AN BILLE UM DHÓCMHAINNEACHT PHEARSANTA, 2012
PERSONAL INSOLVENCY BILL 2012

As amended by Seanad Éireann

REVISED EXPLANATORY MEMORANDUM

Background to and purpose of the Bill

The Bill provides for the reform of personal insolvency law and will introduce the following new non-judicial debt resolution processes, subject to relevant conditions in each case:

- a Debt Relief Notice to allow for the write-off of qualifying unsecured debt up to €20,000 subject to a three-year supervision period;
- a Debt Settlement Arrangement for the agreed settlement of unsecured debt;
- a Personal Insolvency Arrangement for the agreed settlement of secured debt up to €3 million and unsecured debt.

The Bill also continues the reform of the Bankruptcy Act 1988, begun in the Civil Law (Miscellaneous Provisions) Act 2011. This will include the introduction of automatic discharge from bankruptcy, subject to certain conditions, after 3 years in place of the current 12 years.

The Bill provides for the establishment of an Insolvency Service to operate the new insolvency arrangements.

The Bill also provides for the appointment of new specialist judges of the Circuit Court to deal with applications under the new debt resolution processes.

Provisions of the Bill

The Bill contains 6 Parts. The following paragraphs contain a brief description and an outline of the principal reforms proposed in each Part.

PART 1

Preliminary and General

Part 1 contains general provisions such as the short title and commencement provisions (*section 1*), interpretation (*section 2*), regulation-making powers (*section 3*), provision in relation to expenses (*section 4*), provisions relating to the interpretation of ''appropriate court'' (*section 5*) and for repeals of certain legislation (*section 6*).

PART 2

Insolvency Service

Part 2 makes provision for the establishment of a new body, the Insolvency Service of Ireland, for the purposes of operating the new debt settlement arrangements provided for in the Bill. It sets out the functions and powers of the new Service and governance arrangements for the Service.

Sections 7 and *8* make provision for the establishment of the Insolvency Service of Ireland (''Insolvency Service''). The Insolvency Service will have the structures, functions and powers consistent with an effective, independent body.

Section 9 sets out the functions of the Insolvency Service. The Service will be responsible for monitoring the operation of the arrangements relating to personal insolvency provided for in the Bill. It will also consider applications for Debt Relief Notices in accordance with Chapter 1 of Part 3; process applications for protective certificates in accordance with Chapter 3 or 4 of Part 3; maintain the Registers established under section 128; regulate personal insolvency practitioners in accordance with Part 5, provide information to the public on the working of the legislation; advise the Minister on any matter relating to its functions; authorise persons to perform the functions of an approved intermediary under Chapter 1 of Part 3; regulate personal insolvency practitioners in accordance with Part 5, prepare and issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses, arrange for the provision of such education and training for approved intermediaries, personal insolvency practitioners and other persons in relation to the performance of their functions under this Act, contribute to the development of policy in the area of personal insolvency; and carry out any other duties and exercise any other powers assigned to it by or under the Bill.

Section 10 sets out the composition of the Insolvency Service which shall consist of the Director of the Service and the members of staff appointed under Part 2 of the Bill.

Section 11 makes provision for the appointment of a Director of the Insolvency Service and sets out his or her functions.

Section 12 makes provision for the staff of the Insolvency Service.

Section 13 allows the Insolvency Service, with the consent of the Minister and the Minister for Public Expenditure and Reform, to make superannuation schemes in appropriate circumstances.

Sections 14, 15 and *16* make provision respectively for the preparation and submission of strategic plans, business plans, annual

reports and other reports to the Minister. These plans and reports will be laid before both Houses of the Oireachtas by the Minister.

Section 17 provides for financial, accounting and audit matters including presentation of audited accounts to the Minister and the Comptroller and Auditor General.

Section 18 provides for the appearance of the Director before the Committee of Public Accounts in relation to the Insolvency Service's accounts and any matters raised in a report of the Comptroller and Auditor General.

Section 19 provides for the appearance of the Director before other committees of the Houses of the Oireachtas when requested to do so.

Section 20 allows the Insolvency Service to charge and recover fees in respect of its functions, services and activities.

Section 21 provides that the Minister may advance to the Insolvency Service out of moneys provided by the Oireachtas amounts as the Minister may determine, with the consent of the Minister for Public Expenditure and Reform.

Section 22 makes provision that the Freedom of Information Acts do not apply to a record held by the Insolvency Service unless the record relates to the general administration of the Insolvency Service.

New *Section 23* empowers the Insolvency Service to issue guidelines as to what constitutes a reasonable standard of living and reasonable living expenses.

New Section 24 facilitates the processing of documents by the Insolvency Service and the Courts Service in regard to applications for the various debt resolution arrangements provided for in the Bill through electronic means.

PART 3

Insolvency Arrangements

This Part contains 6 Chapters and sets out the provisions in relation to the three new debt resolution processes — Debt Relief Notices, Debt Settlement Arrangements and Personal Insolvency Arrangements. It also makes provision for offences under Part 3 and for miscellaneous matters.

CHAPTER 1

Debt Relief Notices

Chapter 1 provides, subject to certain conditions, for the issue of a Debt Relief Notice to permit the write-off of qualifying debts totalling not more than €20,000 for persons with no assets and no income and who are insolvent and have no realistic prospect of being able to pay their debts within the next 3 years. The intention is to create an efficient non-judicial process of allowing such persons to resolve unmanageable debt problems. The process is akin to bankruptcy in its broad approach, but provides a low-cost insolvency option having regard to the extent of the debts involved. An

application for a Debt Relief Notice must be submitted on behalf of the debtor by an authorised approved intermediary.

Section 23 is an interpretation section for Chapter 1.

Section 24 sets out the eligibility criteria for a Debt Relief Notice. These are that the debtor has qualifying debts that amount to €20,000 or less; has available to him or her, allowing for reasonable living expenses, net disposable income of €60 or less a month; has assets or savings worth €400 or less; is domiciled in the State or, within one year before the application, ordinarily resided or had a place of business in the State; is insolvent and has no likelihood of becoming solvent within the period of 3 years commencing on the application date, while also maintaining a reasonable standard of living for himself or herself; has, where applicable; has not, in the preceding 2 years, entered into a transaction with any person at an undervalue, or given a preference to any person; and is not ineligible under subsection (11) for a Debt Relief Notice. Subsection (4) provides that a debtor is not eligible for a Debt Relief Notice where 25 per cent or more of the qualifying debts were incurred in the 6 months preceding the application. Subsection (5) sets out how net disposable income is to be calculated. Subsection (6) sets out certain items which are not to be taken into account in the calculation of a debtor's assets. These include one item of personal jewellery to a value not exceeding €750, or such other value as the Minister may prescribe, and a motor vehicle worth €2,000 or less or such other value as the Minister may prescribe. Any interest in or entitlement under a relevant pension arrangement is also exempt unless the provisions of subsection (14) apply. Under subsection (11), only one Debt Relief Notice per lifetime is permitted and a person may not enter into the Debt Relief Notice process within 5 years of completion of a Debt Settlement Arrangement or Personal Insolvency Arrangement. New subsections (14) and (15) set out how pensions are to be treated in the context of a Debt Relief Notice. In the Debt Relief Notice process a ''pension pot'' will not be counted against the asset exemption limit of €400 but payments which the debtor is entitled to receive, but has not yet received, will be regarded as income.

Section 25 sets out how the Debt Relief Notice process is initiated by the debtor. A debtor who wishes to apply for a Debt Relief Notice is required to submit a written statement of his or her financial affairs to an approved intermediary. Following receipt of the debtor's financial information, the approved intermediary will hold a meeting with the debtor to advise him or her as to possible options for dealing with his or her debt problems. The approved intermediary must provide information as to whether the debtor satisfies the eligibility criteria for a Debt Relief Notice, the general effect of making an application for a Debt Relief Notice and information on any alternative options which might be open to the debtor in addressing his or her financial difficulty. If, following that meeting, the debtor wishes to proceed with an application for a Debt Relief Notice, he or she must confirm this in writing to the approved intermediary, shall fully disclose his or her financial affairs and complete the Prescribed Financial Statement with the assistance of the approved intermediary. Subsection (8) requires the debtor to make full and honest disclosure to the approved intermediary of all of his or her assets, income and liabilities and all other circumstances that are relevant to the process. It also provides that the debtor must comply with any reasonable request from the approved intermediary to provide assistance, documents and information, etc. Subsections (9), (10), and (11) set out the various notification and reporting requirements in regard to an approved intermediary dying, becoming otherwise incapacitated.

New section 26 provides for the explicit consent of a creditor to have his or her ''xcludable'' debt, as defined in section 2, included in a Debt Relief Notice. It provides that a Debt Relief Notice shall be issued in respect of an excludable debt only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the issue of a Debt Relief Notice. In circumstances where the debtor has an excludable debt and wishes to have that debt included in his or her debts for the purposes of a Debt Relief Notice, the approved intermediary is required to contact the creditor in question and request his or her confirmation in writing of whether or not he or she consents to a Debt Relief Notice being issued in respect of the excludable debt. The creditor is required to comply with the approved intermediary's request within 21 days. Failure to respond within the specified time is deemed under subsection (4) to be consent to the inclusion of the excluded debt in the Debt Relief Notice.

Section 26 provides for the application procedure for a Debt Relief Notice. The application must be made by an approved intermediary to the Insolvency Service on behalf of the debtor. The application shall be in a format to be prescribed by the Insolvency Service and be accompanied by a number of supporting documents concerning the debtor's financial situation. New subsection (5) provides that an application made under this section may be withdrawn by the approved intermediary at any time prior to the issue of a Debt Relief Notice under section 28.

Section 27 provides for the consideration of Debt Relief Notice applications by the Insolvency Service. The Insolvency Service may request additional information from the debtor or approved intermediary in relation to the application and shall make such enquiries as it considers necessary concerning the application. Subsection (4) provides that subject to verification of the information submitted, the Insolvency Service shall be entitled to presume that the eligibility criteria for the Debt Relief Notice have been met. Subsection (9) provides that for the purposes of the performance of the functions of the Insolvency Service under this Chapter, information held by the Department of Social Protection, other Departments of State or other State bodies or agencies in relation to a debtor may be furnished to the Insolvency Service.

Section 28 sets out the procedure for referral of an application to the appropriate court for issue of the Debt Relief Notice. If satisfied that an application under section 26 is in order, the Insolvency Service shall issue a certificate to that effect, furnish the certificate, application and supporting documentation to the appropriate court and notify the approved intermediary to that effect. If satisfied with the application, the court shall issue a Debt Relief Notice in respect of the debts specified in the application which it is satisfied are qualifying debts. If the court is not satisfied with the application the court shall refuse to issue a Debt Relief Notice. Subsection (3) allows the court, where it requires further information in relation to an application for a Debt Relief Notice, to hold a hearing that shall be held in private unless the court considers it appropriate to hold it in public.

Section 29 sets out the matters which are to be specified in a Debt Relief Notice.

Section 30 sets out the duties of the Insolvency Service on issue of the Debt Relief Notice. The Insolvency Service is required to notify the approved intermediary concerned that the Debt Relief Notice has been issued, send the notice to the debtor and to each specified

creditor and record the details of the Debt Relief Notice in the Register of Debt Relief Notices (subsection (4)). Subsection (2) sets out the information to be given to the debtor while subsection (3) sets out the information to be given to each creditor (including information on the creditor's right to object to the Notice).

Section 31 provides that a Debt Relief Notice remains in effect for a period of 3 years from the date on which it is recorded in the Register of Debt Relief Notices. This period is to be called a ''supervision period''. The section provides for extension of this period by the court on application by the Insolvency Service in certain specified situations. The circumstances in which the period of the Debt Relief Notice shall terminate are set out in subsection (4). Notification procedures are provided for in subsections (5) and (6).

Section 32 sets out the effect of the issue of a Debt Relief Notice. It provides that a creditor specified in the Notice shall not initiate or continue proceedings against the debtor for enforcement of the debt (subsection (1)) or initiate or proceed with bankruptcy proceedings against the debtor (subsections (2) and (3)). Subsections (4) and (5) set out certain exceptions.

Section 33 provides for the general duties and obligations of the debtor in relation to his or her participation in a Debt Relief Notice process. During the supervision period, the debtor is required to notify the Insolvency Service of any material changes to his or her financial circumstances and of any inaccuracy or omission in the Prescribed Financial Statement or other information submitted to the Insolvency Service (subsection (1)). So as not to reduce the incentive to seek and obtain employment following approval of a Debt Relief Notice, provision is made in subsections (2), (3) and (4) for the treatment of windfalls of €500 or more or increases in monthly income of €400 or more while the Debt Relief Notice is in effect. Subsection (6) provides that while the Debt Relief Notice is in effect the debtor shall not obtain credit of more than €650 from any person without informing that person that he or she is the subject of a Debt Relief Notice.

Section 34 makes provision for a debtor, who is the subject of a Debt Relief Notice, to ''buy'' him or herself off the Register of Debt Relief Notices where he or she makes repayments totalling at least 50 per cent of the value of the debts specified in the Debt Relief Notice to the Insolvency Service for distribution to the creditors specified in the Notice. On payment of that amount, the debtor's name shall be removed from the Register, the Debt Relief Notice shall cease to have effect and he or she shall be discharged from all of the debts concerned.

Section 35 sets out the procedures to be followed by the Insolvency Service on receipt of the debtor's payment under sections 33 or 34.

Section 36 empowers the Insolvency Service to amend Debt Relief Notices in certain circumstances.

Section 37 empowers the Insolvency Service to carry out an investigation relevant to the exercise of its powers under this Chapter.

Section 38 provides for an application by the Insolvency Service for a direction of the court in relation to any matter arising in connection with a Debt Relief Notice. The remedies available to the court are also set out.

Section 39 provides for an application to the court by a specified debtor or specified creditor affected by a Debt Relief Notice if he or she is dissatisfied by any act, omission or decision of the Insolvency Service in connection with a Debt Relief Notice. Subsection (1) sets out the grounds on which the application can be made. Subsection (3) sets out the remedies available to the court.

Section 40 provides for an application by a specified creditor to the court during the supervision period of the Debt Relief Notice if she or he objects to the inclusion, as a specified qualifying debt, of a debt in respect of which he or she is a specified creditor. Subsection (3) sets out the grounds on which the application can be made. Subsection (5) sets out the remedies available to the court.

Section 41 provides that the Insolvency Service may at any time during the supervision period apply to the appropriate court for termination of the Debt Relief Notice. The application is limited to certain grounds set out in subsection (3). Subsection (4) sets out the remedies available to the court.

Section 42 provides that where a Debt Relief Notice is terminated under this Chapter, the debtor shall be liable in full for all debts specified in the Debt Relief Notice at the time of its termination (including any arrears, charges and interest which have accrued while the Notice was in effect) unless the court has made an order otherwise.

Section 43 provides for the circumstances in which a debtor is discharged from his or her specified qualifying debts (subsection (1)) and sets out the responsibility of the Insolvency Service in relation to such discharge (subsection (2)). Subsection (4) provides that the discharge of the debtor under subsection (1) does not release any other person from their liabilities. Subsection (5) states that the provisions of subsection (1) shall not affect the right of secured creditors to enforce their security.

Section 44 empowers the Insolvency Service to authorise a person or class of person to perform the functions of an approved intermediary under this Chapter. The detailed procedures and criteria to be applied by the Insolvency Service in the exercise of this function may be prescribed by the Insolvency Service with the consent of the Minister for Justice and Equality in regulations (subsection (5)). New subsection (6) provides that the regulations under subsection (5) may provide for a withdrawal of an authorisation of a person where he or she no longer meets the criteria for authorisation to be an approved intermediary.

CHAPTER 2

Appointment of Personal Insolvency Practitioner for purposes of Chapter 3 or 4

Chapter 2 provides for a range of practical matters in regard to the appointment of a personal insolvency practitioner, the duties and obligations on such a practitioner and the documents to be prepared in an application for a Debt Settlement Arrangement or Personal Insolvency Arrangement. A key requirement is the completion of the Prescribed Financial Statement.

Section 45 is a general provision which states that a person who wishes to become a party, as a debtor, to either a Debt Settlement Arrangement or a Personal Insolvency Arrangement is required to

comply with this Chapter before making an application for either arrangement.

Section 46 provides for the appointment by a debtor of a personal insolvency practitioner and sets out the process to be followed by the debtor and the personal insolvency practitioner. Subsection (1) provides that the debtor shall submit a written statement disclosing his or her financial affairs to the personal insolvency practitioner. Subsection (2) sets out the personal insolvency practitioner's duties on receipt of the information set out in subsection (1). The personal insolvency practitioner is required to hold a meeting to advise the debtor, on the basis of the information received, of his or her options for addressing his or her financial difficulty and whether the debtor satisfies the eligibility criteria for making a proposal for either of the Arrangements in Chapter 3 or 4. The personal insolvency practitioner is required to provide the debtor with information on the procedure concerned and the general effect, including the likely costs involved, in participating in such an Arrangement. The personal insolvency practitioner is also required to provide the debtor with written information relating to his or her terms of business and fee arrangements. If, following that meeting, the debtor wishes to become a party to a Debt Settlement Arrangement or a Personal Insolvency Arrangement, he or she shall appoint the personal insolvency practitioner to act as personal insolvency practitioner for the purposes of Chapter 3 or 4 (subsection (3)). On being appointed, the personal insolvency practitioner is required to confirm in writing to the debtor that he or she has consented to act in the role of personal insolvency practitioner (subsection (4)). Subsection (5) provides that a debtor can only appoint one personal insolvency practitioner at a time. Subsections (6) to (9) deal with situations where a personal insolvency practitioner resigns or otherwise becomes unavailable to continue acting as such for the debtor and set out the required notifications that have to be made by parties concerned.

Section 47 sets out the duties of the debtor and the personal insolvency practitioner in relation to the completion of the Prescribed Financial Statement.

New section 48 sets out how pension arrangements are to be treated in the context of Debt Settlement Arrangements and Personal Insolvency Arrangements. It provides that the DSA and PIA processes cannot require a debtor to hand over his or her pension pot or to draw down a pension early.

Section 48 outlines the duties of the personal insolvency practitioner regarding the advice to be given to a debtor.

Section 49 provides that on receipt of the advice of the personal insolvency practitioner referred to in section 48, if the debtor wishes to make a proposal for a Debt Settlement Arrangement or a Personal Insolvency Arrangement, he or she is required to instruct the personal insolvency practitioner in writing to make such a proposal on his or her behalf.

Section 50 sets out the matters to be included in the statement to be prepared by the personal insolvency practitioner in relation to the debtor's financial circumstances.

CHAPTER 3

Debt Settlement Arrangements

Chapter 3 provides for a system of Debt Settlement Arrangements between a debtor and one or more creditors to repay an amount of unsecured debt over a period of 5 years (with a possible agreed extension to 6 years). The Debt Settlement Arrangement would assist persons who have such income, assets and debts that would fall outside the criteria for a Debt Relief Notice. The Chapter provides for all aspects of the eligibility, application, determination, duties and obligations arising, court application, objection by creditors and discharge from qualifying debts under the Debt Settlement Arrangement process.

Section 51 sets out the general conditions attached to a Debt Settlement Arrangement. A debtor who satisfies the eligibility criteria may make a proposal for a Debt Settlement Arrangement with one or more of his or her creditors (subsection (1)). A proposal for a Debt Settlement Arrangement is to be made by a personal insolvency practitioner on the debtor's behalf (subsection (2)). Subsection (3) provides that a joint proposal may be made where two or more debtors are jointly party to all of the debts to be covered in the Debt Settlement Arrangement and each of the debtors satisfies the eligibility criteria. Subsection (4) provides that an excluded debt cannot be proposed for consideration in a Debt Settlement Arrangement.

Section 52 provides that a debtor may enter into a Debt Settlement Arrangement once only.

Section 53 sets out the eligibility criteria for a Debt Settlement Arrangement. These are that the debtor must be domiciled in the State, or within one year before the date of the application for a protective certificate have ordinarily resided or have had a place of business in the State; be insolvent; have completed a Prescribed Financial Statement and made a statutory declaration confirming that the statement is a complete and accurate statement of his or her assets, liabilities, income and expenditure. The personal insolvency practitioner must have completed a statement in respect of the debtor as provided for by section 50.

Subsection (1)(*e*) provides that the following persons are ineligible to apply for a Debt Settlement Arrangement: an undischarged bankrupt, a discharged bankrupt subject to a bankruptcy payment order, a person who is a specified debtor as respects a Debt Relief Notice, a person who, as a debtor, is subject to a Personal Insolvency Arrangement which is in force, or a person who, as a debtor, is subject to an arrangement under the control of the court under Part IV of the Bankruptcy Act 1988. Under subsection (1)(*f*), a person is also ineligible for a Debt Settlement Arrangement if he or she has been the subject of a protective certificate issued under section 55 less than 12 months prior to the date of the application for a protective certificate; had his or her debts discharged pursuant to a final Debt Relief Notice less than 3 years prior to the date of the application for a protective certificate; had his or her debts discharged pursuant to a Personal Insolvency Arrangement less than 5 years prior to the date of the application for a protective certificate, or been discharged from bankruptcy less than 5 years prior to the date of the application for a protective certificate. Subsection (2) allows for certain exceptions to the eligibility criteria. Subsection (3) provides that a debtor is not eligible for a Debt Settlement

Arrangement where 25 per cent or more of the qualifying debts were incurred in the 6 months preceding the application.

New Section 54 provides that an excludable debt shall be included in a proposal for a Debt Settlement Arrangement only where the creditor concerned has consented, or is deemed to have consented, to the inclusion of that debt in such a proposal. The personal insolvency practitioner must notify the creditor concerned and provide him or her with certain information and request the creditor to confirm in writing whether or not he or she consents to the inclusion of the debt in the Debt Settlement Arrangement (subsection (2)). The creditor must confirm in writing within 21 days whether he or she consents to the inclusion of the debt and if he or she does not comply with this deadline the creditor is deemed to have consented (subsections (3) and (4)). Creditors who consent or are deemed to have consented to the inclusion of an excludable debt in a Debt Settlement Arrangement are entitled to vote at any creditors' meetings (subsection (5)). Subsection (6) provides that where the creditor concerned has appealed the application of a protective certificate in relation to the debtor, the 21 day period in which the creditor has to reply to the notification under subsection (3) shall commence on the date of the court determination.

Section 54 sets out the application requirements for a protective certificate for a Debt Settlement Arrangement. The application is made to the Insolvency Service by the personal insolvency practitioner on behalf of the debtor. Subsection (2) outlines the documentation which is to accompany the application. Subsection (3) provides that an application for a Debt Settlement Arrangement may be withdrawn by the personal insolvency practitioner at any time prior to the issue of a protective certificate. Subsection (4) places an obligation on the personal insolvency practitioner to notify the Insolvency Service as soon as practicable after he or she becomes aware of any inaccuracy or omission in relation to an application for a protective certificate. The Insolvency Service is required to have regard to any such information provided under subsection (4) for the purposes of its consideration of the debtor's application.

Section 55 provides for the consideration by the Insolvency Service of an application for a protective certificate. The Insolvency Service may request further information, if required (subsection (1)). Where the information requested is not received within 14 days or a longer period specified by the Insolvency Service, the application may be deemed to have been withdrawn. Subsections (3), (5) and (6) empower the Insolvency Service to make certain enquiries concerning the application for the protective certificate. Subsection (9) provides that for the purposes of the performance of the functions of the Insolvency Service under this Chapter, information held by the Department of Social Protection, other Departments of State or other State bodies or agencies in relation to a debtor may be furnished to the Insolvency Service.

Section 56 provides for the issue of the protective certificate by the appropriate court. Subsection (1)(*a*) provides that where the Insolvency Service is satisfied that the application for a protective certificate is in order, it shall issue a certificate to that effect and furnish that certificate together with the supporting documentation to the appropriate court and notify the personal insolvency practitioner to that effect. If the Insolvency Service is not satisfied that the application is order it shall notify the personal insolvency practitioner and request him or her to submit a revised application within 21 days (subsection (1)(*b*)). If satisfied that the eligibility criteria and other relevant requirements are met, the court shall issue

a protective certificate (subsection (2)(*a*)). If the court is not satisfied it shall refuse to issue a protective certificate (subsection (2)(*b*)). Subsections (3) and (4) provide that if the court requires further information it may hold a hearing to be held otherwise than in public. A protective certificate shall be in force for 70 days from the date of its issue (subsection (5)). Subsections (6) and (7) provide for extension of this period in certain specified circumstances. The period of a protective certificate can only be extended once where reason for the extension is that the debtor had to find an alternative personal insolvency practitioner because the original practitioner was unable or unavailable (as set out in section (46(7)) to continue acting as such for the debtor. Subsection (10) provides for the court to notify the Insolvency Service and the personal insolvency practitioner when it issues a protective certificate, an extension to a protective certificate or if it decides to hold a hearing in relation to the application for a Debt Settlement Arrangement. Subsection (11) provides that the Insolvency Service is required to enter certain details relating to the issuing of the protective certificate on the Register of Protective Certificates. Subsection (12) sets out the duties of the personal insolvency practitioner regarding the notification of creditors of the issue of a protective certificate. Subsection (13) provides that, notwithstanding subsections (5), (6) and (7), a protective certificate that is in force on the date on which a proposal for a Debt Settlement Arrangement is approved in accordance with section 68 shall continue in force until it ceases to have effect under the provisions of section 71. Subsection (14) sets out the information which is to be contained in a protective certificate. Subsection (15) provides that the court may treat a protective certificate issued by the Insolvency Service as evidence of the matters certified therein.

Section 57 sets out the effect of the issue of a protective certificate. Subsection (1) prohibits the initiation or continuation of certain enforcement proceedings or other specified actions while the protective certificate is in force. Subsection (2) prohibits the presentation of a bankruptcy petition relating to the debtor by a creditor or an already-presented petition from being proceeded with while the protective certificate is in force. Subsection (3) provides that no proceedings, etc. may be commenced or continued against the debtor or his or her property save with the leave of the court. The court may make an order to stay such proceedings pending the outcome of attempts to reach a Debt Settlement Arrangement. Subsection (4) makes it clear that the fact that a protective certificate is in force in relation to a debtor shall not prevent a creditor from taking certain actions against another person who has guaranteed the debts of the debtor to which the protective certificate relates. Subsection (5) sets out the effect of the protective certificate on joint debts. Subsection (6) clarifies that subsections (4) and (5) do not apply where a protective certificate is also in force as respects the other person. Subsection (7) provides that the period in which the protective certificate is in force shall be disregarded when reckoning any period of time for the purpose of any applicable limitation period in relation to any proceedings or process set out in subsection (1) or (3) of this section. This includes any limitation period under the Statute of Limitations 1957. Subsection (8) provides that a secured debt is not affected by the protective certificate.

Section 58 sets out the creditor's right of appeal in relation to the issue of a protective certificate. The creditor must lodge his or her appeal within 14 days of the giving of notice of the protective certificate (subsection (1)) and is required to notify the Insolvency Service and the personal insolvency practitioner of the appeal (subsection (2)). Subsection (3) sets out the matters which the court shall take into consideration in determining the appeal. Subsection

(4) provides that all the parties to the application shall bear their own costs unless to do so would cause the parties a serious injustice. Subsection (5) sets out the position in relation to any moneys held or assets recovered in trust for the benefit of other creditors.

Section 59 details the actions to be taken by the personal insolvency practitioner following the issue of a protective certificate. The practitioner is required to notify the creditors concerned that he or she has been appointed by the debtor for the purposes of making a proposal for a Debt Settlement Arrangement and is required to invite the creditors to make submissions as to how the debts concerned might be dealt with as part of a Debt Settlement Arrangement. The personal insolvency practitioner must also make a proposal for a Debt Settlement Arrangement in respect of the debts concerned (subsection (1)). The creditor may be requested to file a proof of debt (subsection (2)).

Section 60 provides for mandatory requirements concerning Debt Settlement Arrangements. These requirements are detailed in subsection (2) and include provisions in regard to the duration of the Arrangement; specification of the debts covered by the Arrangement; the payment of the costs and outlays of the personal insolvency practitioner; reviews of the Arrangement and variation of the Arrangement. The Insolvency Service is empowered under subsection (3) to publish a Code of Practice providing guidance in relation to the matters outlined in subsection (2). Subsection (4) provides that the personal insolvency practitioner shall have regard to any guidelines on reasonable standard of living and reasonable living expenses published by the Insolvency Service when determining such matters for the purposes of subsection (2)(*f*).

Section 61 sets out a non-exhaustive list of matters for possible inclusion in a Debt Settlement Arrangement. Subsection (2) details a number of possible payment options which may be considered. Subsection (3) provides that unless otherwise provided in the Arrangement, payments to creditors of the same class are to be made on a *pari passu* basis. Subsection (4) provides that where an Arrangement requires payments to a creditor which are greater that the creditor would receive on a *pari passu* basis, then the creditor is required to pay the fees, costs and charges of the personal insolvency practitioner in proportion to the payments paid to him or her unless the other creditors agree otherwise. Subsection (5) provides that the payment of moneys or the performance of obligations provided for by an Arrangement may be secured by a charge or a guarantee given by a debtor or a charge or a guarantee given by another person.

Section 62 provides for the treatment of preferential debts in a Debt Settlement Arrangement. Subsection (1) provides that unless the creditor concerned otherwise agrees in writing and provision to that effect is made in the terms of the Debt Settlement Arrangement, a preferential debt shall, subject to *subsection (3)*, be paid in priority by the debtor and where those debts are to be paid in priority the provisions of section 81 of the Bankruptcy Act 1988 shall apply with all necessary modifications. Subsection (2) places an onus on a creditor to prove his or her claim that a debt, or part of it, is a preferential debt. Subsection (3) provides that where a creditor fails to satisfy the personal insolvency practitioner that his or her debt is a preferential debt, the debt shall not be treated as a preferential debt for the purpose of a Debt Settlement Arrangement. Subsection (4) is an interpretation provision in relation to preferential debt‘‘ as referred to in this Chapter of the Bill.

Section 63 makes provision for the treatment of secured creditors in a Debt Settlement Arrangement. Subsection (2) provides that a secured creditor of the debtor may not participate in a Debt Settlement Arrangement with respect to a secured debt. Subsection (3) makes clear that the provisions of subsection (2) shall not prevent the debtor or personal insolvency practitioner from liaising or sharing information with a secured creditor in connection with a proposed or existing Debt Settlement Arrangement.

Section 64 provides for the treatment of a principal private residence in a Debt Settlement Arrangement. Subsection (1) provides that a personal insolvency practitioner shall, insofar as is reasonably practicable, formulate the proposal on terms which will not require the debtor to dispose of an interest in or cease to occupy his or her principal private residence and shall consider any appropriate alternatives to such vacation. Subsection (2) sets out a number of matters to which the personal insolvency practitioner shall have regard in relation to this section. These are the costs likely to be incurred by the debtor by remaining in occupation of his or her principal private residence, the debtor's income and other financial circumstances, the ability of other persons residing with the debtor to contribute to the costs of remaining in occupation, and the reasonable living accommodation needs of the debtor and his or her dependants and, having regard to those needs, the cost of alternative accommodation. Subsection (3) provides that the personal insolvency practitioner will not be required to formulate the proposal on terms that will not require the debtor to cease to occupy his or her principal private residence where the debtor confirms in writing that he or she does not wish to remain in occupation of that residence or where the personal insolvency practitioner, has, having discussed the issue with the debtor, formed the opinion that the costs of continuing to reside in the debtor's principal private residence are disproportionately large. Subsection (4) provides that a Debt Settlement Arrangement shall not provide for disposal of the debtor's interest in the principal private residence unless firstly, the debtor has obtained independent legal advice in relation to such disposal or has declined to do so and, secondly, that all applicable provisions of the Family Home Protection Act 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 are complied with.

Section 65 provides for the calling of a creditors' meeting required to approve a Debt Settlement Arrangement by the personal insolvency practitioner. The duties of the practitioner in relation to notification of the creditors' meeting are outlined in subsection (2). Subsection (3) provides that where a creditor's meeting does not take place before the expiry of the protective certificate, the Debt Settlement Arrangement procedure shall be deemed to come to an end.

Section 66 sets out the documentation to be given to creditors and the Insolvency Service when calling a creditors' meeting (subsection (1)). Subsection (2) places a duty on the debtor to notify the personal insolvency practitioner if his or her financial position has materially changed in the period since completion of the Prescribed Financial Statement. It will be a matter for the personal insolvency practitioner to consider whether the change merits the completion of a new Prescribed Financial Statement, and if so, to assist the debtor in completing a new one.

Section 67 sets out the requirements regarding the conduct of the creditors' meeting. Subsection (2) allows the personal insolvency practitioner to adjourn the meeting and, with the debtor's consent, prepare an amended proposal for a Debt Settlement Arrangement,

if he or she is of the opinion that to do so would aid in obtaining approval of a proposed Debt Settlement Arrangement by the creditors. Subsection (3) provides that where an amended Debt Settlement Arrangement proposal is prepared, the personal insolvency practitioner is required to furnish this proposal to the Insolvency Service. It also sets out the requirements for the rescheduling of the adjourned meeting. An adjournment for the purpose of amending a proposal for a Debt Settlement Arrangement may only occur once during the period of the protective certificate. Subsection (5) provides that creditors may only vote, in accordance with section 69, for or against the approval of the proposal for a Debt Settlement Arrangement. Subsection (6) provides for certain modifications to the proposed Debt Settlement Arrangement. Subsection (7) provides that where a proposed Arrangement is not approved at the meeting, the Debt Settlement Arrangement procedure shall be deemed to have come to an end and the protective certificate shall cease to have effect. Subsection (8) makes provision for cases where only one creditor is entitled to vote at the meeting.

Section 68 makes provision for voting at a creditors' meeting. The value of a creditor's vote shall be calculated by reference to the amount of the debt due by the debtor to the creditor on the date on which the protective certificate was issued (subsection (2)). Subsection (3) provides that a creditor who is owed a preferential debt is not entitled to vote in respect of that debt unless he or she has furnished to the personal insolvency practitioner a waiver in writing of his or her right to have the debt treated as a preferential debt. A proposed Debt Settlement Arrangement shall be approved where creditors representing not less than 65 per cent in value of the creditors present and voting either in person or by proxy at the meeting vote in favour of such approval (subsection (9)). Where no creditor votes, the proposed Debt Settlement Arrangement shall be deemed to have been approved (subsection (10)).

Section 69 specifies procedures for the conduct of creditors' meetings. It allows the Minister for Justice and Equality to make regulations relating to the holding of creditors' meetings.

Section 70 sets out the steps to be taken by a personal insolvency practitioner following approval of a proposal for a Debt Settlement Arrangement at a creditors' meeting. The personal insolvency practitioner is required under subsection (1) to inform the creditors and the Insolvency Service as soon as practicable of the outcome of the creditors' meeting. Subsections (2) and (3) provide for the making by a creditor of an objection to the coming into effect of the Debt Settlement Arrangement.

Section 71 sets out the steps to be taken by the Insolvency Service following notification of approval of a Debt Settlement Arrangement under section 70. Subsection (1) provides that the Insolvency Service shall record the approval of a Debt Settlement Arrangement in the Register of Debt Settlement Arrangements, notify the appropriate court and furnish to the court a copy of the Debt Settlement Arrangement. Where the notification is received by the Insolvency Service before the expiry of the period of the protective certificate, the protective certificate shall continue in force until the Debt Settlement Arrangement comes into effect or all objections lodged with the court have been determined by the court (subsection (2)).

Section 72 makes provision for the determination by the court of objections lodged under section 70. Subsection (1) provides that the grounds on which objection may be made to the coming into effect

of the Debt Settlement Arrangement are specified in section 84. Subsection (2) provides that the hearing of the creditor's objection shall be heard with all due expedition. Subsection (3) provides that where the court upholds an objection, the Debt Settlement Arrangement procedure shall be deemed to have come to an end and the protective certificate in relation to the debtor shall cease to have effect.

Section 73 provides for the scope of the court's function in relation to approval of a Debt Settlement Arrangement and the coming into effect of the Arrangement. Having been notified of the approval of a Debt Settlement Arrangement following a creditors' meeting, the court, if satisfied that the Arrangement is in compliance with the Bill, shall approve it where no creditor objection has been entered within 14 days or where a creditor objection has been entered but dismissed by the court (subsections (1) and (2)). Subsections (3) and (4) provide that if the court requires further information it may hold a hearing to be held otherwise than in public. Subsection (5) provides that the court may treat a certificate issued by the Insolvency Service certifying that the eligibility criteria specified in section 53 have been satisfied as evidence of the matters certified therein and a certificate issued by a personal insolvency practitioner pursuant to section 70(1) as evidence that the requisite percentage of creditors has approved the proposal for a Debt Settlement Arrangement. Subsection(6) provides for the court to notify the Insolvency Service and the personal insolvency practitioner when it approves or refuses to approve the coming into effect of a Debt Settlement Arrangement, or if it decides to hold a hearing in relation to the application. Subsection (7) provides that on receipt of a notification to it from the court, the Insolvency Service shall notify the personal insolvency practitioner concerned, and register the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements. The Arrangement shall take effect immediately upon being registered by the Insolvency Service.

Section 74 sets out the effect of registration of a Debt Settlement Arrangement. The Arrangement shall remain in effect until it is completed in accordance with its terms or terminated. While the Arrangement is in effect, the debtor and every specified creditor shall be parties to it and shall be bound by its terms (subsection (2)). Subsections (3), (4) and (5) set out a list of enforcement and other actions which a creditor bound by the Agreement is prohibited from taking while the Agreement is in effect. Subsection (6) sets out the effect of the protective certificate on joint debts. Subsection (7) clarifies that subsection (6) does not apply where a protective certificate is also in force as respects the other person. New subsection (10) provides that notwithstanding subsections (3) and (4) the fact that a Debt Settlement Arrangement is in effect in relation to a debtor under this Chapter shall not operate to prevent a creditor taking enforcement actions as respects another person who has guaranteed the specified debts concerned.

Section 75 provides for the operation of the terms of a Debt Settlement Arrangement. Among the matters provided for are requirements to ensure that the Arrangement proceeds in accordance with its terms; that the personal insolvency practitioner maintains regular contact with the debtor, obtaining reports and conducting reviews as may be required and to monitor any problems that may arise.

Section 76 sets out the general duties of a debtor who is party to a Debt Settlement Arrangement. Among the matters listed is a requirement that the debtor shall act in good faith and co-operate

fully in the process and comply with any reasonable request from the personal insolvency practitioner for such assistance, documents and information as are necessary to ensure compliance by the debtor or the practitioner with the terms of Chapter 3. The section also sets out the debtor's obligations in regard to notification of any material changes in his or her circumstances.

Section 77 provides for a variation of a Debt Settlement Arrangement. Unless its terms state otherwise, an Arrangement may be varied (subsection (1)). Subsection (2) provides that where it appears that there has been a material change in the debtor's circumstances which would affect his or her ability to make repayments under the Debt Settlement Arrangement, the personal insolvency practitioner may call a meeting of creditors. Subsection (3) sets out the notice requirements and other actions to be completed by the personal insolvency practitioner. Subsection (5) provides that creditors shall vote, in accordance with section 68, in favour of the approval of the proposal for the variation, or against the approval of the proposal. Subsection (6) provides that for the purposes of subsection (5), the value of a creditor's vote at the meeting shall be calculated by reference to the value of the creditor's debts on the date on which the vote takes place. Subsection (9) provides that a variation to a Debt Settlement Arrangement shall take effect immediately upon its being registered and shall remain in effect until the Arrangement, as varied, is completed in accordance with its terms; terminated in accordance with this Chapter or further varied in accordance with this section. While the Arrangement, as varied, is in effect the debtor and every creditor entitled to vote at the creditors' meeting shall be parties to it and shall be bound by its terms (subsection (10)).

Section 78 was deleted. This section provided for the process of termination of a Debt Settlement Arrangement by a meeting of creditors on foot essentially of a material change in the debtor's circumstances in the opinion of the personal insolvency practitioner or that the debtor participated knowing that he did not fulfil the eligibility criteria. The section was deleted on the basis that it is not particularly required in the light of the provisions of section 79, which require the involvement of the court.

Section 79 provides for the termination of a Debt Settlement Arrangement on application to the court at any time while the Arrangement is in effect. Subsection (1) sets out the grounds on which such an application can be made, including a situation where a 3 month arrears default has occurred. Subsection (2) sets out the circumstances in which such a default takes place. Subsection (3) sets out the remedies at the court's discretion i.e. dismissal of the application, termination of the Debt Settlement Arrangement or ordering the personal insolvency practitioner to propose the variation of the agreement in accordance with section 77.

Section 80 provides that a Debt Settlement Arrangement shall be deemed to have failed and shall terminate after a 6 month arrears default has occurred and been notified to the Insolvency Service. Where the Insolvency Service receives notification of such default it shall record the failure of the Debt Settlement Arrangement in the Register of Debt Settlement Arrangements.

Section 81 sets out the effect of premature termination of a Debt Settlement Arrangement on debts. It provides that where an Arrangement has been deemed to come to an end, has failed or terminated, the debtor shall be liable in full for all debts covered by the Arrangement (including any arrears, charges and interest that

have accrued but excluding any amounts paid in respect of the debts during the continuance of the Arrangement) unless the terms of the Arrangement provide otherwise or the appropriate court has made an order otherwise.

Section 82 was deleted. Section *82* provided that a terminated Debt Settlement Arrangement under sections 78, 79 or 80 is to be deemed an act of bankruptcy. This is now included in amended section 7 of the Bankruptcy Act 1988 (see new section 135 of this Bill).

Section 83 provides that upon successful completion of the Debt Settlement Arrangement by the debtor, the personal insolvency practitioner is required to notify the debtor, creditors and the Insolvency Service. The debtor shall stand discharged of the debts specified in the Debt Settlement Arrangement (subsection (2)) and the Insolvency Service shall record the successful completion of the Arrangement in the Register of Debt Settlement Arrangements (subsection (3)).

Section 84 sets out the grounds on which a Debt Settlement Arrangement may be challenged by a creditor.

New section 85 allows a creditor or personal insolvency practitioner of a debtor in respect of whom a Debt Settlement Arrangement is in force, to make an application to the appropriate court for relief in accordance with this section, where the creditor or the personal insolvency practitioner concerned considers that a debtor has made excessive contributions to a relevant pension arrangement. The alleged excessive contributions to the debtor's pension must have been made within the 3 years period prior to the issue of the protective certificate. Subsection (3) provides that where the court finds that the debtor's pension contributions were excessive it can direct that such part of the contribution concerned (less any tax required to be deducted) be paid by the person administering the relevant pension arrangement to the personal insolvency practitioner for distribution amongst the creditors of the debtor, and make such other order as the court deems appropriate, including an order as to the costs of the application. Subsection (4) sets out the matters that the court shall have regard to in the consideration of the matter.

CHAPTER 4

Personal Insolvency Arrangements

Chapter 4 provides for a system of Personal Insolvency Arrangements between a debtor and one or more creditors to repay an amount of both secured and unsecured debt over a period of 6 years (with a possible agreed extension to 7 years). The Personal Insolvency Arrangement would assist those persons who have difficulty in the repayment of both secured debt (e.g. mortgage arrears) and unsecured debt. The Chapter provides for all aspects of the eligibility, application, determination, duties and obligations arising, court application, objection by creditors and discharge from qualifying debts under the Personal Insolvency Arrangement process.

Section 85 was deleted as a consequence of the new review section inserted by new Section 134.

Section 86 sets out the general conditions attached to a Personal Insolvency Arrangement. A debtor who satisfies the eligibility criteria may make a proposal for a Personal Insolvency Arrangement with one or more of his or her creditors (subsection (1)). A proposal

for a Personal Insolvency Arrangement is to be made by a personal insolvency practitioner on the debtor's behalf (subsection (2)). Subsection (3) provides that a joint proposal may be made in circumstances where two or more debtors are jointly party to all of the debts to be covered in the Personal Insolvency Arrangement and each of the debtors satisfies the eligibility criteria. Subsection (4) provides that a Personal Insolvency Arrangement may be proposed by a debtor on the basis that it will be administered in common by a personal insolvency practitioner with one or more other Personal Insolvency Arrangements provided that the personal insolvency practitioner is of the opinion that they can be reasonably administered in common and that each Arrangement will contain sufficient detail on how each will operate.

Section 87 provides that a debtor may enter into a Personal Insolvency Arrangement once only.

Section 88 sets out the eligibility criteria that a debtor must meet to be eligible to propose a Personal Insolvency Arrangement. These are that the debtor must be insolvent, that at least one of his or her creditors must be a secured creditor, that subject to subsection (4), the aggregate secured debts must be less than €3 million, that the debtor must be domiciled in the State, or within 1 year before the date of the application for a protective certificate, have ordinarily resided or had a place of business in the State, have completed a Prescribed Financial Statement and made a statutory declaration confirming that the statement is a complete and accurate statement of his or her assets, liabilities, income and expenditure.

Subsection (1)(*f*) provides that the personal insolvency practitioner must have completed a statement under section 50 in respect of the debtor.

Subsection (1)(*g*) provides that the debtor shall make a declaration in writing declaring that he or she has co-operated for a period of at least 6 months with his or her secured creditors as respect the debtor's principal private residence in accordance with any process approved or required by the Central Bank — such as the Mortgage Arrears Resolution Process provided for in the Central Bank's Code of Conduct on Mortgage Arrears — and that notwithstanding such co-operation the debtor has not been able to agree an alternative repayment arrangement or the secured creditor has confirmed in writing its unwillingness to enter into an alternative repayment arrangement.

Subsection (1)(*h*) provides that the following persons are ineligible to apply for a Personal Insolvency Arrangement: an undischarged bankrupt, a discharged bankrupt subject to a bankruptcy payment order, a person who, as a debtor, is subject to a Debt Relief Notice or Debt Settlement Arrangement which is in force, or a person who, as a debtor, is subject to an arrangement under the control of the court under Part IV of the Bankruptcy Act 1988. Under subsection (1)(*i*), a debtor is also ineligible for a Personal Insolvency Arrangement if he or she has been the subject of a protective certificate issued under section 91 less than 12 months prior to the date of the application for a protective certificate, had his or her debts discharged pursuant to a final Debt Relief Notice less than 3 years prior to the date of the application for a protective certificate, had his or her debts discharged pursuant to a Debt Settlement Arrangement less than 5 years prior to the date of the application for a protective certificate, or been discharged from bankruptcy less than 5 years prior to the date of the application for a protective

certificate. Subsections (2) and (3) allow for certain exceptions to the eligibility criteria.

Subsection (4) provides that the €3 million cap that applies to secured debt within a Personal Insolvency Arrangement can be waived with the consent, in writing, of all the secured creditors. Subsection (5) provides that a debtor is not eligible for a Personal Insolvency Arrangement where 25 per cent or more of the qualifying debts were incurred in the 6 months preceding the application.

New section 89 provides that an excludable debt shall be included in a proposal for a Personal Insolvency Arrangement only where the creditor concerned has consented, or is deemed to have consented, to the inclusion of that debt in such a proposal. The personal insolvency practitioner must notify the creditor concerned and provide him or her with certain information and request the creditor to confirm in writing whether or not he or she consents to the inclusion of the debt in the Personal Insolvency Arrangement (subsection (2)). The creditor must confirm in writing within 21 days whether he or she consents to the inclusion of the debt and if he or she does not comply with this deadline the creditor is deemed to have consented (subsections (3) and (4)). Creditors who consent or are deemed to have consented to the inclusion of an excludable debt in a Personal Insolvency Arrangement are entitled to vote at any creditors' meetings (subsection (5)). Subsection (6) provides that where the creditor concerned has appealed the application of a protective certificate in relation to the debtor, the 21 days period in which the creditor has to reply to the notification under subsection (3) shall commence on the date of the court determination.

Section 89 sets out the application requirements for a protective certificate for a Personal Insolvency Arrangement. The application is made to the Insolvency Service by the personal insolvency practitioner on behalf of the debtor. Subsection (2) outlines the documentation which is to accompany the application. Subsection (3) allows the personal insolvency practitioner to withdraw the application at any time prior to the issue of the protective certificate. Subsection (4) places an obligation on the personal insolvency practitioner to notify the Insolvency Service as soon as practicable after he or she becomes aware of any inaccuracy or omission in relation to an application for a protective certificate. The Insolvency Service is required to have regard to any such information provided under this subsection for the purposes of its consideration of the debtor's application.

Section 90 provides for the consideration by the Insolvency Service of the application for a protective certificate. It empowers the Insolvency Service to request further information, if required (subsection (1)). Where the information requested is not received within 14 days or a longer period specified by the Insolvency Service, the application may be deemed to have been withdrawn (subsection (2)). Subsections (3), (5) and (6) empower the Insolvency Service to make certain enquiries concerning the application for the protective certificate. Subsection (9) provides that for the purposes of the performance of the functions of the Insolvency Service under this Chapter, information held by the Department of Social Protection, other Departments of State or other State bodies or agencies in relation to a debtor may be furnished to the Insolvency Service.

Section 91 provides for the issue of the protective certificate by the appropriate court. Subsection (1) provides that where the Insolvency Service is satisfied that the application for a protective certificate is in order, it shall issue a certificate to that effect and furnish that

certificate together with a copy of the application and supporting documentation to the appropriate court and notify the personal insolvency practitioner. If it is not satisfied, the Insolvency Service shall notify the personal insolvency practitioner to that effect and request him or her, within 21 days of the notification, to submit a revised application or to confirm that the application has been withdrawn. The court will review the documentation and if satisfied that the eligibility criteria referred to in section 88 and other relevant requirements are met, shall issue a protective certificate (subsection (2)). If the court is not satisfied it shall refuse to issue a protective certificate. Subsections (3) and (4) provide that if the court requires further information it may hold a hearing to be held otherwise than in public. A protective certificate shall be in force for 70 days from the date of its issue (subsection (5)). Subsections (6) and (7) provide for extension of this period in certain specified circumstances. The period of a protective certificate can only be extended once where reason for the extension is that the debtor had to find an alternative personal insolvency practitioner because the original practitioner was unable or unavailable (as set out in section (46(7)) to continue acting as such for the debtor. Subsection (10) provides for the court to notify the Insolvency Service and the personal insolvency practitioner when it issues a protective certificate, an extension to a protective certificate or if it decides to hold a hearing in relation to the application for a Personal Insolvency Arrangement. Subsection (11) provides that the Insolvency Service is required to enter certain details relating to the issuing of the protective certificate on the Register of Protective Certificates. Subsection (12) sets out the duties of the personal insolvency practitioner regarding the notification of creditors of the issue of a protective certificate. Subsection (13) provides that, notwithstanding subsections (5), (6) and (7), a protective certificate that is in force on the date on which a proposal for a Personal Insolvency Arrangement is approved in accordance with section 106 shall continue in force until it ceases to have effect under the provisions of section 109. Subsection (14) sets out the information which is to be contained in a protective certificate. Subsection (15) provides that the court may treat a protective certificate issued by the Insolvency Service as evidence of the matters certified therein.

Section 92 sets out the effect of the issue of a protective certificate. Subsection (1) prohibits the initiation or continuation of certain enforcement proceedings or other specified actions while the protective certificate is in force. Subsection (2) prohibits the presentation of a bankruptcy petition relating to the debtor by a creditor or an already-presented petition from being proceeded with where the creditor in question has been notified of the granting of the protective certificate while the certificate is in force. Subsection (3) provides that without prejudice to subsections (1) and (2), no other proceedings, etc. may be commenced or continued against the debtor or his or her property save with the leave of the court. The court may make an order to stay such proceedings for such period as the court deems appropriate pending the outcome of attempts to reach a Personal Insolvency Arrangement. Subsection (4) makes it clear that the fact that a protective certificate is in force in relation to a debtor shall not prevent a creditor from taking certain actions against another person who has guaranteed the debts of the debtor to which the protective certificate relates. Subsection (5) sets out the effect of the protective certificate on joint debts. Subsection (6) clarifies that subsections (4) and (5) do not apply where a protective certificate is also in force as respects the other person. Subsection (7) provides that the period in which the protective certificate is in force shall be disregarded when reckoning any period of time for the purpose of any applicable limitation period in relation to any

proceedings or process set out in subsection (1) or (3) of this section. This includes any limitation period under the Statute of Limitations 1957.

Section 93 sets out a creditor's right of appeal in relation to the issue of a protective certificate. The aggrieved creditor must lodge his or her appeal within 14 days of the giving of notice of the protective certificate (subsection (1)) and is required to notify the Insolvency Service, the personal insolvency practitioner and such other persons as the court may direct of the appeal (subsection (2)). Subsection (3) sets out the matters which the court shall take into consideration in determining the appeal. Subsection (4) provides that all the parties to the application shall bear their own costs unless to do so would cause the parties a serious injustice. Subsection (5) sets out the position in relation to any moneys held or assets recovered in trust for the benefit of other creditors. Subsection (6) provides that a hearing under subsection (1) shall be heard with all due expedition.

Section 94 details the actions to be taken by the personal insolvency practitioner following the issue of a protective certificate. The practitioner is required to notify the creditors concerned that he or she has been appointed by the debtor for the purposes of making a proposal for a Personal Insolvency Arrangement and is required to invite the creditors to make submissions regarding the debts concerned and how they might be dealt with as part of a Personal Insolvency Arrangement and to consider any such submission made. The personal insolvency practitioner must also make a proposal for a Personal Insolvency Arrangement in respect of the debts concerned (subsection (1)). The creditor may be requested to file a proof of debt (subsection (2)).

Section 95 provides for mandatory requirements concerning Personal Insolvency Arrangements. These requirements are detailed in subsection (2) and include provisions in regard to the specification of those debts which are secured and unsecured, the maximum duration of the Arrangement, a provision that a debtor shall not stand discharged from secured debts except to the extent provided for in the Arrangement, the manner in which security is to be treated, the payment of the costs and outlays of the personal insolvency practitioner, reviews of the Arrangement at regular intervals (which are not to be greater than 12 months) and the circumstances in which the personal insolvency practitioner will be required to propose a variation to the Arrangement in accordance with section 115.

In addition, subsection (2)(*d*) provides that the debtor may not be released from certain debts in a Personal Insolvency Arrangement unless the relevant creditor agrees to accept the Arrangement. An Arrangement shall not require the debtor to dispose of his or her interest in a principal private residence unless the provisions of section 100(3) apply (subsection (2)(*j*)). The Insolvency Service is empowered under subsection (3) to publish a Code of Practice providing guidance in relation to the matters outlined in subsection (2). Subsection (4) provides that the personal insolvency practitioner shall have regard to any guidelines on reasonable standard of living and reasonable living expenses published by the Insolvency Service when determining such matters for the purposes of subsection (2)(*g*), which deals with the need for the debtor to have a sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants.

Section 96 sets out a non-exhaustive list of payment options for possible inclusion in a Personal Insolvency Arrangement. Subsection (3) provides that unless otherwise provided in the Arrangement,

payments to creditors of the same class are to be made on a *pari passu* basis. New Subsection (4) provides that where an Arrangement requires payments to a creditor which are greater that the creditor would receive on a *pari passu* basis, then the creditor is required to pay the fees, costs and charges of the personal insolvency practitioner in proportion to the payments paid to him or her unless the other creditors agree otherwise. Subsection (4) provides that the payment of moneys or the performance of obligations provided for by an Arrangement may be secured by a charge or a guarantee given by a debtor or a charge or a guarantee given by another person.

Section 97 provides for the treatment of preferential debts in a Personal Insolvency Arrangement. Subsection (1) provides that unless the creditor concerned otherwise agrees in writing and provision to that effect is made in the terms of the Debt Settlement Arrangement, a preferential debt shall, subject to subsection (3), be paid in priority by the debtor and where those debts are to be paid in priority the provisions of section 81 of the Bankruptcy Act 1988 shall apply with all necessary modifications.. Subsection (2) places an onus on a creditor to prove his or her claim that a debt, or part of it, is a preferential debt. Subsection (3) provides that where a creditor fails to satisfy the personal insolvency practitioner that his or her debt is a preferential debt the debt shall not be treated as a preferential debt for the purpose of a Personal Insolvency Arrangement. New subsection (5) provides an interpretation of ''preferential debt'' for the purposes of this Chapter.

Section 98 makes provision for the treatment of secured creditors in a Personal Insolvency Arrangement. Subsection (1) provides that a secured creditor shall furnish to the personal insolvency practitioner an estimate of the market value of the security and the creditor may also indicate a preference as to how it wishes to have the security and secured debt treated under a Personal Insolvency Arrangement. Subsection (2) provides that in formulating a proposal for a Personal Insolvency Arrangement, a personal insolvency practitioner shall, to a reasonable extent, have regard to the expressed preference of the secured creditor. Subsection (3) provides for the manner in which the security for a secured debt may be treated in a Personal Insolvency Arrangement. Subsection (5) provides that where the Arrangement provides for the sale of the property which is the subject of the security and the realised value of the security is less than the amount due in respect of the secured debt, the balance remaining due to the secured creditor shall abate in equal proportion to the unsecured debts covered by the Personal Insolvency Arrangement and shall be discharged with them on completion of the obligations specified in the Arrangement. Subsection (6) sets out a range of options that may be provided for in a Personal Insolvency Arrangement in relation to secured debt. Subsection (7) addresses the status of judgment mortgages in a Personal Insolvency Arrangement. Subsection (9) provides that, where the market value of the security held by a secured creditor is less than 10 per cent of the amount of that secured debt, the secured creditor may elect to be an unsecured creditor for the purposes of this Chapter. Subsection (11) provides that where a creditor agrees to a reduction of the amount of a secured debt for the purposes of a Personal Insolvency Arrangement, the amount of that reduction is to be treated in the same manner as an unsecured debt for the purposes of the operation of the Arrangement.

Section 99 sets out a number of protections for secured creditors in a Personal Insolvency Arrangement. Subsection (1) provides that where an Arrangement provides for the sale or disposal of the property the subject of the security, the secured creditor (unless he

or she agrees otherwise) shall be paid at least either the value of the security or the amount of the debt (including principal, interest and arrears) whichever is the lesser. Subsections (2) and (3) provide that (again, unless the secured creditor agrees otherwise) if the Arrangement includes terms providing for the retention of the security and a reduction in the principal amount outstanding in respect of the secured debt, the reduced principal sum shall not be an amount less than the value of the security and that if the property is subsequently disposed of for an amount greater than the value attributed to the security, the debtor shall pay to the secured creditor an amount additional to the reduced principal amount in accordance with subsection (4) or such greater amount as is specified in the Arrangement. Subsection (5) provides that any portion of the increase in value attributable to improvements made to the property shall be disregarded for this purpose. Subsection (9) ensures that an obligation to pay an additional amount arising by virtue of this section only applies where the sale proceeds exceed the outstanding amount of the secured debt. Subsection (11) provides for the circumstances in which the obligation to pay any additional sum arising from this section shall cease.

Section 100 sets out the factors that will have to be taken into account regarding a principal private residence in a Personal Insolvency Arrangement. Subsection (1) provides that a personal insolvency practitioner shall, insofar as is reasonably practicable, formulate proposals that will not require a debtor to dispose of an interest in or cease to occupy his or her principal private residence. Subsection (2) outlines the factors that the personal insolvency practitioner is required to consider in this regard and includes the costs likely to be incurred by the debtor in remaining in occupation of the principal private residence, the debtor's income and other financial circumstances, the ability of other persons to contribute to the costs of the debtor remaining in occupation and the reasonable living accommodation needs of the debtor and his or her dependants and, having regard to those needs, the cost of providing alternative accommodation. Subsection (3) provides that the personal insolvency practitioner will not be required to formulate the proposal for an Arrangement on terms that will not require the debtor to cease to occupy his or her principal private residence where the debtor confirms in writing that he or she does not wish to remain in occupation of that residence or where the personal insolvency practitioner, has, having discussed the issue with the debtor, formed the opinion that the costs of continuing to reside in the debtor's principal private residence are disproportionately large. Subsection (4) provides that a Personal Insolvency Arrangement shall not provide for disposal of the debtor's interest in the principal private residence unless firstly, the debtor has obtained independent legal advice in relation to such disposal or has declined to do so and, secondly, that all applicable provisions of the Family Home Protection Act 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 are complied with.

Section 101 outlines the framework for the determination of the value of security in respect of secured debt in a Personal Insolvency Arrangement. Subsection (1) provides that the value shall be the market value of the security in respect of secured debt as determined by agreement between the personal insolvency practitioner, the debtor and the relevant secured creditor. Subsection (2) provides that where the personal insolvency practitioner does not accept the secured creditor's estimate of the value provided in accordance with section 98, both sides shall endeavour, in good faith, to agree a market value for the security. Subsection (3) provides that, in the absence of agreement, an independent expert shall be appointed to

determine the market value. In the event of failure to agree an independent expert, subsection (4) provides that the Insolvency Service shall appoint such an independent person and that the valuation provided by that person shall be binding. Subsection (5) outlines the matters to be taken into account in determining the market value (as defined in subsection (6)) of the security. Subsection (7) provides that the creditor concerned and the personal insolvency practitioner shall each pay 50 per cent of the costs of carrying out the valuation by the independent person pursuant to subsection (3) or (4).

Section 102 deals with the calling of a creditors' meeting to consider a proposal for a Personal Insolvency Arrangement. Subsection (1) provides that, subject to the consent of the debtor, the personal insolvency practitioner shall arrange for the holding of a creditors' meeting to vote on a proposed Personal Insolvency Arrangement. Subsection (2) provides that the personal insolvency practitioner shall give the relevant creditors at least 14 days' notice of the meeting and also the relevant documents (a copy of which is also to be sent to the Insolvency Service) as provided for in section 103. Subsection (3) provides that where a creditors' meeting referred to in subsection (1) does not take place before the expiry of the protective certificate, the Personal Insolvency Arrangement procedure shall be deemed to have come to an end.

Section 103 outlines the documents to be given by the personal insolvency practitioner to creditors when calling a creditors' meeting. Subsection (2) places a duty on the debtor to notify the personal insolvency practitioner if his or her financial position has materially changed in the period since completion of the Prescribed Financial Statement. It will be a matter for the personal insolvency practitioner to consider whether the change merits the completion of a new Prescribed Financial Statement, and if so, to assist the debtor in completing a new one. Subsection (3) provides that where a new Prescribed Financial Statement is completed pursuant to subsection (2), the personal insolvency practitioner shall furnish a copy of that Statement to the Insolvency Service.

Section 104 sets out the voting rights of creditors at a creditors' meeting. Subsection (1) provides that a vote held at a creditors' meeting to consider a proposal for a Personal Insolvency Arrangement shall be held in accordance this section, section 106 and with regulations made under section 107. Subsection (2) provides that in general the voting rights of a creditor shall be proportionate to the value of the debt due to the creditor by the debtor on the day the protective certificate issued. Subsection (3), however, provides that, in respect of secured debt, where the market value of security held by a secured creditor is determined to be less than the value of the debt due to the creditor and the proposed Personal Insolvency Arrangement provides for all or part of that secured debt to (i) rank equally with, and abate in equal proportion to, the unsecured debts covered by the Arrangement, and (ii) be discharged with those unsecured debts on completion of the obligations specified in the Arrangement, then, the relevant portion of debt in excess of the market value of the security shall, for the purposes of this section, section 106 and regulations made under section 107, not be considered as secured. Subsection (4) provides that where a secured creditor waives his or her security, that creditor shall only be entitled to vote as an unsecured creditor. Subsection (8) provides that where no creditor votes, the proposed Personal Insolvency Arrangement shall be deemed to have been approved under this section. Subsection (9) provides that where a vote is taken and the proposal is not approved in accordance with subsection (1) the Personal

Insolvency Arrangement procedure shall teminate and the protective certificate issued under section 91 shall cease to have effect.

Section 105 provides for the conduct of a creditors' meeting. Subsection (1) provides that, subject to subsection (4), there shall be a vote on a proposal for a Personal Insolvency Arrangement. Subsection (3) provides that, prior to a vote, a modification to a proposal for a Personal Insolvency Arrangement may be made to rectify an error or address an ambiguity. Subsection (4) allows a personal insolvency practitioner, where he or she believes it is the interests of obtaining approval of the creditors, to adjourn the meeting and, with the written consent of the debtor, to prepare an amended Personal Insolvency Arrangement proposal. Subsection (5) states that, unless the creditors agree otherwise, at least 7 days' notice must be given of the adjourned meeting and subsection (6) indicates that such an adjournment may take place only once.

Section 106 sets out the necessary proportion of creditors required to approve a Personal Insolvency Arrangement. Subsection (1) provides that each of the following is required:

(*a*) a majority of creditors representing not less than 65 per cent in value of the total of the debtor's debts due to the creditors participating in the meeting and voting must have voted in favour of the proposal,

(*b*) creditors representing more than 50 per cent of the value of the secured debts due to creditors who are entitled to vote and have voted at the meeting as secured creditors must have voted in favour of the proposal, and

(*c*) creditors representing more than 50 per cent by value of the creditors who are entitled to vote and have voted at the meeting as unsecured creditors must have voted in favour of the proposal.

Subsection (2) defines the value of a secured debt for the purposes of subsection (1)(*b*).

Section 107 provides for the procedure for the conduct of a creditors' meeting. It allows the Minister for Justice and Equality to make regulations relating to the holding of creditors' meetings.

Section 108 outlines the steps to be taken by the personal insolvency practitioner following approval of a proposal for a Personal Insolvency Arrangement. Subsection (1) provides that the practitioner shall notify each creditor and the Insolvency Service and provide a certificate with the result of the creditors' vote and a copy of the approved Personal Insolvency Arrangement. Subsection (2) provides that, in addition, the personal insolvency practitioner shall notify each creditor that he or she may make an objection to the coming into effect of the Arrangement by lodging a notice of objection with the appropriate court within 21 days.

Section 109 outlines the steps to be taken by the Insolvency Service following notification of approval of the Personal Insolvency Arrangement by the personal insolvency practitioner under section 108.

Section 110 provides for the appropriate court to determine a notice of objection lodged under section 108. Subsection (1) states that the grounds on which an objection may be made are those specified in section 116. Subsection (2) provides that a hearing under section 108(3) is to be heard with all due expedition. Subsection (3)

provides that where the court upholds an objection, the Personal Insolvency Arrangement procedure shall be deemed to have come to an end and the protective certificate in relation to the debtor shall cease to have effect.

Section 111 sets out the mechanism for the coming into effect of a Personal Insolvency Arrangement. Having been notified of the approval of a Personal Insolvency Arrangement following a creditors' meeting, the court, if satisfied that the Arrangement is in compliance with the Bill, shall approve it where no creditor objection has been entered within 14 days or where a creditor objection has been entered but dismissed by the court (subsections (1) and (2)). Subsections (3) and (4) provide that if the court requires further information it may hold a hearing to be held otherwise than in public. Subsection (5) provides that the court may treat a certificate issued by the Insolvency Service certifying that the eligibility criteria specified in section 88 have been satisfied as evidence of the matters certified therein and a certificate issued by a personal insolvency practitioner pursuant to section 108(1)(*a*) as evidence that the requisite percentage of creditors has approved the proposal for a Personal Insolvency Arrangement. Subsection (6) provides for the court to notify the Insolvency Service and the personal insolvency practitioner when it approves or refuses to approve the coming into effect of a Personal Insolvency Arrangement, or if it decides to hold a hearing in relation to the application. Subsection (7) provides that on receipt of a notification to it from the court, the Insolvency Service shall notify the personal insolvency practitioner concerned, and register the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements. The Arrangement shall take effect immediately upon being registered by the Insolvency Service.

Section 112 sets out the effect of registration of a Personal Insolvency Arrangement. Subsection (1) provides that the Arrangement shall have effect according to its terms and remain in effect until it is completed in accordance with its terms (or the terms of any variation) or is terminated. While the Arrangement is in effect, the debtor and every specified creditor regardless of whether the creditor voted to approve the proposal for the Personal Insolvency Arrangement shall be parties to it and shall be bound by its terms (subsection (2)). Subsections (3), (4) and (5) set out a list of enforcement and other actions which a creditor bound by the Agreement is prohibited from taking while the Agreement is in effect. Subsection (6) sets out the effect of the Personal Insolvency Arrangement on joint debts. Subsection (7) clarifies that subsection (6) does not apply where a Personal Insolvency Arrangement is also in force as respects the other person. New subsection (10) provides that notwithstanding subsections (3) and (4) the fact that a Debt Settlement Arrangement is in effect in relation to a debtor under this Chapter shall not operate to prevent a creditor taking enforcement actions as respects another person who has guaranteed the specified debts concerned.

Section 113 provides for the operation of the terms of a Personal Insolvency Arrangement. Among the matters provided for are requirements for the debtor and creditors to perform their obligations in accordance with the Arrangement, for the personal insolvency practitioner to transmit payments received from the debtor to each creditor in the agreed proportion on a timely basis, for the personal insolvency practitioner to maintain regular contact with the debtor, to monitor the Arrangement and, where the debtor's circumstances have changed to such an extent that a variation in the terms of an Arrangement is appropriate, to take the necessary steps to initiate such a variation. Subsection (10) requires the personal

insolvency practitioner to maintain a complete and accurate account of the moneys received from the debtor and the moneys disbursed to the creditors and to maintain an account which is used solely for such purposes.

Section 114 sets out the general duties of a debtor who is party to a Personal Insolvency Arrangement process. Among the matters listed is a requirement that the debtor shall act in good faith and make a full disclosure regarding all of his or her assets, income and liabilities and inform the personal insolvency practitioner as soon as is reasonably practicable of any material change in his or her circumstances. The debtor may not obtain credit of more than Ç650 without informing the creditor that he or she is subject to a Personal Insolvency Arrangement and may not pay creditors any additional payments separate to the Personal Insolvency Arrangement in respect of debts covered by the Arrangement.

Section 115 provides for variation of a Personal Insolvency Arrangement. A variation of an Arrangement shall be made in accordance with the terms of the Arrangement (subsection (1)). Subsection (2) provides that the debtor's written consent shall be required to any variation, but any unreasonable refusal by a debtor to consent to a variation can be the subject of a challenge in accordance with section 116. Subsection (3) sets out the circumstances where a debtor would be considered to be acting reasonably in refusing consent to a variation. Subsection (4) provides that creditor approval is also required for a variation and that once approved, under subsection (5) it will be binding on every creditor who was entitled to vote at the creditors' meeting.

Section 116 outlines the grounds on which a creditor may challenge the coming into effect or variation of a Personal Insolvency Arrangement.

New Section 117 allows a creditor or personal insolvency practitioner of a debtor in respect of whom a Personal Insolvency Arrangement is in force, to make an application to the appropriate court for relief in accordance with this section, where the creditor or the personal insolvency practitioner concerned considers that a debtor has made excessive contributions to a relevant pension arrangement. The alleged excessive contributions to the debtor's pension must have been made within the 3 years period prior to the issue of the protective certificate. Subsection (3) provides that where the court finds that the debtor's pension contributions were excessive it can direct that such part of the contribution concerned (less any tax required to be deducted) be paid by the person administering the relevant pension arrangement to the personal insolvency practitioner for distribution amongst the creditors of the debtor, and make such other order as the court deems appropriate, including an order as to the costs of the application. Subsection (4) sets out the matters that the court shall have regard to in the consideration of the matter.

Section 117 provides for an application by a creditor to the appropriate court to have a Personal Insolvency Arrangement terminated. Such an application, however, shall be limited to the following grounds: (a) a material inaccuracy or omission exists in the debtor's Prescribed Financial Statement which causes a material detriment to the creditor, (b) the debtor did not satisfy the eligibility criteria specified in section 88 when the Personal Insolvency Arrangement was proposed, (c) the debtor did not comply with the duties and obligations imposed on him or her under the Personal Insolvency Arrangement process, (d) the debtor has since the coming into effect of the Personal Insolvency Arrangement been convicted

of an offence under the Bill, (e) the debtor is in arrears with his or her payments for a period of not less than 3 months; (f) the debtor has failed to carry out any action necessary to enable a term of the Personal Insolvency Arrangement to have effect; (g) the debtor has unreasonably refused to consent to a variation of the Personal Insolvency Arrangement.

Section 118 provides that a Personal Insolvency Arrangement shall be deemed to have failed after a 6 month arrears default has occurred and shall terminate when a creditor or the personal insolvency practitioner notifies the Insolvency Service of the default. Where the Insolvency Service receives notification of such default it shall record the failure of the Personal Insolvency Arrangement in the Register of Personal Insolvency Arrangements.

Section 119 sets out the effect of premature termination of a Personal Insolvency Arrangement. It provides that where an Arrangement has been deemed to come to an end, has failed or terminated, the debtor shall be liable in full for all debts covered by the Arrangement unless the terms of the Arrangement provide otherwise or an appropriate court has made an order otherwise.

Section 120 provides that upon successful completion of the Personal Insolvency Arrangement by the debtor, the personal insolvency practitioner is required to notify the debtor, creditors and the Insolvency Service. Where the debtor has complied with his or her obligations under the Arrangement, the debtor shall stand discharged from (i) the unsecured debts specified in the Personal Insolvency Arrangement (subsection (2)) and (ii) the secured debts, but only to the extent specified in the Arrangement (subsection (3)). The Insolvency Service shall record the successful completion of the Arrangement in the Register of Personal Insolvency Arrangements (subsection (4)).

CHAPTER 5

Offences under Part 3

Section 121 provides for an offence of providing false or misleading information in respect of an application for a Debt Relief Notice, a Debt Settlement Arrangement or a Personal Insolvency Arrangement.

Section 122 provides that it will be an offence for a debtor to intentionally fail to comply with his or her duties in relation to participation in a Debt Relief Notice process. The provision of false or misleading information to the Insolvency Service in connection with a Debt Relief Notice process will also be an offence.

Section 123 provides for an offence relating to failure to provide, concealment, destruction, falsification or alteration of financial records by a debtor for the purpose of obtaining an insolvency arrangement or protective certificate or avoiding obligations under the Bill.

Section 124 provides for an offence of disposal of property by a debtor for the purpose of obtaining an insolvency arrangement or protective certificate or avoiding obligations under the Bill.

Section 125 provides that it will be an offence for a debtor participating in a Debt Relief Notice, Debt Settlement Arrangement or Personal Insolvency Arrangement to obtain credit of more than

Ç650 without complying with the requirements specified in that section.

Section 126 provides that it will be an offence for a person to act as an authorised intermediary or a personal insolvency practitioner unless he or she is entitled to so act by virtue of the Bill.

Section 127 provides that proceedings for an offence under the Bill may be prosecuted summarily by the Insolvency Service (proceedings on indictment will be instituted by the Director of Public Prosecutions) and sets out penalties for offences under the Bill.

CHAPTER 6

Miscellaneous

Section 128 provides for the establishment by the Insolvency Service of registers of insolvency arrangements, Debt Relief Notices, Debt Settlement Arrangements, Personal Insolvency Arrangements and protective certificates.

Section 129 provides for the giving of notices under Part 3.

Section 130 provides for the application of set-off in determining the amount or value of any asset of the debtor or the amount of any debt due to a creditor for the purposes of Part 3.

Section 131 provides that the Insolvency Service, with the consent of the Minister may by regulations prescribe a form (a ''Prescribed Financial Statement'') to be used by persons applying for or proposing a Debt Relief Notice, Debt Settlement Arrangement, Personal Insolvency Arrangement or protective certificate. The Prescribed Financial Statement will require the debtor to provide detailed information relating to his or her income, assets, liabilities and necessary household expenditure. A Prescribed Financial Statement will be required to be verified by means of a statutory declaration.

Section 132 empowers the Insolvency Service to prepare and publish guidelines for personal insolvency practitioners on their duties (subsection (1)). Such guidelines may include a model form of a Debt Settlement Arrangement or a Personal Insolvency Arrangement. Subsection (2) provides that a personal insolvency practitioner is required to have regard to any guidelines published by the Insolvency Service when carrying out his or her duties.

Section 133 provides that the operation of certain specified laws in relation to netting agreements to which an authorised credit institution or any of its subsidiaries or holding company is a party to is not affected by anything in the Bill.

New section 134 is a review provision in regard to the operation of the Bill. The Minister for Justice and Equality, in consultation with the Minister for Finance shall review the operation of Part 3 of the Act. The review will commence no later than three years after commencement of Part 3 and must be completed within a year.

New Section 134 sets out how debts in other currencies are to be dealt with in the context of the provisions of the Bill.

New section 134 makes provision for the transmission of documents in relation to any proceedings under this Act by

electronic means. It allows a court to receive and issue a document, including a judgment or any order made by the court itself, by electronic means. This provision will facilitate an efficient deployment of staff and court time. These provisions can be brought into operation by rules of court.

PART 4

Bankruptcy

Part 4 provides for a number of amendments to the Bankruptcy Act 1988 (''the 1988 Act'').

Section 134 amends section 3 (Interpretation) of the 1988 Act to insert new definitions arising from the provisions of the Bill.

New section 135 amends section 7 of the Bankruptcy Act 1988 to now provide that a failed or terminated Debt Settlement Arrangement or Personal Insolvency Arrangement is added to the list of acts of bankruptcy.

Section 135 amends section 8 (Bankruptcy summons) of the 1988 Act in regard to the minimum amount for a creditor petition for bankruptcy. At present, the debt limit is €1,900 for a creditor and €1,300 for combined non-partner creditors to petition for bankruptcy. The new minimum amount in both circumstances must be more than €20,000. Provision is made for a 14-day notice requirement to ensure that a bankruptcy summons is not brought prematurely by a creditor, so as to allow the debtor to consider other options such as a Debt Settlement Arrangement or a Personal Insolvency Arrangement.

Section 136 amends section 11 (Presenting petition) of the 1988 Act. Section 11(1)(*a*) will be amended to provide that the debt amount which the creditor has to prove must be more than €20,000. At present, the creditor has to prove a debt of at least €1,900. The amendments to section 11 will require a debtor who presents a petition to swear an affidavit that he or she has made reasonable efforts to make use of alternatives to bankruptcy, such as a Debt Settlement Arrangement or Personal Insolvency Arrangement. The debtor will also be required to present a statement of affairs, which must disclose that his or her debts exceed his or her assets by more than €20,000.

Section 137 which amends section 12 (Petitioning creditor's costs) of the 1988 Act, is aimed at further incentivising creditors to engage in a Debt Settlement Arrangement or Personal Insolvency Arrangement process before petitioning for a debtor's bankruptcy.

Section 138 provides for a new section to replace section 14 (Adjudication: creditor's petition) of the 1988 Act. Before adjudicating a debtor bankrupt on foot of a petition presented by a creditor, the court will be required to consider the assets and liabilities of the debtor and assess whether it may be appropriate to adjourn proceedings to allow the debtor to attempt to enter into a Debt Settlement Arrangement or Personal Insolvency Arrangement.

Section 139 provides for a new section to replace section 15 (Adjudication: debtor's petition) of the 1988 Act. Where the petition is presented by a debtor, the court shall, on proof that the debtor is insolvent and unable to meet his or her engagements with his or her creditors, by order adjudicate the debtor a bankrupt. There will no

longer be a requirement for a debtor who wishes to present a petition to possess assets capable of raising at least €1,900. The court will be required to consider the assets and liabilities of the debtor and assess whether it may be appropriate to adjourn proceedings to allow the debtor to attempt to enter into a Debt Settlement Arrangement or Personal Insolvency Arrangement.

Section 140 provides for technical amendments to section 39 (Offer of composition) of the 1988 Act.

New section 141 provides for the insertion of two new sections, new section 44A and new section 44B, into the Bankruptcy Act 1988. New section 44A provides that the future entitlement to payment under a relevant pension arrangement of a person adjudicated bankrupt will not vest in the Official Assignee in Bankruptcy. The section sets out the various conditions attached and lists the types of relevant pension arrangements encompassed by the section. However, any income from a pension either in payment, or where there is an entitlement to receive a payment, is not exempt and may be claimed by the Official Assignee or a trustee in bankruptcy. New section 44B provides that in a case where the bankrupt has made excessive contributions to his or her pension in the 3 years prior to being adjudicated bankrupt, the Official Assignee or the trustee in bankruptcy can apply to court for an order in relation to the pension for the purpose of ensuring that the excessive contributions can be made available for distribution to the creditors. This mirrors similar provisions in regard to excessive contributions in the Debt Settlement Arrangement and Personal Insolvency Arrangement processes.

Section 141 amends section 45 (Excepted articles) of the 1988 Act which provides for a bankrupt's entitlement to retain certain articles such as household furniture or tools or equipment required for a trade or occupation. The maximum value of excepted articles will be increased from the current level of €3,100 to €6,000.

Sections 142 and *143* amend sections 57 (Avoidance of fraudulent preferences) and 58 (Avoidance of certain transactions) of the 1988 Act by extending the current time period of 1 year to 3 years in regard to the avoidance of certain preferences and transactions made before adjudication in bankruptcy.

Section 144 amends section 59 (Avoidance of certain settlements) of the 1988 Act by extending the relevant time periods from 2 years to 3 years in regard to certain voluntary settlements of property made before adjudication in bankruptcy.

New section 145 inserts a ''saver'' provision in to the Bankruptcy Act to preserve any existing arrangements that bankrupts might have under that Act. Arrangements under the bankruptcy legislation are being ended in favour of the new debt resolution arrangements provided in this Bill.

Section 145 provides for a technical amendment to section 81 (Preferential payments) of the 1988 Act to align the date of assessment of tax owed by a bankrupt with the calendar tax year.

Section 146 provides for the substitution of section 85 (Discharge from bankruptcy) of the 1988 Act and also inserts 4 new sections into the 1988 Act. The new text of section 85 provides for automatic discharge from bankruptcy after 3 years from the date of adjudication (section 85, as amended by section 30 of the Civil Law (Miscellaneous Provisions) Act 2011, currently provides for

automatic discharge from bankruptcy after 12 years). The new text of section 85 also provides that where an order of adjudication was made more than 3 years prior to the coming into effect of this section, the bankruptcy shall stand discharged 6 months after that day unless the bankruptcy has been otherwise discharged. This 6 month period will allow time for creditor objections in such cases. The bankrupt's unrealised property will remain vested in the Official Assignee after discharge from bankruptcy and the discharged bankrupt will be under a duty to co-operate with the Official Assignee in the realisation and distribution of such of his property as is vested in the Official Assignee.

The new section 85A (Objection to automatic discharge from bankruptcy) permits the Official Assignee or a creditor to apply to court to object to the discharge of a person from bankruptcy. The grounds for such an objection are that the debtor has failed to co-operate with the Official Assignee or has hidden or failed to disclose income or assets. The court may suspend the discharge pending further investigation or extend the period before discharge of the bankrupt to a date not later than the 8th anniversary of the making of the adjudication order.

The new section 85B (Entitlement to discharge from bankruptcy) restates the existing law in sections 85(3) and 85(4) of the 1988 Act, as amended by section 30 of the Civil Law (Miscellaneous Provisions) Act 2011.

The new section 85C (Annulment of adjudication in bankruptcy) restates the current provisions in relation to annulment of bankruptcy contained in sections 85(8) and 85(9) of the 1988 Act.

The new section 85D (Bankruptcy payment orders) permits the court to order a bankrupt to make payments from his income or other assets to the Official Assignee or trustee in bankruptcy for the benefit of his creditors. In making such an order, the court must have regard to the reasonable living expenses of the bankrupt and his family. The court may also have regard to any guidelines on reasonable expenditure and essential income published by the Official Assignee or by the Insolvency Service. The court may vary a bankruptcy payment order where there has been a material change in the circumstances of the discharged bankrupt.

New section 147 amends the time period in section 123 of the Bankruptcy Act in regard to potentially fraudulent actions from the present twelve months to the now standard period in this Bill of 3 years.

PART 5

Regulation of Personal Insolvency Practitioners

Deleted and replaced by new PART 5

Section 147 provides that the Minister may designate a person to regulate personal insolvency practitioners. The Minister shall have regard to the experience of the person concerned in relation to the regulation or supervision of persons practising a profession or bodies regulating such persons. A designated person may authorise persons to carry on business as personal insolvency practitioners. Authorisations may be subject to such conditions as are necessary for the protection of debtors and creditors. A person may not carry on business as a personal insolvency practitioner unless an indemnity

bond is in force to cover the theft or misuse of the funds of debtors and creditors by the person, or the carrying on of business as a personal insolvency practitioner by the person is protected by a compensation fund for the compensation of debtors and creditors for theft or misuse of funds.

New PART 5

Regulation of Personal Insolvency Practitioners

The new Part 5, comprising sections 147 to 174, as well as two new Schedules, makes provision for the regulation, supervision and discipline of personal insolvency practitioners by the Insolvency Service.

CHAPTER 1

General Provisions

Chapter 1 (sections 147 to 157) contains general provisions regarding the authorisation of persons to carry on practice as a personal insolvency practitioner.

Section 147 provides for the interpretation of certain terms used in the new Part 5.

Section 148 provides that will be an offence for a person to act as a personal insolvency practitioner who is not entitled to do so by virtue of this legislation.

Section 149 gives the Insolvency Service the power to make regulations for the purposes of the control and supervision of personal insolvency practitioners and the protection of debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements. These regulations may provide for matters such as procedures governing the authorisation of persons to carry on practice as personal insolvency practitioners, the standards to be observed by personal insolvency practitioners, qualifications and requirements as to competence, information to be provided to the Insolvency Service by personal insolvency practitioners and the circumstances and purposes for which a personal insolvency practitioner may charge fees or costs or seek to recover outlays.

Section 150 requires the Insolvency Service to establish and maintain a Register of Personal Insolvency Practitioners, which will be published on the website of the Insolvency Service.

Section 151 provides that an application for an authorisation to carry on practice as a personal insolvency practitioner must be accompanied by certain specified evidence and documents, as well as the prescribed fee. Applicants must provide evidence as to their competence, including details of education, training and experience. In particular, applicants must provide evidence of knowledge of relevant Irish insolvency legislation. Applicants must also furnish a certificate from an accountant certifying that proper financial systems and controls are, or will be, in place for the protection of moneys received from debtors. Applicants must also provide evidence of their professional indemnity insurance. The Insolvency Service may make such inquiries and examinations as it considers necessary in relation to an applicant's character, competence and financial position.

Section 152 makes provision for the authorisation by the Insolvency Service of persons to carry on practice as personal insolvency practitioners and refusal to so authorise. When deciding whether to issue an authorisation, the Insolvency Service will take into account the information provided by the applicant and, where appropriate, any information provided by the Garda Síochána and the Central Bank under section 156. In short, it will not issue an authorisation unless it is satisfied that the applicant is a fit and proper person to carry on business as a personal insolvency practitioner, is competent to carry on practice as a personal insolvency practitioner and that he or she complies with all relevant statutory requirements.

Section 153 provides that before refusing to authorise a person to carry on business as a personal insolvency practitioner, the Insolvency Service must give the applicant an opportunity to make representations. Where the Insolvency Service, having considered any such representations, refuses to issue an authorisation, it must give the person notice in writing of the reasons for the refusal.

Sections 154 and *155* contain corresponding provisions that will apply to applications for the renewal of authorisation to carry on practice as a personal insolvency practitioner.

Section 156 provides that the Insolvency Service may request the Garda Síochána or the Central Bank to provide information in relation to a personal insolvency practitioner or an applicant for authorisation to carry on practice as a personal insolvency practitioner.

Section 157 provides that a decision of the Insolvency Service to refuse to authorise a person to carry on practice as a personal insolvency practitioner, or to decline to investigate a complaint, may be appealed to the Circuit Court. The decision of the Circuit Court will be final, save for an appeal to the High Court on a point of law.

CHAPTER 2

General Obligations of Personal Insolvency Practitioners

Chapter 2 comprising sections 158 to 160, sets out a number of general obligations that will apply to personal insolvency practitioners.

Section 158 imposes an obligation on personal insolvency practitioners to keep records of their activities in relation to debtors for a period of not less than 6 years after the completion of the activity to which the record relates. The types of records to be retained will be prescribed by regulations.

Section 159 requires a personal insolvency practitioner to have a policy of professional indemnity insurance which meets requirements that may be prescribed in regulations made by the Insolvency Service.

Section 160 provides that a personal insolvency practitioner will not be permitted to charge fees or costs which are not incurred either in accordance with regulations made under section 149 or, where a Debt Settlement Arrangement or a Personal Insolvency Arrangement comes into effect, in accordance with the terms of the arrangement.

CHAPTER 3

Accounts and Related Matters

Chapter 3, comprising sections 161 to 163, contains provisions dealing with accounts and related matters.

Section 161 empowers the Insolvency Service to make regulations regarding bank accounts which may be opened by personal insolvency practitioners for the keeping of moneys received from debtors, the rights, duties and responsibilities of a personal insolvency practitioner in respect of moneys received from debtors, the accounting records which must be maintained by a personal insolvency practitioner, and also verification and enforcement of compliance with the regulations. In making regulations under this section, the Insolvency Service must have regard to the need to protect debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements.

Section 162 provides that the Insolvency Service may, where necessary for the protection of debtors and creditors who are parties to Debt Settlement Arrangements or Personal Insolvency Arrangements in relation to which a personal insolvency practitioner is or has been acting, apply to the High Court for certain orders in relation to the banking accounts kept by the personal insolvency practitioner in his or her capacity as such or in relation to the assets of the personal insolvency practitioner.

Section 163 addresses situations where a personal insolvency practitioner is no longer authorised to carry on practice as a personal insolvency practitioner and the Insolvency Service is of the opinion that the person has not made adequate arrangements for handing over document relating to his or her practice to another personal insolvency practitioner. In such a case, the Insolvency Service may issue a notice requiring the production of the documents to the Insolvency Service. Where the person does not comply with such a requirement, the Insolvency Service may apply to the Circuit Court for an order requiring the person to comply with the requirement within a specified period of time.

CHAPTER 4

Complaints, Investigations and Sanctions

Chapter 4, comprising sections 164 to 174, provides for a comprehensive system of complaints and investigations where improper conduct by a personal insolvency practitioner is alleged and for the imposition of appropriate sanctions.

Section 164 empowers the Director of the Insolvency Service to appoint members of the staff of the Insolvency Service or other appropriate persons to act as inspectors for the purposes of the

Bill. *Section 165* provides for the establishment of a panel of persons to act on a committee to be known as the Personal Insolvency Practitioners Complaints Committee. Schedule 3 makes detailed provision for the Complaints Committee. When the Insolvency Service appoints an inspector to carry out an investigation into a personal insolvency practitioner's conduct, it must request the Minister to appoint a Complaints Committee from the panel to act in relation to the investigation.

Section 166 provides for the making of written complaints to the Insolvency Service alleging improper conduct by a personal

insolvency practitioner, and sets out the procedure for the handling of such complaints by the Insolvency Service. The Service must investigate the complaint provided it is made in good faith, is not frivolous or vexatious or without substance or foundation and is not likely to be resolved by mediation or other informal means between the parties.

Section 167 provides that where the Insolvency Service considers that immediate suspension of an authorisation to carry on practice as a personal insolvency practitioner is necessary to protect debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements, it may make an application to the High Court for an order to suspend the personal insolvency practitioner's authorisation.

In exceptional circumstances, where there is an immediate risk of financial harm to debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements, the Insolvency Service is empowered to apply to the High Court on an *ex parte* basis for an interim suspension of a personal insolvency practitioner's authorisation. An interim order can last for a maximum of 14 days. An application for an interim order must be held otherwise than in public unless the High Court considers it appropriate to hear the application in public.

Section 168 provides that an investigation may be carried out by the Insolvency Service on foot of a complaint or on the Service's own initiative. It provides for the appointment of an inspector, or inspectors, to carry out such an investigation and to prepare an investigation report. The terms of appointment of an inspector may define the scope of the investigation to be carried out by the inspector. The inspector will be required to give notice of the investigation to the personal insolvency practitioner concerned. Where the investigation takes place on foot of a complaint to the Insolvency Service, the investigator must also keep the complainant informed of progress on the investigation.

Section 169 gives inspectors comprehensive powers to assist them in carrying out investigations, including powers to enter and search premises, carry out examinations and inquiries and conduct oral hearings.

Section 170 sets out the actions to be taken by inspectors and the Complaints Committee on completion of an investigation and includes provisions to ensure that fair procedures are applied. On completion of an investigation, the inspector must submit an investigation report to the Complaints Committee. Before doing this, a draft of the report must be sent for comment to the personal insolvency practitioner, the Insolvency Service and, where relevant, the complainant.

After receiving the investigation report, the Complaints Committee must invite the personal insolvency practitioner, the Insolvency Service, and the complainant, if the investigation arose from a complaint, to make submissions on the report. The Complaints Committee may conduct an oral hearing if appropriate for the purposes of observing fair procedures.

The Complaints Committee will be required to make a determination as to whether the personal insolvency practitioner's conduct constitutes improper conduct. If the personal insolvency practitioner's conduct is found to constitute improper conduct, the Complaints Committee must make a determination as to the

appropriate sanction, and may, if appropriate, impose a minor sanction on the personal insolvency practitioner. A minor sanction is defined in section 147 as advice, a caution, a warning or a reprimand, while a major sanction is defined as the revocation or suspension of a personal insolvency practitioner's authorisation or payment to the Insolvency Service of up to €30,000 towards the costs of the investigation.

Where the Complaints Committee determines that the appropriate sanction is a major sanction, it must refer the matter to the High Court and make a recommendation as to the appropriate sanction. The High Court, having given all the parties an opportunity to make submissions, will impose the sanction it considers appropriate in the circumstances of the case.

Section 171 provides that a personal insolvency practitioner may appeal to the High Court against a decision of the Complaints Committee to impose a minor sanction.

Section 172 sets out the matters to be considered by the Complaints Committee or the High Court in considering whether a sanction ought to be imposed on a personal insolvency practitioner or the appropriate sanction to be imposed. These matters include the need to ensure that the sanction is appropriate and proportionate to the improper conduct, the need to ensure that the sanction will act as a sufficient deterrent to discourage improper conduct of that or a similar nature in the future, the seriousness of the improper conduct, any gain made by the personal insolvency practitioner as a result of the improper conduct, and the amount of any loss suffered or costs incurred as a result of the improper conduct.

Section 173 provides for the publication by the Insolvency Service of particulars of convictions and sanctions imposed under this Part.

Section 174 provides that the right of access to personal data under section 4 of the Data Protection Act 1988 does not apply to data processed by the Insolvency Service, an inspector or the Complaints Committee in the performance of their functions relating to investigations under this Part.

New PART 6

Specialist Judges of Circuit Court

Part 6 provides for the creation of a new cadre of judges of the Circuit Court to hear applications under this Bill.

Section 148 amends the Courts (Establishment and Constitution) Act 1961. Subsection (*a*) amends Section 4(2) which provides that circuit judges be styled in their Irish language titles with English titles a second option. The appropriate term in this instance is ''Sainbhreitheamh den Chúirt Chuarda''. Subsection (*b*) adds speciality judges to the list of judges that make up the Circuit Court. Specialist judges will be regarded as full judges of the Circuit Court. Subsection (*c*) amends section 6A(1)(*b*) of the 1961 Act (inserted by section 12 of the Courts and Court Officers Act 2002) to allow completion of partly heard cases by a judge who is elevated to another judicial office.

Section 149 amends section 17 of the Courts (Supplemental Provisions) Act 1961 dealing with eligibility for appointment as a Circuit Court judge. A specialist judge is a judge of the Circuit Court,

but not what the legislation terms an ''ordinary judge of the Circuit Court''. This gave rise to the need to amend subsection (2), (2A) and (2B) (all inserted by section 5 of the Court and Court Officers Act 2002) to make clear that these provisions apply to the appointment of ordinary judges only, and not to the appointment of Specialty Judges (who are dealt with in the new subsection (4)). Subsection (1)(*d*) allows a specialist judge to apply to appointment as an ordinary judge of the Circuit Court. Subsection (1)(*e*) deals with the qualification for appointment as a specialist judge, by inserting new subsections (4) and (5) in section 17 of the 1961 Act. This is to provide that the first appointments can be confined to serving, qualified county registrars. Subsection 4(*b*) also gives effect to this by ensuring that the standard eligibility criteria for practising solicitors/barristers who are qualified for appointment should not come into effect until 1 January 2014, i.e., after the first round of appointments of specialist judges has finished. A key aim of this measure is to achieve the essential additional capacity in a largely cost neutral manner.

Section 150 amends the Courts (Supplemental Provisions) Act 1961 by inserting a new section 26A setting out the extent of the functions, powers and jurisdiction of a specialist judge.

26(A)(1) provides that a specialist judge may only perform the functions and exercise the powers and jurisdiction conferred by this statute.

26(A)(2) relates to the functions of the Circuit Court under this Personal Insolvency Bill.

26(A)(3) gives a parallel power to specialist judges to make any order that may be made by a County Registrar under section 34(1) of the Courts and Court Officers Act 1995, as amended. Subsection 3(*b*) provides that such orders, if made by a specialist judge, will have to be appealable to the High Court rather than the Circuit Court.

26(A)(4) to (9) ensure that a specialist judge may have powers to deal appropriately with any case before him or her, including, for example, a standard power to adjourn a case (subsection (7)).

Section 151 amends section 46 of the Courts (Supplemental Provisions) Act 1961 in order to provide for the salary of the specialist judge. This is set at the same rate as that applicable from 1 January last to ordinary judges of the Circuit Court, i.e., €140,623.

Section 152 amends the Courts and Court Officers Act 1995 to set a maximum of 8 specialist judges.

Section 153 amends the Courts and Court Officers Act 1995 and provides for amendments to the provisions for the appointment of judges, to add the category of ''specialist judges'' to the list of judges. It also inserts a new provision (19A) into the 1995 Act specifying that a specialist judge shall undertake training as required by the Chief Justice or the President of the Circuit Court.

Section 154 deals with assignment of specialist judges. It inserts a new section 2A into the Courts Act 1977. 2(A)(2) provides that a specialist judge may be assigned to more than one circuit. The new provisions have been drafted to allow for sufficient flexibility to ensure that the judges can be diverted from circuits where fewer applications are lodged to circuits where the volume is greater. More than one judge can be assigned to a single circuit (subsection 2A(6)). The other provisions are standard and uphold the principles of

judicial independence by ensuring that permanently assigned judges can only be reassigned with their consent.

Section 155 amends section 10 of the Courts of Justice Act 1947 to provide that the allocation and organisation of business, sittings and times of sittings of specialist judges is the responsibility of the President of the Circuit Court. The new subsections (8), (9), (10), (11) (12) and (13) provide the powers for the President to organise the business of the court including the sittings, times during the year and hours between which the court might sit. They also allow him or her to consult where necessary with the relevant judges and after consultation with the Specialist Judge, to assign work as appropriate between a County Registrar and a Specialist Judge. The provisions are intended to ensure that there will be sufficient availability of these judges to ensure that applications can be dealt with by the court without delay so, for example, it is intended that these judges will be available from Monday to Friday each week and throughout the calendar year, rather than observing the current legal terms.

Section 156 amends section 38 of the Courts of Justice Act 1924 to provide in subsection (1)(a) that the manner of address shall be fixed by rules of court and subsection (2) that no order of precedence shall apply to specialist judges.

Section 157 amends section 66 of the Courts of Justice Act 1924. It provides that vacations for specialist judges may be set by the Minister of the day. This mirrors a provision in section 5 of the Courts Act 1964 which provides that the Minister approved the duration of vacations of District Court judges. The District Court sits throughout the year, including quite regularly providing a service on Christmas Day, Sundays etc., to deal with criminal charges as they arise.

Section 158 substitutes new text for the existing section 2(2) of the Courts Act 1973 and *Section 159* replaces section 14(2) of the Law Reform Commission Act. These provisions update the relevant sections to provide that certain service (as a judge, Law Reform Commissioner etc) is reckonable in calculating service as a barrister or solicitor for the purposes of s.17 of the 1961 Act which sets out the service requirements for eligibility for appointment as a judge, now including specialist judges.

Section 160 provides for standard provisions found in the Courts Acts to ensure that no cases are affected by the introduction of the new provisions.

SCHEDULE

The Schedule provides for the repeals referred to in section 6 of the Bill, namely sections 87 to 109 of the Bankruptcy Act 1988 (Arrangements under Control of Court).

New SCHEDULE 2

Schedule 2 sets out the provisions applicable to oral hearings conducted in accordance with sections 169 and 170. Part 1 sets out the provisions in regard to an oral hearing conducted by an inspector under section 169 while Part 2 provides for hearings conducted by the Complaints Committee under section 170.

New SCHEDULE 3

Schedule 3 makes provision for the establishment and membership of the complaints panel and Complaints Committees. The complaints panel must contain at least 7 persons, all of whom must have relevant experience or knowledge to enable them to carry out their functions under the legislation. A Complaints Committee will be composed of at least three persons, at least one of whom must be a barrister or solicitor. A Complaints Committee will be independent in the discharge of its functions.

A Roinn Dlí agus Cirt agus Comhionannais,
Nollaig, 2012.

Wt. —. 1. 12/12. Clondalkin. (34150). Gr. 30-15.