall be made by the lodging by the Insolvency Service of a notice with the appropriate court, on notice to the specified debtor.

(3) On an application under this section the court may do one or more of the following—

(*a*) give the Insolvency Service such directions as it deems appropriate,

(*b*) make an order for the enforcement of an obligation of the specified debtor under *section 36*,

(*c*) extend the supervision period concerned,

(*d*) make an order amending the Debt Relief Notice, or

(*e*) make such other order as it deems appropriate.

(4) The power conferred on the court under *subsection (3)(d)*, *section 42(3)(d)*, *section 43(5)(c)* and *section 44(4)(d)* does not include the power to specify in a Debt Relief Notice, as a specified qualifying debt, any debt that was not included in the schedule referred to in *section 29(2)(d)* or in any information provided, or documents submitted, by the specified debtor, or on his or her behalf, for the purpose of his or her application for that Notice.

Application by person affected to court.

42.— (1) A specified debtor or a specified creditor ("applicant") may, during the supervision period concerned, make an application to the appropriate court if he or she is aggrieved by any act, omission or decision of the Insolvency Service in connection with the Debt Relief Notice concerned.

(2) An application under *subsection (1)* shall be made by the lodging by the applicant of a notice with the appropriate court, on notice to the Insolvency Service and—

(*a*) where the applicant is a specified creditor, to the specified debtor and the other specified creditors, and

(*b*) where the applicant is the specified debtor, to the specified creditors.

(3) On an application under this section the court may dismiss the application or do one or more of the following—

(*a*) revoke the whole or part of any act or decision of the Insolvency Service,

(*b*) make an order for the compliance by the specified debtor concerned with an obligation under *section 36*,

(*c*) extend the supervision period concerned, by an additional period not exceeding 12 months,

(*d*) make an order amending the Debt Relief Notice concerned, or

(*e*) make such other order as it deems appropriate.

Creditor objection during supervision period.

43.— (1) A specified creditor may, during the supervision period concerned, make an application to the appropriate court if he or she objects to the inclusion, as a specified qualifying debt, of a debt in respect of which he or she is a specified creditor.

(2) An application under *subsection (1)* shall be—

(*a*) made by the lodging by the specified creditor of a notice of objection with the appropriate court, on notice to the Insolvency Service and the specified debtor, and

(*b*) based on a ground referred to in *subsection (3)*.

(3) The grounds of objection on which an application under *subsection (1)* may be made are the following:

(*a*) the specified debtor did not satisfy the eligibility criteria specified in *section 26(2)* when the application under *section 29* was made on his or her behalf,

(*b*) one or more of the following applies, which causes or has caused a material detriment to the specified creditor—

(i) there is a material inaccuracy or omission in the Prescribed Financial Statement concerned, or other information provided, or documents

submitted, by the specified debtor, or on his or her behalf, under *section 29*;

(ii) the specified debtor failed to comply with an obligation under *section 36*;

(iii) an adjudication in bankruptcy has been made in relation to the specified debtor that has not been annulled or discharged;

(iv) the specified debtor has since the coming into effect of the Debt Relief Notice, committed an offence under this Act;

F37**[**(v) the procedural requirements specified in this Chapter were not complied with;

(vi) the specified debtor, by his or her conduct within the period of 6 months ending on the application date, arranged his or her financial affairs primarily with a view to being or becoming eligible for the issue of a Debt Relief Notice.**]**

(4) A hearing under *subsection (1)* shall be heard with all due expedition.

(5) On an application under this section the court may dismiss the application or do one or more of the following—

(*a*) terminate the Debt Relief Notice,

(*b*) extend the supervision period concerned, by an additional period not exceeding 12 months,

(*c*) make an order amending the Debt Relief Notice, including by removing the debt which was the subject of the objection under *subsection (1)*, or

(*d*) make such other order as it deems appropriate.

F38**[**(6) Where the appropriate court makes a decision under *subsection (5)* or *section 44(4)*—

(*a*) the Registrar of the appropriate court shall notify the Insolvency Service of the decision, and

(*b*) the Insolvency Service, on receipt of the notification under *paragraph (a)*, shall notify the specified creditors concerned of the decision.**]**

Annotations

Amendments:

F37 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 9(d), commenced on enactment as per s. 11(4).

F38 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 57, S.I. No. 286 of 2013.

Application by Insolvency Service to have Debt Relief Notice terminated.

44.— (1) The Insolvency Service may, during the supervision period concerned, apply to the appropriate court to have a Debt Relief Notice terminated.

(2) An application under *subsection (1)* shall be—

(*a*) made by the lodging by the Insolvency Service of a notice with the appropriate court, on notice to the specified debtor and each specified creditor, and

(*b*) based on a ground referred to in *subsection (3)*.

(3) The grounds on which an application under *subsection (1)* may be made are the following—

(*a*) the specified debtor did not satisfy the eligibility criteria specified in *section 26(2)* when the application under *section 29* was made on his or her behalf,

(*b*) there is a material inaccuracy or omission in the Prescribed Financial Statement concerned, or other information provided, or documents submitted, by the specified debtor, or on his or her behalf, under *section 29*,

(*c*) the specified debtor failed to comply with an obligation under *section 36*,

(*d*) an adjudication in bankruptcy has been made in relation to the specified debtor that has not been annulled or discharged,

(*e*) the specified debtor has, since the coming into effect of the Debt Relief Notice, committed an offence under this Act,

F39**[**(*f*) the procedural requirements specified in this Chapter were not complied with;

(*g*) the specified debtor, by his or her conduct within the period of 6 months ending on the application date, arranged his or her financial affairs primarily with a view to being or becoming eligible for the issue of a Debt Relief Notice.**]**

(4) On an application under this section the court may dismiss the application or do one or more of the following—

(*a*) terminate the Debt Relief Notice,

(*b*) extend the supervision period concerned, by an additional period not exceeding 12 months,

(*c*) make an order for the enforcement of an obligation of the specified debtor under *section 36*,

(*d*) make an order amending the Debt Relief Notice, or

(*e*) make such other order as it deems appropriate.

Annotations

Amendments:

F39 Substituted (24.12.2013) by *Companies (Miscellaneous Provisions) Act 2013* (46/2013), s. 9(e), commenced on enactment as per s. 11(4).

Effect of termination of Debt Relief Notice.

45.— (1) Where a Debt Relief Notice is terminated under this Chapter, the specified debtor shall, unless the appropriate court has ordered otherwise and subject to *subsection (2),* thereupon be liable in full for—

(*a*) all debts specified in the Debt Relief Notice at the time of its termination as specified qualifying debts, and

(*b*) all arrears, charges and interest that have accrued during the supervision period in relation to those debts.

(2) In calculating the liability of a specified debtor under *subsection (1)*, the debtor shall be given credit in respect of payments made by him or her under *subsection (2)* or *(3)* of *section 36* or under *section 37*.

(3) Where *subsection (1)* applies—

(*a*) the period during which the Debt Relief Notice concerned was in effect shall be disregarded in reckoning any period of time for the purpose of any applicable limitation period (including any limitation period under the Statute of Limitations 1957) in relation to any proceedings or process in respect of a specified qualifying debt to which *section 35* applied, and

(*b*) the period for which any judgment against the specified debtor in relation to a specified qualifying debt has effect (whether under statute or rule of court) shall, subject to the provisions of this Act, be extended by the period that the Debt Relief Notice was in effect.

F40**[**(4) Where a Debt Relief Notice is terminated under this Chapter, the Insolvency Service shall, within 3 months after the date on which the supervision period concerned would, but for that termination, have ended, remove from the Register of Debt Relief Notices all information recorded in it in respect of the Debt Relief Notice.**]**

Annotations

Amendments:

F40 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 58, S.I. No. 286 of 2013.

Discharge from specified qualifying debts.

46.— (1) Where a Debt Relief Notice ceases to have effect (other than where it is terminated under this Chapter), the specified debtor shall, subject to this section, stand discharged from the specified qualifying debts concerned and all interest, penalties and other sums which have, since the application date, become payable in relation to those debts.

(2) Where a specified debtor stands discharged from the specified qualifying debts under *subsection (1)*, the Insolvency Service shall, F41**[**...**]** within 3 months—

(*a*) remove from the Register of Debt Relief Notices all information recorded in it in respect of the Debt Relief Notice,

(*b*) send a notice to the specified creditors informing them of that fact, and

(*c*) issue to the specified debtor a certificate ("Debt Relief Certificate") confirming the discharge.

(3) *Subsection (1)* is without prejudice to a specified debtor's obligations under *section 36(2)* and *(3).*

(4) The discharge of the specified debtor under *subsection (1)* does not release any other person from—

(*a*) any liability (whether as partner or co-trustee of the specified debtor or otherwise) from which the specified debtor is discharged, or

(*b*) any liability as surety for the specified debtor or as a person in the nature of such a surety.

(5) *Subsection (1)* shall not affect the right of a secured creditor to enforce or otherwise deal with his or her security.

Annotations

Amendments:

F41 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 59, S.I. No. 286 of 2013.

Approved intermediaries.

47.— (1) The Insolvency Service may authorise a person, or a class of person, to perform the functions of an approved intermediary under this Chapter.

(2) An approved intermediary shall not charge a debtor referred to in *section 27(1)* any fee in connection with the performance by the approved intermediary of his or her functions under this Chapter.

(3) An approved intermediary is not liable in damages to any person for anything done or omitted to be done when acting (or purporting to act) as an approved intermediary under this Chapter.

(4) *Subsection (3)* shall not apply if the act or omission concerned was in bad faith.

F42**[**(5) The Insolvency Service, with the consent of the Minister, may and, if directed by the Minister to do so and in accordance with the terms of the direction, shall, following consultation with the Minister for Finance and any other person as the Insolvency Service deems appropriate or as the Minister directs, by regulations provide for any of the following for the purposes of the authorisation, regulation and supervision of approved intermediaries and the protection of debtors and creditors who are or may become specified debtors or specified creditors:

(*a*) the requirements applicable to—

(i) the authorisation of persons as approved intermediaries under this section, and

(ii) the dealings of an approved intermediary with the Insolvency Service;

(*b*) the requirements to be met in the performance of their functions under this Act by approved intermediaries including, without limiting the generality of the foregoing, in relation to:

(i) the public interest;

(ii) the duties owed to debtors and creditors who are or may become specified debtors or specified creditors;

(iii) the professional and ethical conduct of approved intermediaries;

(iv) the maintenance of the confidentiality of the information of debtors and creditors who are or may become specified debtors or specified creditors;

(v) case management in respect of debtors who are or may become specified debtors;

(vi) conflicts of interest;

(*c*) the qualifications (including levels of training, education, expertise and experience) or any other requirements (including required standards of competence) for the authorisation of persons as approved intermediaries under this section;

(*d*) the records, including files and accounts, to be maintained, including in electronic form, by an approved intermediary;

(*e*) the requirements to be met by an approved intermediary when handling complaints against that approved intermediary;

(*f*) any other matter relating to the authorisation, supervision or regulation of approved intermediaries which is incidental to or is considered by the Insolvency Service to be necessary or expedient for the said purposes or all or any of the matters referred to in this subsection.

(5A) The Insolvency Service may do any thing which is necessary or expedient to monitor an approved intermediary's compliance with his or her obligations under this Act and regulations made under this Act.**]**

(6) Regulations under *subsection (5)* may provide for the withdrawal of an authorisation of a person where he or she no longer meets the criteria for such an authorisation prescribed in those regulations.

(7) The Insolvency Service may, out of the proceeds of fees charged under *section 20*, make payments to an approved intermediary in connection with the performance of his or her functions under this Chapter.

F43**[**(8) Where an approved intermediary resigns from the role of approved intermediary as respects a debtor, he or she shall notify the Insolvency Service of that fact, which notification shall be accompanied by a statement of the reasons for his or her resignation.

(9) Where, at any time after the debtor has made the confirmation referred to in *section 27(3)* but before the Debt Relief Notice is issued under *section 31*, the approved intermediary concerned ('original approved intermediary')—

(*a*) dies,

(*b*) becomes incapable, through ill-health or otherwise, of performing the functions of an approved intermediary as respects the debtor,

(*c*) resigns from the role of approved intermediary as respects the debtor, or

(*d*) is no longer entitled to perform the functions of an approved intermediary under this Act,

the debtor shall, as soon as practicable after becoming aware of that fact, appoint another approved intermediary to act as his or her approved intermediary for the purposes of this Chapter.

(10)(*a*) Where *paragraph (a)*, *(b)* or *(c)* of *subsection (9)* applies, the debtor concerned shall, as soon as practicable, inform the Insolvency Service of that fact.

(*b*) Where an approved intermediary has been appointed under *subsection (9)*, the approved intermediary shall, as soon as practicable, inform the Insolvency Service and, where applicable, a creditor to whom a notification under *section 28(2)* has been sent, where the period referred to in *section 28(3)* has not expired, of that fact.

(11) Where an approved intermediary is appointed under *subsection (9)*—

(*a*) that appointment shall not affect the validity of anything previously done under this Chapter by the original approved intermediary, and

(*b*) references in this Act to an approved intermediary, in relation to the debtor concerned, shall be construed as including references to the approved intermediary so appointed.**]**

Annotations

Amendments:

F42 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 60(a), S.I. No. 286 of 2013.

F43 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 60(b), S.I. No. 286 of 2013.

Chapter 2

Appointment of personal insolvency practitioner for purposes of Chapter 3 or 4

General.

48.— A debtor who wishes to become party, as a debtor, to a Debt Settlement Arrangement under *Chapter 3* or a Personal Insolvency Arrangement under *Chapter 4* ("an arrangement") shall, before making an application under the Chapter concerned, comply with this Chapter.

Appointment of personal insolvency practitioner.

49.— (1) A debtor to whom *section 48* applies shall submit to a personal insolvency practitioner a written statement disclosing all of the debtor's financial affairs, which statement shall include—

(*a*) such information as may be prescribed in relation to—

(i) his or her creditors,

(ii) his or her debts and other liabilities,

(iii) his or her assets, and

(iv) guarantees (if any) given by the debtor in respect of a debt of another person,

and

(*b*) such other financial information as may be prescribed.

(2) Following receipt of the information referred to in *subsection (1)*, F44**[**the personal insolvency practitioner F45**[**...**]** shall hold a meeting**]** with the debtor and—

(*a*) advise him or her, on the basis of the information, of his or her options for addressing his or her financial difficulties and, in particular whether he or she satisfies the criteria specified in *Chapter 3* or *4*, or both, for making a proposal for an arrangement, which advice the personal insolvency practitioner shall confirm in writing to the debtor, and

(*b*) provide him or her with—

(i) information relating to the procedure involved in, and general effect, including the likely costs, of becoming party to an arrangement,

(ii) information in writing relating to the fee arrangements and other conditions of appointment of the personal insolvency practitioner in the event that he or she is appointed under *subsection (3)*, and

(iii) such other information as may be prescribed.

F46**[**(2A) For the purposes of *subsection (2)*, 'meeting' means a consultation between the personal insolvency practitioner and the debtor, held in accordance with any regulations made under this section and at which—

(*a*) both are present in person at the same time and in the same place, or

(*b*) both are not present in person in the same place, but each is able, by means of electronic communications technology, to speak to, to see and to hear the other.

(2B) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the directions, shall, make regulations in relation to the holding and conduct of meetings referred to in *paragraph (a)* or *(b)* of *subsection (2A)*.

(2C) Without prejudice to the generality of *subsection (2B)*, regulations under that subsection may provide for—

(*a*) the circumstances in which a meeting referred to in *subsection (2A)(b)* shall not be held,

(*b*) the form of electronic communications technology that shall not be used in a meeting referred to in *subsection (2A)(b)*, and

(*c*) the conduct of meetings referred to in *subsection (2A)*.

(2D) In making regulations pursuant to this section the Insolvency Service shall have regard to:

(*a*) the need to protect debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements;

(*b*) the importance of—

(i) ensuring effective access to, and participation in, meetings referred to in *subsection (2A)* by debtors, and

(ii) supporting the development of a relationship of trust and mutual confidence between debtors and personal insolvency practitioners;

(*c*) the need, having regard to the financial situation of debtors, to ensure efficiency and timeliness in the holding of meetings referred to in *subsection (2A)*;

(*d*) the differing needs of debtors (including having regard to age, health, resources, geographical location, access to private or public transport, access to and familiarity with electronic communications technology, working hours and family and other obligations, including caring obligations) in respect of their participation in a meeting referred to in *subsection (2A)*;

(*e*) the need to ensure that public confidence in the operation of the Debt Settlement Arrangement and Personal Insolvency Arrangement processes is maintained;

(*f*) any other factor that the Insolvency Service considers relevant in ensuring the effective conduct of meetings referred to in *subsection (2A)*.

(2E) In this section, 'electronic communications technology', in relation to a meeting referred to in *subsection (2A)(b)*, means technology that enables real time transmission and real time two-way audio-visual communication.**]**

(3) Where the debtor, following the meeting referred to in *subsection (2)*, wishes to become party to an arrangement, he or she shall appoint a personal insolvency practitioner (whether the personal insolvency practitioner referred to in *subsection*

(1) or another personal insolvency practitioner) to act as his or her personal insolvency practitioner for the purposes of *Chapter 3* or *4*, as the case may be.

(4) On being appointed under *subsection (3)*, the personal insolvency practitioner shall—

(*a*) confirm in writing to the debtor that the personal insolvency practitioner has consented to act in the role of personal insolvency practitioner as respects the debtor, and

(*b*) notify the Insolvency Service of his or her appointment.

F44**[**(5) Where a personal insolvency practitioner is appointed under *subsection (3)*, he or she shall stand appointed, and the debtor concerned shall not appoint another personal insolvency practitioner under that subsection, until such time as—

(*a*) where the debtor concerned terminates the appointment of the personal insolvency practitioner as respects the debtor, such termination takes effect in accordance with *section 49A*,

(*b*) where the personal insolvency practitioner resigns from that role as respects the debtor, such resignation takes effect in accordance with *section 49B*,

(*c*) where the personal insolvency practitioner is replaced by reason of being no longer capable of performing, through ill-health or otherwise, or is no longer authorised to perform, the functions of a personal insolvency practitioner as respects the debtor, such replacement takes effect in accordance with *section 49C*.**]**

(6) F47**[**...**]**

(7) F47**[**...**]**

(8) F47**[**...**]**

(9) F47**[**...**]**

Annotations

Amendments:

F44 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 61(a), (b), S.I. No. 286 of 2013.

F45 Deleted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 5(a), S.I. No. 305 of 2021.

F46 Inserted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 5(b), S.I. No. 305 of 2021.

F47 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 61(c), S.I. No. 286 of 2013.

F48**[**Termination by a debtor of his or her appointment of a personal insolvency practitioner

49A.— (1) A debtor who has appointed a personal insolvency practitioner under *section 49(3)* may terminate that appointment by giving notice in writing to the personal insolvency practitioner, which notice shall specify the date of the termination and which date shall not be less than one month after the giving of the notice to the personal insolvency practitioner.

(2) A debtor who terminates an appointment under *subsection (1)* shall notify the Insolvency Service of that termination as soon as is practicable thereafter.

(3) A debtor who has terminated the appointment of a personal insolvency practitioner under *subsection (1)* shall, no later than two months from the date of termination, appoint a personal insolvency practitioner to replace the original personal insolvency practitioner (in this section referred to as a 'replacement personal insolvency practitioner') and shall as soon as practicable thereafter notify the Insolvency Service of that appointment.

(4) Where a replacement personal insolvency practitioner has been appointed under *subsection (3)*, he or she, as soon as practicable thereafter, shall inform the Insolvency Service and the creditors concerned of that fact.

(5) Where a replacement personal insolvency practitioner is appointed under *subsection (3)*—

(*a*) that appointment shall not affect the validity of anything previously done under this Chapter, *Chapter 3* or *Chapter 4*, as the case may be, by the original personal insolvency practitioner,

(*b*) a protective certificate, Debt Settlement Arrangement or a Personal Insolvency Arrangement that is in effect as regards the debtor shall continue to have effect, and

(*c*) references in this Act to a personal insolvency practitioner, in relation to the debtor concerned, shall be construed as including references to the replacement personal insolvency practitioner so appointed.**]**

Annotations

Amendments:

F48 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 62, S.I. No. 286 of 2013.

F49**[**Termination by a personal insolvency practitioner of his or her appointment by a debtor

49B.— (1) A personal insolvency practitioner who has been appointed by a debtor in accordance with *section 49(3)* may terminate that appointment by giving notice in writing to the debtor, which notice shall specify the date of the termination and which date shall not be less than one month after the giving of the notice to the debtor.

(2) A personal insolvency practitioner who terminates an appointment under *subsection (1)* shall notify the Insolvency Service of that termination as soon as is practicable thereafter.

(3) A debtor who receives notice from a personal insolvency practitioner of the termination of his or her appointment under *subsection (1)* shall, no later than 2 months from the date of termination, appoint a replacement personal insolvency practitioner (in this section referred to as a "replacement personal insolvency practitioner") and, as soon as practicable thereafter, notify the Insolvency Service of that appointment.

(4) Where a replacement personal insolvency practitioner has been appointed under *subsection (3)*, he or she, as soon as practicable thereafter, shall inform the Insolvency Service and the creditors concerned of that fact.

(5) Where a replacement personal insolvency practitioner is appointed under *subsection (3)*—

(*a*) that appointment shall not affect the validity of anything previously done under this Chapter, *Chapter 3* or *Chapter 4*, as the case may be, by the original personal insolvency practitioner,

(*b*) a protective certificate, Debt Settlement Arrangement or a Personal Insolvency Arrangement that is in effect as regards the debtor shall continue to have effect, and

(*c*) references in this Act to a personal insolvency practitioner, in relation to the debtor concerned, shall be construed as including references to the replacement personal insolvency practitioner so appointed.**]**

Annotations

Amendments:

F49 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 62, S.I. No. 286 of 2013.

F50**[**Termination of appointment of a personal insolvency practitioner due to death, incapacity or withdrawal of authorisation

49C.— (1) Where a personal insolvency practitioner appointed under *section 49(3)* ("the original personal insolvency practitioner")—

(*a*) dies,

(*b*) becomes incapable, through ill-health or otherwise, of performing the functions of a personal insolvency practitioner, or

(*c*) is no longer authorised to perform the functions of a personal insolvency practitioner under this Act,

the debtor shall, as soon as practicable after becoming aware of that fact, or of being informed of such by the Insolvency Service, and in any event no later than three months thereafter, appoint a replacement personal insolvency practitioner (in this section referred to as a 'replacement personal insolvency practitioner') to act as his or her personal insolvency practitioner for the purposes of *Chapter 3* or *4*, as the case may be.

(2) Where the debtor appoints a replacement personal insolvency practitioner under *subsection (1)*, he or she shall, as soon as practicable thereafter, inform the Insolvency Service of that fact.

(3) Where a replacement personal insolvency practitioner has been appointed under *subsection (1)*, he or she, as soon as practicable thereafter, shall inform the Insolvency Service and the creditors concerned of that fact.

(4) Where a replacement personal insolvency practitioner is appointed by the debtor—

(*a*) that appointment shall not affect the validity of anything previously done under this Chapter, *Chapter 3* or *Chapter 4*, as the case may be, by the original personal insolvency practitioner,

(*b*) a protective certificate, Debt Settlement Arrangement or a Personal Insolvency Arrangement that is in effect as regards the debtor shall continue to have effect, and

(*c*) references in this Act to a personal insolvency practitioner, in relation to the debtor concerned, shall be construed as including references to the replacement personal insolvency practitioner so appointed.**]**

Annotations

Amendments:

F50 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 62, S.I. No. 286 of 2013.

Completion of Prescribed Financial Statement.

50.— (1) As soon as practicable after the personal insolvency practitioner has been appointed under *section 49(3)*, the debtor shall provide information that fully discloses his or her financial affairs to the personal insolvency practitioner.

(2) The personal insolvency practitioner, on receipt of the information referred to in *subsection (1)*, shall examine that information and, having regard to the obligation of the debtor under *subsection (3)*, assist the debtor in completing a Prescribed Financial Statement.

(3) The debtor, when completing the Prescribed Financial Statement referred to in *subsection (2)*, is under an obligation to make a full and honest disclosure of his or her financial affairs and to ensure that, to the best of his or her knowledge, the Prescribed Financial Statement is true, accurate and complete.

Provisions relating to pension arrangements.

51.— (1) Subject to *subsection (4)*, in relation to Debt Settlement Arrangements and Personal Insolvency Arrangements, where a debtor has an interest in or an entitlement under a relevant pension arrangement, such interest or entitlement of the debtor shall not be treated as an asset of the debtor unless *subsection (2)* applies.

(2) Where this section applies and a debtor has an interest in or entitlement under a relevant pension arrangement which would, if the debtor performed an act or exercised an option, cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(*a*) an income, or

(*b*) an amount of money other than income,

in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that debtor shall be considered as being in receipt of such income or amount of money.

(3) *Subsection (2)* applies where the debtor—

(*a*) is entitled at the date of the making of the application for a protective certificate,

(*b*) was entitled at any time before the date of the making of the application for a protective certificate, or

(*c*) will become entitled within 6 years and 6 months of the date of the making of the application for a protective certificate in relation to a Debt Settlement Arrangement or within 7 years and 6 months of the date of the making of the application for a protective certificate in relation to a Personal Insolvency Arrangement,

to perform the act or exercise the option referred to in *subsection (2)*.

(4) Nothing in *subsections (1)* to *(3)* shall remove the obligation of a debtor making an application for a protective certificate to make disclosure of any interest in or entitlement under a relevant pension arrangement in completing the Prescribed Financial Statement.

Personal insolvency practitioner to advise debtor.

52.— (1) On completion of the Prescribed Financial Statement in accordance with *section 50*, the personal insolvency practitioner shall, on the basis of the information disclosed to him or her by the debtor under *section 50(1)*, advise the debtor of the following:

(*a*) his or her options for addressing his or her financial difficulties;

(*b*) his or her eligibility under *section 57* or *91,* as the case may be, to make a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement, as the case may be;

(*c*) the personal insolvency practitioner's opinion as to whether it would be more appropriate for the debtor to enter into a Personal Insolvency Arrangement or a Debt Settlement Arrangement.

(2) The advice referred to in *subsection (1)(a)* shall include advice relating to—

(*a*) the appropriateness or otherwise of the debtor making a proposal for and entering into an arrangement, having regard to such matters as the personal insolvency practitioner considers relevant, but in any case, including—

(i) the debtor's financial and other circumstances as set out in the Prescribed Financial Statement,

(ii) whether the debtor is likely to be able to meet the financial commitment associated with an arrangement on an ongoing basis, in particular having regard to the debtor's payment capacity at and before the time at which the advice is being given,

(iii) the nature and extent of the debts owed by the debtor to his or her creditors and, in the case of secured debts (if any), the nature of the security,

(iv) the complexity of the debtor's case, and

(v) the likelihood, in the personal insolvency practitioner's opinion, of an arrangement being formulated on terms that would provide, for the debtor and a majority of his or her creditors, an acceptable alternative to the debtor's bankruptcy;

(*b*) the general effect of making a proposal for, and of entering into, an arrangement, including as to the effect on the debtor's credit rating;

(*c*) the consequences for the debtor of entering into an arrangement if the debtor does not comply with the terms of that arrangement;

(*d*) the other option or options (if any) available to the debtor and the general effect of any such option or options, including advice relating to—

(i) negotiation with a creditor or creditors with a view to adjusting the terms of a debt owed to that creditor or creditors, whether as part of any arrears process or otherwise,

(ii) becoming a specified debtor as respects a Debt Relief Notice, and

(iii) bankruptcy.

(3) In advising the debtor under *subsection (1)(c)* of the appropriateness of entering into a Personal Insolvency Arrangement or a Debt Settlement Arrangement, the personal insolvency practitioner shall have regard to—

(*a*) the value of the debtor's unsecured debts as compared to the value of the debtor's secured debts (if any),

(*b*) if applicable, whether the debtor has communicated with his or her secured creditors for the purpose of seeking to renegotiate or restructure the secured debts,

(*c*) whether the debtor has co-operated in good faith with his or her creditors who are secured creditors as respects the debtor's principal private residence in connection with any process relating to mortgage arrears operated by the secured creditors concerned which has been approved or required by the Central Bank of Ireland and which relates to the secured debt concerned,

(*d*) whether any of the debtor's secured creditors have indicated to the debtor or the personal insolvency practitioner a willingness to vary the terms of the secured debt to facilitate the operation of a Debt Settlement Arrangement in respect of the debtor's unsecured debts (including, without limitation, any variation of the terms of the secured debt that would reduce the amounts payable by the debtor in respect of the secured debt for the duration of the Debt Settlement Arrangement),

(*e*) where the debtor has proposed, but not entered into, a Debt Settlement Arrangement in respect of his or her unsecured debts, the terms of such proposal and the result of the creditors' meeting to consider such proposal, and

(*f*) where the debtor has entered into a Debt Settlement Arrangement in respect of his or her unsecured debts that has come to an end, failed or otherwise terminated, the circumstances of such ending, failure or other termination.

(4) The personal insolvency practitioner shall confirm his or her advice under *subsection (1)(c)* in writing to the debtor.

(5) Where the advice of a personal insolvency practitioner under *subsection (1)* is that the debtor should not make a proposal for, or enter into, an arrangement, the personal insolvency practitioner shall notify the Insolvency Service of that fact, and the appointment of the personal insolvency practitioner under *section 49(3)* shall come to an end.

Instruction by debtor to personal insolvency practitioner to make proposal for arrangement.

53.— Where a debtor, having received advice under *section 52(1)*, considers that he or she should make a proposal for an arrangement, he or she shall instruct the personal insolvency practitioner in writing to make a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement, as the case may be, on his or her behalf in accordance with *Chapter 3* or *4*, as the case may be.

Statement to be prepared by personal insolvency practitioner.

54.— On receipt of an instruction under *section 53*, the personal insolvency practitioner shall complete a statement confirming that he or she is of the opinion that—

(*a*) the information contained in the debtor's Prescribed Financial Statement is complete and accurate;

(*b*) the debtor is eligible under *section 57* or *91*, as the case may be, to make a proposal for a Debt Settlement Arrangement or Personal Insolvency Arrangement, as the case may be;

(*c*) having considered the F51**[**Prescribed**]** Financial Statement completed by the debtor, there is no likelihood of the debtor becoming solvent within the period of 5 years commencing on the date on which the statement is made;

(*d*) having regard to the debtor's circumstances as set out in the Prescribed Financial Statement, it is appropriate for the debtor to make a proposal for a Debt Settlement Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor

becoming solvent within a period of not more than 5 years or, as the case may be, it is appropriate for the debtor to make a proposal for a Personal Insolvency Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor becoming solvent within a period of not more than F52**[**6 years**]**.

Annotations

Amendments:

F51 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 63, S.I. No. 286 of 2013.

F52 Substituted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 6, S.I. No. 305 of 2021.

F53**[**Performance by others of certain functions of personal insolvency practitioner.

54A. (1) Subject to any regulations made under *subsection (4)*, nothing in this Act shall be taken to prevent any person (not being a personal insolvency practitioner)—

(*a*) employed by a personal insolvency practitioner or by a partnership in which a personal insolvency practitioner is a partner, or

(*b*) having a common employer with a personal insolvency practitioner,

from performing, when requested to do so by the personal insolvency practitioner (in this subsection referred to as the "requesting personal insolvency practitioner") and under the requesting personal insolvency practitioner's direction and control, any function (or any act in relation to such function) that is authorised or required by or under this Act to be performed by the requesting personal insolvency practitioner.

(2) Nothing in this Act shall be taken to prevent a personal insolvency practitioner—

(*a*) in a partnership in which another personal insolvency practitioner is also a partner,

(*b*) employed by another personal insolvency practitioner or by a partnership in which another personal insolvency practitioner is a partner, or

(*c*) having a common employer with another personal insolvency practitioner,

from performing, subject to any regulations under *section 161*, when requested to do so by that other personal insolvency practitioner (in this subsection referred to as the "requesting personal insolvency practitioner") and acting under the requesting personal insolvency practitioner's direction, any function (or any act in relation to such function) that is authorised or required by or under this Act to be performed by the requesting personal insolvency practitioner.

(3) The requesting personal insolvency practitioner under the subsection concerned shall, for all purposes under this Act, remain responsible in all respects for the performance, pursuant to the subsection concerned, of any function or act by a person referred to in *subsection (1)* or a personal insolvency practitioner referred to in *subsection (2)*.

(4) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall, by regulations provide for any of the following:

(*a*) the functions (if any) under this Act of a personal insolvency practitioner which may or may not, be performed by a person to whom *paragraph (a)* or *(b)* of *subsection (1)* applies;

(*b*) the qualifications (including levels of training, education, expertise and experience), and any other attributes (including standards of competence, fitness and probity) that a person to whom *paragraph (a)* or *(b)* of *subsection (1)* applies must possess before a particular function of a personal insolvency practitioner may be performed by him or her;

(*c*) the requirement that a person to whom *paragraph (a)* or *(b)* of *subsection (1)* applies, be subject, in the performance of functions or acts pursuant to that subsection, to appropriate supervision, guidance and training by a personal insolvency practitioner.

(5) Without prejudice to the generality of *paragraph (c)* of *subsection (4)*, regulations under that paragraph may require, where a person performs acts or functions pursuant to *subsection (1)*, that the supervision and guidance referred to in the paragraph ensure all or any of the following, where applicable:

(*a*) the proper gathering, checking and processing of information regarding a debtor's financial affairs;

(*b*) the proper preparation and communication of written or oral information or evidence for any purpose under any enactment;

(*c*) the proper management of records and accounts;

(*d*) the proper chairing and conduct of creditors' meetings.**]**

Annotations:

Amendments:

F53 Inserted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 7, S.I. No. 305 of 2021.

Editorial Notes:

E54 The section heading is taken from the amending section in absence of one included in the amendment.

Chapter 3

Debt Settlement Arrangements

Debt Settlement Arrangement: General Conditions.

55.— (1) Subject to the provisions of this Act, a debtor who satisfies the eligibility criteria specified in *section 57* may make a proposal for a Debt Settlement Arrangement with one or more of his or her creditors in respect of the payment or satisfaction of his or her debts.

(2) A proposal for a Debt Settlement Arrangement shall be made on behalf of a debtor by a personal insolvency practitioner in accordance with the provisions of this Part.

(3) Where two or more debtors are jointly party to all of the debts to be covered by a Debt Settlement Arrangement and each of those debtors satisfy the eligibility criteria specified in *section 57*, those debtors may jointly propose a Debt Settlement Arrangement and, unless otherwise specified, references in this Chapter to the "debtor" shall be construed as meaning such joint debtors.

(4)(*a*) A Debt Settlement Arrangement shall not contain any terms that would release the debtor from an excluded debt or otherwise affect such a debt.

(*b*) A proposal for a Debt Settlement Arrangement shall not include any terms that, if contained in a Debt Settlement Arrangement that came into effect, would contravene *paragraph (a)*.

(5) Unless otherwise expressly stated, a reference in this Chapter to a debt is a reference to an unsecured debt and a reference to a creditor is a reference to an unsecured creditor.

Debt Settlement Arrangement permitted once only.

56.— A debtor may enter into a Debt Settlement Arrangement once only.

Debt Settlement Arrangement: Eligibility criteria.

57.— (1) Subject to the provisions of this section and this Chapter, a debtor shall not be eligible to make a proposal for a DebtSettlement Arrangement unless he or she satisfies the following criteria—

(*a*) that the debtor—

(i) is domiciled in the State, or

(ii) within one year before the date of the application for a protective certificate has ordinarily—

(I) resided in the State, or

(II) had a place of business in the State;

(*b*) that the debtor is insolvent;

(*c*) that the debtor has completed a Prescribed Financial Statement and has made a statutory declaration confirming that the statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;

(*d*) that the personal insolvency practitioner has completed a statement under *section 54* in respect of the debtor;

(*e*) that the debtor is not—

(i) an undischarged bankrupt,

(ii) a discharged bankrupt subject to a bankruptcy payment order,

(iii) a person who is a specified debtor as respects a Debt Relief Notice which is in effect,

(iv) a person who, as a debtor, is subject to a Personal Insolvency Arrangement which is in effect, or

(v) a person who, as a debtor, is subject to an arrangement under the control of the court under Part IV of the Bankruptcy Act 1988;

(*f*) that the debtor has not—

(i) been the subject of a protective certificate issued under *section 61* less than 12 months prior to the date of the application for a protective certificate,

(ii) had his or her debts discharged pursuant to *section 46(1)* less than 3 years prior to the date of the application for a protective certificate,

(iii) had his or her debts discharged pursuant to a Personal Insolvency Arrangement less than 5 years prior to the date of the application for a protective certificate, or

(iv) been discharged from bankruptcy less than 5 years prior to the date of the application for a protective certificate.

(2) The criterion specified in *subsection (1)(f)* shall not apply where the debtor has, on notice to the Insolvency Service, made an application to the appropriate court and the court has made an order stating that it is satisfied that the current insolvency of the debtor arises by reason of exceptional circumstances or other factors which are substantially outside the control of the debtor and that it would be just to permit the debtor to make a proposal for a Debt Settlement Arrangement.

(3) A debtor shall not be eligible to make a proposal for a Debt Settlement Arrangement where 25 per cent or more of his or her debts (other than excluded debts and secured debts) were incurred during the period of 6 months ending on the date on which an application is made under *section 59* for a protective certificate.

Annotations:

Amendments:

F54 Inserted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 8, not commenced as of date of revision.

Modifications (not altering text):

C3 Prospective affecting provision: subs. (1)(c) amended by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 8, not commenced as of date of revision.

(*c*) that the debtor has completed a Prescribed Financial Statement and has made a statutory declaration F54**[**or a confirmation of truth**]** confirming that the statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;

Creditor consent required for inclusion of excludable debt in Debt Settlement Arrangement.

58.— (1) An excludable debt shall be included in a proposal for a Debt Settlement Arrangement only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the inclusion of that debt in such a proposal.

(2) Where a personal insolvency practitioner proposes to include an excludable debt in a proposal for a Debt Settlement Arrangement, he or she shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—

(*a*) such information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and

(*b*) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the inclusion of the debt in a Debt Settlement Arrangement.

(3) Subject to *subsection (6)*, a creditor shall comply with a request under *subsection (2)(b)* within 21 days of receipt of the notification under that subsection.

(4) Where a creditor does not comply with *subsection (3)*, the creditor shall be deemed to have consented to the inclusion of that debt in a proposal for a Debt Settlement Arrangement.

(5) Where a creditor consents or is deemed to have consented, in accordance with this section, to the inclusion of an excludable debt in a proposal for a Debt Settlement Arrangement, that creditor shall be entitled to vote at any creditors' meeting called to consider that proposal.

(6) Where the debtor concerned is the subject of a protective certificate, and a creditor to whom this section applies brings an application under *section 63(1)* in

respect of that protective certificate, the period referred to in *subsection (3)* shall not commence until the date on which the appropriate court determines the application.

(7) An excludable debt shall not be the subject of a Debt Settlement Arrangement unless it is a permitted debt.

(8) In this Chapter, "permitted debt" means an excludable debt to which *subsection (1)* applies.

Debt Settlement Arrangement: Application for protective certificate.

59.— (1) Where a personal insolvency practitioner has been instructed pursuant to *section 53* to make a proposal for a Debt Settlement Arrangement, the personal insolvency practitioner shall notify the Insolvency Service of the debtor's intention to propose a Debt Settlement Arrangement and apply on behalf of the debtor for a protective certificate.

(2) The application referred to in *subsection (1)* shall be in such form F55**[**as may be prescribed**]** by the Insolvency Service and shall be accompanied by such fee (if any) as may be prescribed and the following documents:

(*a*) the statement of the personal insolvency practitioner prepared under *section 54*;

(*b*) a document signed by the debtor confirming that he or she satisfies the eligibility criteria specified in *section 57*;

(*c*) the statutory declaration of the debtor referred to in *section 57(1)(c)*;

(*d*) the Prescribed Financial Statement;

(*e*) a schedule of the creditors of the debtor and the debts concerned, stating in relation to each such creditor—

(i) the amount of each debt due to that creditor,

(ii) whether, as respects the debt concerned, the creditor is a secured creditor and, if so, the nature of the security concerned, and

(iii) such other information as may be prescribed;

(*f*) the debtor's written consent to—

(i) the disclosure to the Insolvency Service,

(ii) the processing by the Insolvency Service, and

(iii) the disclosure by the Insolvency Service to creditors of the debtor concerned,

of personal data of that debtor, to the extent necessary in respect of the Debt Settlement Arrangement procedure provided for in this Chapter;

(*g*) the debtor's written consent to the making of any enquiry under *section 60* relating to the debtor by the Insolvency Service.

(3) An application under this section may be withdrawn by the personal insolvency practitioner at any time prior to the issue of a protective certificate under *section 61*.

(4) Where a personal insolvency practitioner becomes aware of any inaccuracy or omission in an application under this section or any document accompanying such an application, he or she shall inform the Insolvency Service of this fact as soon as practicable and the Insolvency Service shall have regard to any information provided under this subsection for the purposes of its consideration of the application.

Annotations

Amendments:

F55 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 64, S.I. No. 286 of 2013.

F56 Inserted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 9, not commenced as of date of revision.

Modifications (not altering text):

C4 Prospective affecting provision: subs. (2)(c) amended by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 9, S.I. No. 305 of 2021, not commenced as of date of revision.

(*c*) the statutory declaration F56**[**or confirmation of truth**]** of the debtor referred to in *section 57(1)(c)*;

C5 Reference to personal data and processing construed (25.05.2018) by *Data Protection Act 2018* (7/2018), ss. 165, 166, S.I. No. 17 of 2018.

Reference to personal data in enactment

165. Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

(*a*) the Data Protection Regulation, and

(*b*) Part 5.

Reference to processing in enactment

166. Subject to this Act, a reference in any enactment to processing within the meaning of the Act of 1988 shall be construed as including a reference to processing within the meaning of—

(*a*) the Data Protection Regulation, and

(*b*) Part 5.

Debt Settlement Arrangement: Consideration by Insolvency Service of application for protective certificate.

60.— (1) In its consideration of an application under *section 59*, the Insolvency Service shall be entitled to request any further information it requires from the debtor or personal insolvency practitioner and to defer further consideration of the application until such information is furnished to it.

(2) Where a debtor or personal insolvency practitioner fails to provide the information requested by the Insolvency Service under *subsection (1)* within 14 days or such longer period as the Insolvency Service may permit the application shall be deemed to be withdrawn.

(3) Subject to *subsection (4)*, in considering the application for a protective certificate, the Insolvency Service shall make such enquiries as it considers necessary to satisfy itself:

(*a*) that the personal insolvency practitioner is a person entitled to act as a personal insolvency practitioner;

(*b*) having regard to the documents which are required to accompany the application for a protective certificate—

(i) that the debtor satisfies the eligibility criteria for making a proposal for a Debt Settlement Arrangement specified in *section 57*, and

(ii) the application does not appear to be frivolous or an attempt to frustrate the efforts of creditors to recover debts due to them.

(4) Subject to *subsections (5)* to *(7)*, for the purposes of *subsection (3)* the Insolvency Service shall be entitled to presume that the debtor satisfies the eligibility criteria for a Debt Settlement Arrangement specified in *section 57* if the documents required to be lodged with the Insolvency Service have been so lodged and the Insolvency Service has no reason to believe that the information supplied in or in support of the application for a protective certificate is incomplete or inaccurate.

(5) The Insolvency Service may make such enquiries as it considers necessary to verify the completeness or accuracy of any matter referred to in the Prescribed Financial Statement of the debtor or in relation to the assets, liabilities, income or expenditure of the debtor.

(6) Without prejudice to the generality of *subsection (5)* the matters in respect of which the Insolvency Service may make an enquiry include the following:

(*a*) particulars relating to bank accounts, securities accounts or other accounts held, solely or jointly, by or for the benefit of the debtor with financial institutions or financial intermediaries in the State or abroad;

(*b*) particulars relating to assets of the debtor and the value of such assets;

(*c*) particulars of the liabilities of the debtor;

(*d*) the employment and income of the debtor;

(*e*) payments received by the debtor from the Department of Social Protection or other Departments of State or other State bodies or agencies and whether or not such payments are made as agent of any other person;

(*f*) taxes or charges imposed by or under statute paid or owed by the debtor, whether within or outside the State and refunds in respect of such taxes and charges which are or may become due to the debtor.

(7) Nothing in this section shall be construed as requiring the Insolvency Service to make an enquiry in any case.

(8) A person who receives an enquiry from the Insolvency Service pursuant to this section shall be under a duty to furnish the information requested as soon as reasonably practicable.

(9) Notwithstanding anything contained in any enactment, for the purposes of the performance of the functions of the Insolvency Service under this Chapter information held by a Department of State, the Revenue Commissioners, a local authority or any other State body or agency in relation to a debtor may be furnished to the Insolvency Service.

Debt Settlement Arrangement: Referral of application to court for issue of protective certificate.

61.— (1) Where the Insolvency Service, following its consideration under *section 60*—

(*a*) is satisfied that an application under *section 59* is in order, it shall—

(i) issue a certificate to that effect,

F57**[**(ii) furnish that certificate together with a copy of the application and the supporting documentation (other than the documents referred to in *section 59(2)(f)* and *(g)*) to the appropriate court, and**]**

(iii) notify the personal insolvency practitioner to that effect,

and

(*b*) is not so satisfied, it shall notify the personal insolvency practitioner to that effect and request him or her, within 21 days from the date of the notification,

to submit a revised application or to confirm that the application has been withdrawn.

(2) Where the appropriate court receives the application for a protective certificate and accompanying documentation pursuant to *subsection (1)(a)*, it shall consider the application and documentation and, subject to *subsection (3)*—

(*a*) if satisfied that the eligibility criteria specified in *section 57* have been satisfied, and the other relevant requirements relating to an application for the issue of a protective certificate have been met, shall issue a protective certificate, and

(*b*) if not so satisfied, shall refuse to issue a protective certificate.

(3) The appropriate court, where it requires further information or evidence for the purpose of its arriving at a decision under *subsection (2)*, may hold a hearing, which hearing shall be on notice to the Insolvency Service and the personal insolvency practitioner concerned.

(4) F58**[**...**]**

(5) Subject to F59**[***subsections (6), (7)* and *(7A)***]** and *section 76(2)*, a protective certificate shall be in force for a period of 70 days from the date of its issue.

(6) Where a protective certificate has been issued pursuant to *subsection (2)(a)*, F60**[**or extended under *subsection (7)* or *(7A)*,**]** the appropriate court may, on application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where—

(*a*) the debtor and the personal insolvency practitioner satisfy the court that they have acted in good faith and with reasonable expedition, and

(*b*) the court is satisfied that it is likely that a proposal for a Debt Settlement Arrangement which is likely—

(i) to be accepted by the creditors, and

(ii) to be successfully completed by the debtor,

will be made if the extension is granted.

F59**[**(7) Where a protective certificate has been issued pursuant to *subsection (2)(a)* or extended under *subsection (6)* or *(7A)*, the appropriate court may, on application to that court by a personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where—

(*a*) the personal insolvency practitioner has been appointed in accordance with *section 49A, 49B* or *49C*, and

(*b*) the court is satisfied that the extension is necessary to enable the personal insolvency practitioner so appointed to perform his or her functions under this Chapter.**]**

F60**[**(7A) Where a protective certificate has been issued pursuant to *subsection (2)(a)*, or extended under *subsection (6)* or *(7)*, the appropriate court may, on application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days, where the court is satisfied that, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, it would be just to grant the extension.**]**

(8) A hearing held under F59**[**this section**]** shall be held with all due expedition.

(9) The period of a protective certificate may be extended F59**[**once only under each of *subsections (7)* and *(7A)*.**]**.

(10) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court—

(*a*) issues or extends a protective certificate under this section,

(*b*) refuses to issue or extend a protective certificate under this section, or

(*c*) decides to hold a hearing referred to in *subsection (3)*.

F57**[**(11) Where a protective certificate is issued under this section, the Insolvency Service shall—

(*a*) record in the Register of Protective Certificates, in addition to such other details as may be prescribed under *section 133(3)(b)*, the following—

(i) the name and address of the debtor and the date of issue of the protective certificate,

(ii) where applicable—

(I) the extension under this section of the protective certificate, and

(II) the making by the appropriate court of an order under *section 63*, and the creditor in respect of whom the order has been made,

and

(iii) the date on which the protective certificate ceases, under this Chapter, to be in force,

and

(*b*) within 3 months of the date on which the protective certificate ceases, under this Chapter, to be in force, remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate.**]**

(12) On receipt of a notification under *subsection (10)* of a decision of the court referred to in that subsection, the personal insolvency practitioner shall notify each of the creditors specified in the schedule of creditors of that decision and, in the case of a decision to issue a protective certificate, the notification by the personal insolvency practitioner shall contain a statement—

(*a*) that the debtor intends to make a proposal for a Debt Settlement Arrangement,

(*b*) of the effect of the protective certificate under *section 62*, and

(*c*) of the right of the creditor under *section 63* to appeal the issue of the protective certificate.

(13) Notwithstanding the provisions of F59**[***subsections (5), (6), (7)* and *(7A)*,**]** a protective certificate that is in force on the date on which a proposal for a Debt Settlement Arrangement is approved in accordance with *section 73* shall continue in force until it ceases to have effect in accordance with *section 76*.

(14) A protective certificate issued under this section shall—

(*a*) specify—

(i) the name of the debtor who is the subject of it,

(ii) the debts ("specified debts") which are subject to it, and

(iii) the name of each creditor to whom a specified debt is owed,

and

(*b*) contain such other information as may be prescribed.

(15) In considering an application under this section the appropriate court shall be entitled to treat a certificate issued by the Insolvency Service under *subsection (1)* as evidence of the matters certified therein.

Annotations

Amendments:

F57 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 65(a), (c), S.I. No. 286 of 2013.

F58 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 65(b), S.I. No. 286 of 2013.

F59 Substituted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 10(a), (c), (e)-(g), S.I. No. 305 of 2021.

F60 Inserted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 10(b), (d), S.I. No. 305 of 2021.

Debt Settlement Arrangement: Effect of issue of protective certificate.

62.— (1) Subject to *subsections (3)*, *(4)*, *(5)* and *(8)*, a creditor to whom notice of the issue of a protective certificate has been given shall not, whilst the protective certificate remains in force, in relation to a specified debt—

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to recover goods in the possession or custody of the debtor, F61**[**whether or not**]** title to the goods is vested in the creditor or the creditor holds security over the goods;

(*f*) contact the debtor regarding payment of the specified debt, otherwise than at the request of the debtor;

(*g*) in relation to an agreement with the debtor, other than a security agreement, by reason only that the debtor is insolvent or that the protective certificate has been issued—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(2) Whilst a protective certificate remains in force, no bankruptcy petition relating to the debtor—

(*a*) may be presented by a creditor to whom *subsection (1)* applies in respect of a specified debt,

(*b*) in a case where the petition has been presented by such a creditor in respect of a specified debt, may be proceeded with.

(3) Without prejudice to *subsections (1)* and *(2)*, and subject to *section 68*, whilst a protective certificate remains in force, no other proceedings and no execution or other legal process in respect of a specified debt may be commenced or continued by a creditor to whom *subsection (1)* applies against the debtor or his or her property,

except with the leave of the court and subject to any order the court may make to stay such proceedings, enforcement or execution for such period as the court deems appropriate pending the outcome of attempts to reach a Debt Settlement Arrangement, but this subsection shall not operate to prohibit the commencement or continuation of any criminal proceedings against the debtor.

(4) Notwithstanding *subsection (1)*, the fact that a protective certificate is in force in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (1)* as respects another person who has guaranteed the debts of the debtor to which the protective certificate relates.

(5) Notwithstanding *subsection (1)*, the fact that a protective certificate is in force in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (3)* as respects a person who has jointly contracted with the debtor or is jointly liable with the debtor to the creditor and that other person may sue or be sued in respect of the contract without joining the debtor.

(6) *Subsections (4)* and *(5)* do not apply where a protective certificate is also in force as respects the other person.

(7) In reckoning any period of time for the purpose of any applicable limitation period in relation to any proceedings or process to which *subsection (1)* or *(3)* applies (including any limitation period under the Statute of Limitations 1957), the period in which the protective certificate concerned is in force under *section 61* shall be disregarded.

(8) A secured debt shall not be subject to or affected by a protective certificate under this Chapter.

Annotations

Amendments:

F61 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 66, S.I. No. 286 of 2013.

Debt Settlement Arrangement: Right of appeal as respects protective certificate.

63.— (1) Where a creditor is aggrieved by the issue of a protective certificate that creditor may within 14 days of the giving of notice of the issue of the protective certificate to that creditor apply to the appropriate court for an order directing that the protective certificate shall not apply to that creditor.

(2) A creditor who brings an application under *subsection (1)* shall give notice to the Insolvency Service and the relevant personal insolvency practitioner and to such other persons as the court may direct of that fact, and the application shall be made in such form as is provided for in rules of court.

(3) In determining an application under this section the court shall not make an order directing that the protective certificate shall not apply to that creditor unless it is satisfied that—

(*a*) not making such an order would cause irreparable loss to the creditor which would not otherwise occur, and

(*b*) no other creditor to whom notice of the protective certificate has been given would be unfairly prejudiced.

(4) In determining the costs of the application the court shall have regard to the objective that all the parties to such an application should bear their own costs unless to do so would cause a serious injustice to the parties to the application.

(5) Where the court makes an order under this section, the court shall, unless it considers that there are good reasons not to do so, direct the creditor to hold any moneys or other assets recovered in trust for the benefit of the other creditors to whom the protective certificate applies, pending a further direction on the matter by the court.

(6) A hearing under *subsection (1)* shall be held with all due expedition.

Actions to be taken by personal insolvency practitioner following issue of protective certificate.

64.— (1) Where a protective certificate has been issued, the personal insolvency practitioner shall as soon as practicable thereafter—

(*a*) give written notice to the creditors concerned that the personal insolvency practitioner has been appointed by the debtor for the purpose of making a proposal for a Debt Settlement Arrangement and, subject to *section 67(2)*, invite those creditors to make submissions to the personal insolvency practitioner regarding the debts concerned and the manner in which the debts might be dealt with as part of a Debt Settlement Arrangement, and such notice shall be accompanied by the debtor's completed Prescribed Financial Statement,

(*b*) consider any submissions made by creditors in accordance with *paragraph (a)* regarding the debts and the manner in which the debts might be dealt with as part of a Debt Settlement Arrangement, including any submission made by a creditor with respect to previous or existing offers of arrangements made by the creditor to or with the debtor, and

(*c*) make a proposal for a Debt Settlement Arrangement in respect of the debts concerned.

(2)(*a*) A personal insolvency practitioner may in any case request a creditor to file a proof of debt and the debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act 1988 and, subject to *subsection (3)*, paragraphs 1 to 22 of the First Schedule of that Act shall apply with all necessary modifications to the proof of such debts.

(*b*) Subject to *paragraph (c)*, a creditor who does not comply with a request under *paragraph (a)* is not entitled to—

(i) vote at a meeting referred to in *section 72* or *82*, or

(ii) share in any distribution that may be made under the Debt Settlement Arrangement concerned.

(*c*) Where a creditor to whom *paragraph (b)* applies files a proof of debt in the manner specified in *paragraph (a)*, *paragraph (b)* shall cease to apply, but without prejudice to anything done while that paragraph applied.

(3) In applying the First Schedule of the Bankruptcy Act 1988 to proof of debts under this section—

(*a*) a reference in that Schedule to the Court and the Official Assignee shall be read as a reference to the personal insolvency practitioner, and

(*b*) a reference to a bankrupt shall be read as the reference to the debtor to whom the proposal for a Debt Settlement Arrangement relates.

Mandatory requirements concerning Debt Settlement Arrangement.

65.— (1) Subject to the mandatory requirements referred to in *subsection (2)*, the terms of a Debt Settlement Arrangement shall be those which are agreed to by the debtor and, subject to this Chapter, approved by a majority of the debtor's creditors in accordance with this Chapter.

(2) The mandatory requirements referred to in *subsection (1)* are:

(*a*) the maximum duration of a Debt Settlement Arrangement shall be 60 months but a Debt Settlement Arrangement may provide that this period may be extended for a further period of not more than 12 months in such circumstances as are specified in the terms of the Debt Settlement Arrangement;

(*b*) where the debtor performs all of his or her obligations specified in a Debt Settlement Arrangement, he or she shall stand discharged from the remainder of the debts covered by the Debt Settlement Arrangement;

(*c*) a Debt Settlement Arrangement shall not require the debtor to sell any of his or her assets that are reasonably necessary for the debtor's employment, business or vocation unless the debtor explicitly consents to such sale;

(*d*) a Debt Settlement Arrangement shall not contain any terms which would require the debtor to make payments of such an amount that the debtor would not have sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants;

(*e*) a Debt Settlement Arrangement shall—

(i) make provision for the costs and outlays of the personal insolvency practitioner which relate to the matters referred to in F62**[***sections 48* to *54***]** and this Chapter and to the ongoing administration of the Arrangement,

F63**[**(ia) make provision for the payment of all tax liabilities incurred by the debtor, or by the personal insolvency practitioner, under the Taxes Consolidation Act 1997 during the administration of the Arrangement and—

(I) such tax liabilities of the personal insolvency practitioner shall be payable in priority to any payments to creditors, and

(II) any failure by the debtor to comply with the terms of the provision shall be a breach of the Arrangement such that the Collector-General (within the meaning of the Taxes Consolidation Act 1997) may withdraw his or her agreement under *section 58* to accept the compromise contained in the Arrangement, **]**

(ii) indicate the likely amount of the fees, costs and outlays to be incurred, or where this is not practicable, the basis on which those fees, costs and outlays will be calculated, and

(iii) specify the person or persons by whom those fees, costs and charges are payable and the manner in which they have been or are to be paid;

(*f*) a Debt Settlement Arrangement shall make provision for the manner in which the debtor's debts are to be treated in the event of the death or mental incapacity of the debtor;

(*g*) a Debt Settlement Arrangement shall not require that the debtor dispose of his or her interest in his or her principal private residence or to cease to occupy such residence unless the provisions of *section 69(3)* apply;

(*h*) a Debt Settlement Arrangement shall provide that the circumstances of the debtor be reviewed by the personal insolvency practitioner at regular intervals which are specified in the Arrangement (which intervals are not greater than 12 months) during the currency of the Debt Settlement Arrangement;

(*i*) a Debt Settlement Arrangement shall provide that the review referred to in *paragraph (h)* shall include the preparation by the debtor of a new Prescribed Financial Statement, a copy of which together with a statement by the personal insolvency practitioner as to whether he or she considers that

statement to be complete and accurate, shall be sent by the personal insolvency practitioner to each creditor;

(*j*) the terms of a Debt Settlement Arrangement shall specify the circumstances where the personal insolvency practitioner shall be obliged to propose a variation of the Debt Settlement Arrangement in accordance with *section 82*.

(3) The Insolvency Service may publish a Code of Practice providing guidance on any of the matters set out in *subsection (2)*.

(4) For the purposes of *subsection (2)(d)*, and without prejudice to *subsection (3)*, in determining whether a debtor would have sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants under the Debt Settlement Arrangement, regard shall be had to any guidelines issued under *section 23*.

Annotations

Amendments:

F62 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 67, S.I. No. 286 of 2013.

F63 Inserted (27.03.2013) by *Finance Act 2013* (8/2013), s. 100(3)(a), commenced as per s. 4(a).

Debt Settlement Arrangement: Non-exhaustive list of matters for possible inclusion.

66.— (1) Subject to the provisions of this Act, a proposal for a Debt Settlement Arrangement may incorporate one or more of the options in *subsection (2)* with respect to payments to creditors.

(2) The terms of a proposal for a Debt Settlement Arrangement may include any one or more of the following:

(*a*) a lump sum payment to creditors, whether provided from the debtor's own resources or from the resources of other persons;

(*b*) a payment arrangement with creditors;

(*c*) an agreement by the debtor to transfer some or all of the debtor's property to a person (who may be the personal insolvency practitioner) to hold the property in trust for the benefit of the creditors;

(*d*) a transfer of specified assets of the debtor to creditors generally or to a specified creditor;

(*e*) a sale of specified assets of the debtor by the personal insolvency practitioner and the payment of the proceeds of such sale to creditors.

(3) Unless provision is otherwise made in the Debt Settlement Arrangement, and subject to *section 67*, the arrangement shall provide for payments to creditors to be made on a *pari passu* basis, and where so otherwise provided the Debt Settlement Arrangement shall specify the reasons for such provision being made.

(4) Unless provision is otherwise made in the Debt Settlement Arrangement, where an Arrangement provides for payments to a creditor to whom *section 58* applies that are greater than the payments that creditor would receive if such payments were made on a *pari passu* basis, the fees, costs and charges referred to in *section 65(2)(e)* shall be payable by that creditor in proportion to the payments received by him or her.

(5) The payment of moneys or the performance of obligations provided for by a Debt Settlement Arrangement may be secured by a charge or a guarantee given by the debtor or a charge or guarantee given by a person other than the debtor.

(6) Subject to the provisions of this Act, the terms of a Debt Settlement Arrangement may include provisions relating to payments other than those specified in this section.

Preferential debts in Debt Settlement Arrangement.

67.— (1) Unless the creditor concerned otherwise agrees in writing and provision is so made in the terms of the Debt Settlement Arrangement, a preferential debt shall, subject to *subsection (3)*, be paid in priority by the debtor and where those debts are to be paid in priority the provisions of section 81 of the Bankruptcy Act 1988 shall apply with all necessary modifications.

(2) In notifying creditors of the issue of a protective certificate, the personal insolvency practitioner shall indicate that any creditor who considers some or all of his or her debt to be a preferential debt is required to furnish evidence of the circumstances of how that debt or part of that debt is claimed to be a preferential debt within such reasonable period as may be specified, and that in the absence of such evidence, the proposal for a Debt Settlement Arrangement may be prepared on the basis that the debt concerned is not a preferential debt.

(3) Where a creditor fails to satisfy the personal insolvency practitioner that his or her debt is a preferential debt, the debt shall be treated as not being a preferential debt for the purposes of a Debt Settlement Arrangement.

(4) In this Chapter, "preferential debt" means a debt which, if the debtor concerned were a bankrupt would be a debt—

(*a*) that by virtue of section 81 of the Bankruptcy Act 1988 is to be paid in priority to all other debts, or

(*b*) that by virtue of any other statutory provision is to be included among such debts.

Secured creditors and Debt Settlement Arrangement.

68.— (1) Subject to this section and *section 62*, nothing in this Chapter affects the right of a secured creditor of the debtor to enforce or otherwise deal with his or her security.

(2) A secured creditor of the debtor may not participate in a Debt Settlement Arrangement with respect to a secured debt.

(3) *Subsection (2)* shall not operate to prevent the debtor or the personal insolvency practitioner from liaising or sharing information (including a copy of the debtor's Prescribed Financial Statement and information relating to a proposed or existing Debt Settlement Arrangement) with a secured creditor in connection with a proposed or existing Debt Settlement Arrangement.

(4) For the avoidance of doubt, a secured creditor shall not be deemed to participate in or otherwise be bound by a Debt Settlement Arrangement as a result of entering into an agreement with the debtor to vary the terms of the secured debt following contact between the secured creditor and debtor, or as applicable, the personal insolvency practitioner as referred to in *subsection (3)* (including, without limitation, any variation of the terms of the secured debt that would reduce the amounts payable by the debtor in respect of the secured debt for the duration of the Debt Settlement Arrangement).

Principal private residence in Debt Settlement Arrangement.

69.— (1) In formulating a proposal for a Debt Settlement Arrangement a personal insolvency practitioner shall, insofar as reasonably practicable, and having regard to the matters referred to in *subsection (2)*, formulate the proposal on terms that will not require the debtor to—

(*a*) dispose of an interest in, or

(*b*) cease to occupy,

all or a part of his or her principal private residence and the personal insolvency practitioner shall consider any appropriate alternatives.

(2) The matters referred to in *subsection (1)* are—

(*a*) the costs likely to be incurred by the debtor by remaining in occupation of his or her principal private residence (including rent, mortgage loan repayments, insurance payments, owners' management company service charges and contributions, taxes or other charges relating to ownership or occupation of the property imposed by or under statute, and necessary maintenance in respect of the principal private residence),

(*b*) the debtor's income and other financial circumstances as disclosed in the Prescribed Financial Statement,

(*c*) the ability of other persons residing with the debtor in the principal private residence to contribute to the costs referred to in *paragraph (a)*, and

(*d*) the reasonable living accommodation needs of the debtor and his or her dependants and having regard to those needs the cost of alternative accommodation (including the costs which would necessarily be incurred in obtaining such accommodation).

(3) Where—

(*a*) the debtor confirms in writing to the personal insolvency practitioner that the debtor does not wish to remain in occupation of his or her principal private residence; or

(*b*) the personal insolvency practitioner, has, having discussed the issue with the debtor, formed the opinion that, taking account of the matters referred to in *subsection (2)*, the costs of continuing to reside in the debtor's principal private residence are disproportionately large,

the personal insolvency practitioner shall not be required to formulate the proposal for a Debt Settlement Arrangement on terms that will not require the debtor to cease to occupy his or her principal private residence.

(4) A Debt Settlement Arrangement shall not contain terms providing for a disposal of the debtor's interest in the principal private residence unless:

(*a*) the debtor has obtained independent legal advice in relation to such disposal or, having been advised by the personal insolvency practitioner to obtain such legal advice, has declined to do so; and

(*b*) to the extent that the provisions of the Family Home Protection Act 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 apply to the property, all relevant provisions of those Acts are complied with.

Debt Settlement Arrangement: Calling of creditors' meeting.

70.— (1) Where a personal insolvency practitioner has prepared a proposal for a Debt Settlement Arrangement and the debtor has consented to that proposal and the calling of a creditors' meeting, the personal insolvency practitioner shall arrange for the holding of a meeting of the creditors of the debtor for the purpose of considering the proposal for a Debt Settlement Arrangement.

(2) When calling a creditors' meeting under this section, the personal insolvency practitioner shall do so in accordance with any regulations under *section 74* and, in any case, shall—

(*a*) give each creditor at least 14 days written notice of the meeting and the date on which, and time and place at which, the meeting will be held,

(*b*) ensure that the notice referred to in *paragraph (a)* is accompanied by a copy of each of the documents referred to in *section 71*, and

(*c*) lodge a copy of the notice referred to in *paragraph (a)* and the documents referred to in *section 71* with the Insolvency Service.

(3) Where a creditors' meeting referred to in *subsection (1)* does not take place before the expiry of the protective certificate, the Debt Settlement Arrangement procedure shall be deemed to have come to an end.

Debt Settlement Arrangement: Documents to be given to creditors and the Insolvency Service when calling a creditors' meeting.

71.— (1) The documents referred to in *section 70(2)(b)* F64**[**and *section 74A(2)(b)* (inserted by section 7 of the Personal Insolvency (Amendment) Act 2015)**]** are—

(*a*) a completed statement of the debtor's financial affairs, showing the debtor's position of insolvency, in the form of the Prescribed Financial Statement;

(*b*) a document containing the terms of the proposal for a Debt Settlement Arrangement;

(*c*) a statement by the personal insolvency practitioner to the effect that—

(i) he or she has been instructed by the debtor to act as personal insolvency practitioner in connection with the Debt Settlement Arrangement procedure, he or she has consented to so act and that he or she is a person entitled to act as a personal insolvency practitioner,

(ii) he or she has advised the debtor in accordance with *section 52* of the debtor's options for managing the debtor's financial difficulties,

(iii) he or she is not aware of any reasonable grounds to believe that the information contained in the debtor's Prescribed Financial Statement is not complete and accurate, and

F65**[**(iv) he or she is of the opinion that—

(I) the debtor satisfies the eligibility criteria for the proposal of a Debt Settlement Arrangement specified in *section 57*,

(II) the proposed Debt Settlement Arrangement complies with the mandatory requirements referred to in *section 65(2)*, and

(III) the proposed Debt Settlement Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or a secured debt or otherwise affect such a debt;**]**

(*d*) a report of the personal insolvency practitioner—

(i) describing the outcome for creditors and, having regard to the financial circumstances of the debtor, whether or not the proposed Debt Settlement Arrangement represents a fair outcome for the creditors, and indicating, where relevant, how that financial outcome for creditors, (whether individually or as a member of a class of creditors) under the terms of the proposal is likely to be better than the estimated financial outcome for such creditors if the debtor were to be adjudicated a bankrupt (having regard to, amongst other things, the estimated costs of the bankruptcy process), and

(ii) indicating whether or not he or she is of the opinion that the debtor is reasonably likely to be able to comply with the terms of the proposed Debt Settlement Arrangement.

F66**[**(2) Where a debtor's financial position has materially changed in the period between the completion by him or her of a Prescribed Financial Statement under

section 50 and the giving of a notice under *section 70(2)* or, as the case may be, *section 74A(2)* (inserted by section 7 of the Personal Insolvency (Amendment) Act 2015)—

(*a*) the debtor shall inform the personal insolvency practitioner of that fact and of the nature of such change, and

(*b*) the personal insolvency practitioner shall, if he or she considers that the change necessitates the completion of a new Prescribed Financial Statement, assist the debtor in completing such a new statement, and where those circumstances arise a reference in this section to the Prescribed Financial Statement shall be construed as a reference to the new Prescribed Financial Statement.

(3) Where a new Prescribed Financial Statement is completed pursuant to *subsection (2)*, the personal insolvency practitioner shall furnish a copy of that Statement to the Insolvency Service.**]**

Annotations

Amendments:

F64 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 4(a), S.I. No. 514 of 2015.

F65 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 68, S.I. No. 286 of 2013.

F66 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 4(b), S.I. No. 514 of 2015.

Debt Settlement Arrangement: Conduct of creditors' meeting.

72.— (1) A creditors' meeting F67**[**called in accordance with *section 70***]** shall be conducted in accordance with *section 74* and any regulations made under that section.

(2) The personal insolvency practitioner may, where he or she believes it is in the interests of obtaining approval of a proposed Debt Settlement Arrangement by the creditors at the meeting, adjourn the meeting and, with the consent in writing of the debtor, shall prepare an amended proposal for a Debt Settlement Arrangement.

(3) Where the personal insolvency practitioner prepares an amended proposal for a Debt Settlement Arrangement pursuant to *subsection (2)* he or she shall—

(*a*) notify the debtor of the date on which, and time and place at which, the adjourned meeting will be held,

(*b*) at least 7 days before the day of the adjourned meeting, unless all of the creditors agree in writing to receive a shorter period of notice, notify each creditor of the date on which, and time and place at which, the adjourned meeting will be held,

(*c*) ensure that the notices referred to in *paragraphs (a)* and *(b)* are accompanied by a copy of the amended proposal, and

(*d*) lodge a copy of the notice referred to in *paragraph (b)* and a copy of the amended proposal with the Insolvency Service.

(4) An adjournment for the purpose of preparing an amended proposal for a Debt Settlement Arrangement pursuant to *subsection (2)* may occur once only in the course of the period of validity of a protective certificate (including any extension of such period).

(5) Subject to *subsection (6)*, creditors at a meeting under this section, having considered a proposal for a Debt Settlement Arrangement shall vote, in accordance

with *section 73*, either by voting in favour or against the approval of the proposed Debt Settlement Arrangement.

(6) Subject to *subsection (2)*, the proposal for a Debt Settlement Arrangement may, before the proposal has been voted upon, be subject to a proposal for a modification where the modification addresses an ambiguity or rectifies an error in the proposed Debt Settlement Arrangement and where—

(*a*) the modification has been proposed by a creditor or the personal insolvency practitioner, and

(*b*) the debtor gives his or her written consent to the modification.

(7) Where, on the taking of a vote under *subsection (5)*, the proposal is not approved F68**[**or deemed to have been approved**]** in accordance with *section 73*, the Debt Settlement Arrangement procedure shall be deemed to have come to an end, and the protective certificate issued under *section 61* shall cease to have effect.

(8) F69**[**...**]**

Annotations

Amendments:

F67 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 69, S.I. No. 286 of 2013.

F68 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 5(a), S.I. No. 514 of 2015.

F69 Deleted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 5(b), S.I. No. 514 of 2015.

Debt Settlement Arrangement: Voting at creditors' meeting.

73.— (1) A vote held under *section 72(5)* shall be held in accordance with this section and regulations under *section 74*.

(2) The voting rights exercisable by a creditor at a creditors' meeting shall be proportionate to the amount of the debt due by the debtor to the creditor on the day the protective certificate is issued.

(3) F70**[**...**]**

(4) A creditor who is a connected person of the debtor may not vote in favour of a proposal for a Debt Settlement Arrangement at a creditors' meeting.

(5) Subject to any regulations made under *section 74* relating to proxies, for the purposes of this section, only the person who appears to the personal insolvency practitioner to be the owner of the debt (or an agent acting on behalf of that person) shall be entitled to receive notices required to be sent to a creditor under this Chapter or to vote at the creditors' meeting.

F71**[**(6) A proposal for a Debt Settlement Arrangement shall be considered as having been approved by a creditors' meeting held under this Chapter where creditors representing not less than 65 per cent of the total amount of the debtor's debts due to the creditors participating in the meeting and voting have voted in favour of the proposal.**]**

(7) F71**[**Where a vote is held under *section 72(5)* and no creditor votes,**]** the proposed Debt Settlement Arrangement shall be deemed to have been approved under this section.

Annotations

Amendments:

F70 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 70, S.I. No. 286 of 2013.

F71 Substituted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 6, S.I. No. 414 of 2015.

Debt Settlement Arrangement: Procedures for the conduct of creditors' meetings.

74.— (1) The Minister may make regulations relating to the holding of creditors' meetings under this Chapter, and without prejudice to the generality of the Minister's power under this section, such regulations may provide for—

(*a*) the holding of a meeting in circumstances where not all of the creditors are present in the same venue,

(*b*) the voting process including providing for the communication of creditors' votes to the personal insolvency practitioner by telephony or electronically, and

(*c*) appointment of proxies to vote at such meetings.

(2) The venue for the holding of a creditors' meeting shall be situated within the State.

(3) The period of notice of the meeting of creditors may be waived or abridged where the consent of all the creditors to such waiver or abridgement is given in writing.

Annotations

Editorial Notes:

E55 Power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Procedures for the Conduct of Creditors' Meetings) Regulations 2013* (S.I. No. 335 of 2013).

F72[Approval of proposed Debt Settlement Arrangement where only one creditor

74A. (1) Where—

(*a*) a personal insolvency practitioner has prepared a proposal for a Debt Settlement Arrangement and the debtor has consented to that proposal, and

(*b*) only one creditor would be entitled to vote at a creditors' meeting held under this Chapter (whether in respect of one or more debts),

the procedures specified in this section, and not those specified in *sections 70*, *72* and *73*, shall apply in relation to the approval by that creditor of the proposal for a Debt Settlement Arrangement.

(2) A personal insolvency practitioner referred to in *subsection (1)* shall—

(*a*) give written notice to the creditor that the proposal for a Debt Settlement Arrangement has been prepared and that the creditor may, within the period specified in *subsection (6) (a)*, notify the personal insolvency practitioner in writing of his or her approval or otherwise of that proposal,

(*b*) ensure that the notice referred to in *paragraph (a)* is accompanied by a copy of each of the documents referred to in *section 71*, and

(*c*) lodge a copy of the notice referred to in *paragraph (a)* and the documents referred to in *paragraph (b)* with the Insolvency Service.

(3) A personal insolvency practitioner who has complied with *subsection (2)* may, where he or she believes it is in the interests of obtaining approval of a proposed Debt Settlement Arrangement by the creditor and with the consent in writing of the debtor, prepare an amended proposal for a Debt Settlement Arrangement.

(4) Where the personal insolvency practitioner prepares an amended proposal for a Debt Settlement Arrangement pursuant to *subsection (3)* he or she shall—

(*a*) give written notice to the creditor that he or she may, within the period specified in *subsection (6)(b)*, notify the personal insolvency practitioner in writing of his or her approval or otherwise of the amended proposal, which notice shall be accompanied by a copy of the amended proposal,

(*b*) give the debtor a copy of the documents referred to in *paragraph (a)*, and

(*c*) lodge a copy of the documents referred to in *paragraph (a)* with the Insolvency Service.

(5) A proposal for a Debt Settlement Arrangement may, before the creditor has notified the personal insolvency practitioner of his or her approval or otherwise of the proposal, be subject to a proposal for a modification where the modification addresses an ambiguity or rectifies an error in the proposed Debt Settlement Arrangement and where—

(*a*) the modification has been proposed by the creditor or the personal insolvency practitioner, and

(*b*) the debtor gives his or her written consent to the modification.

(6) A creditor to whom this section applies shall notify the personal insolvency practitioner in writing of his or her approval or otherwise of a proposal for a Debt Settlement Arrangement within—

(*a*) 14 days of the giving to him or her of the notice under *subsection (2)*, or

(*b*) if later, 7 days of the date on which a notice under *subsection (4) (a)* is first given to him or her.

(7) A proposal for a Debt Settlement Arrangement to which this section applies—

(*a*) shall be considered as having been approved by the creditor concerned where that creditor notifies the personal insolvency practitioner in accordance with *subsection (6)* of the creditor's approval of that proposal, and

(*b*) where that creditor fails to comply with *subsection (6)*, shall be deemed to have been approved by the creditor concerned.

(8) Where a creditor to whom this section applies notifies the personal insolvency practitioner in accordance with *subsection (6)* that he or she does not approve of the proposal, the Debt Settlement Arrangement procedure shall be deemed to have come to an end and the protective certificate issued under *section 61* shall cease to have effect.

(9) Where a personal insolvency practitioner fails to give the creditor a notice under *subsection (2)* before the expiry of the protective certificate, the Debt Settlement Arrangement procedure shall be deemed to have come to an end.

(10) Where this section applies, a reference in *section 61(13)* to *section 73* shall be construed as a reference to this section.**]**

Annotations

Amendments:

F72 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 7, S.I. No. 514 of 2015.

Editorial Notes:

E56 The section heading is taken from the amending section in the absence of one included in the amendment.

Steps to be taken by personal insolvency practitioner following approval of proposal for Debt Settlement Arrangement.

75.—F73**[**(1) Where a Debt Settlement Arrangement is approved or, as the case may be, deemed to have been approved at a creditors' meeting in accordance with *section 73*, the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned of that approval or, as the case may be, deemed approval, which notification shall be accompanied by—

(*a*) (i) subject to *subparagraph (ii)*, a certificate with the result of the vote taken at the creditors' meeting, identifying the number of votes, in value of the creditors present and voting, in favour of and against the proposed Debt Settlement Arrangement, and stating that the requisite proportion of creditors referred to in *section 73(6)* has approved the proposal for a Debt Settlement Arrangement, or

(ii) where *section 73(7)* applies to the proposal, a certificate to that effect,

(*b*) a copy of the approved Debt Settlement Arrangement, and

(*c*) a statement by the personal insolvency practitioner to the effect that he or she is of the opinion that—

(i) the debtor satisfies the eligibility criteria for the proposal of a Debt Settlement Arrangement specified in *section 57*,

(ii) the approved Debt Settlement Arrangement complies with the mandatory requirements referred to in *section 65(2)*, and

(iii) the approved Debt Settlement Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or a secured debt or otherwise affect such a debt.**]**

F74**[**(1A) Where a Debt Settlement Arrangement is approved or, as the case may be, deemed to have been approved in accordance with *section 74A(7)* (inserted by section 7 of the Personal Insolvency (Amendment) Act 2015), the personal insolvency practitioner shall as soon as practicable thereafter notify the Insolvency Service and each creditor concerned of that approval or, as the case may be, deemed approval, which notification shall be accompanied by—

(*a*) a certificate stating that *section 74A* applies to the proposed Debt Settlement Arrangement and that the proposal concerned has been approved or, as the case may be, deemed to have been approved in accordance with *section 74A(7)* by the only creditor entitled to vote on the proposal,

(*b*) a copy of the approved Debt Settlement Arrangement, and

(*c*) a statement by the personal insolvency practitioner to the effect that he or she is of the opinion that—

(i) the debtor satisfies the eligibility criteria for the proposal of a Debt Settlement Arrangement specified in *section 57*,

(ii) the approved Debt Settlement Arrangement complies with the mandatory requirements referred to in *section 65(2)*, and

(iii) the approved Debt Settlement Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or a secured debt or otherwise affect such a debt.**]**

(2) The personal insolvency practitioner shall, in addition to the documents referred to in *subsection (1)* F75**[**or, as the case may be, *subsection (1A)* (inserted by section 8(b) of the Personal Insolvency (Amendment) Act 2015),**]** also send a notice to each creditor indicating that he or she may make objection to the coming into effect of the Debt Settlement Arrangement by lodging a notice of objection with the appropriate court, within 14 days of the date of the sending of that notice.

(3) A creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in *subsection (2)* and shall at the same time send a copy of the notice of objection to—

(*a*) the Insolvency Service, and

(*b*) the personal insolvency practitioner.

Annotations

Amendments:

F73 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 8(a), S.I. No. 514 of 2015.

F74 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 8(b), S.I. No. 514 of 2015.

F75 Inserted (20.11.2015) by *Personal INsolvency (Amendment) Act 2015* (32/2015), s. 8(c), S.I. No. 514 of 2015.

Editorial Notes:

E57 Previous affecting provision: subs. (1) substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 71, S.I. No. 286 of 2013; substituted as per F-note above.

Steps to be taken by Insolvency Service following notification of approval of Debt Settlement Arrangement by personal insolvency practitioner under *section 75*.

76.—F76**[**(1) On receipt of a notification and accompanying documents from the personal insolvency practitioner pursuant to *section 75(1)* (as amended by section 71 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013) F77**[**or, as the case may be, *section 75(1A)* (inserted by section 8(b) of the Personal Insolvency (Amendment) Act 2015)**]**, the Insolvency Service shall—

(*a*) notify the appropriate court and furnish to that court a copy of the notification and documents, and

(*b*) record the approval of the Debt Settlement Arrangement concerned in the Register of Debt Settlement Arrangements.**]**

(2) Where the notification of the personal insolvency practitioner is received by the Insolvency Service before the expiry of the period of the protective certificate, such protective certificate shall continue in force until the Debt Settlement Arrangement

comes into effect or all objections lodged with the appropriate court pursuant to *section 75(3)* have been determined by the court.

Annotations

Amendments:

F76 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 72, S.I. No. 286 of 2013.

F77 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 9, S.I. No. 514 of 2015.

Determination of objection lodged under *section 75*.

77.— (1) The grounds on which objection may be made to the coming into effect of the Debt Settlement Arrangement are those specified in *section 87*.

(2) The hearing of an objection lodged under *section 75(3)* shall be heard with all due expedition.

(3) Where the appropriate court upholds the objection to the Debt Settlement Arrangement, the Debt Settlement Arrangement procedure shall be deemed to have come to an end, and the protective certificate issued under *section 61* shall cease to have effect.

Coming into effect of Debt Settlement Arrangement.

78.— (1) Where—

(*a*) no objection is lodged by a creditor with the appropriate court within 14 days of the giving of the notice referred to in *section 75*, or

(*b*) an objection is lodged with the appropriate court and the matter is determined by the court on the basis that the objection should not be allowed,

the appropriate court shall proceed to consider, in accordance with this section, whether to approve the coming into effect of the Debt Settlement Arrangement.

(2) For the purposes of its consideration under *subsection (1)*, the appropriate court shall consider F78**[**the notification and documents**]** furnished to it under *section 76(1)* and, subject to *subsection (3)*—

(*a*) shall approve the coming into effect of the Arrangement, if satisfied that the—

(i) eligibility criteria specified in *section 57* have been satisfied,

(ii) mandatory requirements referred to in *section 65(2)* have been complied with,

(iii) Debt Settlement Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or a secured debt or otherwise affect such a debt, and

F79**[**(iv) proposal for a Debt Settlement Arrangement, as the case may be—

(I) has been approved by the requisite proportion of creditors referred to in *section 73(6)*,

(II) is one to which *section 73(7)* applies, or

(III) has been approved or, as the case may be, deemed to have been approved in accordance with *section 74A(7)* (inserted by section 7 of the Personal Insolvency (Amendment) Act 2015),**]**

and

(*b*) if not so satisfied, shall refuse to approve the coming into effect of the Debt Settlement Arrangement.

F78**[**(3) Where the appropriate court, for the purpose of its arriving at a decision under *subsection (2)*, requires—

(*a*) further information, it may request the Insolvency Service to provide this information, and the Insolvency Service shall provide the information requested to the court and to the personal insolvency practitioner concerned, or

(*b*) further information or evidence, it may hold a hearing, which hearing shall be on notice to the Insolvency Service and the personal insolvency practitioner concerned.**]**

(4) F80**[**...**]**

F79**[**(5) For the purposes of *subsection (2)*, the appropriate court may accept—

(*a*) the certificate of the personal insolvency practitioner referred to in *section 75(1)(a)(i)* (as amended by section 8*(a)* of the Personal Insolvency (Amendment) Act 2015) as evidence that the proposal for a Debt Settlement Arrangement has been approved by the requisite proportion of creditors referred to in *section 73(6)*,

(*b*) the certificate of the personal insolvency practitioner referred to in *section 75(1)(a)(ii)* (as amended by section 8*(a)* of the Personal Insolvency (Amendment) Act 2015) as evidence that the proposal for a Debt Settlement Arrangement is one to which *section 73(7)* applies,

(*c*) the certificate of the personal insolvency practitioner referred to in *section 75(1A)* (inserted by section 8*(b)* of the Personal Insolvency (Amendment) Act 2015) as evidence that the Debt Settlement Arrangement has been approved or, as the case may be, deemed to have been approved in accordance with *section 74A(7)* (inserted by section 7 of the Personal Insolvency (Amendment) Act 2015), and

(*d*) the statement of the personal insolvency practitioner referred to in *section 75(1)(c)* (as amended by section 71 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013) or, as the case may be, *section 75(1A)(c)* (inserted by section 8*(b)* of the Personal Insolvency (Amendment) Act 2015) as evidence of any matter referred to in *subsection (2)* which is the subject of that statement.**]**

(6) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court—

(*a*) approves or refuses to approve the coming into effect of the Debt Settlement Arrangement under this section, or

(*b*) decides to hold a hearing referred to in *subsection (3)*.

(7) On receipt of a notification under *subsection (6)* of the approval of the coming into effect of the Debt Settlement Arrangement, the Insolvency Service shall register the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements.

(8) The Debt Settlement Arrangement shall come into effect upon being registered in the Register of Debt Settlement Arrangements.

Annotations

Amendments:

F78 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 73(a), (b), (d), S.I. No. 286 of 2013.

F79 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 10, S.I. No. 514 of 2015.

F80 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 73(c), S.I. No. 286 of 2013.

Editorial Notes:

E58 Previous affecting provision: subs. (5) substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 73(a), (b), (d), S.I. No. 286 of 2013; substituted as per F-note above.

Effect of Debt Settlement Arrangement.

79.— (1) A Debt Settlement Arrangement having been registered in the Register of Debt Settlement Arrangements shall have effect according to its terms and remain in effect until—

(*a*) it is completed in accordance with its terms or the terms of any variation made, or

(*b*) it is terminated in accordance with this Chapter.

(2) While a Debt Settlement Arrangement is in effect, the following shall be parties to it and, subject to this Act, shall be bound by its terms—

(*a*) the debtor, and

(*b*) in respect of every specified debt, the creditor concerned.

(3) Where a Debt Settlement Arrangement is in effect, a creditor who is bound by it shall not, in relation to a specified debt—

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to recover goods in the possession or custody of the debtor, unless title to the goods is vested in the creditor or the creditor F81**[**holds security**]** over the goods;

(*f*) contact the debtor regarding payment of the specified debt otherwise than at the request of the debtor;

(*g*) in relation to an agreement with the debtor, other than a security agreement, by reason only that the debtor is insolvent or that a Debt Settlement Arrangement is in effect—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(4) Where a Debt Settlement Arrangement is in effect, a creditor of that debtor shall not apply for the issue of a summons under section 8 of the Bankruptcy Act 1988 or present a petition to have the debtor concerned adjudicated a bankrupt in respect of a debt covered by the Debt Settlement Arrangement.

(5) Where a Debt Settlement Arrangement is in effect, and a creditor of that debtor has applied for the issue of a summons under section 8 of the Bankruptcy Act 1988 or has presented a petition to have the debtor concerned adjudicated a bankrupt in respect of a debt covered by the Debt Settlement Arrangement, the creditor shall not proceed with the summons or the petition.

(6) Nothing in *subsections (3)* and *(4)* shall operate to prevent a creditor taking the actions referred to in those subsections as respects a person who has jointly contracted with the debtor or is jointly liable with the debtor to the creditor and that other person may sue or be sued in respect of the contract without joining the debtor.

(7) *Subsection (6)* does not apply where a Debt Settlement Arrangement is also in effect as respects the other person.

(8) In reckoning any period of time for the purpose of any applicable limitation period in relation to any proceedings or process to which this section applies (including any limitation period under the Statute of Limitations 1957), the period in which the Debt Settlement Arrangement is in effect shall be disregarded.

(9) The period for which any judgment against the debtor in relation to a debt which is the subject of a Debt Settlement Arrangement has effect (whether under statute or rule of court) shall, subject to the provisions of this Act be extended by the period that the Debt Settlement Arrangement is in effect.

(10) Notwithstanding *subsections (3)* and *(4)*, the fact that a Debt Settlement Arrangement is in effect in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (3)* or *(4)* as respects another person who has guaranteed the specified debts concerned.

(11) The Deeds of Arrangement Act 1887 does not apply to a Debt Settlement Arrangement.

(12) In this section, "specified debt" means a debt that is specified in a Debt Settlement Arrangement as being subject to that Arrangement.

Annotations

Amendments:

F81 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 74, S.I. No. 286 of 2013.

Operation of terms of Debt Settlement Arrangement.

80.— (1) Subject to the provisions of this section, a Debt Settlement Arrangement shall operate according to the terms of that Arrangement and a debtor or creditor who is party to that Arrangement shall perform his or her obligations in accordance with its terms.

(2) Unless otherwise provided by the Debt Settlement Arrangement, payments to be made to creditors under the terms of the Arrangement shall be made by the debtor through the personal insolvency practitioner concerned.

(3) The personal insolvency practitioner shall transmit payments received to each of the creditors in the agreed proportion on a timely basis.

(4) The personal insolvency practitioner shall maintain regular contact with the debtor and request such reports and conduct such reviews as may be required, but

such review shall in any event be carried out at least once in every period of 12 months.

(5) The personal insolvency practitioner shall monitor implementation of the Arrangement and where the debtor has defaulted or appears likely to default in his or her obligations under the Arrangement, discuss the matter with the debtor.

(6) Where the circumstances of the debtor have changed in a material respect the personal insolvency practitioner shall provide information to the debtor regarding his or her right or obligation to initiate an application to vary the Arrangement in accordance with *section 82*.

(7) Where the circumstances of a debtor have changed to such an extent that a variation in the terms of an Arrangement is appropriate, the personal insolvency practitioner shall take the necessary steps to initiate a variation of the Arrangement under *section 82*.

(8) The personal insolvency practitioner shall deal with the property of the debtor in accordance with the Debt Settlement Arrangement.

(9) The personal insolvency practitioner shall respond in a timely manner to requests for information regarding the operation of the Arrangement from—

(*a*) the Insolvency Service,

(*b*) the debtor, and

(*c*) the creditors.

(10) The personal insolvency practitioner shall maintain complete and accurate records of account of the moneys received from the debtor and the moneys disbursed to the creditors and such moneys shall while in the possession and control of the personal insolvency practitioner be maintained in an account in the State with a bank authorised to carry on business in the State, which account is used solely for the purposes of receiving payments from the debtor and transmitting such payments to creditors (after the deduction of any fees, costs and outlays payable to the personal insolvency practitioner permitted to be made under this Act and in accordance with the Debt Settlement Arrangement).

General duties and obligations of debtor arising under *Chapter 3*.

81.— (1) A debtor who participates in any process under this Chapter is under an obligation to act in good faith, and in his or her dealings with the personal insolvency practitioner concerned to make full disclosure to that practitioner of all of his or her assets, income and liabilities and of all other circumstances that are reasonably likely to have a bearing on the ability of the debtor to make payments to his or her creditors.

(2) A debtor who participates in any part of the process of applying for or operating a Debt Settlement Arrangement shall co-operate fully in the process, and in particular comply with any reasonable request from the personal insolvency practitioner to provide assistance, documents and information necessary for the application of the process to the debtor's case or the carrying out of the personal insolvency practitioner's functions, including any debt, tax, employment, business, social welfare or other financial records.

(3) A debtor in respect of whom a Debt Settlement Arrangement is in effect is under an obligation to inform the personal insolvency practitioner as soon as reasonably practicable of any material change in the debtor's circumstances, particularly an increase or decrease in the extent of the debtor's assets, liabilities or income, which would affect the debtor's ability to make repayments under the Debt Settlement Arrangement.

(4) A debtor in respect of whom a Debt Settlement Arrangement is in effect shall not, either alone or with any other person, obtain credit in an amount of more than

€650 from any person without informing that person that he or she is subject as a debtor to a Debt Settlement Arrangement.

(5) A debtor in respect of whom a Debt Settlement Arrangement is in effect shall not transfer, lease, grant security over, or otherwise dispose of any interest in property above a prescribed value otherwise than in accordance with the terms of the Debt Settlement Arrangement.

(6) A debtor shall inform the personal insolvency practitioner as soon as reasonably practicable after becoming aware of any inaccuracy or omission in the debtor's statement of affairs based on the Prescribed Financial Statement.

(7) A debtor who participates in a Debt Settlement Arrangement shall not pay to creditors any additional payments separate to the Debt Settlement Arrangement in respect of debts covered in the Debt Settlement Arrangement.

Variation of Debt Settlement Arrangement

F82**[82.** (1) Subject to this section, a Debt Settlement Arrangement may be varied in accordance with its terms.

(2) A personal insolvency practitioner, whether on his or her own initiative or on a request made in accordance with *subsection (3)*, shall propose a variation of a Debt Settlement Arrangement (in this section referred to as a 'variation') where—

(*a*) it appears to the personal insolvency practitioner that there has been a material change in the debtor's circumstances, and

(*b*) the personal insolvency practitioner is satisfied that there is a reasonable prospect that a variation that addresses such circumstances would be approved in accordance with this section.

(3) A debtor or creditor who is bound by a Debt Settlement Arrangement may request the personal insolvency practitioner to propose a variation of the Arrangement, which request shall be—

(*a*) in writing,

(*b*) accompanied by information or evidence to support the assertion that there has been a material change in the debtor's circumstances, and

(*c*) accompanied by the written consent of the person making the request to the—

(i) making by the personal insolvency practitioner of an enquiry under *subsection (4)*, and

(ii) disclosure by the personal insolvency practitioner of personal data of the person, to the extent necessary for such an enquiry.

(4) A personal insolvency practitioner shall, within 21 days of receipt of a request under *subsection (3)*, decide whether *paragraphs (a)* and *(b)* of *subsection (2)* apply in relation to the Debt Settlement Arrangement concerned and, for that purpose—

(*a*) may request any further information he or she requires from the person who made the request, and

(*b*) may make such enquiries as he or she considers necessary in order to arrive at his or her decision.

(5) For the purpose of deciding, whether under *subsection (4)* or otherwise, whether *paragraphs (a)* and *(b)* of *subsection (2)* apply in relation to the Debt Settlement Arrangement concerned, the personal insolvency practitioner may require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement.

(6) Where the personal insolvency practitioner is satisfied that *paragraphs (a)* and *(b)* of *subsection (2)* apply in relation to the Debt Settlement Arrangement concerned, he or she shall without delay—

(*a*) require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement, unless the debtor has completed a Prescribed Financial Statement under *subsection (5)* and the information contained in it remains complete and accurate,

(*b*) formulate a proposal for a variation,

(*c*) seek the written consent of the debtor to the proposal and, subject to *subsection (8)*, to the calling of a meeting of the creditors of the debtor for the purpose of considering the proposal, and

(*d*) subject to *subsection (8)*, where the consent of the debtor referred to in *paragraph (c)* has been given, arrange for the holding of the meeting referred to in that paragraph.

(7) When calling a creditors' meeting to be held under this section, the personal insolvency practitioner shall—

(*a*) give each creditor at least 14 days' written notice of the meeting and the date on which, and the time and place at which, the meeting will be held,

(*b*) ensure that the notice referred to in *paragraph (a)* is accompanied by—

(i) a written proposal for the variation of the Debt Settlement Arrangement,

(ii) a report of the personal insolvency practitioner—

(I) describing the outcome for the creditors and for the debtor under the terms of the proposal, and

(II) indicating whether or not he or she is of the opinion that the debtor is reasonably likely to be able to comply with the terms of the Debt Settlement Arrangement as varied in accordance with the proposal,

(iii) the Prescribed Financial Statement completed by the debtor under *subsection (5)* or *(6)*, as the case may be, and

(iv) such other information obtained by the personal insolvency practitioner under this section as he or she considers relevant,

and

(*c*) lodge a copy of the notice referred to in *paragraph (a)* and the documents referred to in *paragraph (b)* with the Insolvency Service.

(8) Where only one creditor would be entitled to vote at a creditors' meeting under this section (whether in respect of one or more debts), the personal insolvency practitioner shall, in place of holding such a meeting, give notice to the creditor of the proposal for a variation, and *paragraphs (b)* and *(c)* of *subsection (7)* shall apply in respect of that notice.

(9) The provisions of *sections 65* to *69* and *sections 72* to *78* (other than *subsections (2)* and *(3)* of *section 67*, *sections 72(4)*, *72(7)*, *73(2)*, *74A(7)* (inserted by section 7 of the Personal Insolvency (Amendment) Act 2015), *75(1)(c)(i)* (as amended by section 8(a) of the Personal Insolvency (Amendment) Act 2015), *75(1A)(c)(i)* (inserted by section 8(b) of the Personal Insolvency (Amendment) Act 2015), *76(2)*, *77(3)* and *78(2)(a)(i)*) and *section 87* shall apply in relation to a variation of a Debt Settlement Arrangement under this section, subject to the following modifications and any other necessary modifications—

(*a*) a reference to a Debt Settlement Arrangement shall be construed as a reference to a Debt Settlement Arrangement as varied in accordance with this Chapter,

(*b*) a reference to a proposal for a Debt Settlement Arrangement shall be construed as a reference to a proposal for the variation of a Debt Settlement Arrangement, and a reference to a proposed Debt Settlement Arrangement shall be construed as a reference to a proposed variation of a Debt Settlement Arrangement,

(*c*) a reference to a Prescribed Financial Statement shall be construed as a reference to the Prescribed Financial Statement completed by the debtor under *subsection (5)* or *(6)*, as the case may be,

(*d*) the variation of a Debt Settlement Arrangement shall not have the effect of extending the duration of that Debt Settlement Arrangement beyond the maximum duration permitted under *section 65(2)(a)*,

(*e*) a Debt Settlement Arrangement as varied under this section shall, in addition to containing the information referred to in *section 65(2) (e)*, make provision for the costs and outlays of the personal insolvency practitioner which relate to this section,

(*f*) a reference to a creditors' meeting shall be construed as a reference to a creditors' meeting called under this section,

(*g*) an adjournment pursuant to *section 72(2)* may occur once only in the course of a creditors' meeting, and

(*h*) a reference in *section 78(5) (c)* (as amended by section 10(b) of the Personal Insolvency (Amendment) Act 2015) to *section 74A(7)* shall be construed as a reference to *subsection (11)*.

(10) The voting rights exercisable by a creditor at a creditors' meeting under this section shall be proportionate to the amount of the debt due by the debtor to the creditor on the day on which the vote is held.

(11) (*a*) Where *subsection (8)* applies, the creditor concerned shall notify the personal insolvency practitioner in writing of his or her approval or otherwise of a proposal for the variation of a Debt Settlement Arrangement within—

(i) 14 days of the giving to him or her of the notice under that subsection, or

(ii) if later, 7 days of the date on which a notice under *section 74A(4)(a)* is first given to him or her.

(*b*) A proposal referred to in paragraph (a) —

(i) shall be considered as having been approved by the creditor concerned where that creditor notifies the personal insolvency practitioner in accordance with that paragraph of the creditor's approval of the proposal, and

(ii) where that creditor fails to comply with that paragraph, shall be deemed to have been approved by the creditor concerned.

(12) Where—

(*a*) on the taking of a vote at a creditors' meeting under this section, the proposal is not approved in accordance with section 73,

(*b*) *subsection (8)* applies and the proposal is not approved in accordance with *subsection (11)*, or

(*c*) the appropriate court upholds the objection of a creditor to the variation of a Debt Settlement Arrangement coming into effect,

the Debt Settlement Arrangement concerned shall, without prejudice to the other provisions of this Act, continue in effect without being subject to such variation.

(13) *Subsection (12)* shall be without prejudice to the entitlement of the personal insolvency practitioner to propose another variation of the Debt Settlement Arrangement in accordance with this section.

(14) Subject to *subsection (15)*, an unreasonable refusal by the debtor to give his or her consent—

(*a*) under *subsection (6)* to a proposal for a variation or the calling of a creditors' meeting, or

(*b*) under *subsection (2)* or *(6*) of *section 72* or, as the case may be, *subsection (3)* or *(5)* of *section 74A* (inserted by section 7 of the Personal Insolvency (Amendment) Act 2015),

shall be grounds for an application under *section 83(1) (g)*.

(15) A debtor who refuses to give his or her consent under a provision referred to in *subsection (14)* shall be considered to be acting reasonably where the proposal in relation to which the consent is sought would require the debtor—

(*a*) where there has been an increase in the debtor's income, to make additional payments in excess of 50 per cent of the increase in his or her income available to him or her after the following deductions (where applicable) are made:

(i) income tax;

(ii) social insurance contributions;

(iii) payments made by him or her in respect of excluded debts;

(iv) payments made by him or her in respect of excludable debts that are not permitted debts;

(v) such other levies and charges on income as may be prescribed,

or

(*b*) to make a payment amounting to more than 50 per cent of the value of any property acquired by the debtor after the coming into effect of the Debt Settlement Arrangement that is proposed to be varied, unless receipt of that property had been anticipated by the terms of that Arrangement.

(16) A reference in this Chapter to a Debt Settlement Arrangement shall be construed as including such an arrangement as proposed to be varied or, as varied in accordance with this section, unless the context otherwise requires.

(17) In this section, 'material change in the debtor's circumstances' means a change in the debtor's circumstances that would materially affect his or her ability to make payments, or otherwise perform his or her obligations, under the Debt Settlement Arrangement, and includes an increase or decrease in the extent of the debtor's assets, liabilities or income.**]**

Annotations

Amendments:

F82 Substituted (20.11.2015) by *Personal Solvency (Amendment) Act 2015* (32/2015), s. 11, S.I. No. 514 of 2015.

Modifications (not altering text):

C6 Reference to personal data construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 165, S.I. No. 17 of 2018.

Reference to personal data in enactment

165. Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

(*a*) the Data Protection Regulation, and

(*b*) Part 5.

Editorial Notes:

E59 Previous affecting provision: section substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 75, S.I. No. 286 of 2013; substituted as per F-note above.

Application to appropriate court to have Debt Settlement Arrangement terminated.

83.— (1) Without prejudice to *section 87*, a creditor or a personal insolvency practitioner may, as respects a Debt Settlement Arrangement, at any time during which the arrangement concerned is in effect, apply to the appropriate court to have that Debt Settlement Arrangement terminated, and such application shall be limited to the following grounds:

(*a*) a material inaccuracy or omission exists in the debtor's Prescribed Financial Statement, which causes a material detriment to the creditor;

(*b*) the debtor, when the Debt Settlement Arrangement was proposed, did not satisfy the eligibility criteria specified in *section 57*;

(*c*) the debtor did not comply with the duties and obligations imposed on him or her under the Debt Settlement Arrangement process;

(*d*) the debtor has since the coming into effect of the Debt Settlement Arrangement committed an offence under this Act;

(*e*) the debtor is in arrears with his or her payments for a period of not less than 3 months;

(*f*) the debtor has failed to carry out any action necessary to enable a term of the Debt Settlement Arrangement to have effect;

(*g*) the debtor has unreasonably refused to consent to a variation of the Debt Settlement Arrangement.

(2) For the purposes of *subsection (1)(e)*, a debtor is in arrears with his or her payments for a period of not less than 3 months where—

(*a*) at the beginning of the 3 month period ending immediately before the day on which the application was made, one or more than one payment in respect of the debts became due and payable by the debtor under the Debt Settlement Arrangement, and

(*b*) at no time during that 3 month period were any obligations in respect of those payments discharged.

(3) On hearing an application under *subsection (1)*, the appropriate court may—

(*a*) dismiss the application,

(*b*) terminate the Debt Settlement Arrangement, or

(*c*) order the personal insolvency practitioner to propose the variation of the Arrangement in accordance with *section 82*.

F83**[**(4) Where the appropriate court makes a decision under *subsection (3)*—

(*a*) the Registrar of the appropriate court shall notify the Insolvency Service of the decision, and

(*b*) the Insolvency Service, on receipt of the notification under *paragraph (a)*, shall notify the personal insolvency practitioner and the specified creditors concerned of the decision.

(5) Where the appropriate court decides, under *subsection (3)*, to terminate a Debt Settlement Arrangement, the Insolvency Service shall, on receipt of the notification under *subsection (4)* of that termination, record the fact of the termination of the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements.**]**

Annotations

Amendments:

F83 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 76, S.I. No. 286 of 2013.

Debt Settlement Arrangement deemed to have failed after 6 month arrears default.

84.— (1) Where the debtor is in arrears with his or her payments for a period of 6 months the Debt Settlement Arrangement shall be deemed to have failed and shall terminate where the personal insolvency practitioner notifies the Insolvency Service and the debtor of such default.

(2) Where the Insolvency Service receives a notification of default referred to in *subsection (1)*, it shall record the failure of the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements.

(3) For the purposes of *subsection (1)*, a debtor is in arrears with his or her payments for a period of 6 months on a given date if—

(*a*) at the beginning of the 6 month period ending immediately before that date, one or more than one payment in respect of a debt became due and payable by the debtor under the Debt Settlement Arrangement, and

(*b*) at no time during that 6 month period were any obligations in respect of those payments discharged.

Effect of premature termination of Debt Settlement Arrangement on debts.

85.— (1) Subject to *subsection (2)*, where a Debt Settlement Arrangement has been deemed to have failed or has terminated under this Chapter, the debtor shall thereupon be liable in full for all debts covered by the Debt Settlement Arrangement (including any arrears, charges and interest that have accrued during the continuance of the Debt Settlement Arrangement but excluding any amounts paid in respect of those debts during the continuance of the Debt Settlement Arrangement), unless:

(*a*) the terms of the Debt Settlement Arrangement provide otherwise; or

(*b*) the appropriate court has made an order otherwise.

(2) *Subsection (1)* has effect without prejudice to the validity of any act done or property disposed of in accordance with the Debt Settlement Arrangement.

F84**[**(3) Where *subsection (1)* applies, the Insolvency Service shall, within 3 months after the date on which the Debt Settlement Arrangement would, but for that fact, have expired, remove from the Register of Debt Settlement Arrangements all information recorded in it in respect of the Debt Settlement Arrangement.**]**

Annotations

Amendments:

F84 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 77, S.I. No. 286 of 2013.

Successful completion of Debt Settlement Arrangement.

86.— (1) Upon the expiration of the Debt Settlement Arrangement, and where the debtor concerned has complied with his or her obligations under the Debt Settlement Arrangement, the personal insolvency practitioner shall notify the debtor, creditors and the Insolvency Service.

(2) Where the debtor has complied with his or her obligations under the Debt Settlement Arrangement, the debtor stands discharged from the debts specified in the Debt Settlement Arrangement.

F85**[**(3) Where the Insolvency Service receives the notice referred to in *subsection (1)*, it shall—

(*a*) record the successful completion of the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements, and

(*b*) within 3 months of such receipt, remove from the Register of Debt Settlement Arrangements all information recorded in it in respect of the Debt Settlement Arrangement.**]**

Annotations

Amendments:

F85 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 78, S.I. No. 286 of 2013.

Grounds of challenge by creditor to coming into effect of Debt Settlement Arrangement.

87.— The grounds on which a Debt Settlement Arrangement may be challenged by a creditor under *section 77* are, without prejudice to *section 83*, limited to the following matters:

(*a*) that the debtor has by his or her conduct within the 2 years prior to the issue of the protective certificate under *section 61* arranged his or her financial affairs primarily with a view to being or becoming eligible to apply for a Debt Settlement Arrangement or a Personal Insolvency Arrangement;

(*b*) the procedural requirements specified in this Act were not complied with;

(*c*) a material inaccuracy or omission exists in the debtor's statement of affairs (based on the Prescribed Financial Statement) which causes a material detriment to the creditor;

(*d*) the debtor, when the Debt Settlement Arrangement was proposed, did not satisfy the eligibility criteria specified in *section 57*;

(*e*) the Debt Settlement Arrangement unfairly prejudices the interests of a creditor;

(*f*) the debtor has committed an offence under this Act, which causes a material detriment to the creditor;

(*g*) the debtor had entered into a transaction with a person at an undervalue within the preceding 3 years that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue);

(*h*) the debtor had given a preference to a person within the preceding 3 years that had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference).

Debt Settlement Arrangement: Excessive pension contributions.

88.— (1) Where, as respects a debtor who has entered into a Debt Settlement Arrangement which is in force, a creditor or the personal insolvency practitioner concerned considers that a debtor has made excessive contributions to a relevant pension arrangement, the creditor or personal insolvency practitioner may make an application to the appropriate court for relief in accordance with this section.

(2) The reference to the debtor having made contributions to a relevant pension arrangement shall be construed as a reference to contributions made by the debtor at any time within 3 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 59*.

(3) Where the appropriate court considers that having regard in particular to the matters referred to in *subsection (4)* the contributions to a relevant pension arrangement were excessive it may:

(*a*) direct that such part of the contribution concerned (less any tax required to be deducted) be paid by the person administering the relevant pension arrangement to the personal insolvency practitioner for distribution amongst the creditors of the debtor, and

(*b*) make such other order as the court deems appropriate, including an order as to the costs of the application.

(4) The matters referred to in *subsection (3)* as respects the contributions made by the debtor to a relevant pension arrangement are:

(*a*) whether the debtor made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the debtor made the contribution concerned;

(*b*) whether the debtor was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the debtor or a person who as respects the debtor is a connected person could have materially influenced the creation of such obligation;

(*c*) the amount of the contributions paid, including the percentage of total income of the debtor in each tax year concerned which such contributions represent;

(*d*) the amount of the contributions paid, in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 59* including the percentage of total income of the debtor concerned which such contributions represent in each of those years;

(*e*) the age of the debtor at the relevant times;

(*f*) the percentage limits which applied to the debtor in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 59*; and

(*g*) the extent of provision made by the debtor in relation to any relevant pension arrangement prior to the making of the contributions concerned.

Chapter 4

Personal Insolvency Arrangements

Personal Insolvency Arrangement: General Conditions.

89.— (1) Subject to the provisions of this Act, a debtor who satisfies the eligibility criteria specified in *section 91* may make a proposal for a Personal Insolvency Arrangement with one or more of his or her creditors in respect of the payment, satisfaction or restructuring of his or her debts.

(2) A proposal for a Personal Insolvency Arrangement shall be made on behalf of a debtor by a personal insolvency practitioner in accordance with the provisions of this Part.

(3) Where two or more debtors are jointly party to all of the debts to be covered by a Personal Insolvency Arrangement and each of those debtors satisfies the eligibility criteria specified in *section 91*, those debtors may jointly propose a Personal Insolvency Arrangement and, unless otherwise specified, references in this Part to the"debtor" shall be construed as meaning such joint debtors.

(4) Without prejudice to *subsection (3)*, a Personal Insolvency Arrangement may be proposed by a debtor on the basis that it will be administered in common by a personal insolvency practitioner with one or more other Personal Insolvency Arrangements provided that, in the opinion of the personal insolvency practitioner:

(*a*) the Personal Insolvency Arrangements can reasonably be administered in common because of the financial relationship of the debtors concerned;

(*b*) the terms of each of the Personal Insolvency Arrangements to be administered in common specify in sufficient detail how such administration will operate, including—

(i) the treatment of joint and individual assets and the treatment of joint and individual debts;

(ii) whether the approval of one Personal Insolvency Arrangement is to be contingent on the approval of any other Personal Insolvency Arrangement;

(iii) the effect of the failure or early termination of one Personal Insolvency Arrangement on any other Personal Insolvency Arrangement, in particular, as to whether it is a condition of each Personal Insolvency Arrangement that for it to be considered as having been successfully completed other Personal Insolvency Arrangements are also required to be successfully completed; and

(iv) where a joint payment is to be received from two or more debtors, how that payment is to be apportioned between the creditors under each Personal Insolvency Arrangement.

(5) The administration of a Personal Insolvency Arrangement in common with one or more other Personal Insolvency Arrangements in accordance with *subsection (4)* shall be without prejudice to the applicability of the remainder of this Part to each such Personal Insolvency Arrangement.

(6)(*a*) A Personal Insolvency Arrangement shall not contain any terms that would release the debtor from an excluded debt or otherwise affect such a debt.

(*b*) A proposal for a Personal Insolvency Arrangement shall not include any terms that, if contained in a Personal Insolvency Arrangement that came into effect, would contravene *paragraph (a)*.

Personal Insolvency Arrangement permitted once only.

90.— A debtor may enter into a Personal Insolvency Arrangement once only.

Eligibility criteria for a Personal Insolvency Arrangement.

91.— (1) Subject to the provisions of this section and this Chapter, a debtor shall not be eligible to make a proposal for a Personal Insolvency Arrangement unless he or she satisfies the following criteria—

(*a*) subject to *subsection (4)*, that the aggregate of the debts of the debtor which are secured debts is less than €3,000,000;

(*b*) that the debtor—

(i) is domiciled in the State, or

(ii) within one year before the date of the application for a protective certificate has ordinarily—

(I) resided in the State, or

(II) had a place of business in the State;

(*c*) that at least one of the creditors of the debtor is a secured creditor holding security over an interest in property of the debtor situate in the State (whether the interest in the property relates to real property or personal property);

(*d*) that the debtor is insolvent;

(*e*) that the debtor has completed a Prescribed Financial Statement and has made a statutory declaration confirming that the statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;

(*f*) that the personal insolvency practitioner has completed a statement under *section 54* in respect of the debtor;

F86**[**(*g*) that the debtor has made a declaration in writing declaring that he or she has co-operated for a period of at least 6 months with his or her creditors who are secured creditors as respects the debtor's principal private residence in accordance with any process relating to mortgage arrears operated by the secured creditors concerned which has been approved or required by the Central Bank of Ireland and which process relates to the secured debt concerned and that—

(i) notwithstanding such co-operation the debtor has not been able to agree an alternative repayment arrangement with the secured creditor concerned, or that the secured creditor has confirmed to the debtor in writing the unwillingness of that secured creditor to enter into an alternative repayment arrangement, or

(ii) the debtor—

(I) has entered into an alternative repayment arrangement and has, in good faith, endeavoured to comply with that arrangement, and

(II) the personal insolvency practitioner has provided the debtor with a confirmation under *subsection (2A)*;**]**

(*h*) that the debtor is not—

(i) an undischarged bankrupt,

(ii) a discharged bankrupt subject to a bankruptcy payment order,

(iii) a person who is a specified debtor as respects a Debt Relief Notice which is in effect,

(iv) a person who, as a debtor, is subject to a Debt Settlement Arrangement which is in effect, or

(v) a person who, as a debtor, is subject to an arrangement under the control of the court under Part IV of the Bankruptcy Act 1988;

(*i*) that the debtor has not—

(i) been the subject of a protective certificate issued under *section 95* less than 12 months prior to the date of the application for a protective certificate,

(ii) had his or her debts discharged pursuant to a final Debt Relief Notice less than 3 years prior to the date of the application for a protective certificate,

(iii) had his or her debts discharged pursuant to a Debt Settlement Arrangement less than 5 years prior to the date of the application for a protective certificate, or

(iv) been discharged from bankruptcy less than 5 years prior to the date of the application for a protective certificate.

(2) The criterion referred to in *subsection (1)(g)* shall not apply where the relevant personal insolvency practitioner confirms in writing that, having regard to the financial circumstances of the debtor as disclosed in the Prescribed Financial Statement completed by the debtor, it is the belief of that practitioner that if the debtor were to have entered into an alternative repayment arrangement with the secured creditor concerned of a type provided for in any process relating to mortgage arrears operated by that secured creditor (being a process approved or required by the Central Bank of Ireland) the debtor would be unlikely to become solvent within the period of 5 years commencing on the date of the personal insolvency practitioner giving that confirmation.

F87**[**(2A) A confirmation under this subsection is a confirmation in writing by the personal insolvency practitioner that, having regard to the financial circumstances of the debtor as disclosed in the Prescribed Financial Statement completed by the debtor, and the terms of the alternative payment arrangement referred to in *subsection (1) (g) (ii)*, it is the belief of that practitioner that the debtor, if he or she were not to enter into a Personal Insolvency Arrangement, would be unlikely to become solvent within the period of 5 years commencing on the date of the personal insolvency practitioner giving that confirmation.**]**

(3) The criterion F88**[**specified in *subsection (1)(i)***]** shall not apply where the debtor has, on notice to the Insolvency Service, made an application to the appropriate court and the court has made an order stating that it is satisfied that the current insolvency of the debtor arises by reason of exceptional circumstances or other factors which are substantially outside the control of the debtor and that it would be just to permit the debtor to make a proposal for a Personal Insolvency Arrangement.

(4) Where all of the creditors who are secured creditors consent in writing the limit of €3,000,000 referred to in *subsection (1)(a)* shall not apply.

(5) A debtor shall not be eligible to make a proposal for a Personal Insolvency Arrangement where 25 per cent or more of his or her debts (other than excluded debts) were incurred during the period of 6 months ending on the date on which an application is made under *section 93* for a protective certificate.

Annotations

Amendments:

F86 Substituted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 12(a), S.I. No. 414 of 2015.

F87 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 12(b), S.I. No. 414 of 2015.

F88 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 79, S.I. No. 286 of 2013.

F89 Inserted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 11, not commenced as of date of revision.

Modifications (not altering text):

C7 Prospective affecting provision: subs. (1)(e) amended by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 11, not commenced as of date of revision.

(*e*) that the debtor has completed a Prescribed Financial Statement and has made a statutory declaration F89**[**or a confirmation of truth**]** confirming that the statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;

Creditor consent required for inclusion of excludable debt in Personal Insolvency Arrangement.

92.— (1) An excludable debt shall be included in a proposal for a Personal Insolvency Arrangement only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the inclusion of that debt in such a proposal.

(2) Where a personal insolvency practitioner proposes to include an excludable debt in a proposal for a Personal Insolvency Arrangement, he or she shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—

(*a*) such information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and

(*b*) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the inclusion of the debt in a Personal Insolvency Arrangement.

(3) A creditor shall comply with a request under *subsection (2)(b)* within 21 days of receipt of the notification under that subsection.

(4) Where a creditor does not comply with *subsection (3)*, the creditor shall be deemed to have consented to the inclusion of that debt in a proposal for a Personal Insolvency Arrangement.

(5) Where a creditor consents or is deemed to have consented, in accordance with this section, to the inclusion of an excludable debt in a proposal for a Personal Insolvency Arrangement, that creditor shall be entitled to vote at any creditors' meeting called to consider that proposal.

(6) Where the debtor concerned is the subject of a protective certificate, and a creditor to whom this section applies brings an application under *section 97(1)* in respect of that protective certificate, the period referred to in *subsection (3)* shall

not commence until the date on which the appropriate court determines the application.

(7) An excludable debt shall not be the subject of a Personal Insolvency Arrangement unless it is a permitted debt.

(8) In this Chapter, "permitted debt" means an excludable debt to which *subsection (1)* applies.

Application for protective certificate.

93.— (1) Where a personal insolvency practitioner has been instructed pursuant to *section 53* to make a proposal for a Personal Insolvency Arrangement, the personal insolvency practitioner shall notify the Insolvency Service of the debtor's intention to make a proposal for a Personal Insolvency Arrangement and apply on behalf of the debtor for a protective certificate.

(2) The application referred to in *subsection (1)* shall be in such form as may be prescribed by the Insolvency Service and shall be F90**[**accompanied by such fee (if any) as may be prescribed and the following documents:**]**:

(*a*) the statement issued by the personal insolvency practitioner pursuant to *section 54*;

(*b*) a document signed by the debtor confirming that he or she satisfies the eligibility criteria specified in *section 91*;

(*c*) the statutory declaration of the debtor referred to in F90**[***section 91(1)(e)*;**]**;

F91**[**(*cc*) the declaration in writing of the debtor referred to in *section 91(1)(g)*;**]**

(*d*) the Prescribed Financial Statement;

(*e*) a schedule of the creditors of the debtor and the debts concerned, stating in relation to each such creditor—

(i) the amount of each debt due to that creditor,

(ii) whether, as respects the debt concerned, the creditor is a secured creditor and, if so, the nature of the security concerned, and

(iii) such other information as may be prescribed;

(*f*) the debtor's written consent to—

(i) the disclosure to the Insolvency Service,

(ii) the processing by the Insolvency Service, and

(iii) the disclosure by the Insolvency Service to creditors of the debtor concerned,

of personal data of that debtor, to the extent necessary in respect of the Personal Insolvency Arrangement procedure provided for in this Chapter; and

(*g*) the debtor's written consent to the making of any enquiry under *section 94* relating to the debtor by the Insolvency Service.

(3) An application under this section may be withdrawn by the personal insolvency practitioner at any time prior to the issue of a protective certificate under *section 95*.

(4) Where a personal insolvency practitioner becomes aware of any inaccuracy or omission in an application under this section or any document accompanying such an application, he or she shall inform the Insolvency Service of this fact as soon as

practicable and the Insolvency Service shall have regard to any information provided under this subsection for the purposes of its consideration of the application.

Annotations

Amendments:

F90 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 80(a), (b), S.I. No. 286 of 2013.

F91 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 80(c), S.I. No. 286 of 2013.

F92 Inserted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 12, not commenced as of date of revision.

Modifications (not altering text):

C8 Prospective affecting provision: subs. (2)(c) amended by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 12, not commenced as of date of revision.

(*c*) the statutory declaration F92**[**or confirmation of truth**]** of the debtor referred to in F90**[***section 91(1)(e)*;**]**;

C9 Reference to personal data and processing construed (25.05.2018) by *Data Protection Act 2018* (7/2018), ss. 165, 166, S.I. No. 17 of 2018.

Reference to personal data in enactment

165. Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

(a) the Data Protection Regulation, and

(b) Part 5.

Reference to processing in enactment

166. Subject to this Act, a reference in any enactment to processing within the meaning of the Act of 1988 shall be construed as including a reference to processing within the meaning of—

(a) the Data Protection Regulation, and

(b) Part 5.

Consideration by Insolvency Service of application for protective certificate.

94.— (1) In its consideration of an application under *section 93* the Insolvency Service shall be entitled to request any further information it requires from the debtor or personal insolvency practitioner and to defer further consideration of the application until such information is furnished to it.

(2) Where a debtor or personal insolvency practitioner fails to provide the information requested by the Insolvency Service under *subsection (1)* within 14 days or such longer period as the Insolvency Service may permit the application shall be deemed to be withdrawn.

(3) Subject to *subsection (4)*, in considering the application for a protective certificate, the Insolvency Service shall make such enquiries as it considers necessary to satisfy itself:

(*a*) that the personal insolvency practitioner is a person entitled to act as a personal insolvency practitioner;

(*b*) having regard to the documents which are required to accompany the application for a protective certificate—

(i) that the debtor satisfies the eligibility criteria for a Personal Insolvency Arrangement specified in *section 91*; and

(ii) the application does not appear to be frivolous or an attempt to frustrate the efforts of creditors to recover debts due to them.

(4) Subject to *subsections (5)* to *(7)*, for the purposes of *subsection (3)* the Insolvency Service shall be entitled to presume that the debtor satisfies the eligibility criteria for a Personal Insolvency Arrangement specified in *section 91* if the documents required to be lodged with the Insolvency Service have been so lodged and the Insolvency Service has no reason to believe that the information supplied in or in support of the application for a protective certificate is incomplete or inaccurate.

(5) The Insolvency Service may make such enquiries as it considers necessary to verify the completeness or accuracy of any matter referred to in the Prescribed Financial Statement of the debtor or in relation to the assets, liabilities, income or expenditure of the debtor.

(6) Without prejudice to the generality of *subsection (5)* the matters in respect of which the Insolvency Service may make an enquiry include the following—

(*a*) particulars relating to bank accounts, securities or other accounts held, solely or jointly, by or for the benefit of the debtor with financial institutions or financial intermediaries in the State or abroad;

(*b*) particulars relating to assets of the debtor and the value of such assets;

(*c*) particulars of the liabilities of the debtor;

(*d*) the employment and income of the debtor;

(*e*) payments received by the debtor from the Department of Social Protection or other Departments of State or other State bodies or agencies and whether or not such payments are made as agent of any other person;

(*f*) taxes or charges imposed by or under statute paid or owed by the debtor, whether within or outside the State and refunds in respect of such taxes and charges which are or may become due to the debtor.

(7) Nothing in this section shall be construed as requiring the Insolvency Service to make an enquiry in any case.

(8) A person who receives an enquiry from the Insolvency Service pursuant to this section shall be under a duty to furnish the information requested as soon as reasonably practicable.

(9) Notwithstanding anything contained in any enactment, for the purposes of the performance of the functions of the Insolvency Service under this Act information held by a Department of State, the Revenue Commissioners, a local authority or any other State body or agency in relation to a debtor may be furnished to the Insolvency Service.

Referral of application to court for issue of protective certificate.

95.— (1) Where the Insolvency Service, following its consideration under *section 94*—

(*a*) is satisfied that an application under *section 93* is in order, it shall—

(i) issue a certificate to that effect,

F93**[**(ii) furnish that certificate together with a copy of the application and the supporting documentation (other than the documents referred to in *section 93(2)(f)* and *(g)*) to the appropriate court, and**]**

(iii) notify the personal insolvency practitioner to that effect,

and

(*b*) is not so satisfied, it shall notify the personal insolvency practitioner to that effect and request him or her, within 21 days from the date of the notification, to submit a revised application or to confirm that the application has been withdrawn.

(2) Where the appropriate court receives the application for a protective certificate and accompanying documentation pursuant to *subsection (1)(a)*, it shall consider the application and documentation and, subject to *subsection (3)*—

(*a*) if satisfied that the eligibility criteria specified in *section 91* have been satisfied and the other relevant requirements relating to an application for the issue of a protective certificate have been met, shall issue a protective certificate, and

(*b*) if not so satisfied, shall refuse to issue a protective certificate.

(3) The appropriate court, where it requires further information or evidence for the purpose of its arriving at a decision under *subsection (2)*, may hold a hearing, which hearing shall be on notice to the Insolvency Service and the personal insolvency practitioner concerned.

(4) F94**[**...**]**

(5) Subject to F95**[***subsections (6), (7)* and *(7A)***]** and F96**[***sections 113(2) and 115A(5)*,**]** a protective certificate shall be in force for a period of 70 days from the date of its issue.

(6) Where a protective certificate has been issued pursuant to *subsection (2)(a)*, F97**[**or extended under *subsection (7)* or *(7A)*,**]** the appropriate court may, on application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where—

(*a*) the debtor and the personal insolvency practitioner satisfy the court that they have acted in good faith and with reasonable expedition, and

(*b*) the court is satisfied that it is likely that a proposal for a Personal Insolvency Arrangement which is likely—

(i) to be accepted by the creditors, and

(ii) to be successfully completed by the debtor,

will be made if the extension is granted.

F95**[**(7) Where a protective certificate has been issued pursuant to *subsection (2)(a)* or extended under *subsection (6)* or *(7A)*, the appropriate court may, on application to that court by a personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where—

(*a*) the personal insolvency practitioner has been appointed in accordance with *section 49A, 49B* or *49C*, and

(*b*) the court is satisfied that the extension is necessary to enable the personal insolvency practitioner so appointed to perform his or her functions under this Chapter.**]**

F97**[**(7A) Where a protective certificate has been issued pursuant to *subsection (2)(a)*, or extended under *subsection (6)* or *(7)*, the appropriate court may, on application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days, where the court is satisfied that, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, it would be just to grant the extension.**]**

(8) A hearing held under F95**[**this section**]** shall be held with all due expedition.

(9) The period of a protective certificate may be extended F95**[**once only under each of *subsections (7)* and *(7A)*.**]**

(10) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court—

(*a*) issues or extends a protective certificate under this section,

(*b*) refuses to issue or extend a protective certificate under this section, or

(*c*) decides to hold a hearing referred to in *subsection (3)*.

F93**[**(11) Where a protective certificate is issued under this section, the Insolvency Service shall—

(*a*) record in the Register of Protective Certificates, in addition to such other details as may be prescribed under *section 133(3)(b)*, the following—

(i) the name and address of the debtor and the date of issue of the protective certificate,

(ii) where applicable—

(I) the extension under this section of the protective certificate, and

(II) the making by the appropriate court of an order under *section 97*, and the creditor in respect of whom the order has been made,

and

(iii) the date on which the protective certificate ceases, under this Chapter, to be in force,

and

(*b*) within 3 months of the date on which the protective certificate ceases, under this Chapter, to be in force, remove from the Register of Protective Certificates all information recorded in it in respect of the protective certificate.**]**

(12) On receipt of a notification under *subsection (10)* of a decision of the court referred to in that subsection, the personal insolvency practitioner shall notify each of the creditors specified in the schedule of creditors of that decision and, in the case of a decision to issue a protective certificate, the notification by the personal insolvency practitioner shall contain a statement—

(*a*) that the debtor intends to make a proposal for a Personal Insolvency Arrangement,

(*b*) of the effect of the protective certificate under *section 96*, and

(*c*) of the right of the creditor under *section 97* to appeal the issue of the protective certificate.

(13) Notwithstanding the provisions of F95**[***subsections (5), (6), (7)* and *(7A)*,**]** a protective certificate that is in force on the date on which a proposal for a Personal Insolvency Arrangement is approved in accordance with *section 110* shall continue in force until it ceases to have effect in accordance with *section 113*.

(14) A protective certificate issued under this section shall—

(*a*) specify—

(i) the name of the debtor who is the subject of it,

(ii) the debts ("specified debts") which are subject to it, and

(iii) the name of each creditor to whom a specified debt is owed,

and

(*b*) contain such other information as may be prescribed.

(15) In considering an application under this section the appropriate court shall be entitled to treat a certificate issued by the Insolvency Service under *subsection (1)* as evidence of the matters certified therein.

Annotations

Amendments:

F93 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 81(a), (c), S.I. No. 286 of 2013.

F94 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 81(b), S.I. No. 286 of 2013.

F95 Substituted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 13(a), (c), (e)-(g), S.I. No. 305 of 2021.

F96 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 13, S.I. No. 514 of 2015.

F97 Inserted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 13(b), (d), S.I. No. 305 of 2021.

Editorial Notes:

E60 Previous affecting provision: court fees in respect of proceedings under subs. (1)(a) prescribed (3.02.2014) by *Circuit Court (Fees) Order 2014* (S.I. No. 23 of 2014), sch. part 4 item 3, in effect as per reg. 1(2); revoked (30.10.2014) by *Circuit Court (Fees) (No. 2) Order 2014* (S.I. No. 491 of 2014), art. 6.

E61 Previous affecting provision: court fees in respect of proceedings under subs. (1)(a) prescribed (3.02.2014) by *Supreme Court and High Court (Fees) Order 2014* (S.I. No. 24 of 2014), sch. 1 part 3 item 75, in effect as per reg. 1(2); revoked (30.10.20140 by *Supreme Court, Court of Appeal and High Court (Fees) Order 2014* (S.I. No. 492 of 2014), art. 11.

E62 Previous affecting provision: court fees in respect of proceedings under subs. (1)(a) prescribed (3.12.2013) by *Supreme Court and High Court (Fees) (No. 2) Order 2013* (S.I. No. 466 of 2013), reg. 2 and sch. 1 part 3 item 74, in effect as per reg. 1(2); revoked (3.02.2014) by *Supreme Court and High Court (Fees) Order 2014* (S.I. No. 24 of 2014), reg. 11, in effect as per reg. 1(2).

Effect of issue of protective certificate.

96.— (1) Subject to *subsections (3)*, *(4)* and *(5)*, a creditor to whom notice of the issue of a protective certificate has been given shall not, whilst the protective certificate remains in force, in relation to a specified debt:

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to enforce security held by the creditor in connection with the specified debt;

F98**[**(*f*) take any step to recover goods in the possession or custody of the debtor, whether or not title to the goods is vested in the creditor;**]**

(*g*) contact the debtor regarding payment of the specified debt, otherwise than at the request of the debtor;

(*h*) in relation to an agreement with the debtor, including a security agreement, by reason only that the debtor is insolvent or that the protective certificate has been issued—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(2) Whilst a protective certificate remains in force, no bankruptcy petition relating to the debtor—

(*a*) may be presented by a creditor to whom *subsection (1)* applies in respect of a specified debt,

(*b*) in a case where the petition has been presented by such a creditor in respect of a specified debt, may be proceeded with.

(3) Without prejudice to *subsections (1)* and *(2)*, whilst a protective certificate remains in force, no other proceedings and no execution or other legal process in respect of a specified debt may be commenced or continued by a creditor to whom *subsection (1)* applies against the debtor or his or her property, except with the leave of the court and subject to any order the court may make to stay such proceedings, enforcement or execution for such period as the court deems appropriate pending the outcome of attempts to reach a Personal Insolvency Arrangement, but this subsection shall not operate to prohibit the commencement or continuation of any criminal proceedings against the debtor.

(4) Notwithstanding *subsection (1)*, the fact that a protective certificate is in force in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (1)* as respects another person who has guaranteed the debts of the debtor to which the protective certificate relates.

(5) Notwithstanding *subsection (1)*, the fact that a protective certificate is in force in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (3)* as respects a person who has jointly contracted with the debtor or is jointly liable with the debtor to the creditor and that other person may sue or be sued in respect of the contract without joining the debtor.

(6) *Subsections (4)* and *(5)* do not apply where a protective certificate is also in force as respects the other person.

(7) In reckoning any period of time for the purpose of any applicable limitation period in relation to any proceedings or process to which *subsection (1)* or *(3)* applies (including any limitation period under the Statute of Limitations 1957), the period in which the protective certificate concerned is in force shall be disregarded.

Annotations

Amendments:

F98 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 82, S.I. No. 286 of 2013.

Right of appeal as respects protective certificate.

97.— (1) Where a creditor is aggrieved by the issue of a protective certificate that creditor may within 14 days of the giving of notice of the issue of the protective certificate to that creditor apply to the appropriate court for an order directing that the protective certificate shall not apply to that creditor.

(2) A creditor who brings an application under *subsection (1)* shall give notice to the Insolvency Service and the relevant personal insolvency practitioner and to such other persons as the court may direct of that fact, and the application shall be made in such form as is provided for in rules of court.

(3) In determining an application under this section the court shall not make an order directing that the protective certificate shall not apply to that creditor unless it is satisfied that—

(*a*) not making such an order would cause irreparable loss to the creditor which would not otherwise occur, and

(*b*) no other creditor to whom notice of the protective certificate has been given would be unfairly prejudiced.

(4) In determining the costs of the application the court shall have regard to the objective that all the parties to such an application should bear their own costs unless to do so would cause a serious injustice to the parties to the application.

(5) Where the court makes an order under this section the court shall, unless it considers that there are good reasons not to do so, direct the creditor to hold any moneys or other assets recovered in trust for the benefit of the other creditors to whom the protective certificate applies, pending a further direction on the matter by the court.

(6) A hearing under *subsection (1)* shall be heard with all due expedition.

Actions to be taken by personal insolvency practitioner following issue of protective certificate.

98.— (1) Where a protective certificate has been issued, the personal insolvency practitioner shall as soon as practicable thereafter—

(*a*) give written notice to the creditors concerned that the personal insolvency practitioner has been appointed by the debtor for the purpose of making a proposal for a Personal Insolvency Settlement Arrangement and, subject to *section 101(2)*, invite those creditors to make submissions to the personal insolvency practitioner regarding the debts concerned and the manner in which the debts might be dealt with as part of a Personal Insolvency Arrangement, and such notice shall be accompanied by the debtor's completed Prescribed Financial Statement,

(*b*) consider any submissions made by creditors regarding the debts and the manner in which the debts might be dealt with as part of a Personal Insolvency Arrangement, including—

(i) any submission made by a creditor with respect to previous or existing offers of arrangements made by the creditor to or with the debtor, and

(ii) any submission made by a secured creditor in accordance with *section 102*,

and

(*c*) make a proposal for a Personal Insolvency Arrangement in respect of the debts concerned.

(2)(*a*) A personal insolvency practitioner may in any case request a creditor to file a proof of debt and the debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act 1988 and subject to

subsection (3) paragraphs 1 to 22 of the First Schedule of that Act shall apply with all necessary modifications to the proof of such debts.

(*b*) Subject to *paragraph (c)*, a creditor who does not comply with a request under *paragraph (a)* is not entitled to—

(i) vote at a creditors' meeting, or

(ii) share in any distribution that may be made under the Personal Insolvency Arrangement concerned.

(*c*) Where a creditor to whom *paragraph (b)* applies files a proof of debt in the manner specified in *paragraph (a)*, *paragraph (b)* shall cease to apply, but without prejudice to anything done while that paragraph applied.

(3) In applying the First Schedule of the Bankruptcy Act 1988 to proof of debts under this section—

(*a*) a reference in that Schedule to the Court and the Official Assignee shall be read as a reference to the personal insolvency practitioner, and

(*b*) a reference to a bankrupt shall be read as a reference to the debtor to whom the proposal for a Personal Insolvency Arrangement relates.

Mandatory requirements concerning Personal Insolvency Arrangement.

99.— (1) Subject to the mandatory requirements referred to in *subsection (2)*, the terms of a Personal Insolvency Arrangement shall be those which are agreed to by the debtor and subject to this Chapter, approved by a majority of the debtor's creditors in accordance with this Chapter.

(2) The mandatory requirements referred to in *subsection (1)* are:

(*a*) a Personal Insolvency Arrangement shall clearly specify which debts are secured debts and which debts are unsecured debts;

(*b*) the maximum duration of a Personal Insolvency Arrangement shall be 72 months but a Personal Insolvency Arrangement may provide that this period may be extended for a further period of not more than 12 months in such circumstances as are specified in the terms of the Personal Insolvency Arrangement;

(*c*) where the debtor performs all of his or her obligations specified in a Personal Insolvency Arrangement, he or she shall not stand discharged from the secured debts covered by the Personal Insolvency Arrangement except to the extent provided for under the terms of the Personal Insolvency Arrangement;

(*d*) a Personal Insolvency Arrangement shall not require the debtor to sell any of his or her assets that are reasonably necessary for the debtor's employment, business or vocation unless the debtor explicitly consents to such sale;

(*e*) a Personal Insolvency Arrangement shall not contain any terms which would require the debtor to make payments of such an amount that the debtor would not have sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants;

(*f*) a Personal Insolvency Arrangement shall—

(i) make provision for the costs and outlays of the personal insolvency practitioner which relate to the matters referred to in *sections 48* to *54* and this Chapter and to the ongoing administration of the Arrangement,

F99**[**(ia) make provision for the payment of all tax liabilities incurred by the debtor, or by the personal insolvency practitioner, under the Taxes

Consolidation Act 1997 during the administration of the Arrangement and—

(I) such tax liabilities of the personal insolvency practitioner shall be payable in priority to any payments to creditors, and

(II) any failure by the debtor to comply with the terms of the provision shall be a breach of the Arrangement such that the Collector-General (within the meaning of the Taxes Consolidation Act 1997) may withdraw his or her agreement under *section 92* to accept the compromise contained in the Arrangement, **]**

(ii) indicate the likely amount of the fees, costs and outlays to be incurred or where this is not practicable the basis on which those fees, costs and outlays will be calculated, and

(iii) specify the person or persons by whom those fees, costs and charges are payable and the manner in which they have been or are to be paid;

(*g*) a Personal Insolvency Arrangement shall make provision for the manner in which the debtor's debts are to be treated in the event of the death or mental incapacity of the debtor;

(*h*) a Personal Insolvency Arrangement shall not require that the debtor dispose of his or her interest in the debtor's principal private residence or to cease to occupy such residence unless the provisions of *section 104(3)* apply;

(*i*) a Personal Insolvency Arrangement shall provide that the circumstances of the debtor be reviewed by the personal insolvency practitioner at regular intervals which are specified in the Personal Insolvency Arrangement (which intervals are not greater than 12 months) during the currency of the Personal Insolvency Arrangement;

(*j*) a Personal Insolvency Arrangement shall provide that the review referred to in *paragraph (i)* shall include the preparation by the debtor of a new Prescribed Financial Statement, a copy of which together with a statement by the personal insolvency practitioner as to whether he or she considers that statement to be complete and accurate, shall be sent by the personal insolvency practitioner to each creditor;

(*k*) subject to *sections 102* to *105*, a Personal Insolvency Arrangement shall make provision for the manner in which security held by a secured creditor is to be treated; and

(*l*) the terms of a Personal Insolvency Arrangement shall specify the circumstances where the personal insolvency practitioner shall be obliged to propose a variation of the Personal Insolvency Arrangement in accordance with *section 119*.

(3) The Insolvency Service may publish a Code of Practice providing guidance on any of the matters set out in *subsection (2)*.

(4) For the purposes of *subsection (2)(e)*, and without prejudice to *subsection (3)*, in determining whether a debtor would have sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants under the Personal Insolvency Arrangement, regard shall be had to any guidelines issued under *section 23*.

Annotations

Amendments:

F99 Inserted (27.03.2013) by *Finance Act 2013* (8/2013), s. 100(3)(b), commenced as per s. 4(a).

Non-exhaustive list of options as respects payments for inclusion in Personal Insolvency Arrangement.

100.— (1) Subject to the provisions of this Act, a proposal for a Personal Insolvency Arrangement may incorporate one or more of the options in *subsection (2)* with respect to payments to creditors.

(2) The terms of a proposal for a Personal Insolvency Arrangement may include any one or more of the following:

(*a*) a lump sum payment to creditors, whether provided from the debtor's own resources or from the resources of other persons;

(*b*) a payment arrangement with creditors;

(*c*) an agreement by the debtor to transfer some or all of the debtor's property to a person (who may be the personal insolvency practitioner) to hold the property in trust for the benefit of the creditors;

(*d*) a transfer of specified assets of the debtor to creditors generally or to a specified creditor;

(*e*) a sale of specified assets of the debtor by or under the supervision of the personal insolvency practitioner and the payment of the proceeds of such sale to creditors; or

(*f*) in respect of secured debts, subject to *sections 102* to *105*, an arrangement for the treatment of the security and the satisfaction or restructuring of the secured debt.

(3) Unless provision is otherwise made in the Personal Insolvency Arrangement, and subject to *section 101*, the arrangement shall provide for payments to creditors of the same class to be made on a *pari passu* basis, and where so otherwise provided the Personal Insolvency Arrangement shall specify the reasons for such provision being made.

(4) Unless provision is otherwise made in the Personal Insolvency Arrangement, where an Arrangement provides for payments to a creditor to whom *section 92* applies that are greater than the payments that creditor would receive if such payments were made on a *pari passu* basis, the fees, costs and charges referred to in *section 99(2)(f)* shall be payable by that creditor in proportion to the payments received by him or her.

(5) The payment of moneys or the performance of obligations provided for by a Personal Insolvency Arrangement may be secured by a charge given by the debtor or a charge or guarantee given by a person other than the debtor.

(6) Subject to the provisions of this Act the terms of a Personal Insolvency Arrangement may include provisions relating to payments other than those specified in this section.

Preferential debts in Personal Insolvency Arrangement.

101.— (1) Unless the creditor concerned otherwise agrees in writing and provision is so made in the terms of the Personal Insolvency Arrangement, a preferential debt shall, subject to *subsection (3)*, be paid in priority by the debtor and where those debts are to be paid in priority the provisions of section 81 of the Bankruptcy Act 1988 shall apply with all necessary modifications.

(2) In notifying creditors of the issue of a protective certificate the personal insolvency practitioner shall indicate that any creditor who considers some or all of his or her debt to be a preferential debt is required to furnish evidence of the circumstances of how that debt or part of that debt is claimed to be a preferential debt within such reasonable period as may be specified, and that in the absence of such evidence, the proposal for a Personal Insolvency Arrangement may be prepared on the basis that the debt concerned is not a preferential debt.

(3) Where a creditor fails to satisfy the personal insolvency practitioner that his or her debt is a preferential debt, the debt shall be treated as not being a preferential debt for the purposes of a Personal Insolvency Arrangement.

(4) *Subsection (1)* shall not affect the operation of *section 103* unless the relevant secured creditors otherwise agree.

(5) In this Chapter, "preferential debt" means a debt which, if the debtor concerned were a bankrupt would be a debt—

(*a*) that by virtue of section 81 of the Bankruptcy Act 1988 is to be paid in priority to all other debts, or

(*b*) that by virtue of any other statutory provision is to be included among such debts.

Secured creditors and Personal Insolvency Arrangement.

102.— (1) Where a secured creditor has been notified by the personal insolvency practitioner that a protective certificate has been issued in respect of the debtor the secured creditor concerned shall furnish to the personal insolvency practitioner an estimate, made in good faith, of the market value of the security and the creditor concerned may also indicate, a preference as to how, having regard to *subsection (3)* and *sections 103* to *105*, that creditor wishes to have the security and secured debt treated under the Personal Insolvency Arrangement.

(2) In formulating the proposal for a Personal Insolvency Arrangement the personal insolvency practitioner shall—

(*a*) have regard to *subsection (3)* and *sections 103* to *105*, and

(*b*) to the extent that he or she considers it reasonable to do so, have regard to the preference of the secured creditor furnished under *subsection (1)* as to the treatment of the security and the secured debt.

(3) Subject to *sections 103* to *105*, the terms of a Personal Insolvency Arrangement may provide for the manner in which the security for a secured debt is to be treated which may include:

(*a*) the sale or any other disposition of the property or asset the subject of the security;

(*b*) the surrender of the security to the debtor; or

(*c*) the retention by the secured creditor of the security.

(4) Failure by the secured creditor to furnish valuation and the indication of preference relating to the security under *subsection (1)* within the period specified by the personal insolvency practitioner or such further period as may be offered by him or her shall not prevent the personal insolvency practitioner from formulating a proposal for a Personal Insolvency Arrangement.

(5) Where a Personal Insolvency Arrangement provides for the sale or other disposal of the property which is the subject of the security for a secured debt, and the realised value of that property is less than the amount due in respect of the secured debt, the balance due to the secured creditor shall abate in equal proportion to the unsecured debts covered by the Personal Insolvency Arrangement and shall be discharged with

them on completion of the obligations specified in the Personal Insolvency Arrangement.

(6) Without prejudice to the generality of *section 100* or *subsections (1)* to *(3)* and subject to *sections 103* to *105*, a Personal Insolvency Arrangement may include one or more of the following terms in relation to the secured debt:

(*a*) that the debtor pay interest and only part of the capital amount of the secured debt to the secured creditor for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(*b*) that the debtor make interest-only payments on the secured debt for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(*c*) that the period over which the secured debt was to be paid or the time or times at which the secured debt was to be repaid be extended by a specified period of time;

(*d*) that the secured debt payments due to be made by the debtor be deferred for a specified period of time which shall not exceed the duration of the Personal Insolvency Arrangement;

(*e*) that the basis on which the interest rate relating to the secured debt be changed to one that is fixed, variable or at a margin above or below a reference rate;

(*f*) that the principal sum due on the secured debt be reduced provided that the secured creditor be granted a share in the debtor's equity in the property the subject of the security;

(*g*) that the principal sum due on the secured debt be reduced but subject to a condition that where the property the subject of the security is subsequently sold for an amount greater than the value attributed to that property for the purposes of the Personal Insolvency Arrangement, the secured creditor's security will continue to cover such part of the difference between the attributed value and the amount for which the property is sold as is specified in the terms of the Personal Insolvency Arrangement;

(*h*) that arrears of payments existing at the inception of the Personal Insolvency Arrangement and payments falling due during a specified period thereafter be added to the principal amount due in respect of the secured debt; and

(*i*) that the principal sum due in respect of the secured debt be reduced to a specified amount.

(7) Subject to *subsections (3)(b)*, *(9)* and *(10)* a creditor who has registered a judgment mortgage against a debtor more than three months before F100**[**the issue by the appropriate court**]** of the protective certificate is a secured creditor for the purposes of a Personal Insolvency Arrangement.

(8) Where requested by the personal insolvency practitioner to do so, a secured creditor shall provide proof of the existence and nature of the security with respect to the relevant secured debt, in default of which, the personal insolvency practitioner may treat the debt as unsecured debt for the purposes of this Chapter.

(9) Notwithstanding *subsection (1)* where the market value of the security held by a secured creditor in respect of a secured debt is less than 10 per cent of the amount of that secured debt, the secured creditor may, upon giving notice in writing to the personal insolvency practitioner, elect to be treated as an unsecured creditor for the purposes of this Chapter, other than this subsection and *subsection (10)*.

(10) Where the personal insolvency practitioner receives notice of an election referred to in *subsection (9)*, the personal insolvency practitioner shall formulate the

proposal for the Personal Insolvency Arrangement on terms providing for the surrender of the security to the debtor and shall treat the creditor as an unsecured creditor for the purposes of this Chapter, other than this subsection and *subsection (9)*.

(11) Without prejudice to *section 103*, where a Personal Insolvency Arrangement includes terms providing for a reduction of the amount of debt (including principal, interest and arrears) secured by the security as of the date of the issue of the protective certificate to a specified amount, the terms of the Arrangement shall, unless the relevant secured creditor agrees otherwise, also include a term providing that the amount of such reduction shall:

(*a*) rank equally with, and abate in equal proportion to, the unsecured debts covered by the Arrangement; and

(*b*) be discharged with those unsecured debts on completion of the obligations specified in the Arrangement.

Annotations

Amendments:

F100 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 83, S.I. No. 286 of 2013.

Protections for secured creditors in Personal Insolvency Arrangement.

103.— (1) A Personal Insolvency Arrangement which includes terms providing for the sale or other disposal of the property the subject of the security shall, unless the relevant secured creditor agrees otherwise, include a term providing that the amount to be paid to the secured creditor shall amount at least to—

(*a*) the value of the security determined in accordance with *section 105*; or

(*b*) the amount of the debt (including principal, interest and arrears) secured by the security as of the date of the issue of the protective certificate,

whichever is the lesser.

(2) A Personal Insolvency Arrangement which includes terms providing for—

(*a*) retention by a secured creditor of the security held by that secured creditor, and

(*b*) a reduction of the principal sum due in respect of the secured debt due to that secured creditor to a specified amount,

shall not, unless the relevant secured creditor agrees otherwise, specify the amount of the reduced principal sum referred to in *paragraph (b)* at an amount less than the value of the security determined in accordance with *section 105*.

(3) A Personal Insolvency Arrangement which includes terms involving—

(*a*) retention by a secured creditor of the security held by that secured creditor, and

(*b*) a reduction of the principal sum due in respect of the secured debt due to that secured creditor to a specified amount,

shall, unless the relevant secured creditor agrees otherwise, also include terms providing that any such reduction of the principal sum is subject to the condition that, subject to *subsections (4)* to *(13)*, where the property the subject of the security is sold or otherwise disposed of for an amount or at a value greater than the value attributed to the security in accordance with *section 105*, the debtor shall pay to the secured creditor an amount additional to the reduced principal sum calculated in

accordance with *subsection (4)* or such greater amount as is provided for under the terms of the Personal Insolvency Arrangement.

(4) Subject to *subsections (5)* to *(13)*, the additional amount referred to in *subsection (3)* shall be the lesser of—

(*a*) the entire of the difference between the value of the property on disposition and the value attributed to the security in accordance with *section 105*, and

(*b*) the amount of the reduction in the principal sum due in respect of the secured debt under the Personal Insolvency Arrangement as referred to in *subsection (3)(b)*.

(5) For the purposes of *subsection (4)*, any portion of the increase in the value of the property attributable to significant improvements made to (or other measures taken which have made a material contribution to the increase in the value of) the property over which the debt is secured which were made subsequent to the valuation of the security for the purposes of the Personal Insolvency Arrangement shall be disregarded in calculating the additional amount payable by the debtor.

(6) *Subsection (5)* shall not apply unless the secured creditor has given his or her consent in writing to the improvements or other measures concerned, which consent shall not be unreasonably withheld.

(7) For the purposes of *subsection (4)*, any payment or transfer of assets to the secured creditor pursuant to the Personal Insolvency Arrangement properly attributable to a reduction of the principal sum due in respect of the secured debt shall be deducted from the additional amount referred to in *subsection (3)*.

(8) For the purposes of *subsection (4)*, the expenses and costs borne by the debtor in connection with the sale or other disposal of the property shall, to the extent that those costs and expenses are of a type and amount normally payable by the vendor of property of that nature, be deducted from the value attributable to the property on such sale or disposal.

(9) The obligation to pay an additional amount arising by virtue of this section shall not apply where the value of the property on its sale or other disposal is less than the amount of the debt secured by the security (other than any additional amount secured by virtue of *subsection (10)*) immediately prior to such sale or other disposition of the property.

(10) Any additional amount payable by virtue of this section shall stand secured in the same manner and with the same priority as the principal sum referred to in *subsection (3)(b)*.

(11) The obligation to pay an additional amount arising by virtue of this section shall cease—

(*a*) on the expiry of the period of 20 years commencing on the date on which the Personal Insolvency Arrangement comes into effect, or

(*b*) on the day on which the debtor is scheduled or permitted to fully discharge the amount secured by the security (or such later date as may be specified for so doing in the Personal Insolvency Arrangement) and does so discharge his or her indebtedness,

whichever first occurs.

(12) Unless otherwise provided for under the terms of the Personal Insolvency Arrangement, where a property in respect of which *subsection (3)* applies is the subject of security held by more than one secured creditor—

(*a*) any additional amounts payable by virtue of this section to the secured creditors shall be paid in order of the priority of the security held by each secured creditor, and

(*b*) if the security held by a secured creditor is not ranked first in priority, the obligation to pay an additional amount to that creditor arising by virtue of this section shall apply only if and to the extent that the sum of the additional amounts payable to secured creditors holding security with higher ranking priority than the secured creditor concerned is less than the additional amount calculated in accordance with *subsection (4)*.

(13) For the purposes of *subsection (3)*—

(*a*) without prejudice to the generality of that subsection, a disposal by a debtor of property the subject of security held by a secured creditor shall include the voluntary grant by the debtor of security over that property to any person other than that secured creditor, including any such grant of security in connection with what is commonly known as a refinancing of the existing secured debt, and

(*b*) a debtor shall not be considered to dispose of property the subject of security held by a secured creditor where the debtor leases or licenses the property to any person for a term of less than 20 years.

Principal private residence in Personal Insolvency Arrangement.

104.— (1) In formulating a proposal for a Personal Insolvency Arrangement a personal insolvency practitioner shall, insofar as reasonably practicable, and having regard to the matters referred to in *subsection (2)*, formulate the proposal on terms that will not require the debtor to—

(*a*) dispose of an interest in, or

(*b*) cease to occupy,

all or a part of his or her principal private residence and the personal insolvency practitioner shall consider any appropriate alternatives.

(2) The matters referred to in *subsection (1)* are—

(*a*) the costs likely to be incurred by the debtor by remaining in occupation of his or her principal private residence (including rent, mortgage loan repayments, insurance payments, owners' management company service charges and contributions, taxes or other charges relating to ownership or occupation of the property imposed by or under statute, and necessary maintenance in respect of the principal private residence),

(*b*) the debtor's income and other financial circumstances as disclosed in the Prescribed Financial Statement,

(*c*) the ability of other persons residing with the debtor in the principal private residence to contribute to the costs referred to in *subsection (2)*, and

(*d*) the reasonable living accommodation needs of the debtor and his or her dependants and having regard to those needs the cost of alternative accommodation (including the costs which would necessarily be incurred in obtaining such accommodation).

(3) Where—

(*a*) the debtor confirms in writing to the personal insolvency practitioner that the debtor does not wish to remain in occupation of his or her principal private residence, or

(*b*) the personal insolvency practitioner, has, having discussed the issue with the debtor, formed the opinion that, taking account of the matters referred to

in *subsection (2)*, the costs of continuing to reside in the debtor's principal private residence are disproportionately large,

the personal insolvency practitioner shall not be required to formulate the proposal for a Personal Insolvency Arrangement on terms that will not require the debtor to cease to occupy his or her principal private residence.

(4) A Personal Insolvency Arrangement shall not contain terms providing for a disposal of the debtor's interest in the principal private residence unless—

(*a*) the debtor has obtained independent legal advice in relation to such disposal or, having been advised by the personal insolvency practitioner to obtain such legal advice, has declined to do so, and

(*b*) to the extent that the provisions of the Family Home Protection Act 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 apply to the property, all relevant provisions of those Acts are complied with.

Valuation of security.

105.— (1) Subject to the provisions of this section the value of security in respect of secured debt for the purposes of this Chapter shall be the market value of the security determined by agreement between the personal insolvency practitioner, the debtor and the relevant secured creditor.

(2) Where the personal insolvency practitioner does not accept a secured creditor's estimate of the value, if any, of the security furnished by the secured creditor under *section 102*, the debtor, the personal insolvency practitioner and the secured creditor shall in good faith endeavour to agree the market value for the security having regard to any matter relevant to the valuation of security, including the matters specified in *subsection (5)*.

(3) In the absence of agreement as to the value of the security, the personal insolvency practitioner, the debtor and the relevant secured creditor shall appoint an appropriate independent expert to determine the market value for the security having regard to any matter relevant to the valuation of security, including the matters specified in *subsection (5)*.

(4) Where the personal insolvency practitioner, the debtor and the secured creditor are unable to agree as to the independent expert to be appointed under *subsection (3)* the issue may be referred by any of them to the Insolvency Service which shall appoint such independent expert as it considers appropriate to determine the market value of the security concerned having regard to any matter relevant to the valuation of security, including the matters specified in *subsection (5)*, and the valuation carried out by such expert shall be binding on the personal insolvency practitioner, the debtor and the secured creditor concerned.

(5) The matters referred to in *subsections (2)* to *(4)* as the matters specified in *subsection (5)* are:

(*a*) the type of property the subject of the security;

(*b*) the priority of the security;

(*c*) the costs of disposing of the property the subject of the security;

(*d*) the price at which similar property to that which is the subject of the security has been sold within the 12 months prior to the issue of the protective certificate;

(*e*) the date of the most recent valuation or transaction with respect to the property the subject of the security and the value attributed to the property in respect of that valuation or transaction;

(*f*) the value attributed to the property the subject of the security in the debtor's accounting records (if any);

(*g*) the value attributed to the security in the secured creditor's accounting records (if any);

(*h*) whether the market for the type of property the subject of the security is or has been subject to significant changes in conditions;

(*i*) data made available to the public by the Property Services Regulatory Authority pursuant to Part 12 of the Property Services (Regulation) Act 2011 and which relate to property similar to the property the subject of the security; and

(*j*) any relevant statistical index relating to the valuation of the same or similar types of property as the property the subject of the security.

(6) In this section "market value"—

(*a*) as respects property the subject of security for a secured debt, means the price which that property might reasonably be expected to fetch on a sale in the open market;

(*b*) as respects security for a secured debt, means the amount that might reasonably be expected to be available to discharge that secured debt, in whole or in part, following realisation of the security by the secured creditor concerned and, where permitted by the terms of the security or otherwise, after deducting all relevant costs and expenses in connection with the realisation of the security.

(7) The creditor concerned and the personal insolvency practitioner shall each pay 50 per cent of the costs of carrying out the valuation by the independent expert pursuant to *subsection (3)* or *(4)*.

(8) The amount paid by the personal insolvency practitioner pursuant to *subsection (7)* shall be treated as an outlay for the purposes of the Personal Insolvency Arrangement.

(9) For the purposes of this section, the personal insolvency practitioner, the debtor, the secured creditor concerned and any independent expert shall be entitled to assume, in the absence of any clear evidence to the contrary, that the market value of the security which is a first charge is the lesser of—

(*a*) an amount equal to the market value of the property the subject of the security, or

(*b*) unless the nature of the security and the property concerned would make it unreasonable to do so, an amount equal to the market value of the property the subject of the security less an adjustment to that value as respects the costs and expenses which would normally be necessarily incurred by a secured creditor in the realisation of a security of a similar kind to that of the security concerned, provided that the adjustment is no greater than 10 per cent of the market value of the property the subject of the security.

Calling of creditors' meeting.

106.— (1) Where a personal insolvency practitioner has prepared a proposal for a Personal Insolvency Arrangement and the debtor has consented to that proposal and the calling of a creditors' meeting, the personal insolvency practitioner shall arrange for the holding of a meeting of the creditors of the debtor for the purpose of considering the proposal for a Personal Insolvency Arrangement.

(2) When calling a creditors' meeting under this section, the personal insolvency practitioner shall do so in accordance with any regulations made under *section 111* and, in any case, shall—

(*a*) give each creditor at least 14 days written notice of the meeting and the date on which, and time and place at which, the meeting will be held,

(*b*) ensure that the notice referred to in *paragraph (a)* is accompanied by a copy of each of the documents referred to in *section 107*, and

(*c*) lodge a copy of the notice referred to in *paragraph (a)* and the documents referred to in *section 107* with the Insolvency Service.

(3) Where a creditors' meeting referred to in *subsection (1)* does not take place before the expiry of the protective certificate, the Personal Insolvency Arrangement procedure shall be deemed to have come to an end.

Documents to be given to creditors and the Insolvency Service when summoning a creditors' meeting.

107.— (1) The documents referred to in *section 106(2)(b)* F101**[**and *section 111A(2)(b)* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015)**]** are—

(*a*) a completed statement of the debtor's financial affairs, showing the debtor's position of insolvency, in the form of the Prescribed Financial Statement;

(*b*) the terms of the proposal for a Personal Insolvency Arrangement;

(*c*) statements by the personal insolvency practitioner to the effect that:

(i) he or she has been instructed by the debtor to act as personal insolvency practitioner in connection with the Personal Insolvency Arrangement procedure, he or she has consented to so act and that he or she is a person entitled to act as a personal insolvency practitioner;

(ii) he or she has advised the debtor in accordance with *section 52* of the debtor's options for managing the debtor's financial difficulties;

(iii) he or she is not aware of any reasonable grounds to believe that the information contained in the debtor's Prescribed Financial Statement is other than complete and accurate;

F102**[**(iv) he or she is of the opinion that—

(I) the debtor satisfies the eligibility criteria for the proposal of a Personal Insolvency Arrangement specified in *section 91*,

(II) the proposed Personal Insolvency Arrangement complies with the mandatory requirements referred to in *section 99(2)*, and

(III) the proposed Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt;**]**

(*d*) a report of the personal insolvency practitioner—

(i) describing the outcome for creditors, and having regard to the financial circumstances of the debtor whether or not the proposed Personal Insolvency Arrangement represents a fair outcome for the creditors, and indicating, where relevant, how the financial outcome for creditors (whether individually or as a member of a class of creditors) under the terms of the proposal is likely to be better than the estimated financial outcome for such creditors if the debtor were to be adjudicated a bankrupt (having regard to, amongst other things, the estimated costs of the bankruptcy process); and

(ii) indicating whether or not he or she considers that the debtor is reasonably likely to be able to comply with the terms of the proposed Personal Insolvency Arrangement.

F103**[**(2) Where a debtor's financial position has materially changed in the period between the completion by him or her of a Prescribed Financial Statement under *section 50* and the giving of a notice under *section 106*(2) or, as the case may be, *section 111A(2)* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015)—

(*a*) the debtor shall inform the personal insolvency practitioner of that fact and of the nature of such change, and

(*b*) the personal insolvency practitioner shall, if he or she considers that the change necessitates the completion of a new Prescribed Financial Statement, assist the debtor in completing such a new statement, and where those circumstances arise a reference in this section to the Prescribed Financial Statement shall be construed as a reference to the new Prescribed Financial Statement.**]**

(3) Where a new Prescribed Financial Statement is completed pursuant to *subsection (2)*, the personal insolvency practitioner shall furnish a copy of that Statement to the Insolvency Service.

Annotations

Amendments:

F101 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 14(a), S.I. No. 514 of 2015.

F102 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 84, S.I. No. 286 of 2013.

F103 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 14(b), S.I. No. 514 of 2015.

Voting rights at creditors' meetings.

108.— (1) A vote held at a creditors' meeting to consider a proposal for a Personal Insolvency Arrangement shall be held in accordance with this section, *section 110* and regulations made under *section 111*.

(2) Subject to *subsection (1)*, the voting rights exercisable by a creditor at a creditors' meeting to consider a proposal for a Personal Insolvency Arrangement shall be proportionate to the amount of the debt due by the debtor to the creditor on the day the protective certificate is issued.

(3) In the case of a secured debt, where:

(*a*) the value of security held by a creditor who is a secured creditor is determined, pursuant to *section 105*, to be less than the amount of the secured debt due to the creditor on the day the protective certificate is issued; and

(*b*) the proposed Personal Insolvency Arrangement provides for all or part ("relevant portion") of that secured debt to:

(i) rank equally with, and abate in equal proportion to, the unsecured debts covered by the Arrangement; and

(ii) be discharged with those unsecured debts on completion of the obligations specified in the Arrangement,

then, the relevant portion of that secured debt shall, for the purposes of this section (other than this subsection), *section 110* and regulations made under *section 111*, be treated as unsecured and the creditor concerned may vote in respect of the relevant portion of that debt as an unsecured creditor.

(4) Where a secured creditor consents in writing to the inclusion of terms in the Personal Insolvency Arrangement providing for the surrender to the debtor of his or her security upon the coming into effect of the Arrangement, that creditor shall be treated as an unsecured creditor for the purposes of this section (other than this subsection), *section 110* and regulations made under *section 111* and shall only be entitled to vote at a creditors' meeting as an unsecured creditor.

(5) A creditor who is a connected person as respects the debtor may not vote in favour of a proposal for a Personal Insolvency Arrangement at a creditors' meeting but that creditor may vote against the proposal.

(6) F104**[**...**]**

(7) Subject to any regulations made under *section 111*, only the person who appears to the personal insolvency practitioner to be the owner of the debt (or an agent acting on behalf of that person) shall be entitled to receive notices required to be sent to a creditor under this Chapter or to vote at the creditors' meeting.

F105**[**(8) (*a*) Where, at the taking of a vote at a creditors' meeting in accordance with *subsection (1)*, no creditor votes, the proposed Personal Insolvency Arrangement shall be deemed to have been approved under this section.

(*b*) Where, at the taking of a vote at a creditors' meeting in accordance with *subsection (1)*, the proposal is not approved in accordance with that subsection or deemed under *paragraph (a)* to have been approved, subject to *section 115A*, the Personal Insolvency Arrangement procedure shall terminate and the protective certificate issued under section 95 shall cease to have effect.**]**

(9) F104**[**...**]**

Annotations

Amendments:

F104 Deleted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 15(a), (b), S.I. No. 514 of 2015.

F105 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 15(b), S.I. No. 514 of 2015.

Conduct of creditors' meeting for consideration of proposed Personal Insolvency Arrangement.

109.— (1) A creditors' meeting called in accordance with *section 106* shall consider the proposal for a Personal Insolvency Arrangement and, subject to *subsection (4)*, shall vote on the proposal.

(2) A creditors' meeting called by the personal insolvency practitioner under *section 106* shall, subject to this section, be conducted in accordance with any regulations made under *section 111*.

(3) Subject to *subsection (4)* the proposal for a Personal Insolvency Arrangement may, before the proposal has been voted upon, be subject to a proposal for a modification where the modification addresses an ambiguity or rectifies an error in the proposed Personal Insolvency Arrangement where—

(*a*) the modification has been proposed by a creditor or the personal insolvency practitioner, and

(*b*) the debtor gives his or her written consent to the modification.

(4) The personal insolvency practitioner may where he or she believes it is in the interests of obtaining approval of the creditors at the meeting, adjourn the meeting

and with the consent in writing of the debtor shall prepare an amended proposal for a Personal Insolvency Arrangement.

(5) Where the personal insolvency practitioner prepares an amended proposal for a Personal Insolvency Arrangement pursuant to *subsection (4)* he or she shall—

(*a*) notify the debtor of the date on which, and time and place at which, the adjourned meeting will be held,

(*b*) at least 7 days before the day of the adjourned meeting, unless all of the creditors agree in writing to receive a shorter period of notice, notify each creditor of the date on which, and time and place at which, the adjourned meeting will be held,

(*c*) ensure that the notices referred to in *paragraphs (a)* and *(b)* are accompanied by a copy of the amended proposal, and

(*d*) lodge a copy of the notice referred to in *paragraph (b)* and a copy of the amended proposal with the Insolvency Service.

(6) An adjournment for the purpose of preparing an amended proposal for a Personal Insolvency Arrangement pursuant to *subsection (4)* may occur once only in the course of the period of validity of a protective certificate (including any extension of such period).

Proportion of creditors required to approve Personal Insolvency Arrangement.

110.— (1) Subject to *subsection (2)* a proposed Personal Insolvency Arrangement shall be considered as having been approved by a creditors' meeting held under this Chapter where—

(*a*) F106**[**...**]** creditors representing not less than 65 per cent of the total amount of the debtor's debts due to the creditors participating in the meeting and voting have voted in favour of the proposal,

(*b*) creditors representing more than 50 per cent of the value of the secured debts due to creditors who are—

(i) entitled to vote, and

(ii) have voted,

at the meeting as secured creditors have voted in favour of the proposal, and

(*c*) creditors representing more than 50 per cent of the amount of the unsecured debts of creditors who—

(i) are entitled to vote, and

(ii) have voted,

at the meeting as unsecured creditors have voted in favour of the proposal.

(2) For the purposes of *subsection (1)(b)* the value of a secured debt shall be—

(*a*) the market value of the security concerned determined in accordance with *section 105*, or

(*b*) the amount of the debt secured by the security on the day the protective certificate is issued,

whichever is the lesser.

Annotations

Amendments:

F106 Deleted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 16, S.I. No. 414 of 2015.

Procedures for the conduct of creditors meetings.

111.— (1) The Minister may make regulations relating to the holding of creditors' meetings under this Chapter, and without prejudice to the generality of the Minister's power under this section, such regulations may provide for—

(*a*) the holding of a meeting in circumstances where not all of the creditors are present in the same venue,

(*b*) the voting process including providing for the communication of creditors' votes to the personal insolvency practitioner by telephony or electronically, and

(*c*) appointment of proxies to vote at such meetings.

(2) The venue for the holding of a creditors' meeting shall be situated within the State.

(3) The period of notice of the meeting of creditors may be waived or abridged where the consent of all the creditors to such waiver or abridgement is given in writing.

Annotations

Editorial Notes:

E63 Power pursuant to section exercised (30.08.2013) by *Personal Insolvency Act 2012 (Procedures for the Conduct of Creditors' Meetings) Regulations 2013* (S.I. No. 335 of 2013).

F107**[**Approval of proposed Personal Insolvency Arrangement where only one creditor

111A. (1) Where—

(*a*) a personal insolvency practitioner has prepared a proposal for a Personal Insolvency Arrangement and the debtor has consented to that proposal, and

(*b*) only one creditor would be entitled to vote at a creditors' meeting held under this Chapter (whether in respect of one or more debts),

the procedures specified in this section, and not those specified in *sections 106* and *108* to *111*, shall apply in relation to the approval by that creditor of the proposal for a Personal Insolvency Arrangement.

(2) A personal insolvency practitioner referred to in *subsection (1)* shall—

(*a*) give written notice to the creditor that the proposal for a Personal Insolvency Arrangement has been prepared and that the creditor may, within the period specified in *subsection (6)(a)*, notify the personal insolvency practitioner in writing of his or her approval or otherwise of that proposal,

(*b*) ensure that the notice referred to in *paragraph (a)* is accompanied by a copy of each of the documents referred to in *section 107*, and

(*c*) lodge a copy of the notice referred to in *paragraph (a)* and the documents referred to in *paragraph (b)* with the Insolvency Service.

(3) A personal insolvency practitioner who has complied with *subsection (2)* may, where he or she believes it is in the interests of obtaining approval of a proposed Personal Insolvency Arrangement by the creditor and with the consent in writing of the debtor, prepare an amended proposal for a Personal Insolvency Arrangement.

(4) Where the personal insolvency practitioner prepares an amended proposal for a Personal Insolvency Arrangement pursuant to *subsection (3)* he or she shall—

(*a*) give written notice to the creditor that he or she may, within the period specified in *subsection (6)(b)*, notify the personal insolvency practitioner in writing of his or her approval or otherwise of the amended proposal, which notice shall be accompanied by the amended proposal,

(*b*) give the debtor a copy of the documents referred to in *paragraph (a)*, and

(*c*) lodge a copy of the documents referred to in *paragraph (a)* with the Insolvency Service.

(5) A proposal for a Personal Insolvency Arrangement may, before the creditor has notified the personal insolvency practitioner of his or her approval or otherwise of the proposal, be subject to a proposal for a modification where the modification addresses an ambiguity or rectifies an error in the proposed Personal Insolvency Arrangement and where—

(*a*) the modification has been proposed by the creditor or the personal insolvency practitioner, and

(*b*) the debtor gives his or her written consent to the modification.

(6) A creditor to whom this section applies shall notify the personal insolvency practitioner in writing of his or her approval or otherwise of a proposal for a Personal Insolvency Arrangement within—

(*a*) 14 days of the giving to him or her of the notice under *subsection (2)*, or

(*b*) if later, 7 days of the date on which a notice under *subsection (4)(a)* is first given to him or her.

(7) A proposal for a Personal Insolvency Arrangement to which this section applies—

(*a*) shall be considered as having been approved by the creditor concerned where that creditor notifies the personal insolvency practitioner in accordance with subsection (6) of the creditor's approval of that proposal, and

(*b*) where that creditor fails to comply with *subsection (6)*, shall be deemed to have been approved by the creditor concerned.

(8) Where a creditor to whom this section applies notifies the personal insolvency practitioner in accordance with *subsection (6)* that he or she does not approve of the proposal, subject to *section 115A*, the Personal Insolvency Arrangement procedure shall be deemed to have come to an end and the protective certificate issued under *section 95* shall cease to have effect.

(9) Where a personal insolvency practitioner fails to give the creditor a notice under *subsection (2)* before the expiry of the protective certificate, the Personal Insolvency Arrangement procedure shall be deemed to have come to an end.

(10) Where this section applies, a reference in *section 95(13)* to *section 110* shall be construed as a reference to this section.**]**

Annotations

Amendments:

F107 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 17, S.I. No. 514 of 2015.

Editorial Notes:

E64 The section heading is taken from the amending section in the absence of one included in the amendment.

Steps to be taken by personal insolvency practitioner following approval of proposal for Personal Insolvency Arrangement.

112.—F108**[**(1) Where a Personal Insolvency Arrangement is approved at a creditors' meeting in accordance with *section 110* or, as the case may be, deemed under *section 108* to have been approved, the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned of that approval or, as the case may be, deemed approval, which notification shall be accompanied by—

(*a*) (i) subject to *subparagraph (ii)*, a certificate with the result of the vote taken at the creditors' meeting, identifying the proportions of the respective categories of votes cast by those voting at the creditors' meeting and stating that the requisite proportions of creditors referred to in section 110(1) have approved the proposal for a Personal Insolvency Arrangement, or

(ii) where the proposal is deemed under *section 108(8)(a)* (as amended by section 15(b) of the Personal Insolvency (Amendment) Act 2015) to have been approved, a certificate to that effect,

(*b*) a copy of the approved Personal Insolvency Arrangement, and

(*c*) a statement by the personal insolvency practitioner to the effect that he or she is of the opinion that—

(i) the debtor satisfies the eligibility criteria for the proposal of a Personal Insolvency Arrangement specified in *section 91*,

(ii) the approved Personal Insolvency Arrangement complies with the mandatory requirements referred to in *section 99(2)*, and

(iii) the approved Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt.**]**

F109**[**(1A) Where a Personal Insolvency Arrangement is approved or, as the case may be, deemed to have been approved in accordance with *section 111A(7)* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015), the personal insolvency practitioner shall as soon as practicable thereafter notify the Insolvency Service and each creditor concerned of that approval or, as the case may be, deemed approval, which notification shall be accompanied by—

(*a*) a certificate stating that *section 111A* applies to the proposed Personal Insolvency Arrangement and that the proposal concerned has been approved or, as the case may be, deemed to have been approved in accordance with *section 111A(7)* by the only creditor entitled to vote on the proposal,

(*b*) a copy of the approved Personal Insolvency Arrangement, and

(*c*) a statement by the personal insolvency practitioner to the effect that he or she is of the opinion that—

(i) the debtor satisfies the eligibility criteria for the proposal of a Personal Insolvency Arrangement specified in *section 91*,

(ii) the approved Personal Insolvency Arrangement complies with the mandatory requirements referred to in *section 99(2)*, and

(iii) the approved Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt.**]**

(2) The personal insolvency practitioner shall, in addition to the documents referred to in *subsection (1)* F110**[**or, as the case may be, *subsection (1A)* (inserted by section 18(b) of the Personal Insolvency (Amendment) Act 2015),**]** also send a notice to each creditor indicating that he or she may make objection to the coming into effect of the Personal Insolvency Arrangement by lodging a notice of objection with the appropriate court, within 14 days of the date of the sending of that notice.

(3) A creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in *subsection (2)* and shall at the same time send a copy of the notice of objection to—

(*a*) the Insolvency Service, and

(*b*) the personal insolvency practitioner.

Annotations

Amendments:

F108 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 18(a), S.I. No. 514 of 2015.

F109 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 18(b), S.I. No. 514 of 2015.

F110 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 18(c), S.I. No. 514 of 2015.

Editorial Notes:

E65 Previous affecting provision: subs. (1) substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 85, S.I. No. 286 of 2013; substituted as per F-note above.

Steps to be taken by Insolvency Service following notification of approval of Personal Insolvency Arrangement by personal insolvency practitioner under *section 112.*

113.—F111**[**(1) On receipt of a notification and accompanying documents from the personal insolvency practitioner pursuant to *section 112(1)* (as amended by section 85 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013) F112**[** or, as the case may be, *section 112(1A)* (inserted by section 18(b) of the Personal Insolvency (Amendment) Act 2015)**]**, the Insolvency Service shall—

(*a*) notify the appropriate court and furnish to that court a copy of the notification and documents, and

(*b*) record the approval of the Personal Insolvency Arrangement concerned in the Register of Personal Insolvency Arrangements.**]**

(2) Where the notification of the personal insolvency practitioner is received by the Insolvency Service before the expiry of the period of the protective certificate, such protective certificate shall continue in force until the Personal Insolvency Arrangement comes into effect or all objections lodged with the appropriate court pursuant to *section 112(3)* have been determined by the court.

Annotations

Amendments:

F111 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 86, S.I. No. 286 of 2013.

F112 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 19, S.I. No. 514 of 2015.

Determination of objection lodged under *section 12*.

114.— (1) The grounds on which objection may be made to the coming into effect of the Personal Insolvency Arrangement are those specified in *section 120*.

(2) The hearing of an objection lodged under *section 112(3)* shall be heard with all due expedition.

(3) Where the appropriate court upholds the objection to the Personal Insolvency Arrangement, the Personal Insolvency Arrangement procedure shall be deemed to have come to an end, and the protective certificate issued under *section 95* shall cease to have effect.

Coming into effect of Personal Insolvency Arrangement.

115.— (1) Where—

(*a*) no objection is lodged by a creditor with the appropriate court within 14 days of the giving of the notice referred to in *section 112*, or

(*b*) an objection is lodged with the appropriate court and the matter is determined by the court on the basis that the objection should not be allowed,

the appropriate court shall proceed to consider, in accordance with this section, whether to approve the coming into effect of the Personal Insolvency Arrangement.

(2) For the purposes of its consideration under *subsection (1)*, the appropriate court shall consider F113**[**the notification and documents**]** furnished to it under *section 113(1)* and, subject to *subsection (3)*—

(*a*) shall approve the coming into effect of the Arrangement, if satisfied that the—

(i) eligibility criteria specified in *section 91* have been satisfied,

(ii) mandatory requirements referred to in *section 99(2)* have been complied with,

(iii) Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or otherwise affect such a debt, and

F114**[**(iv) proposal for a Personal Insolvency Arrangement, as the case may be—

(I) has been approved by the requisite proportions of creditors referred to in *section 110(1)*,

(II) is one to which *section 108(8)(a)* (as amended by section 15(b) of the Personal Insolvency (Amendment) Act 2015) applies, or

(III) has been approved or, as the case may be, deemed to have been approved in accordance with *section 111A(7)* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015),**]**

and

(*b*) if not so satisfied, shall refuse to approve the coming into effect of the Personal Insolvency Arrangement.

F113**[**(3) Where the appropriate court, for the purpose of its arriving at a decision under *subsection (2)*, requires—

(*a*) further information, it may request the Insolvency Service to provide this information, and the Insolvency Service shall provide the information requested to the court and to the personal insolvency practitioner concerned, or

(*b*) further information or evidence, it may hold a hearing, which hearing shall be on notice to the Insolvency Service and the personal insolvency practitioner concerned.**]**

(4) F115**[**...**]**

F116**[**(5) For the purposes of *subsection (2)*, the appropriate court may accept—

(*a*) the certificate of the personal insolvency practitioner referred to in *section 112(1)(a)(i)* (as amended by section 18(a) of the Personal Insolvency (Amendment) Act 2015) as evidence that the proposal for a Personal Insolvency Arrangement has been approved by the requisite proportions of creditors referred to in *section 110(1)*,

(*b*) the certificate of the personal insolvency practitioner referred to in *section 112(1)(a)(ii)* (as amended by section 18(a) of the Personal Insolvency (Amendment) Act 2015) as evidence that the proposal for a Personal Insolvency Arrangement is one to which *section 108(8)(a)* (as amended by section 15(b) of the Personal Insolvency (Amendment) Act 2015) applies,

(*c*) the certificate of the personal insolvency practitioner referred to in *section 112(1A)* (inserted by section 18(b) of the Personal Insolvency (Amendment) Act 2015) as evidence that the Personal Insolvency Arrangement has been approved or, as the case may be, deemed to have been approved in accordance with *section 111A(7)* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015), and

(*d*) the statement of the personal insolvency practitioner referred to in *section 112(1)(c)* (inserted by section 85 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013) or, as the case may be, *section 112(1A)(c)* (inserted by section 18(b) of the Personal Insolvency (Amendment) Act 2015) as evidence of any matter referred to in *subsection (2)* which is the subject of that statement.**]**

(6) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court—

(*a*) approves or refuses to approve the coming into effect of the Personal Insolvency Arrangement under this section, or

(*b*) decides to hold a hearing referred to in *subsection (3)*.

(7) On receipt of a notification under *subsection (6)* of the approval of the coming into effect of the Personal Insolvency Arrangement, the Insolvency Service shall register the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements.

(8) The Personal Insolvency Arrangement shall come into effect upon being registered in the Register of Personal Insolvency Arrangements.

Annotations

Amendments:

F113 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 87(a), (b), (d), S.I. No. 286 of 2013.

F114 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 20(a), S.I. No. 514 of 2015.

F115 Deleted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 87(c), S.I. No. 286 of 2013.

F116 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 20(b), S.I. No. 514 of 2015.

Editorial Notes:

E66 Previous affecting provision: subs. (5) substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 87(d), S.I. No. 286 of 2013; substituted as per F-note above.

F117**[**Court review of proposed Personal Insolvency Arrangement

115A. (1) Where—

(*a*) a proposal for a Personal Insolvency Arrangement is not approved in accordance with this Chapter, and

(*b*) the debts that would be covered by the proposed Personal Insolvency Arrangement include a relevant debt,

the personal insolvency practitioner may, where he or she considers that there are reasonable grounds for the making of such an application and if the debtor so instructs him or her in writing, make an application on behalf of the debtor to the appropriate court for an order under *subsection (9)*.

(2) An application under this section shall be made not later than F118**[**28 days**]** after the creditors' meeting referred to in *subsection (16)(a)* or, as the case may be, receipt by the personal insolvency practitioner of the notice of the creditor concerned under *section 111A(6)* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015), shall be on notice to the Insolvency Service, each creditor concerned and the debtor, and shall be accompanied by—

(*a*) a statement of the grounds of the application, which shall include—

(i) a statement that the proposal for a Personal Insolvency Arrangement has not been approved in accordance with this Chapter,

(ii) other than where the proposed Personal Insolvency Arrangement is one to which *section 111A* applies, a statement identifying, by reference to the information referred to in *paragraph (d)(i)(II)* contained in the certificate furnished under *paragraph (d)*, the creditor or creditors who, having voted in favour of the proposal, should, in the opinion of the personal insolvency practitioner, be considered by the court to be a class of creditors for the purpose of this section, and giving the reasons for this opinion,

(*b*) a copy of the proposal for a Personal Insolvency Arrangement,

(*c*) a copy of the report of the personal insolvency practitioner referred to in *section 107(1)(d)*,

(*d*) a certificate—

(i) with the result of the vote taken at the creditors' meeting and identifying—

(I) the proportions of the respective categories of votes cast by those voting at the creditors' meeting, and

(II) the creditors who voted in favour of and against the proposal, and the nature and value of the debt owed to each such creditor,

or

(ii) where applicable, stating that *section 111A* applies to the proposal and that the creditor concerned has notified the personal insolvency practitioner under *section 111A(6)* that the creditor does not approve of the proposal,

and

(*e*) a statement by the personal insolvency practitioner to the effect that he or she is of the opinion that—

(i) the debtor satisfies the eligibility criteria for the proposal of a Personal Insolvency Arrangement specified in *section 91*,

(ii) the proposed Personal Insolvency Arrangement complies with the mandatory requirements referred to in *section 99(2)*, and

(iii) the proposed Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt.

(3) A notice to a creditor under *subsection (2)* shall be accompanied by a notice indicating that he or she may, within 14 days of the date of the sending of the notice, lodge a notice with the appropriate court, setting out whether or not the creditor objects to the application, and the creditor's reasons for this.

(4) A creditor who lodges a notice under *subsection (3)* shall at the same time send a copy of the notice to the Insolvency Service, the personal insolvency practitioner and each creditor concerned.

(5) Where an application is made under this section F118**[**, whether before or after**]** the expiry of the period of the protective certificate, such protective certificate shall continue in force until—

(*a*) the Personal Insolvency Arrangement comes into effect under *subsection (13)*, or

(*b*) one of the following occurs—

(i) the time for bringing an appeal against a refusal of the appropriate court to make an order under *subsection (9)* has expired without any such appeal having been brought,

(ii) such appeal has been withdrawn, or

(iii) the appeal has been determined.

(6) The appropriate court, for the purpose of an application under this section, shall hold a hearing, which hearing shall be on notice to the Insolvency Service, the personal insolvency practitioner and each creditor concerned.

(7) A hearing under this section shall be held with all due expedition.

(8) The court shall consider whether to make an order under *subsection (9)* only where—

(*a*) it is satisfied that—

(i) the eligibility criteria specified in *section 91* have been satisfied,

(ii) the mandatory requirements referred to in *section 99* have been complied with, and

(iii) the proposed Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt,

and

(*b*) it considers that, having regard to the information before it, including information contained in a notice under *subsection (3)*, no ground specified in section 120 applies in relation to the debtor or the proposed Arrangement.

(9) The court, following a hearing under this section, may make an order confirming the coming into effect of the proposed Personal Insolvency Arrangement only where it is satisfied that—

(*a*) the terms of the proposed Arrangement have been formulated in compliance with *section 104*,

(*b*) having regard to all relevant matters, including the terms on which the proposed Arrangement is formulated, there is a reasonable prospect that confirmation of the proposed Arrangement will—

(i) enable the debtor to resolve his or her indebtedness without recourse to bankruptcy,

(ii) enable the creditors to recover the debts due to them to the extent that the means of the debtor reasonably permit, and

(iii) enable the debtor—

(I) not to dispose of an interest in, or

(II) not to cease to occupy,

all or a part of his or her principal private residence,

(*c*) having regard to all relevant matters, including the financial circumstances of the debtor and the matters referred to in *subsection (10)(a)*, the debtor is reasonably likely to be able to comply with the terms of the proposed Arrangement,

(*d*) where applicable, having regard to the matters referred to in *section 104(2)*, the costs of enabling the debtor to continue to reside in the debtor's principal private residence are not disproportionately large,

(*e*) the proposed Arrangement is fair and equitable in relation to each class of creditors that has not approved the proposal and whose interests or claims would be impaired by its coming into effect,

(*f*) the proposed Arrangement is not unfairly prejudicial to the interests of any interested party, and

(*g*) other than where the proposal is one to which *section 111A* applies, at least one class of creditors has accepted the proposed Arrangement, by a majority of over 50 per cent of the value of the debts owed to the class.

(10) In considering whether to make an order under *subsection (9)*, the court shall have regard to:

(*a*) the conduct, within the 2 years prior to the issue of the protective certificate under *section 95*, of—

(i) the debtor in seeking to pay the debts concerned, and

(ii) a creditor in seeking to recover the debts due to the creditor;

(*b*) the following, where details of them are contained in a notice lodged under *subsection (3)* by a creditor—

(i) a submission made by the creditor under *section 98(1)* or an indication given by the creditor under *section 102(1)* and the date on which such submission was made or indication was furnished, and

(ii) any alternative option available to the creditor for the recovery of the debt concerned.

(11) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court makes or refuses to make an order under *subsection (9)*.

(12) On receipt of a notification under *subsection (11)* of the making of an order under *subsection (9)*, the Insolvency Service shall register the Personal Insolvency Arrangement concerned in the Register of Personal Insolvency Arrangements.

(13) The Personal Insolvency Arrangement shall come into effect upon being registered in the Register of Personal Insolvency Arrangements.

(14) The court, in an application under this section, shall make such other order as it deems appropriate, including an order as to the costs of the application.

(15) For the purposes of its consideration of an application under this section, the appropriate court may accept—

(*a*) the certificate of the personal insolvency practitioner referred to in *subsection (2)(d)(i)* as evidence of the proportions of the respective categories of votes cast by those voting at the creditors' meeting and of the creditors who have voted in favour of and against the proposed Personal Insolvency Arrangement and of the nature and value of the debt owed to each such creditor,

(*b*) the certificate of the personal insolvency practitioner referred to in *subsection (2)(d)(ii)* as evidence that the proposed Arrangement has not been approved in accordance with *section 111A*, and

(*c*) the statement of the personal insolvency practitioner referred to in *subsection (2)(e)* as evidence of any matter referred to in *subsection (8)* which is the subject of that statement.

(16) For the purposes of this section, a proposal for a Personal Insolvency Arrangement is not approved in accordance with this Chapter where—

(*a*) at a creditors' meeting held under this Chapter, it is not approved in accordance with *section 110* or, as the case may be, deemed to have been approved under *section 108(8) (a)* (as amended by section 15*(b)* of the Personal Insolvency (Amendment) Act 2015), or

(*b*) in the case of a proposal for a Personal Insolvency Arrangement to which *section 111A* applies, the creditor concerned has notified the personal

insolvency practitioner in accordance with *section 111A(6)* that the creditor does not approve of the proposal.

(17) (*a*) For the purposes of this section, and subject to *paragraph (b)*, the court may consider—

(i) one creditor, or

(ii) more than one creditor, where the court considers the creditors to have, in relation to the debtor, interests or claims of a similar nature,

to be a class of creditor.

(*b*) In deciding under paragraph (a) whether to consider a creditor or creditors to be a class of creditor, the court shall have regard to the circumstances of the case, including, having regard to the statement of the grounds of the application referred to in subsection (2)(a) and the certificate referred to in *subsection (2)(d)(i)*—

(i) the overall number and composition of the creditors who voted at the creditors' meeting, and

(ii) the proportion of the debtor's debts due to the creditors participating and voting at the creditors' meeting that is represented by the creditor or creditors concerned.

(18) In this section—

"relevant debt" means a debt—

(*a*) the payment for which is secured by security in or over the debtor's principal private residence, and

F118**[**(*b*) in respect of which the debtor—

(i) is in arrears with his or her payments, or

(ii) having been in arrears with his or her payments, has entered into an alternative repayment arrangement with the secured creditor concerned.**]]**

Annotations

Amendments:

F117 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 21, S.I. No. 514 of 2015.

F118 Substituted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 14(a)-(c), S.I. No. 305 of 2021.

Editorial Notes:

E67 The section heading is taken from the amending section in the absence of one included in the amendment.

Effect of Personal Insolvency Arrangement.

116.— (1) Upon a Personal Insolvency Arrangement being registered in the Register of Personal Insolvency Arrangements it shall have effect according to its terms and remain in effect until—

(*a*) it is completed in accordance with its terms or the terms of any variation made, or

(*b*) it is terminated in accordance with this Chapter.

(2) While a Personal Insolvency Arrangement is in effect, the following shall be parties to it and, subject to this Act, shall be bound by its terms—

(*a*) the debtor, and

(*b*) in respect of every specified debt, the creditor concerned.

(3) Where a Personal Insolvency Arrangement is in effect, a creditor who is bound by it shall not, in relation to a specified debt—

(*a*) initiate any legal proceedings;

(*b*) take any step to prosecute legal proceedings already initiated;

(*c*) take any step to secure or recover payment;

(*d*) execute or enforce a judgment or order of a court or tribunal against the debtor;

(*e*) take any step to enforce security held by the creditor;

F119**[**(*f*) take any step to recover goods in the possession or custody of the debtor, unless title to the goods is vested in the creditor;**]**

(*g*) contact the debtor regarding payment of the specified debt otherwise than at the request of the debtor;

(*h*) in relation to an agreement with the debtor, including a security agreement, by reason only that the debtor is insolvent or that a Personal Insolvency Arrangement is in effect—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(4) Where a Personal Insolvency Arrangement is in effect, a creditor of that debtor shall not apply for the issue of a summons under section 8 of the Bankruptcy Act 1988 or present a petition to have the debtor concerned adjudicated a bankrupt in respect of a debt covered by the Personal Insolvency Arrangement.

(5) Where a Personal Insolvency Arrangement is in effect, and a creditor of that debtor has applied for the issue of a summons under section 8 of the Bankruptcy Act 1988 or has presented a petition to have the debtor concerned adjudicated a bankrupt in respect of a debt covered by the Personal Insolvency Arrangement, the creditor shall not proceed with the summons or the petition.

(6) Nothing in *subsections (3)* and *(4)* shall operate to prevent a creditor taking the actions referred to in that subsection as respects a person who has jointly contracted with the debtor or is jointly liable with the debtor to the creditor and that other person may sue or be sued in respect of the contract without joining the debtor.

(7) *Subsection (6)* does not apply where a Personal Insolvency Arrangement is also in effect as respects the other person.

(8) In reckoning any period of time for the purpose of any applicable limitation period in relation to any proceedings or process to which this section applies (including any limitation period under the Statute of Limitations 1957), the period in which the Personal Insolvency Arrangement is in effect shall be disregarded.

(9) The period for which any judgment against the debtor in relation to a debt which is the subject of a Personal Insolvency Arrangement has effect (whether under statute or rule of court) shall subject to the provisions of this Act be extended by the period that the Personal Insolvency Arrangement is in effect.

(10) Notwithstanding *subsections (3)* and *(4)*, the fact that a Personal Insolvency Arrangement is in effect in relation to a debtor under this Chapter shall not operate to prevent a creditor taking the actions referred to in *subsection (3)* or *(4)* as respects another person who has guaranteed the specified debts concerned.

(11) The Deeds of Arrangement Act 1887 does not apply to a Personal Insolvency Arrangement.

(12) In this section, "specified debt" means a debt that is specified in a Personal Insolvency Arrangement as being subject to that Arrangement.

Annotations

Amendments:

F119 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 88, S.I. No. 286 of 2013.

Operation of terms of Personal Insolvency Arrangement.

117.— (1) Subject to the provisions of this section, a Personal Insolvency Arrangement shall operate according to its terms and the debtor and creditors concerned shall perform their obligations in accordance with the Arrangement.

(2) Unless otherwise provided by the Personal Insolvency Arrangement payments to be made to creditors under the terms of the arrangement shall be made by the debtor through the personal insolvency practitioner concerned.

(3) The personal insolvency practitioner shall transmit payments received to each of the creditors in the agreed proportion on a timely basis.

(4) The personal insolvency practitioner shall maintain regular contact with the debtor and request such reports and conduct such reviews as may be required, but such review shall in any event be carried out at least once in every period of 12 months.

(5) The personal insolvency practitioner shall monitor implementation of the Arrangement and where the debtor has defaulted or appears likely to default in his or her obligations under the Arrangement, discuss the matter with the debtor.

(6) Where the circumstances of the debtor have changed in a material respect the personal insolvency practitioner shall provide information to the debtor regarding his or her right or obligation to initiate an application to vary the Arrangement in accordance with *section 119*.

(7) Where the circumstances of a debtor have changed to such an extent that a variation in the terms of an Arrangement is appropriate, the personal insolvency practitioner shall take the necessary steps to initiate a variation of the Arrangement under *section 119*.

(8) The personal insolvency practitioner shall deal with the property of the debtor in accordance with the Personal Insolvency Arrangement.

(9) The personal insolvency practitioner shall respond in a timely manner to requests for information regarding the operation of the Arrangement from—

(*a*) the Insolvency Service,

(*b*) the debtor, and

(*c*) the creditors.

(10) The personal insolvency practitioner shall maintain complete and accurate records of account of the moneys received from the debtor and the moneys disbursed

to the creditors and such moneys shall while in the possession and control of the personal insolvency practitioner be maintained in an account in the State with a bank authorised to carry on business in the State, which account is used solely for the purposes of receiving payments from the debtor and transmitting such payments to creditors (after the deduction of any fees, costs and outlays payable to the personal insolvency practitioner permitted to be made under this Act and in accordance with the Personal Insolvency Arrangement).

General duties and obligations of debtor arising under *Chapter 4*.

118.— (1) A debtor who participates in any process under this Chapter is under an obligation to act in good faith, and in his or her dealings with the personal insolvency practitioner concerned to make full disclosure to that practitioner of all of his or her assets, income and liabilities and of all other circumstances that are reasonably likely to have a bearing on the ability of the debtor to make payments to his or her creditors.

(2) A debtor who participates in any part of the process of applying for or operating a Personal Insolvency Arrangement shall co-operate fully in the process, and in particular comply with any reasonable request from the personal insolvency practitioner to provide assistance, documents and information necessary for the application of the process to the debtor's case or the carrying out of the personal insolvency practitioner's functions, including any debt, tax, employment, business, social welfare or other financial records.

(3) A debtor in respect of whom a Personal Insolvency Arrangement is in effect is under an obligation to inform the personal insolvency practitioner as soon as reasonably practicable of any material change in the debtor's circumstances, particularly an increase or decrease in the level of the debtor's assets, liabilities or income, which would affect the debtor's ability to make repayments under the Personal Insolvency Arrangement.

(4) A debtor in respect of whom a Personal Insolvency Arrangement is in effect shall not, either alone or with any other person, obtain credit in an amount of more than €650 from any person without informing that person that he or she is subject as a debtor to a Personal Insolvency Arrangement.

(5) A debtor in respect of whom a Personal Insolvency Arrangement is in effect shall not transfer, lease, grant security over, or otherwise dispose of any interest in property above a prescribed value otherwise than in accordance with the terms of the Personal Insolvency Arrangement.

(6) A debtor shall inform the personal insolvency practitioner as soon as reasonably practicable after becoming aware of any inaccuracy or omission in the debtor's statement of affairs based on the Prescribed Financial Statement.

(7) A debtor who participates in a Personal Insolvency Arrangement shall not pay to creditors any additional payments separate to the Personal Insolvency Arrangement in respect of debts covered in the Personal Insolvency Arrangement.

Variation of Personal Insolvency Arrangement

F120**[119.** (1) Subject to this section and *section 119A*, a Personal Insolvency Arrangement may be varied in accordance with its terms.

(2) A personal insolvency practitioner, whether on his or her own initiative or on a request made in accordance with *subsection (3)*, shall propose a variation of a Personal Insolvency Arrangement (in this section referred to as a "variation") where—

(*a*) it appears to the personal insolvency practitioner that there has been a material change in the debtor's circumstances, and

(*b*) the personal insolvency practitioner is satisfied that there is a reasonable prospect that a variation that addresses such circumstances would be approved in accordance with this section.

(3) A debtor or creditor who is bound by a Personal Insolvency Arrangement may request the personal insolvency practitioner to propose a variation of the Arrangement, which request shall be—

(*a*) in writing,

(*b*) accompanied by information or evidence to support the assertion that there has been a material change in the debtor's circumstances, and

(*c*) accompanied by the written consent of the person making the request to the—

(i) making by the personal insolvency practitioner of an enquiry under *subsection (4)*, and

(ii) disclosure by the personal insolvency practitioner of personal data of the person, to the extent necessary for such an enquiry.

(4) A personal insolvency practitioner shall, within 21 days of receipt of a request under *subsection (3)*, decide whether *paragraphs (a)* and *(b)* of *subsection (2)* apply in relation to the Personal Insolvency Arrangement concerned, and, for that purpose—

(*a*) may request any further information he or she requires from the person who made the request, and

(*b*) may make such enquiries as he or she considers necessary in order to arrive at his or her decision.

(5) For the purpose of deciding, whether under *subsection (4)* or otherwise, whether *paragraphs (a)* and *(b)* of *subsection (2)* apply in relation to the Personal Insolvency Arrangement concerned, the personal insolvency practitioner may require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement.

(6) Where the personal insolvency practitioner is satisfied that *paragraphs (a)* and *(b)* of *subsection (2)* apply in relation to the Personal Insolvency Arrangement concerned, he or she shall without delay—

(*a*) require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement, unless the debtor has completed a Prescribed Financial Statement under *subsection (5)* and the information contained in it remains complete and accurate,

(*b*) formulate a proposal for a variation,

(*c*) seek the written consent of the debtor to the proposal and, subject to *subsection (8)*, to the calling of a meeting of the creditors of the debtor for the purpose of considering the proposal, and

(*d*) subject to *subsection (8)*, where the consent of the debtor referred to in *paragraph (c)* has been given, arrange for the holding of the meeting referred to in that paragraph.

(7) When calling a creditors' meeting to be held under this section, the personal insolvency practitioner shall—

(*a*) give each creditor at least 14 days' written notice of the meeting and the date on which, and the time and place at which, the meeting will be held,

(*b*) ensure that the notice referred to in *paragraph (a)* is accompanied by—

(i) a written proposal for the variation of the Personal Insolvency Arrangement,

(ii) a report of the personal insolvency practitioner—

(I) describing the outcome for the creditors and for the debtor under the terms of the proposal, and

(II) indicating whether or not he or she is of the opinion that the debtor is reasonably likely to be able to comply with the terms of the Personal Insolvency Arrangement as varied in accordance with the proposal,

(iii) the Prescribed Financial Statement completed by the debtor under *subsection (5)* or *(6)*, as the case may be, and

(iv) such other information obtained by the personal insolvency practitioner under this section as he or she considers relevant,

and

(*c*) lodge a copy of the notice referred to in *paragraph (a)* and the documents referred to in *paragraph (b)* with the Insolvency Service.

(8) Where only one creditor would be entitled to vote at a creditors' meeting under this section (whether in respect of one or more debts), the personal insolvency practitioner shall, in place of holding such a meeting, give notice to the creditor of the proposal for a variation, and *paragraphs (b)* and *(c)* of *subsection (7)* shall apply in respect of that notice.

(9) The provisions of *sections 99* to *105* and *sections 108* to *115* (other than *subsections (2)* and *(3)* of *section 101*, *sections 108(9)*, *109(6)*, *111A(7)* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015), *112(1) (c)(i)* (as amended by section 18(a) of the Personal Insolvency (Amendment) Act 2015), *112(1A)(c)(i)* (inserted by section 18(b) of the Personal Insolvency (Amendment) Act 2015), *113(2)*, *114(3)*, and *115(2)(a)(i)*) and *section 120* shall apply in relation to a variation of a Personal Insolvency Arrangement under this section, subject to the following modifications and any other necessary modifications—

(*a*) a reference to a Personal Insolvency Arrangement shall be construed as a reference to a Personal Insolvency Arrangement as varied in accordance with this Chapter,

(*b*) a reference to a proposal for a Personal Insolvency Arrangement shall be construed as a reference to a proposal for the variation of a Personal Insolvency Arrangement, and a reference to a proposed Personal Insolvency Arrangement shall be construed as a reference to a proposed variation of a Personal Insolvency Arrangement,

(*c*) a reference to a Prescribed Financial Statement shall be construed as a reference to the Prescribed Financial Statement completed by the debtor under *subsection (5)* or *(6)*, as the case may be,

(*d*) the variation of a Personal Insolvency Arrangement shall not have the effect of extending the duration of that Personal Insolvency Arrangement beyond the maximum duration permitted under *section 99(2)(b)*,

(*e*) a Personal Insolvency Arrangement as varied under this section shall, in addition to containing the information referred to in *section 99(2)(f)*, make provision for the costs and outlays of the personal insolvency practitioner which relate to this section,

(*f*) a reference to a notification that a protective certificate has been issued shall be construed as a reference to a notice under *subsection (7)* of the calling of a creditors' meeting,

(*g*) a reference to the day or date on which a protective certificate is issued, other than in *section 102(7)*, shall be construed as a reference to the date on which a vote at the creditors' meeting under this section is held,

(*h*) where *section 103(3)* applied to a Personal Insolvency Arrangement, the variation of that Arrangement shall not operate to alter the period referred to in *section 103(11)(a)*,

(*i*) a reference to the market value attributed to security, or the market value of security determined, in accordance with *section 105* shall be construed as the value attributed or determined in accordance with *section 105* for the purpose of a variation under this section,

(*j*) a reference to a creditors' meeting shall be construed as a reference to a creditors' meeting under this section,

(*k*) where *section 108(4)* applied to a creditor, that subsection shall continue to apply to that creditor for the purpose of his or her voting rights at a creditors' meeting under this section,

(*l*) a debt that is an unsecured debt on the date on which the vote at a creditors' meeting under this section is held shall be treated as an unsecured debt, notwithstanding that the debt concerned was a secured debt when the vote on the proposal for the Personal Insolvency Arrangement concerned was held,

(*m*) an adjournment pursuant to *section 109(4)* may occur once only in the course of a creditors' meeting, and

(*n*) a reference in *section 115(5)(c)* (as amended by *section 20(b)* of the *Personal Insolvency (Amendment) Act 2015*) to *section 111A(7)* shall be construed as a reference to *subsection (10)*.

(10) (*a*) Where *subsection (8)* applies, the creditor concerned shall notify the personal insolvency practitioner in writing of his or her approval or otherwise of a proposal for the variation of a Personal Insolvency Arrangement within—

(i) 14 days of the giving to him or her of the notice under that subsection, or

(ii) if later, 7 days of the date on which a notice under *section 111A(4)(a)* is first given to him or her.

(*b*) A proposal referred to in *paragraph (a)* —

(i) shall be considered as having been approved by the creditor concerned where that creditor notifies the personal insolvency practitioner in accordance with that paragraph of the creditor's approval of the proposal, and

(ii) where that creditor fails to comply with that paragraph, shall be deemed to have been approved by the creditor concerned.

(11) Where—

(*a*) on the taking of a vote at a creditors' meeting under this section, the proposal is not approved in accordance with *section 110*,

(*b*) *subsection (8)* applies and the proposal is not approved in accordance with *subsection (10)*, or

(*c*) the appropriate court upholds the objection of a creditor to the variation of a Personal Insolvency Arrangement coming into effect,

the Personal Insolvency Arrangement concerned shall, without prejudice to the other provisions of this Act, continue in effect without being subject to such variation.

(12) *Subsection (11)* shall be without prejudice to the entitlement of the personal insolvency practitioner to propose another variation of the Personal Insolvency Arrangement in accordance with this section.

(13) Subject to *subsection (14)*, an unreasonable refusal by the debtor to give his or her consent—

(*a*) under *subsection (6)* to a proposal for a variation or the calling of a creditors' meeting,

(*b*) under *section 119A(3)* to a proposal for a variation or the giving to creditors of a notice under *section 119A(4)*, or

(*c*) under *subsection (3)* or *(4)* of *section 109* or, as the case may be, *subsection (3)* or *(5)* of *section 111A* (inserted by section 17 of the Personal Insolvency (Amendment) Act 2015),

shall be grounds for an application under *section 122(1)(g)*.

(14) A debtor who refuses to give his or her consent under a provision referred to in *subsection (13)* shall be considered to be acting reasonably where the proposal in relation to which the consent is sought would require the debtor—

(*a*) where there has been an increase in the debtor's income, to make additional payments in excess of 50 per cent of the increase in his or her income available to him or her after the following deductions (where applicable) are made:

(i) income tax;

(ii) social insurance contributions;

(iii) payments made by him or her in respect of excluded debts;

(iv) payments made by him or her in respect of excludable debts that are not permitted debts;

(v) such other levies and charges on income as may be prescribed,

or

(*b*) to make a payment amounting to more than 50 per cent of the value of any property acquired by the debtor after the coming into effect of the Personal Insolvency Arrangement that is proposed to be varied, unless receipt of that property had been anticipated by the terms of that Arrangement.

(15) A reference in this Chapter to a Personal Insolvency Arrangement shall be construed as including such an arrangement as proposed to be varied or as varied in accordance with this section or *section 119A*, unless the context otherwise requires.

(16) In this section, "material change in the debtor's circumstances" means a change in the debtor's circumstances that would materially affect his or her ability to make payments, or otherwise perform his or her obligations, under the Personal Insolvency Arrangement, and includes an increase or decrease in the extent of the debtor's assets, liabilities or income.**]**

Annotations

Amendments:

F120 Substituted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 22, S.I. No. 514 of 2015.

Modifications (not altering text):

C10 Reference to personal data construed (25.05.2018) by *Data Protection Act 2018* (7/2018), ss. 165, S.I. No. 17 of 2018.

Reference to personal data in enactment

165. Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

(a) the Data Protection Regulation, and

(b) Part 5.

Editorial Notes:

E68 Previous affecting provision: section substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 89, S.I. No. 286 of 2013; substituted as per F-note above.

F121[Variation of Personal Insolvency Arrangement confirmed by order under *section 115A*

119A. (1) Where the coming into effect of a Personal Insolvency Arrangement has been confirmed by an order of the court under *section 115A(9)*, the Arrangement may be varied in accordance with its terms and subject to this section.

(2) *Subsections (2)* to *(5)*, and *paragraphs (a)* and *(b)* of *subsection (6)*, of *section 119* shall apply to the variation of a Personal Insolvency Arrangement under this section.

(3) Where the personal insolvency practitioner has, in accordance with *section 119(6)(b)*, formulated a proposal for the variation of the Personal Insolvency Arrangement concerned, he or she shall without delay—

(*a*) seek the written consent of the debtor to the proposal and to the giving of a notice under *subsection (4)* to the creditors concerned, and

(*b*) give each creditor concerned a notice under *subsection (4)*.

(4) A notice under this subsection shall—

(*a*) inform the creditor of the proposal for a variation of the Personal Insolvency Arrangement,

(*b*) be accompanied by—

(i) a written proposal for the variation of the Personal Insolvency Arrangement,

(ii) a report of the personal insolvency practitioner—

(I) describing the outcome for the creditors and for the debtor under the terms of the proposal, and

(II) indicating whether or not he or she is of the opinion that the debtor is reasonably likely to be able to comply with the terms of the Personal Insolvency Arrangement as varied in accordance with the proposal,

(iii) the Prescribed Financial Statement completed by the debtor under *section 119(5)* or *(6)*, as the case may be,

(iv) a statement informing the creditor of the effect of *subsections (7)*, *(8)*, *(9)* and *(12)*, and

(v) such other information obtained by the personal insolvency practitioner under this section as he or she considers relevant.

(5) The personal insolvency practitioner shall lodge a copy of a notice under *subsection (4)* and the documents referred to in *paragraph (b)* of that subsection with the Insolvency Service.

(6) The provisions of *sections 99* to *105* (other than *subsections (2)* and *(3)* of *section 101*) and *section 120* shall apply in relation to a variation of a Personal Insolvency Arrangement under this section, subject to the following modifications and any other necessary modifications—

(*a*) a reference to a Personal Insolvency Arrangement shall be construed as a reference to a Personal Insolvency Arrangement as varied in accordance with this Chapter,

(*b*) a reference to a proposal for a Personal Insolvency Arrangement shall be construed as a reference to a proposal for the variation of a Personal Insolvency Arrangement, and a reference to a proposed Personal Insolvency Arrangement shall be construed as a reference to a proposed variation of a Personal Insolvency Arrangement,

(*c*) a reference to a Prescribed Financial Statement shall be construed as a reference to the Prescribed Financial Statement completed by the debtor under *section 119(5)* or *(6)*, as the case may be,

(*d*) the variation of a Personal Insolvency Arrangement shall not have the effect of extending the duration of that Personal Insolvency Arrangement beyond the maximum duration permitted under *section 99(2)(b)*,

(*e*) a Personal Insolvency Arrangement as varied under this section shall, in addition to containing the information referred to in *section 99(2)(f)*, make provision for the costs and outlays of the personal insolvency practitioner which relate to this section,

(*f*) a reference to a notification that a protective certificate has been issued shall be construed as a reference to a notice under *subsection (4)*,

(*g*) a reference to the day or date on which a protective certificate is issued, other than in *section 102(7)*, shall be construed as a reference to the date of the giving to the creditor of a notice under *subsection (4)*,

(*h*) where *section 103(3)* applied to a Personal Insolvency Arrangement, the variation of that Arrangement shall not operate to alter the period referred to in *section 103(11)(a)*, and

(*i*) a reference to the market value attributed to security, or the market value of security determined in accordance with *section 105*, shall be construed as the value attributed or determined in accordance with *section 105* for the purpose of a variation under this section.

(7) A creditor shall, within 14 days of the giving to the creditor of a notice under *subsection (4)*, notify the personal insolvency practitioner in writing of his or her approval or otherwise of the proposal for the variation of the Personal Insolvency Arrangement.

(8) Where a creditor fails to comply with *subsection (7)*, the creditor shall be deemed to have approved the proposal concerned.

(9) Where a creditor notifies the personal insolvency practitioner in accordance with *subsection (7)* that the creditor does not approve of the proposal, the personal insolvency practitioner may, if the debtor so instructs him or her in writing, make an application on behalf of the debtor to the appropriate court for an order confirming the coming into effect of the Personal Insolvency Arrangement as varied in accordance with the proposal (in this section referred to as "an order under this section").

(10) Where *subsection (9)* applies and the personal insolvency practitioner does not make an application in accordance with this section, the Personal Insolvency Arrangement concerned shall, without prejudice to the other provisions of this Act, continue in effect without being subject to such variation.

(11) *Subsection (10)* shall be without prejudice to the entitlement of the personal insolvency practitioner to propose another variation of the Personal Insolvency Arrangement in accordance with this section.

(12) Where no creditor notifies the personal insolvency practitioner in accordance with *subsection (7)* that the creditor does not approve of the proposal, the personal insolvency practitioner shall notify the Insolvency Service in writing of that fact.

(13) An application for an order under this section shall be made not less than 14 days after receipt by the personal insolvency practitioner of the notice of the creditor referred to in *subsection (9)* and shall be—

(*a*) on notice to the Insolvency Service, each creditor concerned and the debtor, and

(*b*) accompanied by—

(i) a copy of the documents referred to in *subsection (4) (b)*,

(ii) a copy of the notification by the creditor referred to in *subsection (9)*, and

(iii) a statement of the grounds of the application which shall include (other than where the Personal Insolvency Arrangement that is proposed to be varied is an Arrangement to which *section 111A* applied) a statement identifying the creditor or creditors who, having approved or being deemed to have approved, in accordance with this section, the proposal, should, in the opinion of the personal insolvency practitioner, be considered by the court to be a class of creditors for the purpose of this section, and giving the reasons for this opinion.

(14) *Section 115A(6)* to *(9)* shall apply in relation to an application under this section, subject to the following modifications and any other necessary modifications—

(*a*) a reference to a proposed Personal Insolvency Arrangement shall be construed as a reference to a proposal for the variation of a Personal Insolvency Arrangement,

(*b*) a reference to an order under *section 115A(9)* shall be construed as a reference to an order under this section, and

(*c*) a reference in *section 115A(9) (g)* to a class of creditors having accepted a proposed Arrangement shall be construed as a reference to a class of creditors having approved, or being deemed to have approved, in accordance with this section, a proposal for the variation of a Personal Insolvency Arrangement.

(15) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court makes or refuses to make an order under this section.

(16) The Insolvency Service shall register in the Register of Personal Insolvency Arrangements the variation of a Personal Insolvency Arrangement on receipt by it of a notification under—

(*a*) *subsection (12)*, or

(*b*) *subsection (15)* of the making of an order under this section.

(17) The variation of a Personal Insolvency Arrangement under this section shall come into effect upon being registered in the Register of Personal Insolvency Arrangements.

(18) The court, in an application under this section, shall make such other order as it deems appropriate, including an order as to the costs of the application.**]**

Annotations

Amendments:

F121 Inserted (20.11.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 22, S.I. No. 514 of 2015.

Grounds of challenge by creditor to coming into effect or variation of Personal Insolvency Arrangement.

120.— The grounds on which a Personal Insolvency Arrangement may be challenged by a creditor under *section 114* are, without prejudice to *section 122*, limited to the following matters:

(*a*) that the debtor has by his or her conduct within the 2 years prior to the issue of the protective certificate under *section 95* arranged his or her financial affairs primarily with a view to being or becoming eligible to apply for a Debt Settlement Arrangement or a Personal Insolvency Arrangement;

(*b*) the procedural requirements specified in this Act were not complied with;

(*c*) a material inaccuracy or omission exists in the debtor's statement of affairs (based on the Prescribed Financial Statement) which causes a material detriment to the creditor;

(*d*) the debtor, when the Personal Insolvency Arrangement was proposed, did not satisfy the eligibility criteria specified in *section 91*;

(*e*) the Personal Insolvency Arrangement unfairly prejudices the interests of a creditor;

(*f*) the debtor has committed an offence under this Act, which causes a material detriment to the creditor;

(*g*) the debtor had entered into a transaction with a person at an undervalue within the preceding 3 years that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue);

(*h*) the debtor had given a preference to a person within the preceding 3 years that had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference).

Excessive pension contributions.

121.— (1) Where, as respects a debtor who has entered into a Personal Insolvency Arrangement which is in force, a creditor or the personal insolvency practitioner concerned considers that a debtor has made excessive contributions to a relevant pension arrangement, the creditor or personal insolvency practitioner may make an application to the appropriate court for relief in accordance with this section.

(2) The reference to the debtor having made contributions to a relevant pension arrangement shall be construed as a reference to contributions made by the debtor at any time within 3 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 93*.

(3) Where the appropriate court considers that having regard in particular to the matters referred to in *subsection (4)* the contributions to a relevant pension arrangement were excessive it may—

(*a*) direct that such part of the contribution concerned (less any tax required to be deducted) be paid by the person administering the relevant pension arrangement to the personal insolvency practitioner for distribution amongst the creditors of the debtor, and

(*b*) make such other order as the court deems appropriate, including an order as to the costs of the application.

(4) The matters referred to in *subsection (3)* as respects the contributions made by the debtor to a relevant pension arrangement are:

(*a*) whether the debtor made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the debtor made the contribution concerned;

(*b*) whether the debtor was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the debtor or a person who as respects the debtor is a connected person could have materially influenced the creation of such obligation;

(*c*) the amount of the contributions paid, including the percentage of total income of the debtor in each tax year concerned which such contributions represent;

(*d*) the amount of the contributions paid, in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 93* including the percentage of total income of the debtor concerned which such contributions represent in each of those years;

(*e*) the age of the debtor at the relevant times;

(*f*) the percentage limits which applied to the debtor in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement in each of the 6 years prior to the making of the application for a protective certificate on behalf of the debtor under *section 93*; and

(*g*) the extent of provision made by the debtor in relation to any relevant pension arrangement prior to the making of the contributions concerned.

Application to appropriate court to have Personal Insolvency Arrangement terminated.

122.— (1) Without prejudice to *section 120*, a creditor or a personal insolvency practitioner may, as respects a Personal Insolvency Arrangement, at any time during which the arrangement concerned is in effect, apply to the appropriate court to have that Personal Insolvency Arrangement terminated, and such application shall be limited to the following grounds:

(*a*) a material inaccuracy or omission exists in the debtor's Prescribed Financial Statement which causes a material detriment to the creditor;

(*b*) the debtor, when the Personal Insolvency Arrangement was proposed, did not satisfy the eligibility criteria specified in *section 91*;

(*c*) the debtor did not comply with the duties and obligations imposed on him or her under the Personal Insolvency Arrangement process;

(*d*) the debtor has since the coming into effect of the Personal Insolvency Arrangement been convicted of an offence under this Act;

(*e*) the debtor is in arrears with his or her payments for a period of not less than 3 months;

(*f*) the debtor has failed to carry out any action necessary to enable a term of the Personal Insolvency Arrangement to have effect;

(*g*) the debtor has unreasonably refused to consent to a variation of the Personal Insolvency Arrangement.

(2) For the purposes of *subsection (1)(e)*, a debtor is in arrears with his or her payments for a period of not less than 3 months where—

(*a*) at the beginning of the 3 month period ending immediately before the day on which the application was made, one or more than one payment in respect of the debts became due and payable by the debtor under the Personal Insolvency Arrangement, and

(*b*) at no time during that 3 month period were any obligations in respect of those payments discharged.

(3) On hearing an application under *subsection (1)* the appropriate court may—

(*a*) dismiss the application,

(*b*) terminate the Personal Insolvency Arrangement, or

(*c*) order that the personal insolvency practitioner prepare a proposal for a variation of the arrangement in accordance with *section 119*.

F122**[**(4) Where the appropriate court makes a decision under *subsection (3)*—

(*a*) the Registrar of the appropriate court shall notify the Insolvency Service of the decision, and

(*b*) the Insolvency Service, on receipt of the notification under *paragraph (a)*, shall notify the personal insolvency practitioner and the specified creditors concerned of the decision.

(5) Where the appropriate court decides, under *subsection (3)*, to terminate a Personal Insolvency Arrangement, the Insolvency Service shall, on receipt of the notification under *subsection (4)* of that termination, record the fact of the termination of the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements.**]**

Annotations

Amendments:

F122 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 90, S.I. No. 286 of 2013.

Personal Insolvency Arrangement deemed to have failed after 6 month arrears default.

123.— (1) Where the debtor is in arrears with his or her payments for a period of 6 months the Personal Insolvency Arrangement shall be deemed to have failed and shall terminate where the personal insolvency practitioner notifies the Insolvency Service and the debtor of such default.

(2) For the purposes of *subsection (1)*, a debtor is in arrears with his or her payments for a period of 6 months on a given date if—

(*a*) at the beginning of the 6 month period ending immediately before that date, one or more than one payment in respect of a debt became due and payable by the debtor under the Personal Insolvency Arrangement, and

(*b*) at no time during that 6 month period were any obligations in respect of those payments discharged.

(3) Where the Insolvency Service receives a notification of default referred to in *subsection (1)*, it shall record the failure of the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements.

Effect of premature termination of Personal Insolvency Arrangement on debts.

124.— (1) Subject to *subsection (2)*, where a Personal Insolvency Arrangement has been deemed to have failed or has terminated under this Chapter, the debtor shall thereupon be liable in full for all debts covered by the Personal Insolvency Arrangement (including any arrears, charges and interest that have accrued during the continuance of the Personal Insolvency Arrangement but excluding any amounts paid in respect of those debts during the continuance of the Personal Insolvency Arrangement), unless—

(*a*) the terms of the Personal Insolvency Arrangement provide otherwise; or

(*b*) the appropriate court has made an order otherwise.

(2) *Subsection (1)* has effect without prejudice to the validity of any act done or property disposed of in accordance with the Personal Insolvency Arrangement.

F123**[**(3) Where *subsection (1)* applies, the Insolvency Service shall, within 3 months after the date on which the Personal Insolvency Arrangement would, but for that fact, have expired, remove from the Register of Personal Insolvency Arrangements all information recorded in it in respect of the Personal Insolvency Arrangement.**]**

Annotations

Amendments:

F123 Inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 91, S.I. No. 286 of 2013.

Successful completion of Personal Insolvency Arrangement.

125.— (1) Upon the expiration of the Personal Insolvency Arrangement, and where the debtor concerned has complied with his or her obligations under the Personal Insolvency Arrangement, the personal insolvency practitioner shall notify the debtor, creditors and the Insolvency Service.

(2) Where the debtor has complied with his or her obligations under the Personal Insolvency Arrangement, subject to the provisions of *section 99(2)*, and *102(3)* and *(7)* the debtor stands discharged from the unsecured debts specified in the Personal Insolvency Arrangement.

(3) Where the debtor has complied with his or her obligations under the Personal Insolvency Arrangement, the debtor shall not stand discharged from the secured debts covered by the Arrangement except to the extent specified in the Personal Insolvency Arrangement.

F124**[**(4) Where the Insolvency Service receives the notice referred to in *subsection (1)*, it shall—

(*a*) record the successful completion of the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements, and

(*b*) within 3 months of such receipt, remove from the Register of Insolvency Arrangements all information recorded in it in respect of the Personal Insolvency Arrangement.**]**

Annotations

Amendments:

F124 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 92, S.I. No. 286 of 2013.

Chapter 5

Offences under Part 3

False representations and omissions.

126.— (1) A person on whose behalf an application to which this section applies is made is guilty of an offence if he or she, in respect of that application, knowingly or recklessly provides information which is false or misleading in a material respect.

(2) This section applies to an application—

(*a*) under *section 29* for a Debt Relief Notice,

(*b*) under *section 59* for a protective certificate, or

(*c*) under *section 93* for a protective certificate.

Breach of obligation under *Part 3*.

127.— (1) A person who is a specified debtor under *Chapter 1* is guilty of an offence if he or she—

(*a*) intentionally fails to comply with an obligation under *section 36*, or

(*b*) provides information to the Insolvency Service in connection with such an obligation, or otherwise in connection with the performance by the Insolvency Service of its functions under *Chapter 1*, knowing the information to be false or misleading in a material respect.

(2) A person who is party, as a debtor, to a Debt Settlement Arrangement under *Chapter 3* is guilty of an offence if he or she—

(*a*) intentionally fails to comply with an obligation under *section 81(3)* or *81(6)*, or

(*b*) provides information to the Insolvency Service in connection with such an obligation, or otherwise in connection with the performance by the Insolvency Service of its functions under *Chapter 3*, knowing the information to be false or misleading in a material respect.

(3) A person who is party, as a debtor, to a Personal Insolvency Arrangement under *Chapter 4* is guilty of an offence if he or she—

(*a*) intentionally fails to comply with an obligation under *section 118(3)* or *118(6)*, or

(*b*) provides information to the Insolvency Service in connection with such an obligation, or otherwise in connection with the performance by the Insolvency Service of its functions under *Chapter 4*, knowing the information to be false or misleading in a material respect.

Concealment or falsification of documents.

128.— (1) A person to whom this section applies is guilty of an offence where he or she commits an act referred to in *subsection (2)* for the purpose of—

(*a*) obtaining an insolvency arrangement,

(*b*) avoiding an obligation under *section 36*,

(*c*) obtaining a protective certificate under *Chapter 3* or *4* of this Part,

(*d*) avoiding an obligation under a Debt Settlement Arrangement or Personal Insolvency Arrangement,

(*e*) avoiding the variation or termination of an insolvency arrangement, or

(*f*) avoiding any other obligation under this Act.

(2) A person commits an act referred to in this subsection where he or she—

(*a*) fails to provide, at the request of the Insolvency Service, all of the financial records of which he or she has possession or control,

(*b*) prevents the production to the Insolvency Service of a financial record,

(*c*) conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, a financial record,

(*d*) makes, or causes or permits the making of, any false entries in a financial record, or

(*e*) disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, a financial record.

(3) This section applies to a person—

(*a*) on whose behalf an application under *section 29*, *59* or *93* is made,

(*b*) who is a specified debtor under *Chapter 1*,

(*c*) who is party, as a debtor, to a Debt Settlement Arrangement which is in effect, or

(*d*) who is party, as a debtor, to a Personal Insolvency Arrangement which is in effect.

(4) In this section "financial record", in relation to a person to whom this section applies, means a book, document or record relating to that person's financial affairs.

Fraudulent disposal of property.

129.— (1) A person to whom this section applies is guilty of an offence where he or she commits an act referred to in *subsection (2)* for the purpose of—

(*a*) obtaining an insolvency arrangement,

(*b*) avoiding an obligation under *section 36*,

(*c*) obtaining a protective certificate under *Chapter 3* or *4* of *Part 3*,

(*d*) avoiding an obligation under a Debt Settlement Arrangement or Personal Insolvency Arrangement,

(*e*) avoiding the variation or termination of an insolvency arrangement, or

(*f*) avoiding any other obligation under this Act.

(2) Subject to *subsection (3)*, a person commits an act referred to in this subsection where he or she—

(*a*) makes or causes to be made a gift of any of his or her property to another person,

(*b*) otherwise makes or causes to be made any transfer of any of his or her property, on terms that provide for him or her to receive no consideration, to another person, or

(*c*) enters into a transaction with another person involving the transfer of any of his or her property to that other person or to a third person (whether or not the third person is a party to the transaction), where the value of the property concerned, in money or money's worth, is significantly greater than the value, in money or money's worth, of the consideration provided by the other person.

(3) *Subsection (2)* does not apply to property of a value of less than €400.

(4) This section applies to a person—

(*a*) on whose behalf an application under *section 29*, *59* or *93* is made,

(*b*) who is a specified debtor under *Chapter 1*,

(*c*) who is party, as a debtor, to a Debt Settlement Arrangement which is in effect, or

(*d*) who is party, as a debtor, to a Personal Insolvency Arrangement which is in effect.

Obtaining credit or engaging in business by a debtor while insolvency arrangement is in effect.

130.— (1) A specified debtor is guilty of an offence if he or she, either alone or with any other person, obtains credit in an amount of more than €650 without informing the person from whom the credit is obtained of—

(*a*) his or her name, as specified in the Debt Relief Notice, Debt Settlement Arrangement or Personal Insolvency Arrangement concerned, and

(*b*) the fact that he or she is a specified debtor.

(2) In this section, "specified debtor" means a person who is—

(*a*) a specified debtor under *Chapter 1*, for so long as the Debt Relief Notice remains in effect,

(*b*) party, as a debtor, to a Debt Settlement Arrangement under *Chapter 3*, for so long as the Debt Settlement Arrangement remains in effect, or

(*c*) party, as a debtor, to a Personal Insolvency Arrangement under *Chapter 4*, for so long as the Personal Insolvency Arrangement remains in effect.

(3) The reference in *subsection (1)* to a specified debtor obtaining credit includes the following cases—

(*a*) where goods are bailed to him or her under a hire-purchase agreement, or agreed to be sold to him or her under a conditional sale agreement, and

(*b*) where he or she is paid in advance (in money or otherwise) for the supply of goods or services.

Unauthorised person acting as approved intermediary.

131.— (1) A person shall not—

(*a*) act as an approved intermediary,

(*b*) hold himself or herself out as available to act as an approved intermediary, or

(*c*) represent himself or herself by advertisement as available to act as an approved intermediary,

unless that person is authorised to so act by virtue of this Act.

(2) A person who acts in contravention of *subsection (1)* is guilty of an offence.

Prosecution of offences.

132.— (1) Proceedings for an offence under this Act may be prosecuted summarily by the Insolvency Service.

(2) A person convicted of an offence under this Act shall be liable—

(*a*) on summary conviction, to a Class A fine or to a period of imprisonment not exceeding 12 months or to both, or

(*b*) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years or to both.

Chapter 6

Miscellaneous

Register of Insolvency Arrangements.

133.— (1) The Insolvency Service shall establish and maintain the following Registers—

(*a*) a Register to be known as the Register of Debt Relief Notices,

(*b*) a Register to be known as the Register of Protective Certificates,

(*c*) a Register to be known as the Register of Debt Settlement Arrangements, and

(*d*) a Register to be known as the Register of Personal Insolvency Arrangements,

and, in this section, "Register" means a Register established under this subsection.

(2) A Register shall be in electronic form and such other form (if any) as the Insolvency Service decides.

(3) A Register shall contain—

(*a*) such information as is required under this Part to be recorded in it, and

(*b*) such other information as may be prescribed.

(4) Members of the public may inspect a Register at all reasonable times and may take copies of, or extracts from, entries in the Register at a cost not exceeding the reasonable cost of making a copy.

(5) In any proceedings, a certificate bearing the seal of the Insolvency Service and stating that—

(*a*) a person named in the certificate is recorded in a Register as a debtor in respect of whom an insolvency arrangement or a protective certificate is in effect,

(*b*) a person named in the certificate is not recorded in a Register as a debtor in respect of whom an insolvency arrangement or a protective certificate is in effect,

(*c*) at a specified date or during a specified period, a person named in the certificate was recorded in a Register as a debtor in respect of whom an insolvency arrangement or a protective certificate is in effect, or

(*d*) at a specified date or during a specified period, a person named in the certificate was not recorded in a Register as a debtor in respect of whom an insolvency arrangement or a protective certificate is in effect,

is evidence of the matter referred to in *paragraph (a)*, *(b)*, *(c)* or *(d)* (as the case may be).

(6) A document purporting to be a certificate under *subsection (5)* is deemed to be such a certificate, unless the contrary is shown.

Annotations

Editorial Notes:

E69 Additional information to be recorded in the Register of Debt Relief Notices, Register of Protective Certificates, Register of Debt Settlement Arrangements and Register of Personal Insolvency Arrangements prescribed for purposes of subs. (3)(b) (16.09.2013) by *Personal Insolvency Act 2012 (Additional Information to be contained in the Registers) Regulations 2013* (S.I. No. 356 of 2013).

Giving of notices.

134.— (1) If, under this Part, a notice is required or permitted to be given to a person, then unless an alternative (including any electronic alternative) is agreed in advance between the person giving and the person receiving the notice or the appropriate court otherwise directs or permits, it may be given—

(*a*) where a person is a natural person—

(i) by giving it to the person personally, or

(ii) by sending it by prepaid post, or otherwise delivering it, in a letter addressed to the person at the person's usual or last known place of residence or business,

or

(*b*) where the person is a body corporate—

(i) by delivering it to a person who is or apparently is concerned in the management of the body, or

(ii) by leaving it at the registered office of the body, or

(iii) by sending it by prepaid post in a letter addressed to the body at that registered office.

(2) In *subsection (1)(b)*, ''registered office'' in relation to a body corporate means—

(*a*) the office of the body that is the registered office or principal office in accordance with the law under which the body is incorporated,

(*b*) if the body is not incorporated in the State, an office registered under a law of the State as a registered office of the body, or

(*c*) in the case of a body that has no such registered office or principal office, the principal place of business of the body corporate in the State.

Set-off to be applied.

135.— (1) In this Part, in determining the amount or value of any asset of the debtor or the amount of any debt due to a creditor, where there are mutual credits or debts as between a debtor and a creditor, one debt or demand shall be set off against the other and only the balance found owing shall be considered to be a debt or an asset on one side or the other.

(2) Notwithstanding any provision of the Credit Union Act 1997, savings (within the meaning of that Act) of a debtor in a credit union shall be subject to set off in accordance with *subsection (1)* against a debt owed by the debtor to the credit union.

Prescribed Financial Statement.

136.— F125**[**(1) The Insolvency Service, with the consent of the Minister, may by regulations prescribe a form (in this Act referred to as a "Prescribed Financial Statement") to be used by persons where required under this Part to complete a Prescribed Financial Statement, which form shall provide for the provision of detailed information relating to the income, assets, liabilities and necessary household expenditure incurred by such persons.**]**

(2) In making regulations under this section the Insolvency Service may—

(*a*) prescribe different forms for different circumstances,

(*b*) prescribe descriptions of income, assets, liabilities and expenditure in respect of which information is to be provided in the completion of a prescribed form including the income, assets and liabilities of persons ordinarily residing with the debtor insofar as that information is reasonably available to the debtor,

(*c*) provide that personal data and information relating to domestic support orders and sensitive information relating to the health of the debtor and persons residing with the debtor need not be individually particularised in such form where those particulars have been furnished to the approved intermediary or personal insolvency practitioner concerned and to the Insolvency Service.

(3) A Prescribed Financial Statement made under this Act shall be verified by means of a statutory declaration made under the Statutory Declarations Act 1938.

Annotations

Amendments:

F125 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 93, S.I. No. 286 of 2013.

F126 Substituted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 15, not commenced as of date of revision.

Modifications (not altering text):

C11 Prospective affecting provision: subs. (3) substituted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 15, not commenced as of date of revision.

F126**[**(3) A Prescribed Financial Statement made under this Act shall be verified by means of—

(*a*) a statutory declaration made under the Statutory Declarations Act 1938, or

(*b*) a confirmation of truth.**]**

C12 Reference to personal data construed (25.05.2018) by *Data Protection Act 2018* (7/2018), ss. 165, S.I. No. 17 of 2018.

Reference to personal data in enactment

165. Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

(*a*) the Data Protection Regulation, and

(*b*) Part 5.

Editorial Notes:

E70 Power pursuant to section exercised (10.05.2022) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) (Amendment) Regulations 2022* (S.I. No. 228 of 2022).

E71 Power pursuant to section exercised (13.06.2014) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014* (S.I. No. 259 of 2014).

E72 Previous affecting provision: power pursuant to section exercised (28.08.2013) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2013* (S.I. No. 326 of 2013); revoked (13.06.2014) by *Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014* (S.I. No. 259 of 2014), reg. 5.

Guidelines and codes of practice.

137.— (1) The Insolvency Service may prepare and publish guidelines for personal insolvency practitioners in relation to the duties of personal insolvency practitioners under this Part (which may include a model form of a Debt Settlement Arrangement or Personal Insolvency Arrangement).

(2) A personal insolvency practitioner shall have regard to any guidelines published under *subsection (1)* in carrying out his or her duties under this Part.

Application of laws in relation to netting agreements, etc.

138.— (1) Nothing in this Act—

(*a*) affects the operation of—

(i) the Netting of Financial Contracts Act 1995,

(ii) the European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010), or

(iii) the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010),

in relation to an agreement to which a debtor is a party, or

(*b*) affects the operation of any provision of the law of a Member State required for the implementation of the provisions of—

(i) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009), or

(ii) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009).

(2) Nothing in this Act affects the operation of the Asset Covered Securities Act 2001.

Debts in currency other than currency of the State.

139.— (1) For the purposes of *Chapter 1* , where the amount of a debt owed to a creditor is owed in a currency other than the currency of the State, the amount of the debt shall be converted into the currency of the State at the rate published by the Central Bank of Ireland or the European Central Bank on the application date within the meaning of *section 25*.

(2) For the purposes of *Chapter 3* and *4*, where the amount of a debt owed to a creditor is owed in a currency other than the currency of the State, the amount of the debt shall be converted into the currency of the State at the rate published by the Central Bank of Ireland or the European Central Bank on the date of the issue of the protective certificate under the Chapter concerned.

Transmission of documents by electronic means.

140.— (1) Notwithstanding any other provision of this Act, or any other enactment or rule of law, rules of court may, in relation to any proceedings under this Act before an appropriate court, make provision for—

(*a*) the lodgement or filing of a document with, and making of an application to, the court by transmitting the document or application by electronic means to the court office,

(*b*) the issue by the court or court office, by transmitting the document concerned by electronic means to an appropriate person, of any of the following:

(i) a summons, civil bill or other originating document,

(ii) a judgment, decree or other order or determination of a court (including any judgment, decree or other order or determination entered in or issuing from a court office), or

(iii) any other document required under this Act to be issued by or on behalf of the court or court office concerned,

or

(*c*) the transmission by the court or court office by electronic means of any other document or information required under this Act to be transmitted by or on behalf of a court or court office.

(2) Where rules of court referred to in *subsection (1)* provide for the transmission of a document by electronic means, such rules may, in addition:

(*a*) provide that such transmission is subject to such conditions and such exceptions as may be specified in the rules,

(*b*) in relation to the transmission of a document referred to in *subsection (1)(a)*, require that—

(i) such a document be authenticated, and

(ii) the identity of the person transmitting such a document be verified,

in such manner as may be specified in the rules, and

(*c*) specify, in relation to the transmission of such a document by, or to, the Insolvency Service, whether such transmission is in place of, or is an alternative to, any other method by which such document could be filed, lodged, issued or transmitted, or such application could be made, as the case may be.

(3) Rules of court may provide that, where a document that is required by this Act to be furnished to, or lodged or filed with, the appropriate court, is, in accordance with rules of court referred to in *subsection (1)*, furnished to, or lodged or filed with, that court by electronic means—

(*a*) a copy of that document transmitted by electronic means and displayed in readable form, or

(*b*) a printed version of such a copy,

shall be treated as the original of that document.

(4) Rules of court made in accordance with this section may make different provision for the transmission of documents by, and to, the Insolvency Service to the provision made for the transmission of documents by, and to, other persons.

(5) References in this Act to the—

(*a*) furnishing of a document to,

(*b*) lodgement or filing of a document with,

(*c*) making of an application to,

(*d*) transmission of a document to or by, or

(*e*) issue of a document by,

the appropriate court shall be construed as including a reference to the performance of such action by electronic means, where this is provided for in rules of court referred to in *subsection (1)*.

(6) In this section—

"appropriate person", in relation to a document referred to in *subsection (1)(b)*, means—

(*a*) the Insolvency Service, where it applied to the appropriate court for the issue of that document,

(*b*) the person who applied to the appropriate court for the issue of that document,

(*c*) where applicable, the approved intermediary or personal insolvency practitioner of a person referred to in *paragraph (b)*, or

(*d*) where applicable, a solicitor acting on behalf of an approved intermediary or personal insolvency practitioner referred to in *paragraph (c)*;

"court office" means—

(*a*) in relation to an appropriate court, an office of, or attached to, that court and, where the appropriate court is the Circuit Court, means an office referred to in *section 5(3)*, or

(*b*) any office of the Courts Service designated by the Courts Service for the purpose of receiving documents or applications, or issuing documents, by electronic means for the purposes of this Act.

F127[Confirmation of truth. **140A.**— …]

Annotations:

Amendments:

F127 Inserted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 16, not commenced as of date of revision.

Modifications (not altering text):

C13 Prospective affecting provision: section inserted by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 16, not commenced as of date of revision.

F127[**140A.** (1) A reference in this Act to a confirmation of truth is a reference to a confirmation of truth made in accordance with this section.

(2) A confirmation of truth—

(*a*) may be made and transmitted by electronic means,

(*b*) shall contain a confirmation that the person making the confirmation of truth has an honest belief that the Prescribed Financial Statement to which the confirmation relates is a complete and accurate statement of the person's assets, liabilities, income and expenditure,

(*c*) may be signed by the person making it by the person entering his or her name in an electronic format or otherwise electronically as may be prescribed, and

(*d*) shall comply with any other requirements as to its content, verification, authentication or form as may be prescribed.

(3) Without prejudice to the law as to contempt of court, a person who makes, or causes to be made, a confirmation in a confirmation of truth without an honest belief as to the truth of that confirmation shall be guilty of an offence and shall be liable—

(*a*) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 5 years, or both.

(4) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall, by regulations—

(*a*) prescribe the form of a confirmation of truth, and

(*b*) provide for the matters referred to in *subsection (2)(c)* and *(d)*.]

Editorial Notes:

E73 The section title is taken from the amending section in absence of one included in the amendment.

Review of operation of *Part 3*.

141.— (1) The Minister shall, in consultation with the Minister for Finance, not later than 3 years after the commencement of this Part, commence a review of its operation.

(2) A review under *subsection (1)* shall be completed not later than one year after its commencement.

(3) Having completed the review the Minister in consultation with the Minister for Finance shall prepare a report setting out the assessment arrived at and the reasons for that assessment.

(4) The Minister shall lay a copy of a report prepared under *subsection (3)* before each House of the Oireachtas as soon as reasonably practicable after it has been completed.

PART 4

Bankruptcy

Amendment of section 3 of Bankruptcy Act 1988.

142.— Section 3 of the Bankruptcy Act 1988 is amended by the insertion of the following definitions—

" 'Debt Settlement Arrangement' has the same meaning as in the Personal Insolvency Act 2012;

'Personal Insolvency Arrangement' has the same meaning as it has in the Personal Insolvency Act 2012;

'statement of affairs' means a statement of the debtor's or bankrupt's affairs in the form specified in rules of court;

'trustee' means a person appointed as trustee under Part V;".

Amendment of section 7 of Bankruptcy Act 1988.

143.— Section 7 of the Bankruptcy Act 1988 is amended in subsection (1) by the insertion after paragraph (*c*) of the following paragraphs:

"(*ca*) the individual has been subject as a debtor to a Debt Settlement Arrangement which has been terminated under *section 83* of the *Personal Insolvency Act 2012*;

(*cb*) the individual has been subject as a debtor to a Debt Settlement Arrangement which under *section 84* of the *Personal Insolvency Act 2012* is deemed to have failed;

(*cc*) the individual has been subject as a debtor to a Personal Insolvency Arrangement which has been terminated under *section 122* of the *Personal Insolvency Act 2012*;

(*cd*) the individual has been subject as a debtor to a Personal Insolvency Arrangement which under *section 123* of the *Personal Insolvency Act 2012* is deemed to have failed;".

Amendment of section 8 of Bankruptcy Act 1988.

144.— Section 8 of the Bankruptcy Act 1988 is amended—

(*a*) by the substitution of the following for subsection (1):

"(1) A summons (in this Act referred to as a 'bankruptcy summons') may be granted by the court to a person (in this section referred to as 'the creditor') who proves that—

(*a*) a debt of more than €20,000 is due to the creditor concerned by the person against whom the summons is sought,

(*b*) the debt is a liquidated sum, and

(*c*) the creditor concerned has given not less than 14 days' notice to the debtor of the creditor's intention to apply for a bankruptcy summons and the debt remains unpaid.",

and

(*b*) in subsection (2) by the substitution of "more than €20,000" for "€1,300 or more".

Amendment of section 11 of Bankruptcy Act 1988.

145.— Section 11 of the Bankruptcy Act 1988 is amended—

(*a*) in paragraph (*a*) of subsection (1) by the substitution of "amounts to more than €20,000" for "amounts to €1,900 or more", and

(*b*) by the substitution of the following for subsection (3):

"(3) Subject to subsections (4) and (5) a debtor may petition for adjudication against himself.

(4) A debtor may not present a petition for adjudication unless the petition is accompanied by an affidavit sworn by the debtor that he has, prior to presenting the petition, made reasonable efforts to reach an appropriate arrangement with his creditors relating to his debts by making a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement to the extent that the circumstances of the debtor would permit him to enter into such an arrangement.

(5) A debtor may not present a petition for adjudication unless the petition is accompanied by a statement of affairs and such statement of affairs discloses that the debts of the debtor exceed the assets of the debtor by any amount greater than €20,000.".

Amendment of section 12 of Bankruptcy Act 1988.

146.— The Bankruptcy Act 1988 is amended by the substitution of the following for section 12:

"Petitioning creditor's costs.

12.— (1) The petitioning creditor shall at his own cost present his petition and prosecute it until the statutory sitting referred to in section 17(3), and subject to subsection (2) the Court shall at or after the sitting make an order for the payment of such costs out of the estate of the bankrupt in course of priority to be settled by rules of court.

(2) In considering whether it is appropriate to make an order under subsection (1) the Court shall have regard to whether or not the petitioning creditor had unreasonably refused to accept proposals made in connection with a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement pursuant to the *Personal Insolvency Act 2012*.".

Amendment of section 14 of Bankruptcy Act 1988.

147.— The Bankruptcy Act 1988 is amended by the substitution of the following for section 14:

"Adjudication: creditor's petition.

14.— (1) Subject to subsection (2), where the petition is presented by a creditor, the Court shall, if satisfied that the requirements of section 11(1) have been complied with, by order adjudicate the debtor bankrupt.

(2) Before making an order under subsection (1), the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of any statement of affairs of the debtor filed with the Court, be more appropriately dealt with by means of—

(*a*) a Debt Settlement Arrangement, or

(*b*) a Personal Insolvency Arrangement,

and where the Court forms such an opinion the Court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing.

(3) A copy of the order shall be served on the debtor, either personally or by leaving it at his residence or place of business in the State.

(4) For the purposes of subsection (2), the Court may order the bankrupt to attend and make full disclosure of his assets and liabilities to the Court by way of a statement of affairs filed with the Court.".

Amendment of section 15 of Bankruptcy Act 1988.

148.— The Bankruptcy Act 1988 is amended by the substitution of the following for section 15:

"Adjudication on debtor's petition.

15.— (1) Subject to subsection (2), where the petition for adjudication is presented by the debtor the Court may, where it considers it appropriate to do so, and where it is satisfied that the debtor is unable to meet his engagements with his creditors and that the requirements of section 11(4) and (5) have been complied with, by order adjudicate the debtor a bankrupt.

(2) Before making an order under subsection (1), the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of the debtor's statement

of affairs filed with the Court, be more appropriately dealt with by means of—

(*a*) a Debt Settlement Arrangement, or

(*b*) a Personal Insolvency Arrangement,

and where the Court forms such an opinion the court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing.".

Amendment of section 39 of Bankruptcy Act 1988.

149.— Section 39 of the Bankruptcy Act 1988 is amended—

(*a*) by the substitution of the following for subsection (1):

"(1) Where a stay on the realisation of the estate of the bankrupt has been granted under section 38 or where the Official Assignee has otherwise consented in writing to suspend the realisation of the bankrupt's estate on such terms as he may specify in such consent, the bankrupt shall call a meeting of his creditors before the Court for the purpose of making an offer of composition to them.",

and

(*b*) by the substitution of the following for subsection (4):

"(4) A creditor whose debt is less than €500 shall not be entitled to vote.".

Insertion into Bankruptcy Act 1988 of new sections 44A and 44B.

150.— The Bankruptcy Act 1988 is amended by the insertion, after section 44, of the following sections:

"Pensions in Bankruptcy.

44A.— (1) Subject to subsection (2), where a person is adjudicated bankrupt, and he or she is, or may become entitled to, payments under a relevant pension arrangement, assets relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt was entitled to receive, under the arrangement) shall not vest in the Official Assignee for the benefit of the creditors of the bankrupt.

(2) Where a bankrupt has an interest in or entitlement under a relevant pension arrangement which would, if the bankrupt performed an act or exercised an option, cause that debtor to receive from or at the request of the person administering that relevant pension arrangement—

(*a*) an income, or

(*b*) an amount of money other than income,

in accordance with the relevant provisions of the Taxes Consolidation Act 1997, that bankrupt shall be considered as being in receipt of such income, and such amount of money shall vest in the Official Assignee or the trustee in bankruptcy.

(3) Subsection (2) applies where—

(*a*) the bankrupt is entitled at the date of being adjudicated a bankrupt to perform the act or exercise the option referred to in subsection (2),

(*b*) was entitled at any time before the date of the adjudication, to perform the act or exercise the option referred to in subsection (2), but had not performed the act or exercised the option, or

(*c*) will become entitled within 5 years of the date of the adjudication to perform the act or exercise the option referred to in subsection (2).

(4) Where subsection (2) applies, the Official Assignee or the trustee in bankruptcy may where he or she considers that it would be beneficial to the creditors of the bankrupt to do so, perform an act or exercise an option referred to in subsection (2) in place of the bankrupt.

(5) In this section and in sections 44B and 85D a reference to a relevant pension arrangement means:

(*a*) a retirement benefits scheme, within the meaning of section 771 of the Taxes Consolidation Act 1997, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 of that Act;

(*b*) an annuity contract or a trust scheme or part of a trust scheme for the time being approved by the Revenue Commissioners under section 784 of the Taxes Consolidation Act 1997;

(*c*) a PRSA contract, within the meaning of section 787A of the Taxes Consolidation Act 1997, in respect of a PRSA product, within the meaning of that section;

(*d*) a qualifying overseas pension plan within the meaning of section 787M of the Taxes Consolidation Act 1997;

(*e*) a public service pension scheme within the meaning of section 1 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004;

(*f*) a statutory scheme, within the meaning of section 770(1) of the Taxes Consolidation Act 1997, other than a public service pension scheme referred to in paragraph (*e*);

(*g*) such other pension arrangement as may be prescribed by the Minister, following consultation with the Ministers for Finance, Social Protection and Public Expenditure and Reform.

Excessive pension contributions by bankrupt.

44B.— (1) Where, on application by the Official Assignee or the trustee in bankruptcy, the Court is satisfied that the bankrupt, or a person on his or her behalf, has within the 3 years prior to the adjudication made contributions to a relevant pension arrangement under which the bankrupt is, or may become entitled to, payments and which contributions—

(*a*) were excessive in view of the bankrupt's financial circumstances when those contributions were made, and

(*b*) had the effect of—

(i) materially contributing to the bankrupt's inability to pay his or her debts, or

(ii) substantially reducing the sum available for distribution to the creditors,

the Court may make such order in relation to the relevant pension arrangement as it considers appropriate for the purpose of ensuring that the contributions which the Court considers to be excessive or any part of such contributions can be vested in the Official Assignee or the trustee in bankruptcy to be made available for distribution to the creditors.

(2) In considering an application under subsection (1) and in determining whether or not the contributions made by the bankrupt to a relevant pension arrangement were excessive the Court may have regard to all the financial circumstances of the bankrupt and in particular:

(*a*) whether the bankrupt made payments to his or her creditors in respect of debts due to those creditors on a timely basis at or about the time when the bankrupt made the contribution concerned;

(*b*) whether the bankrupt was obliged to make contributions of the amount or percentage of income as the payments actually made under his or her terms and conditions of employment and if so obliged, whether the bankrupt or a person who as respects the bankrupt is a relative could have materially influenced the creation of such obligation;

(*c*) the amount of the contributions paid, including the percentage of total income of the bankrupt in each tax year concerned which such contributions represent;

(*d*) the amount of the contributions paid, in each of the 6 years prior to the making of the adjudication including the percentage of total income of the bankrupt which such contributions represent in each of those years;

(*e*) the age of the bankrupt at the relevant times;

(*f*) the percentage limits which applied to the bankrupt in relation to relief from income tax for the purposes of making contributions to a relevant pension arrangement in each of the 6 years prior to the adjudication; and

(*g*) the extent of provision made by the bankrupt in relation to any relevant pension arrangement prior to the making of the contributions concerned.

(3) In this section "relative" as respects a person, means a brother, sister, parent, spouse or civil partner of the person or a child of the person or of the spouse or civil partner.".

Amendment of section 45 of Bankruptcy Act 1988.

151.— Section 45 of the Bankruptcy Act 1988 is amended in subsection (1) by the substitution of "€6,000" for "€3,100".

Amendment of section 57 of Bankruptcy Act 1988.

152.— Section 57 of the Bankruptcy Act 1988 is amended in subsection (1) by the substitution of "3 years" for "1 year".

Amendment of section 58 of Bankruptcy Act 1988.

153.— Section 58 of the Bankruptcy Act 1988 is amended in subsection (1) by the substitution of "3 years" for "1 year".

Amendment of section 59 of Bankruptcy Act 1988.

154.— Section 59 of the Bankruptcy Act 1988 is amended—

(*a*) in paragraph (*a*) of subsection (1) by the substitution of "3 years" for "two years", and

(*b*) in paragraph (*a*) of subsection (3) by the substitution of "3 years" for "two years".

Insertion into Bankruptcy Act 1988 of new section 65A.

155.— The Bankruptcy Act 1988 is amended by the insertion, after section 65, of the following new section:

"Cesser of section 65.

65A.— An application for an order under section 65 shall not be made after the coming into operation of this section, but this section shall not operate to

prevent an application under section 65(2) where an order under section 65(1) is in force on the coming into operation of this section.".

Amendment of section 81 of Bankruptcy Act 1988.

156.— Section 81 of the Bankruptcy Act 1988 is amended in paragraph (*a*) of subsection (1) by the substitution of "31st December" for "5th day of April".

Amendment of section 85 of Bankruptcy Act 1988.

157.— Section 85 of the Bankruptcy Act 1988 is amended by the substitution of the following for section 85:

"Automatic discharge from bankruptcy.

85.— (1) Subject to subsection (2) and section 85A every bankruptcy shall, on the 3rd anniversary of the date of the making of the adjudication order in respect of that bankruptcy, unless prior to that date the bankruptcy has been discharged or annulled, stand discharged.

(2) Subject to section 85A, a bankruptcy subsisting on the coming into operation of *section 157* of the *Personal Insolvency Act 2012* where the order of adjudication was made more than 3 years prior to the coming into operation of that section, shall stand discharged 6 months after that day unless the bankruptcy has otherwise been discharged or annulled.

(3) Where a bankruptcy is discharged in pursuance of this section the unrealised property of the bankrupt shall remain vested in the Official Assignee for the benefit of the creditors.

(4) A bankrupt who is discharged from bankruptcy in pursuance of this section shall have a duty to co-operate with the Official Assignee in relation to the realisation and distribution of such of his property as is vested in the Official Assignee.

(5) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy.

(6) In this section and in sections 85A to 85D 'bankrupt' includes personal representatives and assigns.

Objection to automatic discharge from bankruptcy.

85A.— (1) The Official Assignee, the trustee in bankruptcy or a creditor of the bankrupt may, prior to the discharge of a bankrupt pursuant to section 85, apply to the Court to object to the discharge of a bankrupt from bankruptcy in accordance with section 85 where the Official Assignee, the trustee in bankruptcy or the creditor concerned believes that the bankrupt has—

(*a*) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or

(*b*) hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of the creditors of the bankrupt.

(2) An application under subsection (1) shall be made on notice to the bankrupt and where made by the trustee in bankruptcy or a creditor, notice shall also be given to the Official Assignee.

(3) Where it appears to the Court that the making of an order pursuant to subsection (4) may be justified, the Court may make an order that the matters complained of by the applicant under subsection (1) be further investigated and pending the making of a determination of the application the bankruptcy shall not stand discharged by virtue of section 85.

(4) Where the court is satisfied that the bankrupt has—

(*a*) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or

(*b*) hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of the creditors of the bankrupt,

the Court may where it considers it appropriate to do so, order that in place of the discharge provided for in section 85 the bankruptcy shall stand discharged on such later date, being not later than the 8th anniversary of the date of the making of the adjudication order, as the Court considers appropriate.

(5) Where the Court has made an order under subsection (4), no further application may be made under subsection (1).

(6) The making of an order under this section shall not prevent an application being made for discharge or annulment under section 85B.

Entitlement to discharge from bankruptcy.

85B.— (1) A bankrupt shall be entitled to an order discharging him from bankruptcy where provision has been made for the payment of the expenses, fees and costs of the bankruptcy, and for preferential payments, and—

(*a*) he has paid one euro in the euro, with such interest as the Court may allow, or

(*b*) he has obtained the consent in writing of all of his creditors, whose debts have been proved and admitted in the bankruptcy, or

(*c*) section 41 (discharge of adjudication order) applies.

(2) The giving of consent by a creditor under subsection (1) constitutes a waiver by that creditor of the right to recover the amount concerned proved and admitted in the bankruptcy.

(3) A person whose bankruptcy has been discharged by virtue of this section may apply to the Official Assignee for the issue of a certificate of discharge from bankruptcy.

Annulment of adjudication in bankruptcy.

85C.— (1) A person shall be entitled to an annulment of his adjudication—

(*a*) where he has shown cause pursuant to section 16, or

(*b*) in any other case where, in the opinion of the Court, he ought not to have been adjudicated bankrupt.

(2) An order of annulment shall provide that any property of the bankrupt then vested in the Official Assignee shall be revested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly.

(3) A person whose bankruptcy has been annulled may apply to the Official Assignee for the issue of a certificate that the bankruptcy has been annulled.

Bankruptcy payment orders.

85D.— (1) The Court may, on application being made to it by the Official Assignee or the trustee in bankruptcy, make an order requiring a bankrupt to make payments to the Official Assignee or the trustee in bankruptcy from his income or other assets for the benefit of his creditors (a 'bankruptcy payment order').

(2) An application for a bankruptcy payment order may not be made after the bankrupt has been discharged from bankruptcy, but where an application for such an order is made before the discharge of the bankrupt, the Court may make a bankruptcy payment order after the date of discharge as if the bankrupt had not been so discharged.

(3) An order made under subsection (1) shall have effect for no longer than 5 years from the date of the order coming into operation, and where, during the order's validity, the court has varied the order under subsection (5) such variation shall not cause the order to have effect for a period of more than 5 years, and in any event, any order made under subsection (1) or varied under subsection (5) shall cease to have effect on the 8th anniversary of the date on which the bankrupt was adjudicated bankrupt.

(4) In making an order under subsection (1) the Court shall have regard to the reasonable living expenses of the bankrupt and his or her dependants and the Court may also have regard to any guidelines on reasonable living expenses issued by the Insolvency Service under the *Personal Insolvency Act 2012* or by the Official Assignee.

(5) The Court, on the application of the bankrupt or the Official Assignee or the trustee in bankruptcy, may vary a bankruptcy payment order granted under subsection (1) where there has been a material change in the circumstances of the bankrupt.

(6) The court in granting an application under subsection (1) may order any person from whom the bankrupt is entitled to receive any salary, income, emolument, pension or other payment to make payments to the Official Assignee or trustee.

(7) For the purposes of this section, where a bankrupt is, or may become entitled to, payments under a relevant pension arrangement, an asset relating to the arrangement (other than payments already received by the bankrupt, or that the bankrupt was entitled to receive, under the arrangement) shall not be regarded as an asset.".

Amendment of section 123 of Bankruptcy Act 1988.

158.— Section 123(3)(*b*) of the Bankruptcy Act 1988 is amended by the substitution of "3 years" for "twelve months".

PART 5

Regulation of Personal Insolvency Practitioners

Chapter 1

General Provisions

Interpretation (*Part 5*).

159.— In this Part—

"accounting records", in relation to a personal insolvency practitioner, mean the books of account and all other documents required to be kept by the personal insolvency practitioner in accordance with regulations made under *section 173*;

F128**[**"authorised officer" means a person appointed under *section 176B* to be an authorised officer;**]**

"complainant", in relation to a complaint, means the person who made the complaint;

"complaint" means a complaint under *section 178*;

F129**[**"improper conduct", in relation to a personal insolvency practitioner, means—

(*a*) the commission by the personal insolvency practitioner of an act which renders the personal insolvency practitioner no longer a fit and proper person to carry on practice as a personal insolvency practitioner,

(*b*) the commission by the personal insolvency practitioner of a material contravention of a provision of this Act or any regulations made thereunder, or

(*c*) failure by the personal insolvency practitioner to perform his or her functions under this Act in accordance with this Act and any regulations made thereunder.**]**

"inspector" means a person appointed under *section 176* to be an inspector;

"investigation" means an investigation under *section 180*;

"investigation report", in relation to an investigation, means a report in writing prepared, following the completion of the investigation, by the inspector appointed under *section 180(1)(b)* to carry out the investigation—

(*a*) stating that the inspector—

(i) is satisfied that improper conduct by the personal insolvency practitioner to whom the investigation relates has occurred or is occurring, or

(ii) is not so satisfied,

as appropriate,

(*b*) if *paragraph (a)(i)* is applicable, stating the grounds on which the inspector is so satisfied, and

(*c*) if *paragraph (a)(ii)* is applicable, stating—

(i) the basis on which the inspector is not so satisfied, and

(ii) the inspector's opinion, in view of such basis, on whether or not a further investigation of the personal insolvency practitioner is warranted and, if warranted, the inspector's opinion on the principal matters to which the further investigation should relate;

"maintain", in relation to a record, includes create and keep;

"major sanction", in relation to a personal insolvency practitioner, means—

(*a*) the revocation of his or her authorisation to carry on practice as a personal insolvency practitioner and a prohibition (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) against the former personal insolvency practitioner applying for a new authorisation,

(*b*) the suspension for a specified period of his or her authorisation to carry on practice as a personal insolvency practitioner or, in any case where the period of such suspension (in this paragraph referred to as "the relevant period") sought to be imposed is longer than the period of validity of the authorisation left to run, the suspension of the authorisation during that period and a prohibition for a specified period against the former personal insolvency practitioner applying for a new authorisation, which periods, added together, are equivalent to the relevant period,

(*c*) a direction to the personal insolvency practitioner that the personal insolvency practitioner pay a sum, as specified in the direction but not exceeding €30,000, to the Insolvency Service, being the whole or part of the cost to the Insolvency Service of an investigation of the personal insolvency practitioner, or

(*d*) any combination of any of the sanctions specified in *paragraphs (a)* to *(c)*;

"minor sanction", in relation to a personal insolvency practitioner, means—

(*a*) the issue, to the personal insolvency practitioner, of—

(i) advice,

(ii) a caution,

(iii) a warning, or

(iv) a reprimand,

or

(*b*) any combination of any of the sanctions specified in *paragraph (a)*;

"moneys received from debtors" means moneys received from a debtor or from third parties in respect of the debtor under a Debt Settlement Arrangement or a Personal Insolvency Arrangement;

"professional indemnity insurance" means a policy of indemnity insurance against losses arising from claims in respect of any description of civil liability incurred by a person arising from his or her carrying on practice as a personal insolvency practitioner;

"Register" means the Register of Personal Insolvency Practitioners established under *section 162*;

"satisfied" means satisfied on reasonable grounds;

"specified"—

(*a*) in relation to a period, means a period which is reasonable in the circumstances concerned,

(*b*) in relation to a time, date or place, means a time, date or place, as the case may be, which is reasonable in the circumstances concerned;

"terms" includes conditions.

Annotations

Amendments:

F128 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 23(a), S.I. No. 414 of 2015.

F129 Substituted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 23(b), S.I. No. 414 of 2015.

Unauthorised person acting as personal insolvency practitioner.

160.— (1) A person shall not—

(*a*) act as a personal insolvency practitioner,

(*b*) hold himself or herself out as available to act as a personal insolvency practitioner, or

(*c*) represent himself or herself by advertisement as available to act as a personal insolvency practitioner,

unless that person is authorised to so act by virtue of this Act.

(2) A person who acts in contravention of *subsection (1)* is guilty of an offence.

F130**[**Regulations that may be made by Insolvency Service regarding personal insolvency practitioners.

161.— (1) The Insolvency Service, with the consent of the Minister, may and, if directed by the Minister to do so and in accordance with the terms of the direction, shall, following consultation with the Minister for Finance and with any other person as the Insolvency Service deems appropriate or as the Minister directs, by regulations provide for any of the following, for the purposes of the authorisation, regulation and supervision of personal insolvency practitioners F131**[**(including in relation to the performance by them of functions or acts pursuant to *section 54A(2)*)**]** and the protection of debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements and the maintenance of public confidence in the operation of Debt Settlement Arrangements and Personal Insolvency Arrangements under this Act:

(*a*) the requirements applicable to—

(i) the authorisation of persons to carry on practice as personal insolvency practitioners;

(ii) the supervision and regulation of persons authorised to carry on practice as personal insolvency practitioners in the performance of their functions under this Act;

(iii) the dealings of a person authorised to carry on practice as a personal insolvency practitioner with the Insolvency Service; and

(iv) the cessation or transfer of practice by persons authorised to carry on practice as personal insolvency practitioners;

(*b*) the requirements to be met in the performance of their functions under this Act by personal insolvency practitioners including, without limiting the generality of the foregoing, in relation to:

(i) the public interest;

(ii) the duties owed to debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements;

(iii) the professional and ethical conduct of personal insolvency practitioners;

(iv) the maintenance of the confidentiality of the information of debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements;

(v) case management in respect of debtors by whom a personal insolvency practitioner is appointed; and

(vi) conflicts of interest;

(*c*) the qualifications (including levels of training, education, expertise and experience) or any other requirements (including required standards of competence, fitness and probity, and required minimum levels of professional indemnity insurance) for the authorisation of persons to carry on practice as personal insolvency practitioners;

(*d*) the terms on which indemnity against losses is to be available to personal insolvency practitioners under any policy of indemnity insurance and the circumstances in which the right to such indemnity is to be excluded or modified;

(*e*) the records to be maintained and the information and returns, including in electronic form, to be provided to the Insolvency Service by personal insolvency practitioners;

(*f*) the requirements to be met by a personal insolvency practitioner when handling complaints against that personal insolvency practitioner;

(*g*) the standards to be adhered to by personal insolvency practitioners in regard to advertising under this Act;

(*h*) the circumstances and purposes for which a personal insolvency practitioner may charge fees or costs or seek to recover outlay in respect of work done following engagement by a debtor at any time in performing his or her functions—

(i) under this Act,

(ii) under regulations made under this Act,

(iii) under rules of court,

and the requirements to be met by a personal insolvency practitioner when charging fees or costs or seeking to recover outlays, and

(i) any other matter relating to the authorisation, supervision or regulation of personal insolvency practitioners which is incidental to or is considered by the Insolvency Service to be necessary or expedient for the said purposes or all or any of the matters referred to in this subsection.

(2) The Insolvency Service may do anything which it considers necessary or expedient to monitor a personal insolvency practitioner's compliance with his or her obligations under this Act and regulations made under this Act.**]**

Annotations

Amendments:

F130 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 94, S.I. No. 286 of 2013.

F131 Inserted (25.06.2021) by *Personal Insolvency (Amendment) Act 2021* (10/2021), s. 17, S.I. No. 305 of 2021.

Editorial Notes:

E74 Power pursuant to section exercised (5.05.2016) by *Personal Insolvency Act 2012 (Renewal of Authorisation of Personal Insolvency Practitioners) Regulations 2016* (S.I. No. 226 of 2016).

E75 Power pursuant to section exercised (9.07.2014) by *Personal Insolvency Act 2012 (Regulatory Disclosure Statement of a Personal Insolvency Practitioner) Regulations 2014* (S.I. No. 319 of 2014).

E76 Regulations made for purposes of section (21.06.2013) by *Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013* (S.I. No. 209 of 2013).

Register of Personal Insolvency Practitioners.

162.— (1) The Insolvency Service shall establish and maintain a register to be known as the Register of Personal Insolvency Practitioners.

(2) The Register shall be in such form as the Insolvency Service deems appropriate and shall—

(*a*) contain the names of personal insolvency practitioners and such other identifying particulars as the Insolvency Service considers appropriate, and

(*b*) contain such other entries in respect of personal insolvency practitioners (including personal insolvency practitioners whose authorisation is suspended) as the Insolvency Service considers appropriate.

(3) The Insolvency Service shall make the Register available for inspection by members of the public on its website.

(4) A copy of an entry in the Register shall, on request, be issued by the Insolvency Service on payment of such fee (if any) as may be prescribed.

(5) In any legal proceedings, a certificate signed by the Director, or a member of the staff of the Insolvency Service authorised by the Director to give a certificate under this subsection, stating that a person—

(*a*) is registered in the Register,

(*b*) is not registered in the Register,

(*c*) was at a specified date or during a specified period registered in the Register,

(*d*) was not, at a specified date or during a specified period, registered in the Register or was suspended from the Register at that time, or

(*e*) has never been registered in the Register,

shall, without proof of the signature of the person purporting to sign the certificate or that the person was the Director or a member of the staff of the Insolvency Service so authorised, as the case may be, be evidence, unless the contrary is proved, of the matters stated in the certificate.

(6) The Insolvency Service shall ensure that the Register is accurate and, for that purpose, the Insolvency Service shall make any alteration requiring to be made in the information contained in an entry.

(7) The Insolvency Service shall, as soon as is practicable after doing anything under *subsection (6)*, give notice in writing of that fact to the personal insolvency practitioner to whom the alteration relates.

(8) A personal insolvency practitioner to whom an entry in the Register relates shall give notice in writing to the Insolvency Service of—

(*a*) any error that the person knows of in the entry, and

(*b*) any change in circumstances that is likely to have a bearing on the accuracy of the entry,

as soon as may be after the person becomes aware of that error or change in circumstances, as the case may be.

Application for authorisation to carry on practice as personal insolvency practitioner.

163.— (1) An individual may make an application in the prescribed form to the Insolvency Service for authorisation to carry on practice as a personal insolvency practitioner unless the individual is prohibited from making such an application by virtue of the imposition on the individual of a major sanction which falls within *paragraph (a)* or *(b)* of the definition of "major sanction" in *section 159* or where an order under *section 179(2)* is in force suspending that individual from carrying on practice as a personal insolvency practitioner.

(2) An application under *subsection (1)* shall be accompanied by—

(*a*) evidence of the applicant's competence (including any levels of education, training and experience specified by the Insolvency Service), and in particular that the applicant has a satisfactory knowledge of—

(i) the provisions of this Act, and

(ii) the law generally as it applies in the State relating to the insolvency of individuals and in particular statutory provisions relating to such persons,

(*b*) a report in the prescribed form by a duly qualified accountant that appropriate financial systems and controls are or will be in place for the protection of moneys received from debtors if the applicant is authorised to carry on practice as a personal insolvency practitioner,

(*c*) evidence in writing of the availability to the applicant of the required level of professional indemnity insurance if the applicant is authorised to carry on practice as a personal insolvency practitioner,

(*d*) such other documents as may be prescribed by the Insolvency Service in relation to applications for authorisation to carry on practice as a personal insolvency practitioner, and

(*e*) the prescribed fee.

(3) Without prejudice to *section 168*, the Insolvency Service may—

(*a*) require an applicant to provide in the prescribed form, or by statutory declaration, such additional information in respect of the applicant's character, competence and financial position, and it may make such inquiries and conduct such examinations in that regard, as it considers necessary,

(*b*) require the applicant to provide a certificate in the prescribed form by a member of the Garda Síochána not below the rank of superintendent containing such particulars in respect of the applicant as are requisite for the due performance of the Insolvency Service's functions in relation to the applicant.

Annotations

Editorial Notes:

E77 Regulations made for purposes of section (21.06.2013) by *Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013* (S.I. No. 209 of 2013).

Authorisation to carry on practice as personal insolvency practitioner or refusal to authorise.

164.— (1) Subject to *subsections (3)* and *(5)*, the Insolvency Service may authorise an individual to carry on practice as a personal insolvency practitioner and shall furnish to that individual the registration number assigned to such person for the purposes of the Register.

(2) When deciding whether to authorise an individual to carry on practice as a personal insolvency practitioner, the Insolvency Service shall take into account any information supplied to it under *sections 163* and *168*.

(3) Subject to *section 165*, the Insolvency Service shall refuse to authorise an individual to carry on practice as a personal insolvency practitioner if—

(*a*) *section 163* has not been complied with as respects the individual,

(*b*) the individual has not furnished sufficient evidence to show that there is available to him or her the required level of professional indemnity insurance,

(*c*) the individual—

(i) is under 18 years of age, or

(ii) is an undischarged bankrupt,

(*d*) the Insolvency Service is satisfied that the individual—

(i) is not a fit and proper person to carry on practice as a personal insolvency practitioner,

(ii) is not competent to carry on practice as a personal insolvency practitioner or does not meet the levels of education, training and experience specified by the Insolvency Service, or

(iii) does not comply with any requirement (not being a requirement referred to in any of *paragraphs (a)* to *(c)* of this subsection) of this Act or of regulations made under this Act applicable to the person.

F132**[**(4) An authorisation to carry on practice as a personal insolvency practitioner, unless sooner surrendered or revoked or otherwise ceasing to be in force, shall remain in force for a period to be determined by the Insolvency Service, but such period shall not exceed 5 years from the date on which the authorisation is issued.**]**

(5) An authorisation to carry on practice as a personal insolvency practitioner is personal to the personal insolvency practitioner concerned.

(6) An authorisation to carry on practice as a personal insolvency practitioner shall not authorise the person concerned to carry on any other form of financial advisory services subject to regulation by the Central Bank of Ireland.

Annotations

Amendments:

F132 Substituted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 95, S.I. No. 286 of 2013.

Notification to applicant of refusal to authorise, etc.

165.— (1) Where the Insolvency Service proposes to refuse to authorise a person to carry on practice as a personal insolvency practitioner, it shall give notice in writing to the person—

(*a*) of the proposal and the reasons for the proposal, and

(*b*) stating that the person may make representations in writing to the Insolvency Service on the proposal—

(i) subject to *subparagraph (ii)*, within 21 days from the date of the issue of that notice to the person,

(ii) within such longer period as the Insolvency Service deems appropriate in the circumstances of the case.

(2) Where the Insolvency Service has given a notice under *subsection (1)* to a person, it shall, as soon as is practicable after the expiration of the period referred to in *subsection (1)(b)(i)* or *(ii)*, as the case requires, and the consideration of any representations referred to in *subsection (1)(b)* made to it—

(*a*) issue to the person the authorisation that is the subject of the notice, or

(*b*) refuse to issue the authorisation that is the subject of the notice and give the person—

(i) notice in writing of the refusal and the reasons for the refusal, and

(ii) a copy of *section 169* if the ground, or one of the grounds, for the refusal falls within *section 164(3)(d)*.

Renewal of authorisation to carry on practice as a personal insolvency practitioner.

166.— (1) An authorisation to carry on practice as a personal insolvency practitioner, unless it has been revoked, may, subject to *subsection (4)*, be renewed by the Insolvency Service.

(2) An application for the renewal of an authorisation to carry on practice as a personal insolvency practitioner shall be—

(*a*) in the prescribed form,

(*b*) made at least 6 weeks before the expiration of the authorisation, and

(*c*) accompanied by—

(i) such documents as may be prescribed, and

(ii) the prescribed fee.

(3) Subject to *subsection (4)*, where an application under *subsection (2)* for the renewal of an authorisation is not determined by the Insolvency Service before the authorisation expires, and the application was made in accordance with *paragraph (b)* of that subsection, the authorisation shall continue in force until the application has been so determined.

(4) Subject to *section 167*, the Insolvency Service shall refuse to renew an authorisation to carry on practice as a personal insolvency practitioner if—

(*a*) *subsection (2)* has not been complied with in respect of the person,

(*b*) the application is not accompanied by a report in the prescribed form by a duly qualified accountant that appropriate financial systems and controls are still in place for the protection of moneys received from debtors by the applicant,

(*c*) the applicant does not satisfy the Insolvency Service that there is available to the person the required level of professional indemnity insurance in respect of the authorisation to carry on practice as a personal insolvency practitioner,

(*d*) in the case of an individual, the person is an undischarged bankrupt.

(5) Where an authorisation to carry on practice as a personal insolvency practitioner is renewed under this Act, the period of validity of the authorisation as so renewed shall be deemed to start to run on the day that the authorisation would have expired if no application under *subsection (2)* for its renewal had been made, and irrespective of whether the authorisation is renewed before, on or after that day.

Annotations

Editorial Notes:

E78 Fee prescribed for purposes of subs. (2)(c)(ii) (4.07.2013) by *Personal Insolvency Act 2012 (Personal Insolvency Practitioner Authorisation and Renewal of Authorisation Prescribed Fees) Regulations 2013* (S.I. No. 246 of 2013), reg. 2(2).

Notification to applicant of refusal to renew authorisation, etc.

167.— (1) Where the Insolvency Service proposes to refuse to renew an authorisation to carry on practice as a personal insolvency practitioner, it shall give a notice in writing to the person concerned—

(*a*) of the proposal and the reasons for the proposal, and

(*b*) stating that the person may make representations in writing to the Insolvency Service on the proposal—

(i) subject to *subparagraph (ii)*, within 21 days from the date of the issue of that notice to the person, or

(ii) within such longer period as the Insolvency Service deems appropriate in the circumstances of the case.

(2) Where the Insolvency Service has given a notice under *subsection (1)* to a person, it shall, as soon as is practicable after the expiration of the period referred to in s*ubsection (1)(b)(i)* or *(ii)*, as the case requires, and the consideration of any representations referred to in *subsection (1)(b)* made to it—

(*a*) issue to the person the renewal of the authorisation that is the subject of the notice, or

(*b*) refuse to renew the authorisation that is the subject of the notice and give the person notice in writing of the refusal and the reasons for the refusal.

Provision of information by Garda Síochána and Central Bank.

168.— (1) The Insolvency Service may request the Commissioner of the Garda Síochána or the Central Bank of Ireland to provide any information requisite for the due performance of its functions in relation to any applicant for authorisation to carry on practice as a personal insolvency practitioner or any personal insolvency practitioner.

(2) The Commissioner of the Garda Síochána and the Central Bank of Ireland shall comply with a request under *subsection (1)* notwithstanding anything contained in any statutory provision or rule of law.

Appeal to Circuit Court against decision of Insolvency Service.

169.— (1) A person aggrieved by a decision of the Insolvency Service—

(*a*) refusing under *section 164(3)(d)* to issue an authorisation to carry on practice as a personal insolvency practitioner, or

(*b*) declining under *section 178(2)* to cause to be carried out an investigation of the matter the subject of a complaint,

may, within 21 days from the date of receipt of notice of the decision, appeal to the Circuit Court against the decision.

(2) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the appellant ordinarily resides or carries on any profession, business or occupation.

(3) The appeal shall be determined by the Circuit Court—

(*a*) by confirming the decision of the Insolvency Service to which the appeal relates, or

(*b*) by substituting its determination for that decision.

(4) A decision of the Circuit Court under this section shall be final, save that, by leave of that Court, an appeal shall lie to the High Court on a point of law.

Chapter 2

General Obligations of Personal Insolvency Practitioners

Retention of records.

170.— Where a personal insolvency practitioner is appointed by a debtor under *Chapter 2* of *Part 3*, the personal insolvency practitioner shall retain such records as may be prescribed and in such form and manner as may be prescribed of his or her activities in relation to the debtor for a period of not less than 6 years after the completion of the activity to which the record relates.

Annotations

Editorial Notes:

E79 Regulations made for purposes of section (21.06.2013) by *Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013* (S.I. No. 209 of 2013).

Professional indemnity insurance.

171.— (1) A personal insolvency practitioner shall not carry on practice as a personal insolvency practitioner unless there is in force, at the time he or she so acts, a policy of professional indemnity insurance which meets such requirements as may be prescribed from time to time pursuant to *subsection (2)*.

(2) The Insolvency Service may prescribe such matters as it considers necessary in relation to policies of professional indemnity insurance including the minimum amount of cover which shall apply in relation to each and every claim made against a personal insolvency practitioner.

Annotations

Editorial Notes:

E80 Regulations made for purposes of section (21.06.2013) by *Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013* (S.I. No. 209 of 2013).

Fees and charges by personal insolvency practitioners.

172.— A personal insolvency practitioner shall not charge fees or costs or seek to recover outlays which are not incurred—

(*a*) in accordance with regulations made under *section 161(f)*, and

(*b*) in a case where a Debt Settlement Arrangement or a Personal Insolvency Arrangement comes into effect, in accordance with the terms of such an arrangement.

Chapter 3

Accounts and Related Matters

Keeping and preservation by personal insolvency practitioner of accounts and records.

173.— (1) Subject to *subsection (2)*, the Insolvency Service may make regulations providing for any of the following matters:

(*a*) the kind or kinds of accounts at banks authorised to carry on business in the State which may be opened and kept by a personal insolvency practitioner for the keeping of moneys received from debtors;

(*b*) the opening and keeping of such accounts by a personal insolvency practitioner and in particular the keeping of moneys received from or for the credit of or on behalf of debtors in a client account maintained specifically for that purpose;

(*c*) the rights, duties and responsibilities of a personal insolvency practitioner in respect of moneys received from debtors, including the transmission of such moneys to creditors and the deduction of fees, charges and outlays due to the personal insolvency practitioner;

(*d*) the receipts or statements to be issued by a personal insolvency practitioner in respect of moneys received from debtors;

(*e*) the accounting records to be maintained by a personal insolvency practitioner, including the minimum period or periods for which accounting records shall be retained by a personal insolvency practitioner during the period of, and following the conclusion of, Debt Settlement Arrangements or Personal Insolvency Arrangements and the manner in which the lodgement into bank accounts of any moneys received from debtors shall be recorded in the accounting records;

(*f*) the accounting records to be maintained by a personal insolvency practitioner containing particulars of and information as to moneys received, held, controlled or paid by the personal insolvency practitioner in connection with Debt Settlement Arrangements or Personal Insolvency Arrangements;

(*g*) the circumstances and manner in which a personal insolvency practitioner (or a duly qualified accountant on behalf of the personal insolvency practitioner) verifies compliance with the regulations, including the frequency of doing so;

(*h*) the examination by an auditor or an accountant who is a member of a body prescribed for the purposes of this section, at intervals prescribed by the regulations, of accounting records maintained by a personal insolvency practitioner under regulations made under *paragraphs (e)* and *(f)* and for the making of reports to the Insolvency Service of such matters relating to the keeping of accounts and holding of moneys received from debtors as may be prescribed and such reports shall be in such form as may be prescribed;

(*i*) the enforcement by the Insolvency Service of compliance with the regulations;

(*j*) the imposition of fees on a personal insolvency practitioner in cases of non-compliance where the Insolvency Service, by reason of such non-compliance has determined that further enquiries should be carried out (such fees not exceeding the cost of conducting such enquiries);

(*k*) the examination, by or on behalf of the Insolvency Service, of the financial circumstances of a personal insolvency practitioner in so far as such circumstances could affect his or her capacity to carry out the functions of a personal insolvency practitioner.

(2) The Insolvency Service shall, in making regulations under this section, have regard to the need to protect debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements.

Annotations

Editorial Notes:

E81 Regulations made for purposes of section (8.07.2013) by *Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013* (S.I. No. 247 of 2013).

Control of banking accounts or assets of personal insolvency practitioners.

174.— (1) Where, as respects a person who is a personal insolvency practitioner, the Insolvency Service determines that it is necessary to do so for the protection of debtors and creditors who are parties to Debt Settlement Arrangements or Personal Insolvency Arrangements in relation to which the personal insolvency practitioner concerned is performing or has performed functions performable by a personal insolvency practitioner under this Act, the Insolvency Service may apply to the High Court in a summary manner for an order directing one or more of the following:

(*a*) that no bank shall, without leave of the High Court, make any payment out of an account in the name of the personal insolvency practitioner concerned in his or her capacity as a personal insolvency practitioner;

(*b*) that a specified bank shall not, without leave of the High Court, make any payment out of an account kept at such bank by the personal insolvency practitioner or former personal insolvency practitioner in such capacity or former capacity, as the case may be;

(*c*) that the personal insolvency practitioner or former personal insolvency practitioner shall not, without leave of the High Court, dispose of or direct or facilitate the disposal of any assets within his or her possession or control or within his or her procurement;

(*d*) that the personal insolvency practitioner or former personal insolvency practitioner shall not, without leave of the High Court, reduce his or her assets below a specified amount or value.

(2) The High Court may hear an application for an order under *subsection (1)* otherwise than in public.

(3) Where the High Court makes an order under *subsection (1)* in relation to a personal insolvency practitioner, the Court may make one or more of the following further orders:

(*a*) directing a specified bank to furnish any information in its possession that the Insolvency Service requires relating to any aspect of the financial affairs of the personal insolvency practitioner in his or her capacity as a personal insolvency practitioner;

(*b*) directing the personal insolvency practitioner to swear an affidavit disclosing all information relating to or contained in any account with any bank held in his or her own name, or in the name of his or her business or former business as a personal insolvency practitioner, or jointly with third parties, within a specified duration of time to be fixed by the Court;

(*c*) directing the personal insolvency practitioner to swear an affidavit disclosing all information relating to his or her assets, either then in his or her possession or control or within his or her procurement or which had been but are no longer in his or her possession or control or within his or her procurement, within a specified duration of time to be fixed by the Court, and, if no longer in his or her possession or control or within his or her procurement, his or her belief as to the present whereabouts of those assets;

(*d*) directing the personal insolvency practitioner to make himself or herself available before the Court on a specified date and at a specified time for oral examination under oath in relation to the contents of any affidavit of assets sworn by him or her pursuant to *paragraph (c)*.

(4) Where the High Court makes an order under *subsection (1)* in relation to a personal insolvency practitioner, the personal insolvency practitioner shall forthwith lodge (or cause to be lodged) any moneys subsequently received by him or her to the appropriate account or accounts, unless otherwise ordered by the Court.

(5) Where the High Court is satisfied, on an application being made to it by the Insolvency Service, that there is reason to believe that any person holds or has held assets on behalf of a personal insolvency practitioner or on behalf of his or her practice or former practice as a personal insolvency practitioner to whom *subsection (1)* applies, the Court may order that person to disclose to the Insolvency Service all information as to such assets, either then in his or her possession or control or within his or her procurement or which had been but are no longer in his or her possession or control or within his or her procurement, and, if no longer within his or her possession or control or within his or her procurement, his or her belief as to the present whereabouts of those assets.

(6) A reference in this section to a personal insolvency practitioner includes a reference to a person who is no longer a personal insolvency practitioner.

Power of Insolvency Service to deal with documents.

175.— (1) Where—

(*a*) either—

(i) the Insolvency Service refuses to renew an authorisation to carry on practice as a personal insolvency practitioner, or

(ii) an authorisation to carry on practice as a personal insolvency practitioner is revoked or suspended under this Act,

and

(*b*) the Insolvency Service is of the opinion that adequate arrangements have not been made for handing over to another personal insolvency practitioner of any documents within the possession or in the control, or within the procurement, of the personal insolvency practitioner or former personal insolvency practitioner, as the case may be,

the Insolvency Service may, by notice in writing given to the personal insolvency practitioner or former personal insolvency practitioner, as the case may be, require the personal insolvency practitioner or former personal insolvency practitioner, as the case may be, or any other person in possession or control of such documents, to produce the documents, to a person appointed by the Insolvency Service for the purpose, at a time and place specified by the Insolvency Service in the notice.

(2) Where a person the subject of a requirement under *subsection (1)* does not comply or fully comply with that requirement, the Insolvency Service may apply in a summary manner to the Circuit Court, on notice to that person, for an order requiring the person to comply or comply fully, as the case may be, with the requirement within a period to be specified by the Court and the Court may make the order applied for or such other order as it deems appropriate.

(3) Where the Insolvency Service takes possession of documents produced under this section—

(*a*) it shall serve on the person by whom the documents were produced, a notice giving particulars of the documents and the date of taking possession thereof, and

(*b*) it may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents, or any of them, and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled.

(4) Within 14 days from the service of a notice under *subsection (3)* on a person, the person may apply in a summary manner to the Circuit Court for an order directing the Insolvency Service to return the documents taken by the Insolvency Service to him or her or to such other person or persons as the applicant may require and the Court may make the order applied for or such other order as it deems appropriate.

(5) An application under *subsection (2)* to the Circuit Court shall be made to a judge of that Court for the circuit in which the personal insolvency practitioner the subject of the application resides or ordinarily carried on within the previous 3 years practice as a personal insolvency practitioner.

Chapter 4

Complaints, Investigations and Sanctions

Inspectors.

176.— (1) For the purposes of this Act—

(*a*) the Director of the Insolvency Service may appoint such members of the staff of the Insolvency Service as he or she deems appropriate to be inspectors for such period and subject to such terms as the Director may determine,

(*b*) the Director of the Insolvency Service may appoint such other persons as he or she deems appropriate to be inspectors for such period and subject to such terms (including terms as to remuneration and allowances for expenses) as the Director, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, may determine.

(2) Each inspector shall be given a warrant of appointment and, when performing any function imposed under this Act, shall, on request by any person affected, produce the warrant or a copy thereof, together with a form of personal identification.

F133**[**Supervision

176A. The Insolvency Service may, for the purpose of ensuring compliance by personal insolvency practitioners with their obligations under this Act, supervise personal insolvency practitioners in the performance of their functions under this Act.**]**

Annotations

Amendments:

F133 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 24, S.I. No. 414 of 2015.

F134**[**Authorised Officers

176B. (1) For the purposes of this Act—

(*a*) the Director of the Insolvency Service may appoint such members of the staff of the Insolvency Service as he or she deems appropriate to be authorised officers for such period and subject to such terms as the Director may determine,

(*b*) the Director of the Insolvency Service may appoint such other persons as he or she deems appropriate to be authorised officers for such period and subject to such terms (including terms as to remuneration and allowances for expenses) as the Director, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, may determine.

(2) Each authorised officer shall be given a warrant of appointment and, when performing any function imposed under this Act, shall, on request by any person affected, produce the warrant or a copy thereof, together with a form of personal identification.

(3) An appointment under this section shall cease—

(*a*) if the Insolvency Service revokes the appointment,

(*b*) if the person appointed ceases to be a member of staff of the Insolvency Service, or

(*c*) if the appointment is for a fixed period, on the expiry of that period.

(4) A revocation under this section shall be in writing.**]**

Annotations

Amendments:

F134 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 24, S.I. No. 414 of 2015.

F135[Powers of Authorised Officers

176C. (1) For the purposes of the performance of the functions of the Insolvency Service under *section 176A*, an authorised officer may, in relation to a personal insolvency practitioner—

(*a*) subject to *subsections (13)* and *(14)*, at all reasonable times enter, inspect, examine and search any premises at, or vehicles in or by means of, which any activity in connection with the practice of the personal insolvency practitioner is carried on,

(*b*) subject to *subsections (13)* and *(14)*, enter, inspect, examine and search any dwelling occupied by the personal insolvency practitioner, being a dwelling as respects which there are reasonable grounds to believe records relating to the practice of the personal insolvency practitioner are being kept in it,

(*c*) without prejudice to any other power conferred by this subsection, require any person found in or on any premises, vehicle or dwelling referred to in any of the preceding paragraphs or any person in charge of or in control of such premises, vehicle or dwelling or directing any activity therein or thereto referred to in *paragraph (a)* to produce any records, books or accounts (whether kept in manual form or otherwise) or other documents which it is necessary for the authorised officer to see for the purposes of *section 176A*, and the authorised officer may inspect, examine, copy and take away any such records, books or accounts or other documents so produced or require a foregoing person to provide a copy of them or of any entries in them to the authorised officer,

(*d*) require any person referred to in *paragraph (c)* to afford such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the authorised officer to exercise any of the powers conferred on the authorised officer under *paragraph (a)*, *(b)* or *(c)*,

(*e*) require any person by or on whose behalf data equipment is or has been used in connection with an activity referred to in *paragraph (a)*, or any person having charge of, or otherwise concerned with the operation of, such data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in respect of its use,

(*f*) require the personal insolvency practitioner, the personal insolvency practitioner's employee or the personal insolvency practitioner's agent to give such authority in writing addressed to such bank or banks as the authorised officer requires for the purpose of enabling the inspection of any account or accounts opened, or caused to be opened, by the personal insolvency practitioner at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the authorised officer deems necessary to fulfil that purpose, and

(*g*) be accompanied by a member of the Garda Síochána and assisted in the exercise of the officer's powers under this Chapter by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate.

(2) A requirement under *subsection (1)(c)*, *(d)*, *(e)* or *(f)* shall specify a period within which, or a date and time on which, the person the subject of the requirement is to comply with it.

(3) For the purposes of his or her supervisory functions under *section 176A*, an authorised officer—

(*a*) may require a person who, in the authorised officer's opinion—

(i) possesses information that is relevant, or

(ii) has any records, books or accounts (whether kept in manual form or otherwise) or other documents within that person's possession or control or within that person's procurement that are relevant to the supervision,

to provide that information or those records, books, accounts or other documents, as the case may be, to the authorised officer,

(*b*) where the authorised officer deems appropriate, may require that person to attend before the authorised officer for the purpose of so providing that information or those records, books, accounts or other documents, as the case may be, and

(*c*) may require a person to provide an explanation of a decision, course of action, system or practice or the nature or content of any records or, where the authorised officer deems appropriate, may require that person to attend before the authorised officer for the purpose of so explaining,

and the person shall comply with the requirement.

(4) A requirement under *subsection (3)* shall specify—

(*a*) a period within which, or a date and time on which, the person the subject of the requirement is to comply with the requirement, and

(*b*) as the authorised officer concerned deems appropriate—

(i) the place at which the person shall attend to give the information concerned or to which the person shall deliver the records, books, accounts or other documents concerned, or

(ii) the place to which the person shall send the information or the records, books, accounts or other documents concerned.

(5) A person required to attend before an authorised officer under *subsection (3)*—

(*a*) is also required to answer fully and truthfully any question put to the person by the authorised officer, and

(*b*) if so required by the authorised officer, shall answer any such question under oath.

(6) Where it appears to an authorised officer that a person has failed to comply or fully comply with a requirement under *subsection (1)*, *(3)* or *(5)*, the authorised officer may, on notice to that person and with the consent of the Insolvency Service, apply in a summary manner to the Circuit Court for an order under *subsection (7)*.

(7) Where satisfied after hearing the application about the person's failure to comply or fully comply with the requirement in question, the Circuit Court may, subject to *subsection (10)*, make an order requiring that person to comply or fully comply, as the case may be, with the requirement within a period specified by the Court.

(8) An application under *subsection (6)* to the Circuit Court shall be made to a judge of that Court for the circuit in which the person the subject of the application resides or ordinarily carries on any profession, business or occupation.

(9) The administration of an oath referred to in *subsection (5)(b)* by an authorised officer is hereby authorised.

(10) A person the subject of a requirement under *subsection (1)*, *(3)* or *(5)* shall be entitled to the same immunities and privileges in respect of compliance with such requirement as if the person were a witness before the High Court.

(11) Any statement or admission made by a person pursuant to a requirement under *subsection (1)*, *(3)* or *(5)* is not admissible against that person in criminal proceedings other than criminal proceedings for an offence under *subsection (15)*, and this shall be explained to the person in ordinary language by the authorised officer concerned.

(12) Nothing in this section shall be taken to compel the production by any person of any records, books or accounts (whether kept in manual form or otherwise) or other documents which he or she would be exempt from producing in proceedings in a court on the ground of legal professional privilege.

(13) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling without a warrant issued under *subsection (14)* authorising the entry.

(14) A judge of the District Court, if satisfied on the sworn information of an authorised officer that—

(*a*) (i) there are reasonable grounds for suspecting that any information is, or records, books or accounts (whether kept in manual form or otherwise) or other documents required by an authorised officer under this section are, held on any premises or any part of any premises, and

(ii) an authorised officer, in the performance of functions under *subsection (1)*, has been prevented from entering the premises or any part thereof,

or

(*b*) it is necessary that the authorised officer enter a private dwelling and exercise therein any of his or her powers under this section,

may issue a warrant authorising the authorised officer, accompanied if necessary by other persons, at any time or times within 30 days from the date of issue of the warrant and on production if so requested of the warrant, to enter, if need be by reasonable force, the premises or part of the premises concerned and perform all or any such functions.

(15) Subject to *subsection (12)*, a person who—

(*a*) withholds, destroys, conceals or refuses to provide any information or records, books or accounts (whether kept in manual form or otherwise) or other documents required for the purposes of the supervision of a personal insolvency practitioner,

(*b*) fails or refuses to comply with any requirement of an authorised officer under this section, or

(*c*) otherwise obstructs or hinders an authorised officer in the performance of functions imposed under this Act,

is guilty of an offence.

(16) Subject to *subsection (17)*, where a personal insolvency practitioner is convicted of an offence under *subsection (15)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that his or her authorisation to carry on practice as a personal insolvency practitioner be revoked and that he or she be prohibited (which may be a permanent prohibition, a prohibition

for a specified period or a prohibition subject to specified conditions) from applying for any new authorisation to carry on practice as a personal insolvency practitioner.

(17) An order under *subsection (16)* shall not take effect until—

(*a*) the ordinary time for bringing an appeal against the conviction concerned or the order has expired without any such appeal having been brought,

(*b*) such appeal has been withdrawn or abandoned, or

(*c*) on any such appeal, the conviction or order, as the case may be, is upheld.

(18) In this section, 'records, books or accounts' include copies of records, books or accounts.

(19) In this section, where records, books or accounts are held or maintained in electronic form, the obligation to produce or provide records, books or accounts includes an obligation to produce or provide those records, books or accounts in a legible and comprehensible printed form.

(20) Where records are not in legible form, an authorised officer, in the exercise of any of his or her powers under this section, may—

(*a*) operate any data equipment, including any computer, or cause any such data equipment or computer to be operated by a person accompanying the authorised officer, and

(*b*) require any person who appears to the authorised officer to be in a position to facilitate access to the records stored in any data equipment or computer or which can be accessed by the use of that data equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including:

(i) providing the records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible;

(ii) giving to the authorised officer any password necessary to make the records concerned legible and comprehensible; or

(iii) otherwise enabling the authorised officer to examine the records in a form in which they are legible and comprehensible.

(21) Where an authorised officer believes upon reasonable grounds, that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.**]**

Annotations

Amendments:

F135 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 24, S.I. No. 414 of 2015.

F136**[**Notification by Authorised Officer

176D. Where it appears to an authorised officer, in the performance of his or her functions under *section 176C*, that improper conduct by a personal insolvency practitioner has occurred or is occurring—

(*a*) he or she shall notify the Insolvency Service in writing, as soon as practicable, setting out the reasons why he or she has formed that view, and

(*b*) the Insolvency Service shall consider the notification and, if satisfied that there is sufficient reason for so doing, may, in accordance with *section 180*, cause an investigation to be carried out.**]**

Annotations

Amendments:

F136 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 24, S.I. No. 414 of 2015.

Panel of persons to act as members of Complaints Committee.

177.— (1) The Minister shall establish a panel of persons to act on a committee to be known as the Personal Insolvency Practitioners Complaints Committee (in this Part referred to as "the Complaints Committee").

(2) *Schedule 3* shall apply in relation to the panel and the Complaints Committee.

(3) Where the Insolvency Service appoints an inspector under *section 180(1)(b)* to carry out an investigation, it shall thereafter request the Minister to appoint a Complaints Committee from the panel of persons appointed in accordance with *subsection (1)* and *Schedule 3*, to perform the functions of the Complaints Committee under this Part as respects the inspector's investigation of the personal insolvency practitioner concerned.

Complaints against personal insolvency practitioners.

178.— (1) A person may make a complaint in writing to the Insolvency Service alleging that improper conduct by a personal insolvency practitioner has occurred or is occurring.

(2) Where the Insolvency Service receives a complaint it shall—

(*a*) notify the personal insolvency practitioner concerned in writing of the receipt of the complaint,

(*b*) provide the personal insolvency practitioner with a copy of the complaint and a copy of any documents furnished to the Insolvency Service by the complainant,

(*c*) refer the personal insolvency practitioner to any regulations made under *sections 161* and *173* and to any guidelines or codes of practice issued under *section 137*, and

(*d*) request the personal insolvency practitioner to provide a response in relation to the complaint within a time specified in the notification.

(3) Where the Insolvency Service receives a response to the request referred to in *subsection (2)(d)* it shall consider the response and having considered the response it may, where—

(*a*) it is satisfied that the complaint is not made in good faith,

(*b*) it is satisfied that the complaint is frivolous or vexatious or without substance or foundation, or

(*c*) subject to *subsection (6)*, it is satisfied that the complaint is likely to be resolved by mediation or other informal means between the parties concerned,

determine the complaint accordingly and in that case it shall give notice in writing to the complainant and the personal insolvency practitioner to whom the complaint relates of the decision and the reasons for the decision.

(4) Where the Insolvency Service does not receive a response to the request referred to in *subsection (2)(d)*, or having received a response it considers that none of *paragraphs (a)* to *(c)* of *subsection (3)* apply, it shall cause an investigation of the matter the subject of the complaint to be carried out.

(5) Where a complaint is withdrawn by a complainant before the investigation report which relates to the complaint has been furnished by the inspector concerned pursuant to *section 182(2)*, the Insolvency Service may proceed as if the complaint had not been withdrawn if it is satisfied that there is good and sufficient reason for so doing.

(6) Where, pursuant to *subsection (5)*, the Insolvency Service proceeds as if a complaint had not been withdrawn, the investigation concerned shall thereupon be treated as an investigation initiated by the Insolvency Service, and the other provisions of this Act shall be construed accordingly.

(7) Where a complaint is not resolved by mediation or other informal means referred to in *subsection (3)(c)*, the complainant may, at his or her discretion, make a fresh complaint in respect of the matter the subject of the first-mentioned complaint.

Circumstances in which application may be made to High Court for immediate suspension of authorisation, etc.

179.— (1) Without prejudice to *subsection (4)*, where the Insolvency Service considers that the immediate suspension of an authorisation to carry on practice as a personal insolvency practitioner (whether or not the personal insolvency practitioner concerned is the subject of a complaint) is necessary to protect debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements, until steps or further steps are taken under this Part, the Insolvency Service may, on notice to the personal insolvency practitioner, make an application in a summary manner to the High Court for an order to suspend the personal insolvency practitioner's authorisation to carry on practice as a personal insolvency practitioner.

(2) The High Court may determine an application under *subsection (1)* by—

(*a*) making any order that it considers appropriate, including an order suspending the authorisation of the personal insolvency practitioner the subject of the application for such period, or until the occurrence of such event, as is specified in the order, and

(*b*) giving to the Insolvency Service any other direction that the court considers appropriate.

(3) The Insolvency Service shall, on complying with a direction of the High Court under *subsection (2)(b)*, give notice in writing to the personal insolvency practitioner concerned of the Insolvency Service's compliance with the direction.

(4)(*a*) Where the Insolvency Service considers that the immediate suspension of an authorisation to carry on practice as a personal insolvency practitioner (and whether or not the personal insolvency practitioner concerned is the subject of a complaint) is necessary because of the immediate risk of financial harm to debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements, the Insolvency Service may make an application in a summary manner *ex parte* to the High Court for an interim order to suspend the authorisation.

(*b*) The application for such an order shall be grounded on an affidavit sworn on behalf of the Insolvency Service.

(5)(*a*) The High Court may make an interim order to suspend an authorisation to carry on practice as a personal insolvency practitioner on an application under *subsection (4)* where, having regard to the circumstances of the case, the Court considers it necessary to do so for the protection of debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements.

(*b*) If an interim order is made, a copy of the order and the affidavit referred to in *subsection (4)(b)* shall be served on the personal insolvency practitioner as soon as is practicable.

(*c*) The interim order shall have effect for a period, not exceeding 14 days, to be specified in the order, and shall cease to have effect on the determination by the High Court of an application under *subsection (1)* for an order to suspend the authorisation to carry on practice as a personal insolvency practitioner.

(6) An application under *subsection (4)* shall be heard otherwise than in public unless the High Court considers it appropriate to hear the application in public.

Investigations.

180.— (1) Subject to *section 178(2)* and *(4)*, the Insolvency Service—

(*a*) shall, following the receipt of a complaint, or may of its own volition, cause such investigation as it deems appropriate to be carried out to identify any improper conduct, and

(*b*) for the purposes of the investigation, shall appoint an inspector subject to such terms as it deems appropriate—

(i) to carry out the investigation, and

(ii) to prepare an investigation report following the completion of the investigation and to furnish it to the persons referred to in *subsection (4)*.

(2) The Insolvency Service may appoint more than one inspector to carry out an investigation but, in any such case, the investigation report concerned shall be prepared jointly by the inspectors so appointed.

(3) The terms of appointment of an inspector may define the scope of the investigation to be carried out by the inspector, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances.

(4) Where the Insolvency Service has appointed an inspector to carry out an investigation, the inspector shall, as soon as is practicable after being so appointed—

(*a*) if the investigation arises in consequence of the receipt of a complaint by the Insolvency Service—

(i) give notice in writing to the personal insolvency practitioner to whom the complaint relates of the receipt of the complaint and setting out particulars of the complaint, and

(ii) give the personal insolvency practitioner—

(I) copies of any documents relevant to the investigation, and

(II) a copy of this Part,

(*b*) if the investigation arises on the volition of the Insolvency Service—

(i) give notice in writing to the personal insolvency practitioner concerned of the matters to which the investigation relates, and

(ii) give the personal insolvency practitioner—

(I) copies of any documents relevant to the investigation, and

(II) a copy of this Part,

and

(iii) without prejudice to the generality of *section 181*, afford the personal insolvency practitioner an opportunity to respond within 21 days from the day on which notice was given to the personal insolvency practitioner pursuant to *subparagraph (i)*, or such further period not exceeding 30 days as the inspector allows, to the matter to which the investigation relates.

(5) Where an investigation arises in consequence of the receipt of a complaint by the Insolvency Service, the inspector appointed to carry out the investigation—

(*a*) shall, as soon as is practicable, give the complainant a copy of the notice referred to in *subsection (4)(a)(i)* given to the personal insolvency practitioner to whom the complaint relates, and

(*b*) shall make reasonable efforts to ensure that the complainant is kept informed of progress on the investigation.

Measures to assist inspector in carrying out investigation.

181.— (1) For the purposes of an investigation in relation to a personal insolvency practitioner, an inspector may—

(*a*) subject to *subsections (13)* and *(14)*, at all reasonable times enter, inspect, examine and search any premises at, or vehicles in or by means of, which any activity in connection with the practice of the personal insolvency practitioner is carried on,

(*b*) subject to *subsections (13)* and *(14)*, enter, inspect, examine and search any dwelling occupied by the personal insolvency practitioner, being a dwelling as respects which there are reasonable grounds to believe records relating to the practice of the personal insolvency practitioner are being kept in it,

(*c*) without prejudice to any other power conferred by this subsection, require any person found in or on any premises, vehicle or dwelling referred to in any of the preceding paragraphs or any person in charge of or in control of such premises, vehicle or dwelling or directing any activity therein or thereto referred to in *paragraph (a)* to produce any records, books or accounts (whether kept in manual form or otherwise) or other documents which it is necessary for the inspector to see for the purposes of the investigation, and the inspector may inspect, examine, copy and take away any such records, books or accounts or other documents so produced or require a foregoing person to provide a copy of them or of any entries in them to the inspector,

(*d*) require any person referred to in *paragraph (c)* to afford such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the inspector to exercise any of the powers conferred on the inspector under *paragraph (a)*, *(b)* or *(c)*,

(*e*) require any person by or on whose behalf data equipment is or has been used in connection with an activity referred to in *paragraph (a)*, or any person having charge of, or otherwise concerned with the operation of, such data equipment or any associated apparatus or material, to afford the inspector all reasonable assistance in respect of its use,

(*f*) require the personal insolvency practitioner, the personal insolvency practitioner's employee or the personal insolvency practitioner's agent to give such authority in writing addressed to such bank or banks as the inspector requires for the purpose of enabling the inspection of any account or accounts opened, or caused to be opened, by the personal insolvency practitioner at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the inspector deems necessary to fulfil that purpose, and

(*g*) be accompanied by a member of the Garda Síochána if there is reasonable cause to apprehend any serious obstruction in the performance of any of the inspector's functions under this subsection.

(2) A requirement under *subsection (1)(c)*, *(d)*, *(e)* or *(f)* shall specify a period within which, or a date and time on which, the person the subject of the requirement is to comply with it.

(3) For the purposes of an investigation, an inspector—

(*a*) may require a person who, in the inspector's opinion—

(i) possesses information that is relevant to the investigation, or

(ii) has any records, books or accounts (whether kept in manual form or otherwise) or other documents within that person's possession or control or within that person's procurement that are relevant to the investigation,

to provide that information or those records, books, accounts or other documents, as the case may be, F137**[**to the inspector,**]**

(*b*) where the inspector deems appropriate, may require that person to attend before the inspector for the purpose of so providing that information or those records, books, accounts or other documents, F137**[**as the case may be, and**]**

F138**[**(*c*) may require a person to provide an explanation of a decision, course of action, system or practice or the nature or any content of any records or, where the inspector deems appropriate, may require that person to attend before the inspector for the purpose of so explaining,**]**

and the person shall comply with the requirement.

(4) A requirement under *subsection (3)* shall specify—

(*a*) a period within which, or a date and time on which, the person the subject of the requirement is to comply with the requirement, and

(*b*) as the inspector concerned deems appropriate—

(i) the place at which the person shall attend to give the information concerned or to which the person shall deliver the records, books, accounts or other documents concerned, or

(ii) the place to which the person shall send the information or the records, books, accounts or other documents concerned.

(5) A person required to attend before an inspector under *subsection (3)*—

(*a*) is also required to answer fully and truthfully any question put to the person by the inspector, and

(*b*) if so required by the inspector, shall answer any such question under oath.

(6) Where it appears to an inspector that a person has failed to comply or fully comply with a requirement under *subsection (1)*, *(3)* or *(5)*, the inspector may, on notice to that person and with the consent of the Insolvency Service, apply in a summary manner to the Circuit Court for an order under *subsection (7)*.

(7) Where satisfied after hearing the application about the person's failure to comply or fully comply with the requirement in question, the Circuit Court may, subject to *subsection (10)*, make an order requiring that person to comply or fully comply, as the case may be, with the requirement within a period specified by the Court.

(8) An application under *subsection (6)* to the Circuit Court shall be made to a judge of that Court for the circuit in which the person the subject of the application resides or ordinarily carries on any profession, business or occupation.

(9) The administration of an oath referred to in *subsection (5)(b)* by an inspector is hereby authorised.

(10) A person the subject of a requirement under *subsection (1)*, *(3)* or *(5)* shall be entitled to the same immunities and privileges in respect of compliance with such requirement as if the person were a witness before the High Court.

(11) Any statement or admission made by a person pursuant to a requirement under *subsection (1)*, *(3)* or *(5)* is not admissible against that person in criminal proceedings other than criminal proceedings for an offence under *subsection (17)*, and this shall be explained to the person in ordinary language by the inspector concerned.

(12) Nothing in this section shall be taken to compel the production by any person of any records, books or accounts (whether kept in manual form or otherwise) or other documents which he or she would be exempt from producing in proceedings in a court on the ground of legal professional privilege.

(13) An inspector shall not, other than with the consent of the occupier, enter a private dwelling without a warrant issued under *subsection (14)* authorising the entry.

(14) A judge of the District Court, if satisfied on the sworn information of an inspector that—

(*a*)(i) there are reasonable grounds for suspecting that any information is, or records, books or accounts (whether kept in manual form or otherwise) or other documents required by an inspector under this section are, held on any premises or any part of any premises, and

(ii) an inspector, in the performance of functions under *subsection (1)*, has been prevented from entering the premises or any part thereof,

or

(*b*) it is necessary that the inspector enter a private dwelling and exercise therein any of his or her powers under this section,

may issue a warrant authorising the inspector, accompanied if necessary by other persons, at any time or times within 30 days from the date of issue of the warrant and on production if so requested of the warrant, to enter, if need be by reasonable force, the premises or part of the premises concerned and perform all or any such functions.

(15) For the purposes of an investigation, an inspector may, if he or she thinks it proper to do so, of his or her own volition or at the request of the personal insolvency practitioner to whom the investigation relates, conduct an oral hearing.

(16) *Part 1* of *Schedule 2* shall have effect for the purposes of an oral hearing referred to in *subsection (15)*.

(17) Subject to *subsection (12)*, a person who—

(*a*) withholds, destroys, conceals or refuses to provide any information or records, books or accounts (whether kept in manual form or otherwise) or other documents required for the purposes of an investigation,

(*b*) fails or refuses to comply with any requirement of an inspector under this section, or

(*c*) otherwise obstructs or hinders an inspector in the performance of functions imposed under this Act,

is guilty of an offence.

(18) Subject to *subsection (19)*, where a personal insolvency practitioner is convicted of an offence under *subsection (17)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that his or her authorisation to carry on practice as a personal insolvency practitioner be revoked and that he or she be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from applying for any new authorisation to carry on practice as a personal insolvency practitioner.

(19) An order under *subsection (18)* shall not take effect until—

(*a*) the ordinary time for bringing an appeal against the conviction concerned or the order has expired without any such appeal having been brought,

(*b*) such appeal has been withdrawn or abandoned, or

(*c*) on any such appeal, the conviction or order, as the case may be, is upheld.

(20) In this section, "records, books or accounts" includes copies of records, books or accounts.

(21) In this section where records, books or accounts are held or maintained in electronic form, the obligation to produce or provide records, books or accounts includes an obligation to produce or provide those records, books or accounts in a legible and comprehensible printed form.

F139**[**(22) Where records are not in legible form, an inspector, in the exercise of any of his or her powers under this section, may—

(*a*) operate any data equipment, including any computer, or cause any such data equipment or computer to be operated by a person accompanying the inspector, and

(*b*) require any person who appears to the inspector to be in a position to facilitate access to the records stored in any data equipment or computer or which can be accessed by the use of that data equipment or computer to give the inspector all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including—

(i) providing the records to the inspector in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,

(ii) giving to the inspector any password necessary to make the records concerned legible and comprehensible, or

(iii) otherwise enabling the inspector to examine the records in a form in which they are legible and comprehensible.

(23) Where an inspector believes upon reasonable grounds, that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.**]**

Annotations

Amendments:

F137 Substituted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 25(a)(i), (ii), S.I. No. 414 of 2015.

F138 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 25(a)(iii), S.I. No. 414 of 2015.

F139 Inserted (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 25(b), S.I. No. 414 of 2015.

Preparation of report by inspector and consideration of matter by the Complaints Committee.

182.— (1) Subject to *subsection (3)*, where an inspector has completed an investigation, the inspector shall, as soon as is practicable after having considered, in so far as they are relevant to the investigation, any information or records, books or accounts (whether kept in manual form or otherwise) or other documents provided to the inspector pursuant to any requirement under *section 181*, any statement or admission made by any person pursuant to any requirement under that section, any submissions made and any evidence presented (whether at an oral hearing referred to in *section 181(15)* or otherwise)—

(*a*) prepare a draft of the investigation report, and

(*b*) give a copy of the investigation report together with a copy of this section to—

(i) the personal insolvency practitioner to whom the investigation relates,

(ii) if the investigation arose in consequence of the receipt of a complaint, the complainant, and

(iii) the Insolvency Service,

and shall in writing invite those persons to each make submissions in writing to the inspector on the draft of the investigation report not later than 30 days from the date on which the notice was sent to them, or such further period not exceeding 30 days as the inspector allows.

(2) An inspector who has complied with *subsection (1)* following the completion of an investigation shall, as soon as is practicable after the expiration of the period referred to in *subsection (1)(b)*, and, having—

(*a*) considered the submissions (if any) referred to in *subsection (1)(b)* made before the expiration of that period on the draft of the investigation report concerned, and

(*b*) made any revisions to the draft of the investigation report which, in the opinion of the inspector, are warranted following such consideration,

prepare the final form of the investigation report and submit it, together with any such submissions annexed to the report, to each of the parties referred to in *subsection (1)* and the Complaints Committee.

(3) In a case where the investigation report states that the inspector is satisfied that improper conduct by the personal insolvency practitioner to whom the investigation relates has occurred or is occurring, the inspector shall not make any recommendation, or express any opinion, in the report as to the form of sanction (whether a minor sanction or a major sanction) that he or she thinks ought to be imposed on the personal insolvency practitioner in respect of such improper conduct.

(4) Where the Complaints Committee receives an inspector's report it shall invite—

(*a*) the personal insolvency practitioner concerned,

(*b*) the Insolvency Service, and

(*c*) where the investigation by the inspector arose in consequence of the receipt of a complaint, the complainant,

to make submissions to it in writing regarding the matters the subject of the inspector's report and the submissions furnished to those parties pursuant to

subsection (2) within 30 days of the issue of the invitation or such further period as the Complaints Committee may allow.

(5) Subject to *subsection (6)*, the Complaints Committee may consider the matter on the basis of the inspector's report and any submissions made to the inspector pursuant to *subsection (1)*, and to the Complaints Committee pursuant to *subsection (4)*, and may also have regard to any documents furnished to the inspector in the course of the inspection.

(6) Where the Complaints Committee is of the opinion that for the purposes of observing fair procedures it is appropriate to do so, it may conduct an oral hearing.

(7) *Part 2* of *Schedule 2* shall apply for the purposes of an oral hearing referred to in *subsection (6)*.

(8) Having completed its consideration of the matter the Complaints Committee shall make a determination as to whether the conduct of the personal insolvency practitioner the subject of the investigation constitutes improper conduct.

(9) Where the Complaints Committee determines that the conduct of the personal insolvency practitioner does not constitute improper conduct it shall dismiss the complaint.

(10) Where the Complaints Committee determines that the conduct of the personal insolvency practitioner the subject of the investigation does constitute improper conduct it shall determine whether the appropriate sanction is a minor sanction or a major sanction in the circumstances of the case.

(11) Where the Complaints Committee determines that the appropriate sanction is a minor sanction it shall determine which of the sanctions specified in the definition of minor sanction is the appropriate sanction in the circumstances of the case and shall impose that sanction.

(12) Where the Complaints Committee determines that the appropriate sanction is a major sanction it shall determine which of the sanctions specified in the definition of major sanction is the appropriate sanction in the circumstances of the case and in such a case it shall refer the matter to the High Court and make a recommendation as to the appropriate sanction.

(13) In every case where a determination is made under *subsections (8)* to *(12)* the Complaints Committee shall furnish a copy of that determination to—

(*a*) the personal insolvency practitioner concerned,

(*b*) the Insolvency Service, and

(*c*) where the investigation by the inspector arose in consequence of the receipt of a complaint, the complainant.

(14) Where a matter is referred to the High Court it shall determine, having given all the parties an opportunity to make submissions, whether the appropriate sanction is a minor sanction or a major sanction in the circumstances of the case, and

(*a*) where the Court determines that the appropriate sanction is a minor sanction it shall determine which of the sanctions specified in the definition of minor sanction in *section 159* is the appropriate sanction in the circumstances of the case and shall impose that sanction, and

(*b*) where the Court determines that the appropriate sanction is a major sanction it shall determine which of the sanctions specified in the definition of major sanction in *section 159* is the appropriate sanction in the circumstances of the case and shall impose that sanction.

Appeal to High Court against determination of Complaints Committee.

183.— (1) A personal insolvency practitioner the subject of a determination under *section 182* (other than *subsection (12)* of that section) by the Complaints Committee—

(*a*) that the personal insolvency practitioner concerned has committed improper conduct, and

(*b*) that a minor sanction be imposed in respect of improper conduct,

may, not later than 30 days from the date the notice under *section 182(13)* was issued to the personal insolvency practitioner, appeal to the High Court against the decision.

(2) The High Court may, on the hearing of an appeal under *subsection (1)* by a personal insolvency practitioner, consider any evidence adduced or argument made, whether or not adduced or made to an inspector or the Complaints Committee.

(3) Subject to *subsection (4)*, the High Court may, on the hearing of an appeal under *subsection (1)* by a personal insolvency practitioner—

(*a*) (i) confirm the decision the subject of the appeal,

(ii) determine that the conduct concerned does not constitute improper conduct, or

(iii) confirm the determination that the conduct concerned does constitute improper conduct and impose a different sanction on the personal insolvency practitioner,

and

(*b*) make such order as to costs as it deems appropriate in respect of the appeal.

(4) The High Court shall, in considering an appropriate sanction, take into consideration the matters referred to in *section 184*.

Matters to be considered in determining sanctions to be imposed.

184.— The Complaints Committee and the High Court, as the case may be, in considering whether a sanction ought to be imposed or the appropriate sanction to be imposed shall take into account the circumstances of the improper conduct concerned (including the factors occasioning it) and, without prejudice to the generality of the foregoing, may have regard to—

(*a*) the need to ensure that any sanction imposed—

(i) is appropriate and proportionate to the improper conduct, and

(ii) if applicable, will act as a sufficient deterrent to discourage improper conduct of that or a similar nature in the future,

(*b*) the seriousness of the improper conduct,

(*c*) the extent of any failure by the personal insolvency practitioner to co-operate with the investigation concerned of the personal insolvency practitioner,

(*d*) any excuse or explanation by the personal insolvency practitioner for the improper conduct or failure to co-operate with the investigation concerned,

(*e*) any gain (financial or otherwise) made by the personal insolvency practitioner or by any person in which the personal insolvency practitioner has a financial interest as a consequence of the improper conduct,

(*f*) the amount of any loss suffered or costs incurred as a result of the improper conduct,

(*g*) the duration of the improper conduct,

(*h*) the repeated occurrence of improper conduct by the personal insolvency practitioner,

(*i*) if applicable, the continuation of the improper conduct after the personal insolvency practitioner was notified of the investigation concerned,

(*j*) if applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the personal insolvency practitioner intended to prevent improper conduct from occurring,

(*k*) if applicable, the extent and timeliness of any steps taken to end the improper conduct and any steps taken for remedying the consequences of the improper conduct,

(*l*) whether a sanction in respect of similar improper conduct has already been imposed on the personal insolvency practitioner by a court or the Complaints Committee, and

(*m*) any precedents set by a court or the Complaints Committee in respect of previous improper conduct.

Publication of sanctions, etc.

185.— (1) The Insolvency Service shall publish particulars, in such form and manner and for such period as it deems appropriate, of—

(*a*) the conviction of a person for an offence under *section 160*,

(*b*) a decision of the Insolvency Service refusing to renew an authorisation to carry on practice as a personal insolvency practitioner,

(*c*) the suspension under *section 179(2)* of an authorisation to carry on practice as a personal insolvency practitioner, and

(*d*) the imposition of a major sanction on a personal insolvency practitioner under this Part.

(2) The Insolvency Service may publish particulars, in such form and manner and for such period as it deems appropriate, of the imposition of a minor sanction on a personal insolvency practitioner under this Part.

F140[Restriction of right of access to personal data in certain circumstances

186. Article 15 (Right of access) of the Data Protection Regulation, in so far as it relates to personal data (within the meaning of that Regulation) processed by the following persons or bodies, is restricted to the extent necessary and proportionate to enable the person or body to effectively perform his, her or its functions under this Act, in so far as those functions relate to the supervision of personal insolvency practitioners in accordance with *section 176A* or to carrying out an investigation under this Part:

(*a*) the Insolvency Service;

(*b*) an inspector appointed under *section 176*;

(*c*) an authorised officer appointed under *section 176B*;

(*d*) the Complaints Committee.**]**

Annotations

Amendments:

F140 Substituted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 221(c), S.I. No. 174 of 2018.

Editorial Notes:

E82 Previous affecting provision: section amended (29.09.2015) by *Personal Insolvency (Amendment) Act 2015* (32/2015), s. 26, S.I. No. 414 of 2015; section substituted as per F-note above.

PART 6

Specialist Judges of Circuit Court

Amendment of Courts (Establishment and Constitution) Act 1961.

187.— The Courts (Establishment and Constitution) Act 1961 is amended—

(*a*) in section 4(2)—

(i) in paragraph (*a*), by deleting "and",

(ii) in paragraph (*b*), by deleting "Oireachtas." and substituting "Oireachtas, and", and

(iii) by inserting the following paragraph after paragraph (*b*):

"(*c*) such number of specialist judges (each of whom shall be styled "Sainbhreitheamh den Chúirt Chuarda" ("Specialist Judge of the Circuit Court")) as may from time to time be fixed by Act of the Oireachtas.",

(*b*) in section 6(1)(*a*), by deleting "President of the Circuit Court or ordinary judge of the Circuit Court" and substituting "President of the Circuit Court, ordinary judge of the Circuit Court or specialist judge of the Circuit Court", and

(*c*) in section 6A (inserted by section 12 of the Courts and Court Officers Act 2002), by substituting the following for subsection (1):

"(1) Where a judicial office within the meaning of section 6 of this Act is vacated by a person in accordance with subsection (3) of that section, the person shall complete the hearing of any case or cases that have been partly heard by the person in the Court in which the judicial office is vacated if, at the request of the President of that Court—

(*a*) in case the person is appointed to the office of Chief Justice, President of the High Court or President of the Circuit Court, he or she considers it appropriate to do so, or

(*b*) in case the person is appointed to the office of—

(i) ordinary judge of the Supreme Court, the Chief Justice requests the person to do so,

(ii) ordinary judge of the High Court, the President of the High Court requests the person to do so, or

(iii) ordinary judge of the Circuit Court or specialist judge of the Circuit Court, the President of the Circuit Court requests the person to do so.".

Amendment of section 17 of Courts (Supplemental Provisions) Act 1961.

188.— Section 17 of the Courts (Supplemental Provisions) Act 1961 is amended—

(*a*) in subsection (2) (as amended by section 5 of the Courts and Court Officers Act 2002), by deleting "A person" and substituting "Subject to subsection (4), a person",

(*b*) in subsection (2A) (inserted by section 5 of the Courts and Court Officers Act 2002), by deleting "A judge" and substituting "Subject to subsection (4), a judge",

(*c*) in subsection (2B) (inserted by section 5 of the Courts and Court Officers Act 2002), by deleting "A county registrar" and substituting "Subject to subsection (4), a county registrar",

(*d*) by inserting the following after subsection (2B) (inserted by section 5 of the Courts and Court Officers Act 2002):

"(2C) A specialist judge of the Circuit Court shall be qualified for appointment as an ordinary judge of the Circuit Court.",

and

(*e*) by inserting the following after subsection (3):

"(4) Any of the following persons shall be qualified for appointment as a specialist judge of the Circuit Court:

(*a*) a person who is for the time being a county registrar, having held such office for not less than 2 years continuously, and

(*b*) subject to subsection (5)—

(i) a person who is for the time being a practising barrister or a practising solicitor of not less than 10 years standing, and

(ii) a judge of the District Court.

(5) Subsection (4)(*b*) shall come into operation on such day, being not later than 1 January 2014, as the Minister may by order appoint.".

Amendment of Courts (Supplemental Provisions) Act 1961.

189.— The Courts (Supplemental Provisions) Act 1961 is amended by inserting the following after section 26:

"Functions, powers and jurisdiction of specialist judges of the Circuit Court.

26A.— (1) Notwithstanding any other enactment conferring functions, powers and jurisdiction on a judge of the Circuit Court, a specialist judge of that court may only perform the functions and exercise the powers and jurisdiction that are conferred upon him or her by this section.

(2) The functions, powers and jurisdiction conferred on the Circuit Court by the *Personal Insolvency Act 2012* may, subject to this section, be performed and exercised by a specialist judge.

(3) A specialist judge may make any order that may be made by a County Registrar under section 34(1) of, and the Second Schedule to, the Courts and Court Officers Act 1995, subject to the following modifications and any other necessary modifications—

(*a*) a reference in the Schedule to a County Registrar shall be construed as a reference to a specialist judge,

(*b*) section 34(2) of the Act shall not apply to such an order, and

(*c*) the deletion of paragraph 8 of the Schedule.

(4) In performing the functions and exercising the jurisdiction conferred upon him or her by this section, a specialist judge shall have all powers ancillary to those functions or that jurisdiction.

(5) A specialist judge may perform functions and exercise powers and jurisdiction in respect of proceedings to which subsections (2) and (3) apply that are before the Circuit Court only in a relevant circuit.

(6) A specialist judge may, in any place in the State outside a relevant circuit, hear and determine any application which he or she has power to hear and determine within that circuit and which, in his or her opinion, should be dealt with as a matter of urgency.

(7) A specialist judge may adjourn proceedings or any part of proceedings before him or her to any other judge of the Circuit Court within a relevant circuit.

(8) A specialist judge may make out of court any orders which he or she may deem to be urgent.

(9) In this section—

"enactment" means—

(*a*) an Act of the Oireachtas,

(*b*) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(*c*) an instrument made under—

(i) an Act of the Oireachtas, or

(ii) a statute referred to in paragraph (*b*);

"relevant circuit" means, in relation to a specialist judge, a circuit to which he or she is assigned under section 10(3) of the Courts of Justice Act 1947 or section 2A (inserted by *section 193* of the *Personal Insolvency Act 2012*) of the Courts Act 1977.".

Amendment of section 46 of Courts (Supplemental Provisions) Act 1961.

190.— Subsection (9A) (inserted by section 10 of the Financial Emergency Measures in the Public Interest (Amendment) Act 2011) of section 46 of the Courts (Supplemental Provisions) Act 1961 is amended—

(*a*) in paragraph (*g*), by deleting "and", and

(*b*) by inserting the following after paragraph (*g*):

"(*gg*) to each specialist judge of the Circuit Court, the sum of €140,623, and".

Number of specialist judges.

191.— The Courts and Court Officers Act 1995 is amended by inserting the following after section 10:

"Number of specialist judges of Circuit Court.

10A.— The number of specialist judges of the Circuit Court shall not be more than 8.".

Amendment of Courts and Court Officers Act 1995.

192.— The Courts and Court Officers Act 1995 is amended—

(*a*) in section 12, in the definition of "judicial office", by inserting ", specialist judge of the Circuit Court" after "Circuit Court",

(*b*) in section 16(7) (as amended by section 8 of the Courts and Court Officers Act 2002), by substituting the following paragraph for paragraph (*a*):

"(*a*) When submitting the name of a person to the Minister under this section, the Board shall indicate whether the person satisfies the requirements of—

(i) subsection (2) of section 5 (as amended by section 4 of the Courts and Court Officers Act 2002) of the Act of 1961 (in the case of an appointment to the office of ordinary judge of the Supreme Court or of ordinary judge of the High Court),

(ii) subsection (2) or (2B) of section 17 (as amended by *section 188* of the *Personal Insolvency Act 2012*) of the Act of 1961 (in the case of an appointment to the office of judge of the Circuit Court),

(iii) subsection (4) (inserted by *section 188* of the *Personal Insolvency Act 2012*) of section 17 of the Act of 1961 (in the case of an appointment to the office of specialist judge of the Circuit Court), or

(iv) subsection (2) or (3) of section 29 of the Act of 1961 (in the case of an appointment to the office of judge of the District Court),

in respect of appointment to the judicial office for which the person wishes to be considered and the Board shall not recommend a person to the Minister under this section unless the person satisfies those requirements.",

(*c*) by inserting the following after section 19:

"Training and education of specialist judges of Circuit Court.

19A.— A specialist judge of the Circuit Court shall take such course or courses of training or education, or both, as may be required by the Chief Justice or the President of the Circuit Court, at such time or times as the Chief Justice or, as the case may be, the President of the Circuit Court may specify.".

Amendment of Courts Act 1977.

193.— The Courts Act 1977 is amended by inserting the following after section 2:

"Assignment of specialist judges of Circuit Court to circuits.

2A.— (1) Section 2 shall not apply to the assignment to a circuit of a specialist judge of the Circuit Court.

(2) Where a specialist judge of the Circuit Court is appointed, the Government shall permanently assign him or her to one or more than one circuit.

(3) Any specialist judge of the Circuit Court who is permanently assigned to a particular circuit may at any time, if he or she so consents but not otherwise, be transferred by the Government to another circuit and shall upon such transfer become and be permanently assigned to that other circuit in lieu of the first-mentioned circuit.

(4) Where a specialist judge of the Circuit Court is permanently assigned to a circuit, the Government, at his or her request, may, if they think fit, terminate his or her permanent assignment to that circuit and the judge may at any time thereafter be permanently assigned by the Government to any other circuit.

(5) Where—

(*a*) a specialist judge of the Circuit Court is permanently assigned to two or more circuits, and

(*b*) his or her permanent assignment to one of those circuits ceases under subsection (3) or (4),

nothing in those subsections shall terminate or affect his or her permanent assignment to the circuit or circuits not referred to in paragraph (*b*) or deprive or relieve him or her of any of the privileges, powers and duties vested in or imposed on him or her by virtue of such permanent assignment.

(6) More than one specialist judge of the Circuit Court may be assigned to the same circuit, whether by operation of this section or section 10(3) of the Courts of Justice Act 1947, or both.".

Amendment of section 10 of Courts of Justice Act 1947.

194.— Section 10 of the Courts of Justice Act 1947 is amended—

(*a*) in subsection (1), by deleting "by subsections (2), (3), (4), (5) and (6) of this section" and substituting "by this section",

(*b*) in subsection (2), by deleting paragraph *(e)*, and

(*c*) by adding the following after subsection (6):

"(8) Subsections (2), (4) and (5) shall not apply to the distribution of the work, or the despatch of the business, of the Circuit Court that is required to be done by or transacted before a specialist judge of the Circuit Court.

(9) The President of the Circuit Court may, from time to time, by order fix, in respect of any circuit the—

(*a*) places therein at which sittings before specialist judges are to be held,

(*b*) times during the year and the hours between which (which may include times and hours other than the times and hours of the sittings of the Circuit Court fixed under subsection (2)) such sittings are to be held,

and, whenever such an order is in force, such sittings within that circuit shall be held—

(i) at the place fixed by the order and not elsewhere, and

(ii) at the times during the year and between the hours fixed by the order.

(10) The President of the Circuit Court may, before exercising his or her powers under subsection (9)(*a*) in respect of a circuit, consult the specialist judge permanently assigned to that circuit.

(11) Where 2 or more specialist judges are for the time being assigned (whether permanently or temporarily) to a particular circuit, the President of the Circuit Court, after consultation with those specialist judges, may, from time to time, allocate the business of the Circuit Court in that circuit that is required to be transacted before a specialist judge amongst those specialist judges.

(12) Where a specialist judge is for the time being assigned (whether permanently or temporarily) to a particular circuit, the President of the Circuit Court may, after consultation with that specialist judge, in respect of any business of the Circuit Court which may be transacted both before a county registrar for a county, county borough or other area within a circuit and a specialty judge assigned to that circuit, by order—

(*a*) direct that such business is to be transacted before a county registrar and not before a specialist judge, or

(*b*) allocate such business amongst the specialty judges and the county registrars concerned.

(13) Every order made under subsection (2), (9) or (12) shall, as soon as may be after it is made, be published in such manner as the President of the Circuit Court may direct.".

Amendment of section 38 of Courts of Justice Act 1924.

195.— The Courts of Justice Act 1924 is amended by substituting the following section for section 38:

"38.— (1) The following judges shall be addressed in such manner as may be determined by the rules to be made under this Part:

(*a*) all the circuit judges, other than the specialist judges, and

(*b*) all the specialist judges.

(2) All the circuit judges, other than the specialist judges, shall rank amongst themselves according to priority of appointment.".

Amendment of section 66 of Courts of Justice Act 1924.

196.— The Courts of Justice Act 1924 is amended in section 66—

(*a*) by designating the section as subsection (1), and

(*b*) by inserting the following after subsection (1):

"(2) Notwithstanding subsection (1), the times at which specialist judges of the Circuit Court may take vacations shall be such times as may be approved of by the Minister.".

Amendment of Courts Act 1973.

197.— Section 2(2) of the Courts Act 1973 is amended by substituting the following paragraphs for paragraph (*a*):

"(*a*) under subsection (2) or (2B) of section 17 of the Courts (Supplemental Provisions) Act 1961, as a judge of the Circuit Court,

(*aa*) under section (4)(*b*) (inserted by *section 188* of the *Personal Insolvency Act 2012*) of section 17 of the Courts (Supplemental Provisions) Act 1961, as a specialist judge of the Circuit Court, or".

Amendment of Law Reform Commission Act 1975.

198.— Section 14(2) of the Law Reform Commission Act 1975 is amended by substituting the following paragraphs for paragraph (*d*):

"(*d*) under subsection (2) or (2B) of section 17 of the Courts (Supplemental Provisions) Act 1961, as a judge of the Circuit Court,

(*dd*) under section (4)(*b*) (inserted by *section 188* of the *Personal Insolvency Act 2012*) of section 17 of the Courts (Supplemental Provisions) Act 1961, as a specialist judge of the Circuit Court,".

Continuity of administration of justice not to be affected.

199.— (1) The continuity of the administration of justice shall not be interrupted by—

(*a*) the coming into operation of any provision of this Part, or

(*b*) the assignment of a specialist judge of the Circuit Court to a circuit, whether permanently or temporarily, under section 10(3) of the Courts of Justice Act 1947 or section 2A (inserted by *section 193* of the *Personal Insolvency Act 2012*) of the Courts Act 1977.

(2) A specialist judge of the Circuit Court may perform the functions and exercise the powers and jurisdiction conferred on him or her by *section 189* in proceedings

before the Circuit Court, notwithstanding that those proceedings may have been pending at the date of coming into operation of that section.

SCHEDULE 1

Repeals

F141**[**...**]**

Annotations

Amendments:

F141 Repealed (3.12.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 37, S.I. No. 463 of 2013.

Sections 181 and *182.*

SCHEDULE 2

Provisions applicable to Oral Hearings conducted pursuant to *SECTIONS 181* and *182*.

PART 1

Oral Hearing conducted by inspector pursuant to *SECTION 181(15)*

1. The inspector conducting the oral hearing for the purposes of an investigation may take evidence on oath, and the administration of such an oath by the inspector is hereby authorised.

2. The inspector may by notice in writing require any person to attend the oral hearing at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the investigation or to produce any relevant documents within his or her possession or control or within his or her procurement.

3. Subject to *paragraph 4*, a person referred to in *paragraph 2* may be examined and cross-examined at the oral hearing.

4. A person referred to in *paragraph 2* shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.

5. Where a person referred to in *paragraph 2* does not comply or fully comply with a requirement referred to in that paragraph, the inspector may apply in a summary manner to the Circuit Court, on notice to that person, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it deems appropriate or refuse to make any order.

6. The jurisdiction conferred on the Circuit Court by *paragraph 5* may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation.

7. The oral hearing shall be held otherwise than in public.

PART 2

Oral Hearing conducted by Complaints Committee pursuant to *SECTION 182(6)*

1. The Complaints Committee, in conducting the oral hearing for the purposes of assisting it to make a determination under *section 182* or for the purposes of observing fair procedures, may take evidence on oath, and the administration of such an oath by any member of the Complaints Committee is hereby authorised.

2. The Complaints Committee may by notice in writing require any person to attend the oral hearing at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the making of the decision under *section 182* or to produce any relevant documents within his or her possession or control or within his or her procurement.

3. Subject to *paragraph 4*, a person referred to in *paragraph 2* may be examined and cross-examined at the oral hearing.

4. A person referred to in *paragraph 2* shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.

5. Where a person referred to in *paragraph 2* does not comply or fully comply with a requirement referred to in that paragraph, the Insolvency Service may apply in a summary manner to the Circuit Court, on notice to that person, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it deems appropriate or refuse to make any order.

6. The jurisdiction conferred on the Circuit Court by *paragraph 5* may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation.

7. The oral hearing shall be held otherwise than in public unless—

(*a*) the personal insolvency practitioner to whom the investigation concerned relates or, if the investigation arose in consequence of the receipt of a complaint, the complainant, makes a request in writing to the Insolvency Service that the hearing (or a part thereof) be held in public and states in the request the reasons for the request, and

(*b*) the Insolvency Service, after considering the request (in particular, the reasons for the request), is satisfied that it would be appropriate to comply with the request.

Section *177*.

SCHEDULE 3

Complaints Panel and Complaints Committees

1. Subject to *paragraphs 2* and *3* of this Schedule, on the coming into operation of *section 177* of this Act, the Minister shall, with the consent of the Ministers for Finance and Public Expenditure and Reform, establish and maintain a panel which shall be composed of at least 7 persons.

2. Each of the persons appointed to the panel referred to in *paragraph 1* of this Schedule shall be a person whom the Minister considers to have relevant experience

or special knowledge which will enable the persons appointed to carry out their functions under this Act.

3. At least two of the persons appointed to the panel referred to in *paragraph 1* of this Schedule shall be a solicitor or a barrister.

4. Subject to *paragraph 6* of this Schedule, a person shall remain on the panel established under this section for such period as may be specified on appointment unless he or she sooner dies or requests the Minister that his or her appointment be revoked, but unless he or she has died shall be eligible to be appointed to the panel for a further period or periods.

5. A vacancy in the membership of the panel may be filled by the Minister in the same manner as is specified in *paragraphs 1* and *2* as respects the appointment of persons to be members of the panel.

6. A person who has been appointed to be a member of a Complaints Committee as respects a particular investigation shall continue as a member of the panel and of that Complaints Committee until the conclusion of the deliberations of that Complaints Committee as respects the matter concerned notwithstanding that the period for which the panel was appointed has expired.

7. A member of the panel appointed to a Complaints Committee shall be paid such remuneration and allowances for expenses as the Minister may determine with the consent of the Minister for Public Expenditure and Reform.

8. A Complaints Committee shall be composed of no less than three persons at least one of whom shall be a barrister or solicitor.

9. The Minister, with the consent of the Minister for Finance, may at any time remove a member from the panel for stated misbehaviour.

10. A Complaints Committee shall be independent in the discharge of its functions.

11. The Minister shall make available to a Complaints Committee such services, including staff, as may be reasonably required by that Committee.