



**AN BILLE UM OIFIG SOCRAÍOCHTA FIACHAIS AGUS
RÉITIGH MORGÁISTE, 2011
DEBT SETTLEMENT AND MORTGAGE RESOLUTION
OFFICE BILL 2011**

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As initiated*

ARRANGEMENT OF SECTIONS

PART 1
PRELIMINARY

Section

1. Short title and commencement.
2. Interpretation.

PART 2

NON-JUDICIAL DEBT SETTLEMENT ARRANGEMENTS

CHAPTER 1

Debt Settlement Arrangements: General

3. Purpose of *Part 2, Chapter 1*.
4. Debtor and debt settlement arrangement: general conditions.
5. General duty of personal insolvency trustee to advise debtor prior to initiating debt settlement arrangement.
6. General functions of personal insolvency trustee prior to making of debt settlement arrangement.
7. General functions of personal insolvency trustee after making of debt settlement arrangement.
8. General duties of debtor in debt settlement arrangement process.
9. Documents to be prepared for debt settlement arrangement.
10. Mandatory requirements concerning debt settlement arrangement.
11. Preferential debts in debt settlement arrangement.

[No. 59 of 2011]

12. Secured creditors and debt settlement arrangement.
13. Protective order and its effect.
14. Creditors' meeting required to approve debt settlement arrangement.
15. Debt settlement arrangement comes into effect after registration.
16. Effect of registration of debt settlement arrangement.
17. Variation of debt settlement arrangement.
18. Termination of debt settlement arrangement.
19. Application for adjudication in bankruptcy on ending, termination or failure of debt settlement arrangement.
20. Scope of functions of Court concerning debt settlement arrangements.
21. Grounds of challenge by creditor to debt settlement arrangement.
22. Application to Court to have debt settlement arrangement terminated.
23. Debt settlement arrangement deemed to have failed after 6 month arrears default.

CHAPTER 2

Debt Settlement Arrangements: Licensing and Regulatory Functions of Debt Settlement and Mortgage Resolution Office

24. Purpose of *Part 2, Chapter 2*.
25. Status and general licensing functions of Debt Settlement and Mortgage Resolution Office.
26. Powers of investigation and sanction of Debt Settlement and Mortgage Resolution Office.
27. Annual Report of Debt Settlement and Mortgage Resolution Office.
28. Mandatory requirements to obtain licence as personal insolvency trustee.
29. Code of Practice on Standards for personal insolvency trustees.
30. Guidelines on Reasonable Expenditure and Essential Income for debtors.
31. Offences and penalties.

PART 3
DEBT RELIEF ORDERS

32. Purpose of *Part 3*.
33. Debt relief order.
34. Debts and liabilities excluded from debt relief order.
35. Application for debt relief order.
36. Conditions for making debt relief order.
37. Effect of debt relief order.
38. General duties of debtor in debt relief order process.
39. Creditor objection to debt relief order.
40. Amendment or termination of debt relief order.
41. Effect of termination of debt relief order.
42. Offences and penalties.

PART 4
MORTGAGE RESOLUTION ORDERS

43. Purpose of *Part 4*.
44. Mortgage resolution order.
45. Mortgage properties covered by mortgage resolution order.
46. Application for mortgage resolution order.
47. Conditions for making mortgage resolution order.
48. Submission of application to financial institution.
49. Making of a mortgage resolution order.
50. Effect of mortgage resolution order.
51. General duties of financially restricted mortgagor in mortgage resolution order process.
52. Financial institution's objection to mortgage resolution order.
53. Amendment or termination of mortgage resolution order.
54. Effect of termination of mortgage resolution order.
55. Offences and Penalties.

PART 5
DEBT ENFORCEMENT PROCEDURES

CHAPTER 1

Institutions and Structures

56. Purpose of *Part 5, Chapter 1*.
57. Debt Enforcement Office.
58. Enforcement officers and supervision by Debt Enforcement Office.
59. Enforcement fees and Debt Enforcement Office.
60. General functions of Debt Enforcement Office.
61. Obtaining comprehensive information on debtor's means by Debt Enforcement Office.
62. Enforcement information disclosure request.
63. Determination and implementation of enforcement mechanisms.
64. Court order required for enforcement mechanisms, use of single process and progress reports by enforcement officer.

CHAPTER 2

Enforcement Mechanisms

65. Purpose of *Part 5, Chapter 2*.
66. Proportionality of enforcement mechanism and minimum standard of living.
67. Admission by debtor of claim at pre-action stage.
68. Consolidated instalment order.
69. Attachment of debts order.
70. Joint bank accounts and attachment of debts order.
71. Attachment of earnings order.
72. Variation and review of attachment of earnings order.
73. Consolidated attachment of earnings order.
74. Attachment of earnings order and family maintenance.
75. Goods seizure order for seizure and sale of goods.
76. Goods seizure order for jointly owned and third party goods.
77. Goods seizure order: entry of premises.
78. Order to receive and retain money due to debtor from future sale: receiver by way of equitable execution.

79. Combined mechanisms and orders.
 80. Guidelines on use of goods seizure order.
 81. Code of Practice on goods seizure order.
 82. Abolition of imprisonment for non-payment of debt.
-

ACTS REFERRED TO

Bankruptcy Act 1988	1988, No. 27
Building Societies Act 1989	1989, No. 17
Central Bank Act 1942	1942, No. 22
Central Bank Act 1989	1989, No. 16
Credit Union Act 1997	1997, No. 15
Criminal Justice (Community Service) Act 1983	1983, No. 23
Data Protection Acts 1988 and 2003	
Equal Status Acts 2000 to 2008	
Proceeds of Crime Acts 1996 and 2005	



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RÉITIGH MORGÁISTE, 2011
DEBT SETTLEMENT AND MORTGAGE RESOLUTION
OFFICE BILL 2011**

BILL

entitled

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AN ACT TO REFORM THE LAW ON PERSONAL INSOL-
VENCY; TO PROVIDE FOR A NON-JUDICIAL DEBT
SETTLEMENT ARRANGEMENT PROCESS CONCERN-
ING PERSONAL DEBT; TO PROVIDE FOR A NON-
JUDICIAL MORTGAGE RESOLUTION ORDER CON-
CERNING MORTGAGES OVER FAMILY HOMES; TO
PROVIDE FOR A DEBT RELIEF ORDER FOR PER-
SONAL DEBT WHERE A DEBT SETTLEMENT
ARRANGEMENT OR BANKRUPTCY IS NOT APPRO-
PRIATE; TO REFORM THE LAW ON THE ENFORCE-
MENT OF PERSONAL DEBT, INCLUDING INDIVIDUAL
ENFORCEMENT MECHANISMS; TO PROVIDE FOR THE
ESTABLISHMENT OF A DEBT ENFORCEMENT OFFICE,
WHICH INCLUDES A DEBT SETTLEMENT AND MORT-
GAGE RESOLUTION OFFICE; TO PROVIDE FOR THE
LICENSING AND REGULATION OF PERSONAL INSOL-
VENCY TRUSTEES AND DEBT COLLECTION UNDER-
TAKINGS; AND TO PROVIDE FOR RELATED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

30 **1.—(1)** This Act may be cited as the Debt Settlement and Mort-
gage Resolution Office Act 2011. Short title and
commencement.

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

35 **2.—In this Act—** Interpretation.

“Code of Conduct on Mortgage Arrears” means the Revised Code of Conduct on Mortgage Arrears published by the Central Bank pursuant to section 117 of the Central Bank Act 1989 and which became effective on 1 January 2011;

“the Court” means, unless the context otherwise requires, the Circuit Court; 5

“debtor” means a natural person who is unable to pay his or her personal debt;

“family home” means any real property, building, or any structure, vehicle or vessel (whether mobile or not), or part thereof, ordinarily occupied by a person or persons as a principal private residence, and includes any garden or portion of ground attached to and usually occupied with the property or otherwise required for the amenity or convenience of the property; 10

“financial institution” means any bank regulated by the Central Bank Act 1942, as amended, or any credit union regulated by the Credit Union Act 1997, as amended, or any building society regulated by the Building Societies Act 1989, as amended; 15

“Minister” means the Minister for Justice and Law Reform;

“Money Advice and Budgeting Service” means MABS National Development Limited that is funded and supported by the Citizens Information Board; 20

“mortgage” means any charge or lien on any property for securing money or money’s worth;

“mortgagor” means any person deriving title to the mortgaged property under the original mortgage or entitled to redeem the mortgage; 25

“mortgagee” means any person having the benefit of a charge or lien and any person deriving title to the mortgage under the original mortgagee;

“personal debt” means a debt or debts incurred by a natural person through his or her personal consumption or in the course of his or her business, trade or profession that— 30

(a) is or are for a liquidated sum or sums payable either immediately or at some certain future time, and

(b) is or are not secured debt or debts or excluded debt or debts; 35

“prescribed” means prescribed in Regulations made by the Minister under this Act;

“Report of Expert Group on Mortgage Arrears and Personal Debt” is the report published on 16 November 2010 by the expert group that was established by the Government in February 2010 and was tasked with making recommendations to the Minister for Finance on options for improving the situation for families with mortgage arrears on their principal private residence and with personal debt. 40

PART 2

NON-JUDICIAL DEBT SETTLEMENT ARRANGEMENTS

CHAPTER 1

Debt Settlement Arrangements: General

5 3.—(1) This Chapter sets out—

Purpose of *Part 2*,
Chapter 1.

(a) the general conditions that apply where a debtor enters into a debt settlement arrangement, and

10 (b) the duties and functions of a personal insolvency trustee, of the Debt Settlement and Mortgage Resolution Office and of the Court in connection with debt settlement arrangements.

(2) The debt settlement arrangement procedure, provided for in this Part, establishes a structured non-judicial debt settlement mechanism designed for cases of debtors who, while insolvent, possess the means to make part repayments of their debts over a period of years. debtors who successfully complete a repayment plan under a debt settlement arrangement may obtain under this Part a discharge of their remaining obligations, thereby providing them with an alternative to bankruptcy.

20 4.—(1) Subject to the provisions of this Act, a debtor may enter into a debt settlement arrangement with his or her creditors in respect of his or her personal debt.

Debtor and debt
settlement
arrangement:
general conditions.

25 (2) Subject to *subsection (3)*, a debtor may enter into a debt settlement arrangement once only in a 10 year period, unless during that time period exceptional factors or other external factors outside of his or her control justify a subsequent debt settlement arrangement.

30 (3) It shall be presumed that any debtor, including one who has entered into a debt settlement arrangement within the preceding 10 year period, is eligible to propose a debt settlement arrangement to his or her creditors on any number of occasions, subject to—

(a) the approval of the creditors' meeting in accordance with *section 14*,

35 (b) the entitlement of a creditor to challenge the debtor's eligibility where he or she has previously proposed a debt settlement arrangement within the 10 years, and

40 (c) the obligation being on the debtor to establish the existence of exceptional factors or other external factors outside of his or her control that have caused his or indebtedness and which justify a second debt settlement arrangement within the 10 year time period.

(4) In any application for a debt settlement arrangement, the debtor or his or her personal insolvency trustee shall make a statutory declaration as to the debtor's previous participation, if any, in a debt settlement arrangement.

General duty of personal insolvency trustee to advise debtor prior to initiating debt settlement arrangement.

5.—A personal insolvency trustee shall, prior to a debtor initiating a debt settlement arrangement process, advise the debtor as to—

- (a) any alternative option or options available to the debtor, including a debt relief order or bankruptcy, and the general effect of any such option or options, and 5
- (b) the general effect of initiating and of entering into a debt settlement arrangement process.

General functions of personal insolvency trustee prior to making of debt settlement arrangement.

6.—The general functions of a personal insolvency trustee prior to the making of a debt settlement arrangement are to—

- (a) confirm in writing that he or she has consented to act in the role of personal insolvency trustee for the purposes of the debt settlement arrangement, and has entered into an agreement with the debtor to make the payments to creditors (“individual debt settlement agreements”) comprising the debt settlement arrangement, 10
15
- (b) hold a meeting with the debtor and provide information to the debtor in accordance with *section 5* about his or her options for addressing his or her situation of financial difficulty, and certify that such information has been provided, 20
- (c) receive a full disclosure of the debtor’s financial affairs, and, if such a step has not already been taken, assist the debtor in completing a standard financial statement, 25
- (d) make a statutory declaration to the effect that the trustee has reasonable grounds to believe that the information contained in the debtor’s statement of affairs is complete and accurate, 25
- (e) prepare a proposal to be considered and voted upon at a creditors’ meeting to be held in accordance with *section 14*, 30
- (f) consider the likely viability of the proposal, its fairness to all parties involved, whether it is an acceptable alternative to bankruptcy or a debt relief order, and whether it is otherwise fit to be considered by creditors, 35
- (g) submit a report to the Debt Settlement and Mortgage Resolution Office stating whether the proposed debt settlement arrangement has a reasonable prospect of being accepted by creditors and completed sustainably by the debtor; and whether a creditors’ meeting should be summoned to consider the proposal, and 40
- (h) summon a creditors’ meeting, to be held in accordance with *section 14*.

General functions of personal insolvency trustee after making of debt settlement arrangement.

7.—The general functions of a personal insolvency trustee after the making of a debt settlement arrangement are to—

- (a) ensure that the debt settlement arrangement proceeds in accordance with its accepted terms, 45

- (b) maintain regular contact with the debtor, obtaining reports and conducting reviews as may be required,
- (c) monitor any problems that may arise and, where a default appears likely to take place, discuss the issue with the debtor,
- (d) provide information to the debtor concerning the option to vary the debt settlement arrangement in accordance with *section 17* where the debtor's circumstances have changed,
- (e) if a variation in the terms of a debt settlement arrangement is required, take appropriate action to achieve a variation in accordance with *section 17*,
- (f) comply with any requirements in this Act or Regulations made under the Act concerning his or her remuneration, including maintaining a separate record of money received, payments made and the balance of money held in relation to any debt settlement arrangement,
- (g) notify creditors of any increase in his or her remuneration occurring during the course of the administration of the debt settlement arrangement,
- (h) deal with the debtor's property in the manner specified in the debt settlement arrangement,
- (i) respond in a timely manner to reasonable requests from creditors about the progress of individual debt settlement agreements,
- (j) respond in a timely manner to reasonable requests from a debtor for information,
- (k) ensure that creditors and the Debt Settlement and Mortgage Resolution Office are informed where the debtor defaults in prescribed circumstances,
- (l) handle and properly account for money including paying all money received from debtors under individual debt settlement agreements to the credit of a single interest-bearing bank account and keeping such accounts, books and records as are necessary to give a full and correct account of the administration of the individual debt settlement agreements, and
- (m) answer any inquiries about the individual debt settlement agreements and cooperate with any inquiry or investigation made by the Debt Settlement and Mortgage Resolution Office or court.

8.—A debtor who participates in the debt settlement arrangement process shall, from the time of applying for entry to it through to the completion of the process, comply with the following duties—

General duties of debtor in debt settlement arrangement process.

- (a) to cooperate fully in the process, and in particular to comply with any reasonable request from the personal insolvency trustee to provide assistance, documents and information necessary for the application of the process to the debtor's case;

- (b) to inform the personal insolvency trustee as soon as reasonably practicable of any material change in the debtor's circumstances, particularly an increase in the level of the debtor's assets or income, which would affect the debtor's ability to make repayments under the debt settlement arrangement; 5
- (c) not to obtain credit above a prescribed amount without disclosing the fact that the debtor is party to a debt settlement arrangement; and
- (d) not to engage directly or indirectly in any business under a name other than that in which the debt settlement arrangement has been registered (in the Personal Insolvency Register) without disclosing the name in which the arrangement was registered to all persons with whom the debtor enters into a business transaction. 10
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Documents to be prepared for debt settlement arrangement.

9.—The following documents shall be prepared by the personal insolvency trustee in advance of the application for entry to the debt settlement arrangement procedure—

- (a) a statement by the personal insolvency trustee indicating his or her consent to act as personal insolvency trustee; 20
- (b) a completed statement of the debtor's financial affairs, showing the debtor's position of insolvency, in the form of the standard financial statement;
- (c) a statement that, by reference to cash flow and balance sheet, in the opinion of the personal insolvency trustee, as verified by the completed standard financial statement— 25
 - (i) the value of the debtor's assets is less than the amount of the debtor's liabilities, and that it is unforeseeable that at any stage within a 5 year period the value of the assets will be equal to, or larger than, the value of the liabilities, or 30
 - (ii) the debtor is unable to pay his or her debts as they fall due, and it is unforeseeable that over the course of a 5 year period the debtor will be able to pay his or her debts in full; 35
- (d) the terms of the proposal to be sent to creditors for consideration;
- (e) a report of the personal insolvency trustee stating whether, in the opinion of the personal insolvency trustee—
 - (i) the proposal of the debtor has a reasonable prospect of being accepted by creditors, 40
 - (ii) the proposal of the debtor is viable and that the debtor is reasonably likely to be able to comply with its terms,
 - (iii) a meeting of the debtor's creditors will be held on a specific date to consider the proposal, and 45

(iv) the proposal is reasonably fair to all parties involved, and is an acceptable alternative to bankruptcy or a debt relief order;

5 (f) a statement to the effect that the debtor has been appropriately advised by the personal insolvency trustee in accordance with *section 5* of his or her options for managing his or her debt difficulty;

10 (g) a statement to the effect that the personal insolvency trustee has reasonable grounds to believe that the information contained in the debtor's statement of affairs is complete and accurate; and

15 (h) a statement to the effect that the personal insolvency trustee has reasonable grounds to believe that the debtor is eligible to enter the debt settlement arrangement procedure.

10.—(1) Subject to the mandatory requirements in *subsection (2)*, the terms of a debt settlement arrangement are to be agreed between the debtor and his or her creditors.

Mandatory requirements concerning debt settlement arrangement.

20 (2) The mandatory requirements referred to in *subsection (1)* are—

(a) the maximum duration of a debt settlement arrangement shall be 5 years, so that a proposed debt settlement arrangement shall provide for the performance of its obligations within a period of 5 years;

25 (b) subject to *paragraphs (c)* and *(d)*, on completion of the obligations specified in a debt settlement arrangement the debtor shall be discharged from the remainder of the debts covered by the arrangement;

30 (c) a debt settlement arrangement shall not release the debtor from any of the following debts or liabilities unless the proposed debt settlement arrangement explicitly provides for the compromise of that debt or liability and the relevant creditor for any of the following debts or liabilities has voted to accept a debt settlement arrangement—

35 (i) any liability arising out of a court order made in family law proceedings,

(ii) any liability arising out of damages awarded in respect of personal injuries or wrongful death arising from the tort of the debtor, or

40 (iii) any debt or liability arising from a loan (or forbearance of a loan) obtained through fraud, misappropriation, embezzlement or fraudulent breach of trust;

45 (d) a debt settlement arrangement shall not release the debtor from any debt or liability 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;

(e) a debt settlement arrangement shall not contain any terms requiring the debtor to sell any assets of the debtor that are necessary for the debtor's employment, business or vocation;

(f) without prejudice to *paragraph (e)*, a debt settlement arrangement shall not contain any terms which would require such repayments as would leave the debtor with insufficient income to maintain a reasonable standard of living for the debtor and his or her dependants (if any). 5

(3) The Minister may make Regulations prescribing the details of any of the matters set out in *paragraphs (e) and (f) of subsection (2)*. 10

(4) The Debt Settlement and Mortgage Resolution Office may publish a code of practice providing guidance on any of the matters set out in *paragraphs (e) and (f) of subsection (2)*.

Preferential debts in debt settlement arrangement.

11.—Unless the relevant preferential creditors agree otherwise, a debt settlement arrangement shall provide for the payment of any debts specified in the Bankruptcy Act 1988 as preferential debts in priority to those of the debtor's debts that are not preferential debts. 15

Secured creditors and debt settlement arrangement.

12.—In the debt settlement arrangement process, a secured creditor remains free to choose between the following three options— 20

(a) realising its security and claiming for the balance due, if any, after deducting the net amount realised in the debt settlement arrangement process,

(b) surrendering its security to the debtor and claiming for the full amount of the debt owed as if it was unsecured, or 25

(c) valuing the security when proving its debt, and claiming alongside unsecured creditors for the balance due after deducting the amount of the valuation.

Protective order and its effect.

13.—(1) A debtor who seeks to enter into a debt settlement arrangement may apply to the Debt Settlement and Mortgage Resolution Office for an order to prevent the enforcement of any personal debt while attempts are made to reach a debt settlement arrangement, and such an order is referred to in this Act as a "protective order". 30

(2) A debtor shall inform his or her creditors of the making of a protective order. 35

(3) The officers of the Debt Enforcement Office shall refrain from taking any steps to enforce a judgment against a debtor who is the subject of a protective order.

(4) The debtor shall, when applying for a protective order, provide the Debt Settlement and Mortgage Resolution Office with draft terms of the debt settlement arrangement. 40

(5) Any creditor on whom notice of the making of a protective order has been served shall, if commencing proceedings against the debtor for the recovery of a debt, notify the court of the making of such an order, and the court shall, without prejudice to any other 45

order it may deem appropriate, make an order staying the proceedings for such period it deems appropriate pending the outcome of attempts to reach a debt settlement arrangement.

5 **14.—(1)** Where a proposed debt settlement arrangement is approved at a creditors' meeting by a majority of 60 per cent in value of actual votes cast at the meeting, the proposed debt settlement arrangement shall become a debt settlement arrangement under this Act and shall, subject to the provisions of this Act (in particular *section 15*) then be binding on every creditor who was entitled to
10 vote at the creditors' meeting.

Creditors' meeting required to approve debt settlement arrangement.

(2) Where a debt settlement arrangement is approved in accordance with *subsection (1)*, the personal insolvency trustee shall forthwith send a copy of the debt settlement arrangement to the Debt Settlement and Mortgage Resolution Office.

15 (3) Where the proposed debt settlement arrangement is not approved in accordance with *subsection (1)*, the debt settlement arrangement procedure shall be deemed to have come to an end, and any protective order issued by the Debt Settlement and Mortgage Resolution Office shall cease to have effect.

20 (4) The Minister shall make Regulations concerning the requirements as to the holding of a creditors' meeting, and without prejudice to the generality of such Regulations, they shall provide that such a meeting may be held otherwise than in the form of a physical meeting, and shall provide for the voting process (including permitting
25 the communication of creditors' votes to the intermediary by telephone or electronically, such as by means of email or the internet).

15.—(1) Where a debt settlement arrangement is approved in accordance with *section 14*, the Debt Settlement and Mortgage Resolution Office shall forthwith send a copy of the debt settlement arrangement to the Circuit Court in whose circuit the debtor resides.
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Debt settlement arrangement comes into effect after registration.

(2) Unless a creditor enters an objection in the Circuit Court to the debt settlement arrangement within 30 days from the communication of the result of the creditors' meeting to the Debt Settlement and Mortgage Office, the debt settlement arrangement shall be
35 deemed to have effect 30 days after such communication.

(3) Where a creditor enters an objection in the Circuit Court to the debt settlement arrangement within 30 days from the communication of the result of the creditors' meeting to the Debt Settlement and Mortgage Resolution Office, the Circuit Court shall hear such
40 objection in accordance with the scope of the Court's powers set out in *section 19*.

(4) (a) Where the Circuit Court upholds the objection to the debt settlement arrangement, the debt settlement arrangement procedure shall be deemed to have come to an end, and any protective order issued by the Debt Settlement and Mortgage Resolution Office shall cease to have effect.
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(b) Where the Circuit Court rejects the objection to the debt settlement arrangement, the debt settlement arrangement procedure shall be deemed to have effect from the making of the Court's order.
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Effect of registration of debt settlement arrangement.

16.—(1) Where a debt settlement arrangement is deemed to have effect under *section 15(2)* or *section 15(4)(b)*, it shall be registered by the Debt Settlement and Mortgage Resolution Office in the Personal Insolvency Register, which shall be maintained by the Debt Settlement and Mortgage Resolution Office.

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(2) The effect of registering a debt settlement arrangement in the Personal Insolvency Register shall be that—

(a) no creditor may present a bankruptcy petition against the debtor,

(b) no creditor may commence legal proceedings for the recovery of a debt covered by the arrangement, and

(c) no action may be taken by an enforcement officer to enforce a judgment debt owed by the debtor.

Variation of debt settlement arrangement.

17.—(1) A debt settlement arrangement may be varied at a creditors' meeting by a majority of 60 per cent in value of actual votes cast at the meeting and such variation shall, subject to the provisions of this Act, then be binding on every creditor who was entitled to vote at the creditors' meeting.

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(2) Where a debt settlement arrangement is varied in accordance with *subsection (1)*, the personal insolvency trustee shall forthwith send a copy of the variation of the debt settlement arrangement to the Debt Settlement and Mortgage Resolution Office.

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(3) When the Debt Settlement and Mortgage Resolution Office receives the variation of a debt settlement arrangement in accordance with *subsection (2)*, it shall forthwith register the variation in the Personal Insolvency Register.

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(4) *Section 15(2)* to (4) shall apply, with appropriate adaptations, to a variation made under this section.

Termination of debt settlement arrangement.

18.—(1) A debt settlement arrangement may be terminated at a creditors' meeting by a majority of 60 per cent in value of actual votes cast at the meeting and such termination shall, subject to the provisions of this Act, then be binding on every creditor who was entitled to vote at the creditors' meeting.

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(2) Where a debt settlement arrangement is terminated in accordance with *subsection (1)*, the personal insolvency trustee shall forthwith notify the Debt Settlement and Mortgage Resolution Office.

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(3) When the Debt Settlement and Mortgage Resolution Office receives notice of the termination of a debt settlement arrangement in accordance with *subsection (2)*, it shall forthwith register the termination in the Personal Insolvency Register.

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(4) *Section 15(2)* to (4) shall apply, with appropriate adaptations, to a termination made under this section.

Application for adjudication in bankruptcy on ending, termination or failure of debt settlement arrangement.

19.—(1) Where a debt settlement arrangement has been deemed to come to an end or is terminated in accordance with *section 14, 15, 17* or *18*, or is deemed to have failed under *section 22*, a creditor or the personal insolvency trustee may apply to court for an adjudication in bankruptcy against the debtor involved.

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(2) For the avoidance of doubt, a creditor or the personal insolvency trustee may apply to court for an adjudication in bankruptcy against the debtor involved in the same proceedings as an application for termination of the debt settlement arrangement.

5 **20.**—In this Part, the scope of the functions of the Court concerning debt settlement arrangements are limited to the following matters—

Scope of functions of Court concerning debt settlement arrangements.

10 (a) approval of a debt settlement arrangement that has been accepted at a creditors' meeting in accordance with *section 14* and registered by the Debt Settlement and Mortgage Resolution Office in accordance with *section 16*, such approval to be given by the Court without a hearing unless an objection to approval is raised by a creditor in accordance with *section 15, 17 or 18*;

15 (b) in a hearing held concerning an objection by a creditor in accordance with *sections 15, 17 or 18*, the hearing shall be limited to the grounds specified in *section 21*; and

20 (c) in a hearing concerning a challenge to any actions, directions or decisions of either the personal insolvency trustee or the Debt Settlement and Mortgage Resolution Office, the hearing shall be limited to the grounds specified in *section 22*.

25 **21.**—The grounds on which a debt settlement arrangement may be challenged by a creditor under *section 15, 17 or 18* are, without prejudice to *section 22*, limited to the following matters—

Grounds of challenge by creditor to debt settlement arrangement.

30 (a) the procedural requirements specified in this Act were not followed,

35 (b) a material inaccuracy or omission exists in the debtor's statement of affairs (based on the standard financial statement) which causes a material detriment to the creditor,

40 (c) the debtor did not satisfy the eligibility requirements to enter the debt settlement arrangement process when he or she initiated the process,

45 (d) the arrangement unfairly prejudices the interests of a creditor, or

 (e) the debtor has committed an offence under this Act.

40 **22.**—(1) Without prejudice to *section 21*, a creditor or a personal insolvency trustee may, at any time during the operation of a debt settlement arrangement, apply to the Court to have a debt settlement arrangement terminated, and such application shall be limited to the following grounds—

Application to Court to have debt settlement arrangement terminated.

45 (a) the procedural requirements specified in this Act were not followed,

 (b) a material inaccuracy or omission exists in the debtor's statement of affairs (based on the standard financial

statement) which causes a material detriment to the creditor,

- (c) the debtor did not satisfy the eligibility requirements to enter the debt settlement arrangement process when he or she initiated the process, 5
- (d) the debtor did not comply with the duties and obligations imposed under the debt settlement arrangement process,
- (e) the continuation of the arrangement would lead to injustice or undue delay,
- (f) the debtor has committed an offence under this Act, or 10
- (g) a 3 month arrears default has occurred.

(2) For the purposes of *subsection (1)(g)*, a 3 month arrears default means a default that occurs at a specific time (the “test time”) in relation to a debt settlement arrangement if, and only if—

- (a) at the beginning of the 3 month period ending immediately before the test time, one or more payments in respect of the debtor’s provable debts become due and payable by the debtor under an individual debt settlement agreement, and 15
- (b) throughout that 3 month period, the debtor was in arrears in respect of any or all of those payments. 20

Debt settlement arrangement deemed to have failed after 6 month arrears default.

23.—(1) A debt settlement arrangement shall be deemed to have failed where, after a 6 month arrears default has occurred, a creditor or the personal insolvency trustee, notifies the Debt Settlement and Mortgage Resolution Office of such default. 25

(2) Where the Debt Settlement and Mortgage Resolution Office receives notification of default referred to in *subsection (1)*, it shall record the failure of the debt settlement arrangement in the Personal Insolvency Register.

(3) For the purposes of this section, a 6 month arrears default means a default that occurs at a specific time (the “test time”) in relation to a debt settlement arrangement if, and only if, either— 30

- (a) before the test time, one or more payments in respect of provable debts became due and payable by the debtor under an individual debt settlement agreement, and 35
- (b) at no time during the 6 month period ending immediately before the test time were any obligations in respect of those payments discharged.

CHAPTER 2

Debt Settlement Arrangements: Licensing and Regulatory Functions of Debt Settlement and Mortgage Resolution Office 40

Purpose of Part 2, Chapter 2.

24.—This Chapter sets out—

- (a) the status and general licensing functions of the Debt Settlement and Mortgage Resolution Office,

- (b) mandatory requirements to obtain a licence as a personal insolvency trustee,
- (c) the making of codes of practice and guidelines by the Debt Settlement and Mortgage Resolution Office, and
- 5 (d) offences for failure to comply with this Part.

25.—(1) The Debt Settlement and Mortgage Resolution Office shall be an independent unit within the Debt Enforcement Office established under *section 43*, and shall have all the necessary powers to carry out the functions conferred on it by this Act.

Status and general licensing functions of Debt Settlement and Mortgage Resolution Office.

10 (2) Without prejudice to the generality of *subsection (1)* and to the other provisions of this Act, a person who performs the functions of a personal insolvency trustee shall be in possession of a current personal insolvency trustee licence issued by the Debt Settlement and Mortgage Resolution Office.

15 (3) In carrying out its licensing functions under *subsection (2)*, the Debt Settlement and Mortgage Resolution Office shall have the power to—

- (a) issue licences to suitably qualified persons to carry out the functions of personal insolvency trustee,
- 20 (b) receive and review annual reports from licensed personal insolvency trustees,
- (c) enter and inspect any places where a personal insolvency trustee conducts his or her business as licensed by the Debt Settlement and Mortgage Resolution Office,
- 25 (d) investigate any complaints or suspected violation of this Act, Regulations made under the Act or codes of practice issued under it, and
- (e) develop and publish codes of practice in accordance with this Act to provide guidance on the requirements of the functions of personal insolvency trustee.
- 30

(4) The Debt Settlement and Mortgage Resolution Office shall be funded, in whole or in part, through the prescribed licensing fees payable to it.

35 **26.—**(1) The Debt Settlement and Mortgage Resolution Office, in carrying out its role to investigate any complaints or suspected violation of this Act, Regulations made under the Act or codes of practice issued under it, shall have the power to compel a personal insolvency trustee to provide it with books of account and other records.

Powers of investigation and sanction of Debt Settlement and Mortgage Resolution Office.

40 (2) The Debt Settlement and Mortgage Resolution Office, where it finds that a personal insolvency trustee has acted in breach of any provision of this Act, of any Regulations made under the Act or of any codes of practice issued under it, shall have the power to do any one, or a combination of, the following—

- 45 (a) impose restrictions or conditions on the licence of a personal insolvency trustee;

- (b) in cases of serious breaches, revoke the licence of a personal insolvency trustee;
- (c) without prejudice to *paragraphs (a) and (b)*, refer a breach to a professional body, if any, of a personal insolvency trustee where the breach raises issues as to the personal insolvency trustee's continued fitness to be a member of such body; 5
- (d) impose a financial sanction by way of penalty on a personal insolvency trustee;
- (e) order a personal insolvency trustee to pay monetary compensation to any individual who has suffered financial loss arising from any such breach. 10

Annual Report of Debt Settlement and Mortgage Resolution Office.

27.—The Debt Settlement and Mortgage Resolution Office shall, as soon as practicable after the end of each calendar year, publish an annual report, which shall include a financial statement and a statistical analysis of the complaints received and cases investigated during the year to which it applies. 15

Mandatory requirements to obtain licence as personal insolvency trustee.

28.—(1) A person applying for a licence as a personal insolvency trustee shall comply with prescribed conditions concerning—

- (a) the applicant's general fitness and good character; 20
- (b) whether the applicant has been convicted of any offence, in particular involving fraud, dishonesty or violence;
- (c) the applicant's record of compliance with insolvency legislation;
- (d) whether the applicant has engaged in any practice considered to be deceitful, oppressive or otherwise unfair or improper, which casts doubt upon his or her probity or competence for discharging duties of personal insolvency trustee; 25
- (e) the prior conduct of the applicant in carrying out any insolvency practice, including the applicant's independence, skill, integrity and compliance with generally accepted professional standards; 30
- (f) adequate systems of control;
- (g) disclosure of conflicts of interests; 35
- (h) previous cancellation of registration or other disciplinary sanctions;
- (i) the applicant's education and training;
- (j) the skills and relevant knowledge of the applicant regarding the relevant legislation, debt management techniques, and his or her ability to carry out the role and to comply with all of the duties and obligations required of the role; 40
- (k) the level of the applicant's insurance against liabilities that the applicant may incur in this role or to provide security for the proper performance of his or her functions; 45

(l) the solvency of the applicant and any previous bankruptcies or insolvencies within a prescribed period;

(m) if the applicant is a member of any professional body, the applicant's standing within that body, and any current disciplinary action by the body involving the applicant.

(2) The Minister shall make Regulations prescribing the details of any of the matters set out in *subsection (1)*.

(3) The Debt Settlement and Mortgage Resolution Office shall publish a code of practice providing guidance on any of the matters set out in *subsection (1)*.

(4) For the avoidance of doubt—

(a) a personal insolvency trustee need not be a money adviser or money advice undertaking, and

(b) the same personal insolvency trustee may act for a debtor for any or all of the following, namely, a debt settlement arrangement process, a debt relief order or for any purpose connected with and permitted by the Bankruptcy Act 1988, as amended by this Act.

29.—(1) The Debt Settlement and Mortgage Resolution Office shall, as soon as practicable after it has been established, prepare and publish a Code of Practice on Standards for personal insolvency trustees, which shall provide guidance on the standards expected of a personal insolvency trustee in carrying out his or her duties and functions.

Code of Practice on Standards for personal insolvency trustees.

(2) Without prejudice to the generality of *subsection (1)*, the Code of Practice on Standards for personal insolvency trustees shall include guidance on the following matters—

(a) continuing professional development activities;

(b) maintenance in force of a bond or security for losses caused by the fraud or dishonesty of the personal insolvency trustee;

(c) general best practice standards in relation to the preparation and supervision of debt settlement arrangements (including the provision of advice to debtors);

(d) duties to assess the debtor's income and the repayments that the debtor can reasonably make or is obliged to make towards his or her creditors, and to monitor the payment of contributions by the debtor to his or her creditors;

(e) making of annual returns relating to all cases worked on during a year;

(f) records to be maintained by a personal insolvency trustee;

(g) a duty to act honestly and impartially;

(h) a duty to notify creditors, the Debt Settlement and Mortgage Resolution Office or the Court (as appropriate) if it

becomes apparent that a conflict of interests exists, and to take steps to avoid the conflict of interest;

- (i) a duty to respect any data protection legislation and privacy rights when dealing with information relating to an insolvency; 5
- (j) details of the obligatory preliminary inquiries and actions that must be taken by the personal insolvency trustee in any process or proceedings under this Act;
- (k) details of the approach to be taken by the personal insolvency trustee in investigating matters affecting any process or proceedings under this Act; 10
- (l) details of the approach to be taken by the personal insolvency trustee in identifying, protecting, realising, or determining the ownership of, assets, or in obtaining advice about an interest or value, and disposing of property; 15
- (m) standards regarding remuneration and costs;
- (n) standards and duties regarding the holding of meetings of creditors;
- (o) standards and duties regarding the keeping of personal insolvency trustee accounts; 20
- (p) duties to provide information to creditors;
- (q) duties to report to creditors;
- (r) duties regarding the distribution of dividends;
- (s) advertising practices of a personal insolvency trustee; and 25
- (t) duties relating to the reporting of offences or the sanctioning of debtors or directors.

(3) The Debt Settlement and Mortgage Resolution Office shall consult with such parties as it considers appropriate or necessary in preparing the Code of Practice on Standards for personal insolvency trustees, which shall include relevant representatives and professional bodies. 30

Guidelines on Reasonable Expenditure and Essential Income for debtors.

30.—(1) The Debt Settlement and Mortgage Resolution Office shall, as soon as practicable after it has been established, prepare and publish Guidelines on Reasonable Expenditure and Essential Income for debtors. 35

(2) Without prejudice to the generality of *subsection (1)*, in preparing the guidelines, the Debt Settlement and Mortgage Resolution Office shall take into account—

- (a) the structural framework of the standard financial statement published by the Money Advice and Budgeting Service; 40
- (b) the definition of poverty in the National Anti-Poverty Strategy and National Action Plan for Social Inclusion 2007-2016 or similar replacement publications; 45

(c) subject to *paragraph (d)*, the amount of the basic supplementary welfare allowance; and

(d) the need to incentivise the debtor to seek and maintain employment and to cooperate in the completion of his or her obligations under the debt settlement arrangement as far as possible, in particular by—

(i) ensuring that the reasonable essential income permitted to be maintained by a debtor is higher than that which the debtor would receive if he or she was unemployed and reliant on social welfare payments for income;

(ii) ensuring that the debtor is allowed to retain a significant portion of any income increase;

(iii) providing for proportionate reductions in the amount of payments to be made by the debtor as a reward for completing certain stages of the debt settlement arrangement payment plan;

(iv) ensuring that the level of income allowed to the debtor under a debt settlement arrangement is greater than that exempted under an instalment order, attachment of earnings mechanism or other method for the enforcement of judgment debts.

31.—(1) A debtor who participates in a debt settlement arrangement process in a manner that involves fraudulent or dishonest conduct commits an offence. Offences and penalties.

(2) Without prejudice to the generality of *subsection (1)*, a debtor commits an offence under this section where he or she—

(a) fraudulently makes a false or incomplete representation for the purposes of obtaining the acceptance by a creditors' meeting of a proposed debt settlement arrangement;

(b) knowingly conceals, or refuses to produce, or produces a falsified document or documents or information when required to do so by the personal insolvency trustee, the Debt Settlement and Mortgage Resolution Office or the Court;

(c) conceals or disposes of property with the intention of defrauding creditors;

(d) fraudulently deals with property obtained on credit;

(e) obtains credit above a certain limit without disclosing that the debtor is a party to a debt settlement arrangement; or

(f) carries on business in a name other than the debtor's own without disclosing the name under which the debt settlement arrangement has been registered in the Personal Insolvency Register.

(3) (a) Where a personal insolvency trustee has reasonable grounds to believe that the debtor may have committed a criminal offence under this Act, the personal insolvency

trustee shall notify the Debt Settlement and Mortgage Resolution Office of this.

(b) The personal insolvency trustee shall cooperate with any criminal investigation under this Act.

(4) A person who acts as a personal insolvency trustee without a current licence issued under this Act commits an offence. 5

(5) Summary proceedings in relation to an offence under this Act, other than *Part 5*, may be brought and prosecuted by the Debt Settlement and Mortgage Resolution Office.

(6) A person who is guilty of an offence under this Act shall be liable— 10

(a) on summary conviction to a fine not exceeding €5,000 or, at the discretion of the Court in the case of an individual, to imprisonment for a term not exceeding twelve months, or both, or 15

(b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding five years, or both.

PART 3

DEBT RELIEF ORDERS 20

Purpose of *Part 3*. 32.—This Part sets out—

- (a) the nature and purpose of a debt relief order,
- (b) the process for obtaining a debt relief order, and
- (c) duties of debtors and offences under this Part.

Debt relief order. 33.—(1) This Part provides for the establishment of debt relief orders as a structured non-judicial resolution procedure for debtors who lack the necessary means to make even part repayments to their creditors. 25

(2) Subject to the provisions of this Act, an insolvent debtor (being a natural person) whose disposable income, non-essential assets and total debts fall below the prescribed level (in this Part referred to as an insolvent debtor) may obtain a debt relief order in respect of his or her personal debt. 30

(3) (a) The Minister shall, as soon as practicable after the coming into force of this Act, make Regulations for the purposes of *subsection (1)* which set out the prescribed levels of disposable income, non-essential assets and total debts. 35

(b) The Minister shall, from time to time, amend the prescribed levels, having regard in particular to the Consumer Price Index. 40

34.—(1) A debt relief order shall not release an insolvent debtor from any secured debt, and any such debt is therefore not capable of being discharged under this Part. Debts and liabilities excluded from debt relief order.

5 (2) A debt relief order shall not release an insolvent debtor from any of the following debts or liabilities, and any such debts or liabilities are therefore not capable of being discharged under this Part—

(a) any liability arising out of a court order made in family law proceedings,

10 (b) any liability arising out of damages awarded in respect of personal injuries or wrongful death arising from the tort of the insolvent debtor,

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

15 (d) any debt or liability 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.

20 35.—(1) An insolvent debtor may initiate an application for a debt relief order to the Money Advice and Budgeting Service only. Application for debt relief order.

25 (2) The Money Advice and Budgeting Service shall, in consultation with the debtor, prepare and complete a prescribed application form for a debt relief order, based on the standard financial statement, and shall confirm that, having regard to the information supplied by the debtor, the debtor appears to comply with the conditions in *section 33* and *section 36*.

30 (3) The Money Advice and Budgeting Service shall communicate the application form for a debt relief order to the Debt Settlement and Mortgage Resolution Office, which shall determine, in accordance with this Part, whether to make a debt relief order.

(4) The Debt Settlement and Mortgage Resolution Office shall make a debt relief order where the application complies with the requirements specified in *section 33* and *section 36*.

35 (5) The insolvent debtor shall pay a prescribed fee to the Money Advice and Budgeting Service, which shall be set at such a level as not to operate as an obstacle to access to the debt relief order process and which shall be revised from time to time by reference to the Consumer Price Index.

40 (6) Applications for, and communications concerning, a debt relief order shall, so far as practicable, be made using on-line information and communications technology.

(7) Where a debt relief order is made, it shall be registered by the Debt Settlement and Mortgage Resolution Office in the Personal Insolvency Register.

45 36.—(1) A debt relief order may be granted by the Debt Settlement and Mortgage Resolution Office only in respect of an applicant who is insolvent as defined in *section 33* and where the applicant— Conditions for making debt relief order.

- (a) has resided in the State for one year prior to the application or whose centre of main interests is in the State, and
 - (b) either—
 - (i) has not previously been granted a debt relief order, or 5
 - (ii) if he or she has previously been granted a debt relief order, his or her insolvency as defined in this section has been caused by external factors outside of the debtor’s control (it being presumed that any such factors were not outside his or her control where less 10 than 6 years have elapsed since a debt relief order was granted to the debtor).
- (2) The Debt Settlement and Mortgage Resolution Office may refuse to make a debt relief order where it is of opinion, based on reasonable grounds, that any of the following conditions exist— 15
- (a) the debtor is an undischarged bankrupt;
 - (b) a bankruptcy petition is pending against the debtor, and the financial outcome for the petitioning creditor would be materially better if the debtor is adjudicated bankrupt than if the debtor is admitted to the debt relief order 20 process;
 - (c) the debtor has made any false representation in making the application or on supplying any information or documents in support of it;
 - (d) the debtor has entered into a transaction with any person 25 at an undervalue during the period between the start of the period of 3 months (ending with the application date) and the determination date;
 - (e) the debtor has concealed assets with the intention of defrauding creditors; 30
 - (f) the debtor has engaged in conduct that would, if the debtor were adjudicated bankrupt, constitute an offence; or
 - (g) the debtor has incurred a debt or debts knowing that he or she does not have the means to repay them. 35
- (3) Where the Debt Settlement and Mortgage Resolution Office refuses an application, it shall give reasons for the refusal.
- (4) (a) The Debt Settlement and Mortgage Resolution Office may request further information from the debtor where the Office has reasonable grounds to believe that such 40 information is necessary in order to reach a conclusion in relation to the existence of the conditions specified in this section.
 - (b) The Debt Settlement and Mortgage Resolution Office may refuse to make a debt relief order where the debtor 45 fails to provide such information when requested.
- (5) The Debt Settlement and Mortgage Resolution Office shall presume that all of the relevant conditions in this section are satisfied

if that appears to be the position from the debtor's application and where the Office has no reasonable grounds to believe that the information supplied is inaccurate or incomplete.

5 **37.—**(1) The effect of granting a debt relief order shall be that for a period of 12 months after the granting of the debt relief order, any creditor is prevented from commencing any legal proceedings for the recovery of a debt included in the debt relief order. Effect of debt relief order.

10 (2) Where proceedings for the recovery of a debt included in the debt relief order have already been commenced, the Court may make an order staying the proceedings or an order permitting them to continue subject to such terms as the Court thinks fit.

15 (3) For the avoidance of doubt, a creditor and his or her agent are prohibited from taking any action to collect, or undertake or attempt to collect, directly or indirectly, debts owed by a debtor which have been included in a debt relief order.

(4) This section does not affect the power of a secured creditor to realise or otherwise deal with his or her security.

20 (5) On the expiry of the 12 month period after the granting of the debt relief order, the debts included in the debt relief order shall stand discharged.

38.—A debtor who participates in the debt relief order process shall, from the time of applying for entry to it through to the completion of the process, comply with the following duties— General duties of debtor in debt relief order process.

25 (a) to co-operate fully in the process, and in particular to comply with any reasonable request of the Debt Settlement and Mortgage Resolution Office to provide assistance, documents and information necessary for the application of the process to the debtor's case;

30 (b) to inform the Debt Settlement and Mortgage Resolution Office as soon as reasonably practicable of any material change in his or her circumstances, particularly an increase in the level of the debtor's assets or income, which would affect (or would have affected) the adjudication on the debtor's application, or which influences the debtor's ability to repay an amount towards the debts included in the debt relief order;

35 (c) not to obtain credit above a certain amount without disclosing the fact that a debt relief order or a debt relief restrictions order is in place in respect of the debtor; and

40 (d) not to engage directly or indirectly in any business under a name other than that in which the debt relief order was made without disclosing the debtor's name as used in the order to all persons with whom the debtor enters into a business transaction.

45 **39.—**(1) A creditor may, at any time during the 12 month duration of the debt relief order process, object to the debtor's continuing participation in the debt relief order process by way of applying Creditor objection to debt relief order.

to the Debt Settlement and Mortgage Resolution Office for an investigation by the Debt Settlement and Mortgage Resolution Office under this section.

(2) The Debt Settlement and Mortgage Resolution Office shall, in response to such objection, carry out an investigation of the debtor's affairs and, if it finds that the conditions for making a debt relief order specified in *section 36* did not exist at the time the order was made, may amend or, in its discretion, revoke the order. 5

(3) A creditor may appeal to the court against a decision of the Debt Settlement and Mortgage Resolution Office made under this section on the following grounds— 10

- (a) the procedural requirements specified in this Act were not followed,
- (b) a material inaccuracy or omission exists in the debtor's application form which causes a material detriment to the creditor, 15
- (c) the debtor did not satisfy the eligibility requirements to enter the debt relief order process when he or she initiated the process,
- (d) the arrangement unfairly prejudices the interests of a creditor, or 20
- (e) the debtor has committed an offence under this Act.

Amendment or termination of debt relief order.

40.—The Debt Settlement and Mortgage Resolution Office may amend or, in its discretion, terminate a debt relief order where—

- (a) the Debt Settlement and Mortgage Resolution Office, having carried out an investigation under *section 39*, becomes aware that the conditions for making a debt relief order specified in *section 36* did not exist at the time the order was made, or 25
- (b) the Debt Settlement and Mortgage Resolution Office becomes aware that the debtor no longer complies with the duties imposed on a debtor under this Part. 30

Effect of termination of debt relief order.

41.—(1) Where a debt relief order is terminated, the debtor shall be liable for all debts covered by the debt relief order, including any arrears, charges and interest that have accrued during the continuance of the debt relief order. 35

(2) Where a debt relief order is terminated because a debtor's income has increased since the making of the order, the Debt Settlement and Mortgage Resolution Office shall provide that the termination is not to take effect until the debtor has been given reasonable time to come to an arrangement, including a debt settlement arrangement, with his or her creditors. 40

Offences and penalties.

42.—(1) A debtor who participates in a debt relief order process in a manner that involves fraudulent or dishonest conduct commits an offence. 45

(2) Without prejudice to the generality of *subsection (1)*, a debtor commits an offence under this section where he or she—

- 5 (a) knowingly conceals, or refuses to produce, documents, or produces falsified document or documents or information when required to do so by the Money Advice and Budgeting Service, the Debt Settlement and Mortgage Resolution Office or the court;
- (b) disposes of property with the intention of defrauding creditors;
- 10 (c) fraudulently deals with property obtained on credit;
- (d) obtains credit above a certain limit without disclosing that a debt relief order has been made in respect of him or her;
- 15 (e) carries on business in a name other than the debtor's own without disclosing the name under which the debt relief order has been registered in the Personal Insolvency Register.

(3) A person who is guilty of an offence under this Act shall be liable—

- 20 (a) on summary conviction to a fine not exceeding €5,000 or, at the discretion of the Court in the case of an individual, to imprisonment for a term not exceeding twelve months, or both, or
- 25 (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding five years, or both.

PART 4

MORTGAGE RESOLUTION ORDERS

43.—This Part sets out—

Purpose of *Part 4*.

- 30 (a) the nature and purpose of a mortgage resolution order,
- (b) the process for obtaining a mortgage resolution order, and
- (c) duties of mortgagors, mortgagees and offences under this Part.

35 **44.**—(1) Subject to the provisions of this Act, a mortgagor (being a natural person or persons who resides in and is the registered owner of a mortgaged property that is a family home) whose disposable income, non-essential assets and total debts is restricted below the prescribed level (in this Part referred to as a financially restricted mortgagor) may obtain a mortgage resolution order in respect of a mortgage on that family home.

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(2) The Minister shall, as soon as practicable after the coming into force of this Act, make regulations for the purposes of *subsection (1)*

which set out the prescribed levels of disposable income, non-essential assets and total debts in order for a mortgagor to be categorised as a financially restricted mortgagor.

(3) The Minister shall, from time to time, amend the prescribed level, having regard in particular to the consumer price index. 5

Mortgage properties covered by mortgage resolution order.

45.—A financially restricted mortgagor shall only be entitled to apply for a mortgage resolution order in respect of a mortgaged property that is a family home.

Application for mortgage resolution order.

46.—(1) A financially restricted mortgagor may initiate an application for a mortgage resolution order to the Debt Settlement and Mortgage Resolution Office established under *section 25* of this Act. 10

(2) A financially restricted mortgagor may prepare and complete a prescribed application form for a mortgage resolution order, based on a mortgage resolution statement issued by the Debt Settlement and Mortgage Resolution Office, which shall confirm that the restricted mortgagor complies with the conditions in *sections 44(1)* and *45*. 15

(3) A financially restricted mortgagor shall communicate the application form for a mortgage resolution order to the Debt Settlement and Mortgage Resolution Office which shall determine, in accordance with this Part, whether to make a mortgage resolution order. 20

(4) The Debt Settlement and Mortgage Resolution Office shall make a mortgage resolution order where the application complies with the requirements specified in *section 47*.

(5) Applications for, and communications concerning, a mortgage resolution order shall, as far as practicable, be made using online information and communications technology. 25

(6) Where a mortgage resolution order is made, it shall be registered by the Debt Settlement and Mortgage Resolution Office on a register of mortgage resolution orders. 30

Conditions for making mortgage resolution order.

47.—(1) A mortgage resolution order may be granted by the Debt Settlement and Mortgage Resolution Office only in respect of a mortgagor who is financially restricted as defined in *section 44* and where that financially restricted mortgagor or mortgagors—

(a) is or are the registered owners of a mortgaged property that is a family home within the State; 35

(b) has or have resided in the mortgaged property for two years prior to the making of the application for a mortgage resolution order;

(c) has or have provided written confirmation that they shall not lease or sell the mortgaged property without notifying the Debt Settlement and Mortgage Resolution Office; 40

(d) has or have not previously been granted a mortgage resolution order;

(e) have previously corresponded and/or communicated with the financial institution that provided the mortgage for 45

the purpose of seeking to renegotiate or restructure their mortgage.

5 (2) The Debt Settlement and Mortgage Resolution Office may refuse to make a mortgage resolution order where it is of the opinion, based on reasonable grounds, that any of the following conditions exist—

(a) the financially restricted mortgagor is not financially restricted as provided for in *section 44*;

10 (b) the financially restricted mortgagor has, in making the application or in supplying any information or documents in support of the application, made representations which are false;

15 (c) the financially restricted mortgagor has entered into a transaction in respect of the mortgaged property with any person at an undervalue during the period of two years prior to the submission of the application;

(d) the financially restricted mortgagor has concealed assets with the intention of not meeting his obligations to the mortgagee;

20 (e) the financially restricted mortgagor has engaged in conduct that would, if the mortgagor was adjudicated to be a bankrupt, constitute an offence; or

25 (f) there is definitive evidence that the financially restricted mortgagor entered into the mortgage over the mortgaged property knowing at that time that he or she did not have the means to repay the mortgage.

30 (3) The Debt Settlement and Mortgage Resolution Office shall require the financially restricted mortgagor to sign a form of release entitling the Debt Settlement and Mortgage Resolution Office to access all bank accounts held, solely or jointly, by or for the benefit of the financially restricted mortgagor with financial institutions or credit unions in the State or abroad.

35 (4) Where the Debt Settlement and Mortgage Resolution Office refuses an application for a mortgage resolution order, it shall give reasons for the refusal.

40 (5) The Debt Settlement and Mortgage Resolution Office may request further information from the financially restricted mortgagor where the Office has reasonable grounds to believe that such information is necessary in order to reach a conclusion in relation to the existence of the conditions specified in this section;

(6) The Debt Settlement and Mortgage Resolution Office may refuse to make a mortgage resolution order where the financially restricted mortgagor fails to provide such information when requested.

45 (7) The Debt Settlement and Mortgage Resolution Office shall presume that all of the relevant conditions in this section are satisfied if that appears to be the position from the financially restricted mortgagor's application and where the Office has no reasonable grounds to believe that the information supplied is inaccurate or incomplete.

Submission of application to financial institution.

48.—(1) Within fourteen days of receiving an application for a mortgage resolution order, the Debt Settlement and Mortgage Resolution Office shall communicate the financially restricted mortgagor's completed application form to the financial institution that provided the mortgage to the mortgagor.

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(2) The Debt Settlement and Mortgage Resolution Office shall not communicate the financially restricted mortgagor's application form if it is not completed in any material respect.

(3) The Debt Settlement and Mortgage Resolution Office shall seek from the financial institution a written response to the financially restricted mortgagor's application. The financial institution shall be required in its written response to assert whether or not, in its opinion, the mortgage over the financially restricted mortgagor's family home is sustainable for that mortgagor in light of the disclosed disposable income, non-essential assets and total debts in the financially restricted mortgagor's application form.

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(4) If the financial institution makes a submission accepting that the financially restricted mortgagor is financially restricted and cannot sustain the mortgage over the family home, the financial institution may provide to the Debt Settlement and Mortgage Resolution Office a proposal from the financial institution as to any restructuring or rearrangement of the mortgage that would be agreed to by the financial institution.

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(5) If the financial institution makes a submission not accepting that the financially restricted mortgagor is financially restricted and cannot sustain the mortgage over the family home, the financial institution must provide to the Debt Settlement and Mortgage Resolution Office the basis upon which it contends that the financially restricted mortgagor is not financially restricted.

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(6) If a submission in accordance with *subsections (4) and (5)* is made to the Debt Settlement and Mortgage Resolution Office it shall be communicated to the financially restricted mortgagor within fourteen days of its receipt seeking a response from the financially restricted mortgagor as to whether any proposal of the financial institution is accepted or rejected by the mortgagor.

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Making of a mortgage resolution order.

49.—(1) If the financial institution makes a submission pursuant to *subsection (4) of section 48* and this is accepted by the financially restricted mortgagor then, subject to the review and/or approval of the Debt Settlement and Mortgage Resolution Office, the Debt Settlement and Mortgage Resolution Office may make a mortgage resolution order amending the terms of the mortgage between the financially restricted mortgagor and the financial institution in terms as offered by the financial institution, which said order shall be binding on both the financially restricted mortgagor and financial institution.

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(2) If the financial institution makes a submission pursuant to *subsection (4) of section 48* and this is rejected by the financially restricted mortgagor or if the financial institution makes a submission pursuant to *subsection (5) of section 48*, then the Debt Settlement and Mortgage Resolution Office may, if it thinks appropriate considering all the circumstances of the financially restricted mortgagor's application, the financial institution's response and any other factors that appear relevant to the Debt Settlement and Mortgage Resolution Office, make a mortgage resolution order that provides for any of the following:

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- (a) an order that the financially restricted mortgagor make interest only payments on the mortgage for a period of time that shall not exceed four years;
- 5 (b) an order that the mortgage period be extended by a period of time that shall not exceed twenty years;
- (c) an order that the mortgage payments due to be made by the financially restricted mortgagor be deferred for a period that shall not exceed one year;
- 10 (d) an order that the terms and conditions of the mortgage be amended so that the interest rate can be changed to a fixed or variable interest rate, as the Debt Settlement and Mortgage Resolution Office considers appropriate, taking into account prevailing market conditions;
- 15 (e) an order that the principal sum due on the mortgage be reduced in a fair manner provided that the mortgagee be granted a share in the financially restricted mortgagor's equity in the family home, as the Debt Settlement and Mortgage Resolution Office considers appropriate;
- 20 (f) an order that the Deferred Interest Scheme recommended in the Report of the Expert Group on Mortgage Arrears and Personal Debt be applied to the mortgage in accordance with paragraph 4.4.2 of that Report, provided that the financially restricted mortgagor meets the eligibility criteria identified at paragraph 4.4.3 of the Report.

25 (3) If the Debt Settlement and Mortgage Resolution Office is satisfied that—

- 30 (a) the mortgage is unsustainable for the financially restricted mortgagor having regard to the Ministerial Regulations provided for in *section 44(2)* of this Part and the financially restricted mortgagor's application;
- (b) the financially restricted mortgagor has or will surrender voluntarily his or her or their legal interest in the family home;
- 35 (c) the financial institution has or will secure legal ownership of the financially restricted mortgagor's family home,

it may order the financial institution to provide a lease of the family home to the financially restricted mortgagor or mortgagors, as a tenant or tenants, subject to leasehold terms, including terms in respect of rent, that shall be approved by the Debt Settlement and Mortgage
40 Resolution Office. Such order shall also be referred to as a mortgage resolution order.

50 **50.—(1)** The effect of granting a mortgage resolution order shall be that for the period of time that the mortgage resolution order is in place, any financial institution that is a mortgagee in respect of a mortgage resolution order is prevented from commencing any legal proceedings for the recovery of a debt or repayment included in the mortgage resolution order, or, in the case of a mortgage resolution order granted under *subsection (3)* of *section 49*, any legal proceedings seeking to eject the financially restricted mortgagor or mortgagors from their tenancy in the family home, save where those
Effect of mortgage resolution order.

legal proceedings are based on an affidavit of an officer of the financial institution that the financially restricted mortgagor or mortgagors are refusing to comply with the terms of the lease.

(2) Where proceedings for repossession of a mortgaged family home or repayment of monies due on foot of a mortgage, included in the mortgage resolution order, have already been commenced, the Court may make an order staying the proceedings or an order permitting them to continue subject to such terms as the Court thinks fit.

(3) For the avoidance of doubt, a financial institution in the position of a mortgagee, and/or his or her agent, is prohibited from taking any action to secure repayments or seek repossession of a mortgaged property that has been included in a mortgage resolution order.

General duties of financially restricted mortgagor in mortgage resolution order process.

51.—A financially restricted mortgagor who participates in the mortgage resolution order process shall, from the time of applying for entry to it through to the completion of the process, comply with the following duties:

(a) to co-operate fully in the process, and in particular to comply with any reasonable request of the Debt Settlement and Mortgage Resolution Office to provide assistance, documents and information necessary for the application of the process to the financially restricted mortgagor's case;

(b) to inform the Debt Settlement and Mortgage Resolution Office as soon as reasonably practicable of any material change in his or her circumstances, particularly an increase in the level of the financially restricted mortgagor's assets or income, which would affect (or would have affected) the adjudication on the financially restricted mortgagor's application, or which influences the financially restricted mortgagor's ability to repay an amount towards the mortgage included in the mortgage resolution order;

(c) not to obtain credit above a certain amount without disclosing the fact that a mortgage resolution order is in place in respect of that financially restricted mortgagor, and

(d) not to engage directly or indirectly in any business under a name other than that in which the mortgage resolution order was made without disclosing the financially restricted mortgagor's name as used in the order to all persons with whom the financially restricted mortgagor enters into a business transaction.

Financial institution's objection to mortgage resolution order.

52.—(1) A financial institution that is subject to a mortgage resolution order may, at any time during the duration of the mortgage resolution order, object to the financially restricted mortgagor's continuing participation in the mortgage resolution order by way of applying to the Debt Settlement and Mortgage Resolution Office for an investigation by the Debt Settlement and Mortgage Resolution Office under this section.

5 (2) The Debt Settlement and Mortgage Resolution Office shall, in response to such objection, carry out an investigation of the financially restricted mortgagor's affairs and, if it finds that the conditions for making a mortgage resolution order specified in *section 47* did not exist at the time the order was made, may amend or, in its discretion, revoke the order.

(3) A financial institution may appeal to the Court against the decision of the Debt Settlement and Mortgage Resolution Office made under this section on the following grounds—

- 10 (a) the procedural requirements specified in this Act were not followed;
- (b) a material inaccuracy or omission exists in the financially restricted mortgagor's application form which causes a material detriment to the financial institution;
- 15 (c) the financially restricted mortgagor did not satisfy the eligibility requirements to enter the mortgage resolution order process when he or she initiated the process;
- (d) the arrangement unfairly prejudices the interests of the financial institution, or
- 20 (e) the financially restricted mortgagor has committed an offence under this Act.

53.—(1) The Debt Settlement and Mortgage Resolution Office may amend or, in its discretion, terminate a mortgage resolution order where—

Amendment or termination of mortgage resolution order.

- 25 (a) the Debt Settlement and Mortgage Resolution Office, having carried out an investigation under *section 52*, becomes aware that the conditions for the making of a mortgage resolution order specified in *section 47* did not exist at the time the order was made, or
- 30 (b) the Debt Settlement and Mortgage Resolution Office becomes aware that the financially restricted mortgagor no longer complies with the duties imposed upon that financially restricted mortgagor under this Part of the Act.

35 **54.—**(1) Where a mortgage resolution order is terminated, the financially restricted mortgagor shall be liable under the mortgage covered by the mortgage resolution order, including any arrears, charges and interest that have accrued during the continuance of the mortgage resolution order.

Effect of termination of mortgage resolution order.

40 (2) Where a mortgage resolution order is terminated because a financially restricted mortgagor's income has increased since the making of the order, the Debt Settlement and Mortgage Resolution Office shall provide that the termination is not to take effect until the financially restricted mortgagor has been given reasonable time

45 to come to an arrangement, if possible, with the financial institution.

55.—(1) A financially restricted mortgagor who participates in a mortgage resolution order process in a manner that involves fraudulent or dishonest conduct commits an offence.

Offences and Penalties.

(2) Without prejudice to the generality of *subsection (1)*, a financially restricted mortgagor commits an offence under this section where he or she—

- (a) knowingly conceals, or refuses to produce, documents, or produces a falsified document or documents or information when required to do so by the Debt Settlement and Mortgage Resolution Office or the Court; 5
- (b) knowingly has made representations which are false in the application to the Debt Settlement and Mortgage Resolution Office; 10
- (c) disposes of the property covered by the mortgage resolution order with the intention of defrauding the financial institution that is the mortgagee of the said property;
- (d) carries on business in a name other than the financially restricted mortgagor's own name without disclosing the name under which the mortgage resolution order has been registered in the Mortgage Settlement Register. 15

(3) A person who is guilty of an offence under this Part of the Act shall be liable—

- (a) on summary conviction to a fine not exceeding €5,000 or, at the discretion of the Court in the case of an individual, to imprisonment for a term not exceeding 12 months, or both, or 20
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or both. 25

PART 5

DEBT ENFORCEMENT PROCEDURES

CHAPTER 1

Institutions and Structures 30

Purpose of *Part 5, Chapter 1.*

56.—This chapter sets out—

- (a) the nature and functions of the Debt Enforcement Office,
- (b) the role and functions of enforcement officers, and
- (c) the requirement to have a court order in order to initiate enforcement mechanisms under *Part 5, Chapter 2.* 35

Debt Enforcement Office.

57.—(1) Without prejudice to *section 60*, the Debt Enforcement Office shall be responsible for the oversight and management in the State of the debt enforcement procedures provided for in this Part.

- (2) (a) The Debt Enforcement Office shall put in place procedures to receive and, so far as practicable, to resolve complaints arising in respect of the debt enforcement procedures provided for in this Part. 40

(b) The Debt Enforcement Office shall, where practicable, resolve any complaints through informal mediation.

5 (3) The Debt Settlement and Mortgage Resolution Office established under *section 25(1)* shall be an independent unit within the Debt Enforcement Office.

58.—(1) Without prejudice to *section 60*, the Debt Enforcement Office shall be responsible for supervising and managing enforcement officers who shall carry into effect the enforcement mechanisms provided for in *Chapter 2* of this Part. Enforcement officers and supervision by Debt Enforcement Office.

10 (2) Enforcement officers shall be suitably qualified persons (and may be a natural person or an undertaking), and shall be appointed through a publicly advertised tendering procedure.

15 (3) Enforcement officers shall be remunerated either by reference to the money value (poundage) generated by the enforcement mechanisms or on a commission basis.

(4) The Debt Enforcement Office shall appoint at least one enforcement officer in each of a number of designated geographical areas in the State.

20 (5) Subject to *subsection (2)*, the position of enforcement officer shall be capable of being carried out by a person who, at the time of coming in to force of this Act, carries out the role of Sheriff or Revenue Sheriff, but nothing in this Act shall require that such a person shall be appointed as an enforcement officer.

25 59.—The Debt Settlement and Mortgage Resolution Office shall be funded, in whole or in part, through the prescribed fees payable to it by a judgment creditor when applying for the enforcement mechanisms provided for in *Chapter 2* of this Part. Enforcement fees and Debt Enforcement Office.

60.—(1) Without prejudice to *sections 57* and *58*, the functions of the Debt Enforcement Office shall be to— General functions of Debt Enforcement Office.

30 (a) oversee the tendering process for the appointment of enforcement officers;

35 (b) prepare and publish the requirements that must be met by applicants for the position of enforcement officer (in respect of which the Debt Enforcement Office shall have regard to the conditions applicable to personal insolvency trustees and to debt collection undertakings);

(c) supervise and co-ordinate the activities of enforcement officers in accordance with their terms of appointment, including—

40 (i) monitoring their performance, and

(ii) complaints handling (in particular by reference to the terms of appointment of enforcement officers);

(d) prepare and publish a code of practice for enforcement officers;

- (e) obtain information on the debtor's means, including through enforcement information disclosure requests;
- (f) determine whether enforcement is possible in a given case, in particular by choosing the most appropriate enforcement mechanism; 5
- (g) establish and maintain an internal appeals mechanism for dealing with challenges to its decisions; and
- (h) maintain a register of judgments and enforcement proceedings.

(2) The register of judgments and enforcement proceedings 10 referred to in *subsection (1)(h)* shall include information as to—

- (a) all court judgments in respect of which an enforcement application has been brought;
- (b) all enforcement proceedings in respect of which a stay of enforcement or certificate of unenforceability has been 15 issued on the grounds of the inability of the debtor to pay the amount owed; and
- (c) all enforcement orders made by the Debt Enforcement Office, subject to the removal of information relating to such orders as soon as practicable following the satisfac- 20 tion of the order.

(3) The register of judgments and enforcement proceedings shall be publicly accessible, subject to a prescribed fee payable to access the register, and shall be integrated into the Personal Insolvency Register maintained under *section 15(1)*. 25

Obtaining comprehensive information on debtor's means by Debt Enforcement Office.

61.—(1) Where a creditor applies to the Debt Enforcement Office to seek an enforcement mechanism provided for in *Chapter 2* of this Part, the Debt Enforcement Office shall obtain comprehensive information concerning the means and financial circumstances of the debtor in question in accordance with the procedures in *subsection (2)*, in order to determine the most appropriate enforcement mechanism, if any, to be used the specific application. 30

(2) The procedures for obtaining comprehensive information concerning the means and financial circumstances of the debtor in question under *subsection (1)* are— 35

- (a) the Debt Enforcement Office shall communicate with the debtor, indicating that an enforcement application has been made, and shall require the debtor to complete a standard financial statement within a specified period;
- (b) (i) if the debtor does not comply with this requirement, 40 the relevant local enforcement officer shall make contact with the debtor (which may, where appropriate, include visiting the home of the debtor) for the purposes of interviewing the debtor as to his or her means, and completing the standard financial 45 statement;
- (ii) the enforcement officer may dispense with such interview where there are reasonable grounds to believe that the process will be unsuccessful or otherwise

unjustified (because of the absence of debtor cooperation or unjustifiable cost);

5 (c) (i) if the procedure under *paragraph (b)* is unsuccessful or if the enforcement officer dispenses with the interview, the enforcement officer shall request the debtor to attend the office of the enforcement officer, where the debtor shall make a statutory declaration as to his or her means;

10 (ii) this attendance shall be held in private, and the judgment creditor shall be entitled to attend in order to question the debtor;

15 (d) Following the process that occurs under *paragraph (b)* or *paragraph (c)*, the enforcement officer shall, as soon as practicable, prepare a report and submit the report to the Debt Enforcement Office, and the report shall contain—

(i) a recommendation by the Enforcement Officer regarding the most appropriate method of enforcement, if any, in the particular case,

20 (ii) whether the enforcement officer is of the opinion that further information is required, and whether the enforcement officer has reasonable grounds to be of the opinion that further relevant information concerning the debtor may be obtained through accessing tax or social welfare databases, credit history or bank records;

25 (e) creditors and debtors may challenge any factual statements made in the enforcement officer's report, and make representations to the Debt Enforcement Office as to the most appropriate method of enforcement.

30 (3) The Debt Enforcement Office shall, as soon as practicable after the coming into force of this Act, develop and publish a code of practice setting out the procedures to be followed by enforcement officers under *subsection (2)*, in particular in connection with the interview and examination of debtors, and the contents of the enforcement officer's report.

40 **62.—(1)** Subject to the requirements of the Data Protection Acts 1988 and 2003, and to the need to protect, as far as practicable, the debtors' right to privacy, the Debt Enforcement Office may make an enforcement information disclosure request in the circumstances specified in this section.

45 (2) The Debt Enforcement Office may make an enforcement information disclosure request, directed at a Department of State, the Revenue Commissioners or other body (being a bank, credit union or credit reporting company) requesting the disclosure of the specified information concerning the debtor referred to in *subsection (5)*.

(3) The Debt Enforcement Office may make an enforcement information disclosure request where—

50 (a) the Debt Enforcement Office is satisfied that it is reasonably necessary and proportionate for the effective

enforcement of a judgment and where other less restrictive mechanisms to determine accurately the debtor's means have failed or are inappropriate, and

- (b) the enforcement officer has stated in his or her report under *section 61* that, in his or her opinion, such a request is necessary. 5

(4) A creditor may make a submission to the Debt Enforcement Office requesting that an enforcement information disclosure request be made.

(5) The information requested in an enforcement information disclosure request shall be limited to the following— 10

- (a) the full name of the debtor;
- (b) the address of the debtor;
- (c) the date of birth of the debtor;
- (d) the PPS number of the debtor; 15
- (e) whether or not the debtor is employed;
- (f) the name and address of the debtor's employer (if the debtor is employed);
- (g) the amount of income being received by the debtor from his or her employment; 20
- (h) the amount of income being received by the debtor from his or her business, trade or profession (if the debtor is self-employed); and
- (i) the amount of income being received by the debtor in social welfare benefits. 25

(6) The recipient of an enforcement information disclosure request shall comply with the request, except where it is not possible to do so, or where it would be unreasonable to require the recipient to do so, and in either event the recipient shall state the reason for refusing to comply with the request. 30

(7) (a) The information received in response to an enforcement information disclosure request shall, subject to *paragraph (b)*, not be disclosed to any other person (including a creditor) by the Debt Enforcement Office, and shall be restricted to determining what method of enforcement, if any, is appropriate in the specific instance to which the request relates. 35

(b) The information may be disclosed to an enforcement officer, but only to the extent that it is necessary for the implementation of the enforcement order made by the Debt Enforcement Office (including disclosure of the debtor's employer to facilitate an attachment of earnings, or the disclosure of the debtor's bank account in order to facilitate an attachment of the debtor's bank account). 40

(8) The Minister shall, as soon as practicable after the coming into force of this Act, make Regulations prescribing how the information 45

referred to in this section shall be communicated, and such Regulations shall have regard in particular to the requirements of the Data Protection Acts 1988 and 2003.

5 (9) It is an offence for any person to engage in the unauthorised use or disclosure of information obtained under an enforcement information disclosure request.

(10) A person who is guilty of an offence under this Act shall be liable—

10 (a) on summary conviction to a fine not exceeding €5,000 or, at the discretion of the Court in the case of an individual, to imprisonment for a term not exceeding twelve months, or both, or

15 (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding five years, or both.

(11) Summary proceedings in relation to an offence under this Act may be brought and prosecuted by the Debt Settlement and Mortgage Resolution Office.

20 **63.—**(1) The Debt Enforcement Office shall determine whether enforcement is possible in a given case and shall determine the most appropriate enforcement mechanism in *Chapter 2* of this Part is to be used, having regard to the information collected under *section 61* and, where appropriate, *section 62*, and to the principle of proportionality in *Chapter 2* of this Part.

Determination and implementation of enforcement mechanisms.

25 (2) A creditor and a debtor may appeal the determination of the Debt Enforcement Office as to enforcement to the internal appeals mechanisms of the Debt Enforcement Office.

30 (3) A determination of the Debt Enforcement Office that a specific enforcement mechanism in *Chapter 2* of this Part is to be used shall be implemented by the enforcement officer in the relevant designated geographical area in the State in which the debtor resides.

35 **64.—**(1) For the avoidance of doubt, a court order to the effect that a debt is due and owing to a specified creditor is a necessary precondition for an application by that creditor to the Debt Enforcement Office for an enforcement mechanism under this Part.

Court order required for enforcement mechanisms, use of single process and progress reports by enforcement officer.

40 (2) The use of an enforcement mechanism or mechanisms through the Debt Enforcement Office under this Part against a specific debtor shall involve, as far as practicable, a single process, in particular where more than one creditor applies for an enforcement mechanism against a specific debtor.

45 (3) The enforcement officer with responsibility for the implementation of a specific enforcement mechanism shall, from time to time (in accordance with guidelines to be issued by the Debt Enforcement Office as to the appropriate time periods), prepare and submit a report setting out the progress of the enforcement process to both the Debt Enforcement Office and the judgment creditor.

CHAPTER 2

Enforcement Mechanisms

Purpose of Part 5,
Chapter 2.

65.—This chapter sets out—

- (a) the principles of proportionality and maintenance of a minimum standard of living in the application of enforcement mechanisms, 5
- (b) the supervisory functions of the Debt Enforcement Office,
- (c) the individual enforcement mechanisms: instalment orders, attachment of debts orders, attachment of earnings orders, goods seizure orders for seizure and sale of goods, and orders to receive and retain money due to debtor from future sale, and 10
- (d) abolition of imprisonment for non-payment of debt.

Proportionality of enforcement mechanism and minimum standard of living.

66.—(1) The Debt Enforcement Office shall, when determining the enforcement mechanism in a specific case, have regard to the principle of proportionality and the need to ensure that the enforcement mechanism chosen by it is the least restrictive in respect of the specific debtor. 15

(2) The Debt Enforcement Office shall ensure that the effect of any enforcement mechanism is that the debtor's income does not fall below the level of income exempted from attachment under an attachment of earnings order. 20

Admission by debtor of claim at pre-action stage.

67.—Where any debtor receives a pre-action notice of pending legal proceedings for the recovery of a debt, the debtor may admit the claim and make an offer to pay the amount owed by instalments, which may be made into a consensual court order on the agreement of the creditor. 25

Consolidated instalment order.

68.—Where a debtor's financial circumstances are such as to permit multiple judgment debts that have been obtained against him or her to be repaid by instalment orders within a reasonable period of up to 5 years, the Debt Enforcement Office may make a consolidated instalment order which may provide for the sharing of the instalment payments made by the debtor amongst his or her relevant judgment creditors on a shared basis. 30

Attachment of debts order.

69.—(1) The Debt Enforcement Office may make an attachment of debts order without first requiring that an enforcement officer attempt enforcement by execution against the debtor's goods. 35

(2) An attachment of debts order shall not operate to deprive a debtor of the means necessary to maintain a minimum standard of living for the debtor, and of his or her dependents, if any. 40

(3) The minimum standard of living referred to in *subsection (2)* shall be the same as the level of income exempted from attachment under an attachment of earnings order, and shall be achieved in the

case of an attachment of debts order by maintaining a balance in the debtor's bank account at that minimum level.

5 (4) In this section an attachment of debts order means an order directed at the debtor's bank account for payment of a personal debt due to a creditor.

(5) The term "attachment of debts order" shall replace the term "garnishee order".

10 **70.—(1)** A debt owed to a creditor in the form of a bank account held jointly by the debtor with another person (a joint bank account) shall be capable of being attached to an attachment of debts order in order to satisfy the debt. Joint bank accounts and attachment of debts order.

15 (2) The amount of a balance held in a joint bank account capable of being attached shall be limited to 50 per cent (or a proportionately lower amount where the account is held jointly by more than two people).

20 (3) (a) It shall be presumed that a joint bank account held by two persons is held in equal shares, subject to the non-debtor account holder providing evidence that the funds in the account are proportioned differently.

25 (b) The Debt Enforcement Office shall notify the non-debtor account holder of its decision to make an attachment of debts order in respect of the account, and the non-debtor account holder shall then be given the opportunity, within a specified time, to provide evidence to the Debt Enforcement Office that the account is held otherwise than in equal shares.

30 (4) The Debt Enforcement Office shall as soon as is practicable, including by reference to any information obtained under *subsection (3)*, determine the shares in which the account is held before a final attachment of debts order is made by it.

71.—(1) The Debt Enforcement Office may make an attachment of earnings order in respect of any debt owed by any debtor who is in receipt of any income. Attachment of earnings order.

35 (2) An attachment of earnings order shall not operate to deprive a debtor of the means necessary to maintain a minimum standard of living for the debtor, and of his or her dependents, if any.

(3) The minimum standard of living referred to in *subsection (2)* shall be the same as the level of income exempted under a debt settlement arrangement in accordance with *section 10*.

40 (4) (a) An employer may deduct from the debtor's salary a prescribed sum that reflects the actual cost incurred by the employer in complying with the attachment of earnings order.

45 (b) Where the employer deducts the sum referred to in *paragraph (a)*, the employer shall notify the employee in writing of the making of any such deduction.

(5) (a) Where practicable, an employer may transmit all sums deducted to satisfy an attachment of earnings order into

a designated account under the control of the Debt Enforcement Office.

(b) The Debt Enforcement Office shall, as soon as practicable after receipt of a deduction, transmit the sum or sums to the relevant creditor. 5

(6) Any employer who, by reason of the circumstances that an attachment of earnings order has been made in relation to the employee or that the employer is required to make payments under such an order in relation to the employee, dismisses the employee, or alters the employee's position to his or her prejudice, or otherwise penalises the employee shall be guilty of an offence. 10

Variation and review of attachment of earnings order.

72.—(1) A debtor or a creditor may apply to the Debt Enforcement Office for a variation of an attachment of earnings order where the debtor's circumstances change materially.

(2) A debtor may apply to the Debt Enforcement Office for the suspension of an attachment of earnings order where his or her circumstances have changed rendering him or her temporarily unable to comply with the order. 15

(3) The Debt Enforcement Office shall publish guidance for debtors and creditors in readily understandable and plain language containing information on their entitlement to apply for a variation or suspension of an attachment of earnings order, including the types of circumstances in which a variation or suspension is possible. 20

(4) The Debt Enforcement Office may review an attachment of earnings order of its own motion where an application is made to it to enforce another judgment debt against a debtor who is subject to an attachment of earnings order. 25

(5) Where a review of the debtor's changed circumstances (either on an application of the debtor or creditor, or on the Office's own motion) concludes that the debtor no longer possesses the means to satisfy a judgment debt through an attachment of earnings order, the Debt Enforcement Office may discharge the attachment of earnings order and provide the debtor with information of the relevant insolvency procedures that may be open to him or her. 30

(6) (a) A debtor who is subject to an attachment of earnings order shall inform the Debt Enforcement Office of any change in his or her employment status, including any change of employer. 35

(b) Where a debtor who is subject to an attachment of earnings order changes employer and the employer becomes aware that the employee is subject to such an order, the debtor's new employer shall notify the Debt Enforcement Office that the attachment of earnings order is to apply to the new employer. 40

(7) Where attachment of earnings deductions have ceased, and the debtor has failed to comply with a request by the Debt Enforcement Office for the voluntary disclosure of details concerning his or her employment status, the Debt Enforcement Office may (subject to the requirements of the Data Protection Acts 1988 and 2003) apply for access to any relevant information concerning the debtor held by the Revenue Commissioners and the Department of Social Protection. 45 50

5 **73.**—Where a debtor’s financial circumstances are such as to permit multiple judgment debts that have been obtained against him or her to be repaid by attachment of earnings orders within a reasonable period of up to 5 years, the Debt Enforcement Office may make a consolidated attachment of earnings order which may provide for the distribution of a single amount deducted from the debtor’s income amongst his or her relevant judgment creditors on a shared basis.

Consolidated attachment of earnings order.

10 **74.**—Without prejudice to the other provisions of this Act and for the avoidance of doubt, where an attachment of earnings order has been made for family maintenance in respect of a debtor, the Debt Settlement and Mortgage Resolution Office shall not make any further attachment of earnings order unless the deductions arising from such further order allow the debtor a reasonable standard of living sufficient for the debtor and his or her dependants, if any.

Attachment of earnings order and family maintenance.

75.—(1) The Debt Enforcement Office may make a goods seizure order which provides for the seizure and sale of specified goods of a debtor by an enforcement officer.

Goods seizure order for seizure and sale of goods.

20 (2) (a) Subject to *paragraphs (b) and (c)*, the effect of an application made to the Debt Enforcement Office for a goods seizure order is to bind the property in the goods of the judgment debtor as from the time when the application is made by a creditor to the Debt Enforcement Office.

25 (b) The binding effect does not prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he or she acquired his or her title notice that such an application or any other application by virtue of which the goods of the execution debtor might be seized had been made to the Debt Enforcement Office.

30 (c) The binding effect shall not apply to any goods of the debtor that are exempt from seizure.

(3) The following are exempt from seizure under a goods seizure order—

35 (a) any assets of the debtor reasonably necessary to ensure that the debtor, and his or her dependants (if any), may maintain a reasonable standard of living; and

(b) any assets of the debtor that are necessary for the debtor’s employment, business or vocation.

40 (4) The Minister may make Regulations prescribing the details of any of the matters set out in *subsection (3)*.

45 (5) (a) An enforcement officer may identify certain goods of the debtor for seizure, and reach an agreement in writing with the debtor (a “walking possession agreement”) that the goods have been seized but that the debtor is permitted to retain custody of them, subject to the condition that the debtor agrees not to remove or dispose of them, nor to permit anyone else to do so, before the judgment debt in question is paid.

(b) Where the requirements in *paragraph (a)* have been met, the effect of the walking possession agreement is that the enforcement officer shall be deemed not to have abandoned the goods.

(6) (a) An enforcement officer shall prepare a report setting out the result of carrying out the goods seizure order and submit it to the creditor, the debtor and the Debt Enforcement Office. 5

(b) (i) The report shall be expressed in clearly understandable plain language. 10

(ii) Without prejudice to the generality of *subparagraph (i)*, if the enforcement officer finds no goods to seize, the report shall state this in plain language and shall avoid the use of any term such as “*nulla bonna*”.

(7) For the avoidance of doubt, the goods seizure order replaces the procedure known as “execution against goods” and the order known as “*fieri facias*”. 15

Goods seizure order for jointly owned and third party goods.

76.—(1) Subject to the provisions of this section, a goods seizure order shall apply to the debtor’s goods only.

(2) Jointly-owned goods may be seized under a goods seizure order subject to the protection of the interests of joint owners. 20

(3) (a) An enforcement officer may act on the presumption that goods found in the debtor’s possession or on the debtor’s premises are capable of being seized, unless the enforcement officer knows or ought to know that the goods are not solely owned by the debtor. 25

(b) The enforcement officer shall make reasonable enquiries as to ownership of any person present at the place in which the goods are situated. 30

(c) Where the enforcement officer makes reasonable enquiries, the enforcement officer shall incur no liability for seizing jointly owned goods or goods owned by a third party.

(4) A third party holding an interest in seized goods shall be paid by the enforcement officer the amount of his or her interest in priority to the payment of the debt to the creditor and the payment of the costs of seizure and sale. 35

(5) A third party holding an interest in seized goods may prevent the sale of such goods in exceptional circumstances where he or she establishes to the Debt Enforcement Office that it would be unduly harsh to his or her interests to allow the sale to continue. 40

(6) (a) Where a debtor has a right to sell goods upon making a payment to a third party, an enforcement officer may sell those goods provided that the judgment creditor pays this sum to the third party. 45

(b) An enforcement officer may pay any balance due under a hire or leasing agreement in order to obtain a clear title

to the goods held under such an agreement in advance of sale.

5 (7) (a) Subject to *paragraph (b)*, an enforcement officer may deliver goods to a third party who claims an interest in the goods, on production of a receipt or similar proof of ownership.

10 (b) The Debt Enforcement Office shall put in place an internal procedure to resolve any dispute that arises as to ownership of goods which have been delivered under *paragraph (a)*.

(c) The internal procedure under *paragraph (b)* does not alter or affect the entitlement of any person to institute proceedings in court as to ownership of the goods.

15 (8) (a) Subject to *subsection (7)*, a third party who claims an interest in seized goods shall make a statutory declaration to that effect.

20 (b) A third party who makes a vexatious or frivolous claim with the purpose of frustrating a goods seizure order shall be liable for any costs incurred by any party as a result of such claim.

77.—(1) Subject to this section, an enforcement officer may enter a debtor's premises. Goods seizure order: entry of premises.

25 (2) An enforcement officer may use reasonable force to enter a debtor's premises only where authorised to do so on foot of a warrant issued by the District Court, on the Court being satisfied on information on oath that forcible entry is reasonably necessary for the enforcement of the judgment debt in question.

30 (3) The Minister may make Regulations providing for measures to facilitate access to multi-unit developments by enforcement officers.

78.—(1) The Debt Enforcement Office may make an order appointing a named person, called a receiver by way of equitable execution, to receive and retain any money due to a debtor from a specified sale of goods that is known to be occurring in the future. Order to receive and retain money due to debtor from future sale: receiver by way of equitable execution.

35 (2) It shall not be necessary to attempt to use any other form of enforcement mechanism provided for in this chapter before the appointment of a receiver by way of equitable execution.

40 **79.—(1)** The Debt Enforcement Office may combine enforcement mechanisms and orders provided for under this Part in a case involving a single debtor. Combined mechanisms and orders.

45 (2) Where the Debt Enforcement Office has made an attachment of debts order, or an attachment of earnings order or a goods seizure order, and has suspended any such order subject to compliance with an instalment order, any such order shall come into effect if a debtor fails to comply with an instalment order.

Guidelines on use of goods seizure order.

80.—(1) The Debt Enforcement Office shall prepare and publish guidelines which describe the circumstances in which the use of a goods seizure order would be appropriate and proportionate.

(2) The guidelines shall include guidance on the following—

- (a) whether the debtor possesses such assets available for seizure as to indicate that a goods seizure order is likely to realise a significant amount of the judgment debt owed within a reasonable time; 5
- (b) whether other more appropriate or less restrictive methods of enforcement are likely to be successful in recovering a significant amount of the judgment debt owed within a reasonable time; 10
- (c) the need for additional consideration of the debtor's right to privacy and the inviolability of the dwelling in cases where a goods seizure order takes place at the debtor's home; and 15
- (d) whether the proceeds raised from the sale and seizure of a debtor's assets would exceed the costs incurred in the process by a reasonable amount.

Code of Practice on goods seizure order.

81.—(1) The Debt Enforcement Office shall prepare and publish a code of practice concerning the manner in which enforcement officers shall carry out a goods seizure order. 20

(2) The content of the code of practice shall take account of relevant non-statutory codes in the State and those developed in other states, and shall take account of the views of representatives of enforcement officers, and creditor and debtor representative bodies. 25

- (3) (a) The Debt Enforcement Office shall monitor the operation of the code of practice, and shall receive and hear any complaints of debtors or creditors in respect of the conduct of enforcement officers when carrying out a goods seizure order. 30
- (b) The code of practice shall include the procedures for dealing with complaints, including the transparency and impartiality of the process.

Abolition of imprisonment for non-payment of debt.

82.—(1) Notwithstanding any enactment or rule of law, no person shall be liable to imprisonment for non-payment of a personal debt, including where this arises from wilful refusal to pay the debt. 35

(2) Subject to *subsection (3)*, nothing in this section alters or affects the law of contempt of court.

- (3) (a) A person commits an offence where he or she wilfully refuses to pay a personal debt arising out of a court order to that effect. 40
- (b) A person who commits an offence under *paragraph (a)* is liable on summary conviction to a community service order in accordance with the Criminal Justice (Community Service) Act 1983. 45