



SEANAD ÉIREANN

AN BILLE UM CHÚIRTEANNA AGUS AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA), 2013 COURTS AND CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2013

LEASUITHE A RINNE AN DÁIL AMENDMENTS MADE BY THE DÁIL

SEANAD ÉIREANN

AN BILLE UM CHÚIRTEANNA AGUS AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA), 2013 *[BILLE SEANAID ARNA LEASÚ AG AN DÁIL]*

COURTS AND CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2013 *[SEANAD BILL AMENDED BY THE DÁIL]*

Leasuithe a rinne an Dáil

Amendments made by the Dáil

*[The page and line references in this list of amendments
are to the text of the Bill as passed by Seanad Éireann]*

SECTION 26

1. In page 26, lines 8 to 11 deleted and the following substituted:

“Interpretation (*Part 7*)

26. In this Part “Act of 1988” means the Bankruptcy Act 1988.”.

SECTION 28

2. In page 26, after line 36, the following inserted:

“Amendment of section 8 of Act of 1988

28. Section 8 of the Act of 1988 is amended—

- (a) in subsection (1) (substituted by section 144 of the Personal Insolvency Act 2012), by the substitution in paragraph (c) of “notice in the prescribed form to the debtor” for “notice to the debtor”, and
- (b) in subsection (3), by the substitution of “within 14 days” for “within four days”.

3. In page 28, line 11, “to whom this subsection applies” deleted and “to whom this section applies” substituted.

4. In page 28, lines 27 to 32 deleted and the following substituted:

“shall not, except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, receive a lesser scale of pay or less favourable superannuation benefits than the scale of pay and superannuation benefits to which he was entitled immediately before the secondment, transfer or return concerned.”.

[SECTION 33]

SECTION 33

5. In page 32, between lines 27 and 28, the following inserted:

“Amendment of section 85B of Act of 1988

33. Section 85B of the Act of 1988 (inserted by section 157 of the Personal Insolvency Act 2012) is amended by the insertion, after subsection (2), of the following:

“(2A) An order of discharge shall provide that any property of the bankrupt then vested in the Official Assignee shall be re-vested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly.”.

SECTION 41

6. In page 35, between lines 4 and 5, the following inserted:

“Amendment of section 5 of Act of 2012

41. Section 5 of the Act of 2012 is amended by substituting the following for subsection (2):

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

- (a) the debtor to whom the application relates is residing at the time of the making of the application or has resided within one year of the time of the making of the application, or
- (b) the debtor to whom the application relates has a place of business at the time of the making of the application or has had a place of business within one year of the time of the making of the application.”.

SECTION 42

7. In page 35, between lines 7 and 8, the following inserted:

“Amendment of section 9 of Act of 2012

42. Section 9(1) of the Act of 2012 is amended by the substitution of the following for paragraph (g):

“(g) in accordance with section 47—

- (i) authorise a person or class of persons to perform the functions of an approved intermediary,
- (ii) supervise and regulate persons or classes of persons authorised to perform the functions of an approved intermediary.”.

[SECTION 43]

SECTION 43

8. In page 35, between lines 10 and 11, the following inserted:

“New section 21A in Act of 2012

43. The following section is inserted after section 21 of the Act of 2012:

“Retention of information by Insolvency Service

21A. Notwithstanding the Data Protection Act 1988, the Insolvency Service shall retain such information or data obtained by it under this Act as is necessary for the performance of its functions under this Act.”.

SECTION 44

9. In page 35, lines 15 to 33 deleted and the following substituted:

“Amendment of section 27 of Act of 2012

44. Section 27 of the Act of 2012 is amended—

(a) by substituting the following for subsection (4):

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

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

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

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

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

and

(b) by substituting the following for subsections (9) to (12):

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

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

[SECTION 45]

SECTION 45

10. In page 35, after line 33, the following inserted:

“Amendment of section 29 of Act of 2012

45. Section 29(2) of the Act of 2012 is amended—

(a) by substituting the following for paragraph (c):

“(c) the Prescribed Financial Statement completed under section 27, in relation to which the statement referred to in paragraph (a) was made, and a statutory declaration made by the debtor confirming that the Prescribed Financial Statement is a complete and accurate statement of the debtor’s assets, liabilities, income and expenditure;”,

and

(b) in paragraph (d), by substituting “debts concerned, as specified in the Prescribed Financial Statement referred to in paragraph (c)” for “debts concerned”.”.

11. In page 36, lines 1 to 7 deleted and the following substituted:

“Amendment of section 31 of Act of 2012

46. Section 31 of the Act of 2012 is amended—

(a) in subsection (1), by substituting the following for paragraph (a)(ii):

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

and

(b) by deleting subsection (4).”.

SECTION 49

12. In page 37, line 9, “in respect of” deleted and “in it in respect of” substituted.

SECTION 54

13. In page 37, after line 34, the following inserted:

“Amendment of section 47 of Act of 2012

54. Section 47 of the Act of 2012 is amended—

(a) by substituting the following for subsection (5):

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

- (a) the requirements applicable to—
 - (i) the authorisation of persons as approved intermediaries under this section, and
 - (ii) the dealings of an approved intermediary with the Insolvency Service;
- (b) the requirements to be met in the performance of their functions under this Act by approved intermediaries including, without limiting the generality of the foregoing, in relation to:
 - (i) the public interest;
 - (ii) the duties owed to debtors and creditors who are or may become specified debtors or specified creditors;
 - (iii) the professional and ethical conduct of approved intermediaries;
 - (iv) the maintenance of the confidentiality of the information of debtors and creditors who are or may become specified debtors or specified creditors;
 - (v) case management in respect of debtors who are or may become specified debtors;
 - (vi) conflicts of interest;
- (c) the qualifications (including levels of training, education, expertise and experience) or any other requirements (including required standards of competence) for the authorisation of persons as approved intermediaries under this section;
- (d) the records, including files and accounts, to be maintained, including in electronic form, by an approved intermediary;
- (e) the requirements to be met by an approved intermediary when handling complaints against that approved intermediary;
- (f) any other matter relating to the authorisation, supervision, or regulation of approved intermediaries which is incidental to or is considered by the Insolvency Service to be necessary or expedient for the said purposes or all or any of the matters referred to in this subsection.

[SECTION 54]

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

and

(b) by inserting the following after subsection (7):

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

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

(a) dies,

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

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

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

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

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

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

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

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

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

[SECTION 54]

14. In page 37, after line 34, the following inserted:

“Amendment of section 49 of Act of 2012

55. Section 49 of the Act of 2012 is amended—

(a) in subsection (2), by the substitution of “the personal insolvency practitioner, or an employee of that personal insolvency practitioner acting under his or her direction and control, shall hold a meeting” for “the personal insolvency practitioner shall hold a meeting”,

(b) by the substitution of the following for subsection (5):

“(5) Where a personal insolvency practitioner is appointed under subsection (3), he or she shall stand appointed, and the debtor concerned shall not appoint another personal insolvency practitioner under that subsection, until such time as—

(a) where the debtor concerned terminates the appointment of the personal insolvency practitioner as respects the debtor, such termination takes effect in accordance with section 49A,

(b) where the personal insolvency practitioner resigns from that role as respects the debtor, such resignation takes effect in accordance with section 49B,

(c) where the personal insolvency practitioner is replaced by reason of being no longer capable of performing, through ill-health or otherwise, or is no longer authorised to perform, the functions of a personal insolvency practitioner as respects the debtor, such replacement takes effect in accordance with section 49C.”,

and

(c) by the deletion of subsections (6) to (9).”.

15. In page 37, after line 34, the following inserted:

“Insertion of sections 49A, 49B and 49C in Act of 2012

56. The Act of 2012 is amended by the insertion, after section 49, of the following sections:

“Termination by a debtor of his or her appointment of a personal insolvency practitioner

49A. (1) A debtor who has appointed a personal insolvency practitioner under section 49(3) may terminate that appointment by giving notice in writing to the personal insolvency practitioner, which notice shall specify the date of the termination and which date shall not be less than one month after the giving of the notice to the personal insolvency practitioner.

- (2) A debtor who terminates an appointment under subsection (1) shall notify the Insolvency Service of that termination as soon as is practicable thereafter.
- (3) A debtor who has terminated the appointment of a personal insolvency practitioner under subsection (1) shall, no later than two months from the date of termination, appoint a personal insolvency practitioner to replace the original personal insolvency practitioner (in this section referred to as a ‘replacement personal insolvency practitioner’) and shall as soon as practicable thereafter notify the Insolvency Service of that appointment.
- (4) Where a replacement personal insolvency practitioner has been appointed under subsection (3), he or she, as soon as practicable thereafter, shall inform the Insolvency Service and the creditors concerned of that fact.
- (5) Where a replacement personal insolvency practitioner is appointed under subsection (3)—
 - (a) that appointment shall not affect the validity of anything previously done under this Chapter, Chapter 3 or Chapter 4, as the case may be, by the original personal insolvency practitioner,
 - (b) a protective certificate, Debt Settlement Arrangement or a Personal Insolvency Arrangement that is in effect as regards the debtor shall continue to have effect, and
 - (c) references in this Act to a personal insolvency practitioner, in relation to the debtor concerned, shall be construed as including references to the replacement personal insolvency practitioner so appointed.

Termination by a personal insolvency practitioner of his or her appointment by a debtor

- 49B. (1) A personal insolvency practitioner who has been appointed by a debtor in accordance with section 49(3) may terminate that appointment by giving notice in writing to the debtor, which notice shall specify the date of the termination and which date shall not be less than one month after the giving of the notice to the debtor.
- (2) A personal insolvency practitioner who terminates an appointment under subsection (1) shall notify the Insolvency Service of that termination as soon as is practicable thereafter.
 - (3) A debtor who receives notice from a personal insolvency practitioner of the termination of his or her appointment under subsection (1) shall, no later than 2 months from the date of termination, appoint a replacement personal insolvency practitioner (in this section referred to as a ‘replacement personal insolvency practitioner’) and, as soon as practicable thereafter, notify the Insolvency Service of that

appointment.

- (4) Where a replacement personal insolvency practitioner has been appointed under subsection (3), he or she, as soon as practicable thereafter, shall inform the Insolvency Service and the creditors concerned of that fact.
- (5) Where a replacement personal insolvency practitioner is appointed under subsection (3)—
 - (a) that appointment shall not affect the validity of anything previously done under this Chapter, Chapter 3 or Chapter 4, as the case may be, by the original personal insolvency practitioner,
 - (b) a protective certificate, Debt Settlement Arrangement or a Personal Insolvency Arrangement that is in effect as regards the debtor shall continue to have effect, and
 - (c) references in this Act to a personal insolvency practitioner, in relation to the debtor concerned, shall be construed as including references to the replacement personal insolvency practitioner so appointed.

Termination of appointment of a personal insolvency practitioner due to death, incapacity or withdrawal of authorisation

49C. (1) Where a personal insolvency practitioner appointed under section 49(3) ('the original personal insolvency practitioner')—

- (a) dies,
- (b) becomes incapable, through ill-health or otherwise, of performing the functions of a personal insolvency practitioner, or
- (c) is no longer authorised to perform the functions of a personal insolvency practitioner under this Act,

the debtor shall, as soon as practicable after becoming aware of that fact, or of being informed of such by the Insolvency Service, and in any event no later than three months thereafter, appoint a replacement personal insolvency practitioner (in this section referred to as a 'replacement personal insolvency practitioner') to act as his or her personal insolvency practitioner for the purposes of Chapter 3 or 4, as the case may be.

- (2) Where the debtor appoints a replacement personal insolvency practitioner under subsection (1), he or she shall, as soon as practicable thereafter, inform the Insolvency Service of that fact.
- (3) Where a replacement personal insolvency practitioner has been appointed under subsection (1), he or she, as soon as practicable thereafter, shall inform the Insolvency Service and the creditors concerned of that fact.

[SECTION 54]

- (4) Where a replacement personal insolvency practitioner is appointed by the debtor—
- (a) that appointment shall not affect the validity of anything previously done under this Chapter, Chapter 3 or Chapter 4, as the case may be, by the original personal insolvency practitioner,
 - (b) a protective certificate, Debt Settlement Arrangement or a Personal Insolvency Arrangement that is in effect as regards the debtor shall continue to have effect, and
 - (c) references in this Act to a personal insolvency practitioner, in relation to the debtor concerned, shall be construed as including references to the replacement personal insolvency practitioner so appointed.”.”.

SECTION 55

16. In page 38, lines 4 to 11 deleted.

SECTION 57

17. In page 38, line 22 deleted and the following substituted:

“(b) by deleting subsection (4), and”.

SECTION 65

18. In page 41, line 9 deleted and the following substituted:

“(c) by deleting subsection (4), and”.

SECTION 67

19. In page 41, between lines 24 and 25, the following inserted:

“Amendment of section 82 of Act of 2012

67. The Act of 2012 is amended by substituting the following for section 82:

“Variation of Debt Settlement Arrangement

82. (1) Subject to this section, a Debt Settlement Arrangement may be varied in accordance with its terms.
- (2) A personal insolvency practitioner, whether on his or her own initiative or on a request made in accordance with subsection (3), shall propose a variation of a Debt Settlement Arrangement (in this section referred to as a ‘variation’) where—
- (a) it appears to the personal insolvency practitioner that there has been a material change in the debtor’s circumstances, and

[SECTION 67]

- (b) the personal insolvency practitioner is satisfied that there is a reasonable prospect that a variation that addresses such circumstances would be approved in accordance with this section.
- (3) A debtor or creditor who is bound by a Debt Settlement Arrangement may request the personal insolvency practitioner to propose a variation of the Arrangement, which request shall be—
 - (a) in writing,
 - (b) accompanied by information or evidence to support the assertion that there has been a material change in the debtor's circumstances, and
 - (c) accompanied by the written consent of the person making the request to the—
 - (i) making by the personal insolvency practitioner of an enquiry under subsection (4), and
 - (ii) disclosure by the personal insolvency practitioner of personal data of the person, to the extent necessary for such an enquiry.
- (4) A personal insolvency practitioner shall, within 21 days of receipt of a request under subsection (3), decide whether paragraphs (a) and (b) of subsection (2) apply in relation to the Debt Settlement Arrangement concerned and, for that purpose—
 - (a) may request any further information he or she requires from the person who made the request, and
 - (b) may make such enquires as he or she considers necessary in order to arrive at his or her decision.
- (5) For the purpose of deciding, whether under subsection (4) or otherwise, whether paragraphs (a) and (b) of subsection (2) apply in relation to the Debt Settlement Arrangement concerned, the personal insolvency practitioner may require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement.
- (6) Where the personal insolvency practitioner is satisfied that paragraphs (a) and (b) of subsection (2) apply in relation to the Debt Settlement Arrangement concerned, he or she shall without delay:
 - (a) require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement, unless the debtor has completed a Prescribed Financial Statement under subsection (5) and the information contained in it remains complete and accurate,
 - (b) formulate a proposal for a variation,
 - (c) seek the written consent of the debtor to the proposal and to the

[SECTION 67]

calling of a meeting of the creditors of the debtor for the purpose of considering the proposal, and

- (d) where the consent of the debtor referred to in paragraph (c) has been given, arrange for the holding of the meeting referred to in that paragraph.
- (7) When calling a creditors' meeting to be held under this section, the personal insolvency practitioner shall—
- (a) give each creditor at least 14 days written notice of the meeting and the date on which, and the time and place at which, the meeting will be held;
 - (b) ensure that the notice referred to in paragraph (a) is accompanied by—
 - (i) a written proposal for the variation of the Debt Settlement Arrangement,
 - (ii) a report of the personal insolvency practitioner—
 - (I) describing the outcome for the creditors and for the debtor under the terms of the proposal, and
 - (II) indicating whether or not he or she is of the opinion that the debtor is reasonably likely to be able to comply with the terms of the Debt Settlement Arrangement as varied in accordance with the proposal,
 - (iii) the Prescribed Financial Statement completed by the debtor under subsection (5) or (6), as the case may be, and
 - (iv) such other information obtained by the personal insolvency practitioner under this section as he or she considers relevant;
 - (c) lodge a copy of the notice referred to in paragraph (a) and the documents referred to in paragraph (b) with the Insolvency Service.
- (8) The provisions of sections 65 to 69 and sections 72 to 78 (other than subsections (2) and (3) of section 67, sections 72(4), 72(7), 73(2), 75(1)(c)(i) (as amended by *section 63 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*), 76(2), 77(3), 78(2)(a)(i) and 78(5)(a) (as amended by *section 65 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*)) and section 87 shall apply in relation to a variation of a Debt Settlement Arrangement under this section, subject to the following modifications and any other necessary modifications—
- (a) a reference to a Debt Settlement Arrangement shall be construed as a reference to a Debt Settlement Arrangement as varied in accordance with this Chapter,
 - (b) a reference to a proposal for a Debt Settlement Arrangement shall

[SECTION 67]

be construed as a reference to a proposal for the variation of a Debt Settlement Arrangement, and a reference to a proposed Debt Settlement Arrangement shall be construed as a reference to a proposed variation of a Debt Settlement Arrangement,

- (c) a reference to a Prescribed Financial Statement shall be construed as a reference to the Prescribed Financial Statement completed by the debtor under subsection (5) or (6), as the case may be,
 - (d) the variation of a Debt Settlement Arrangement shall not have the effect of extending the duration of that Debt Settlement Arrangement beyond the maximum duration permitted under section 65(2)(a),
 - (e) a Debt Settlement Arrangement as varied under this section shall, in addition to containing the information referred to in section 65(2)(e), make provision for the costs and outlays of the personal insolvency practitioner which relate to this section,
 - (f) a reference to a creditors' meeting shall be construed as a reference to a creditors' meeting called under this section, and
 - (g) an adjournment pursuant to section 72(2) may occur once only in the course of a creditors' meeting.
- (9) The voting rights exercisable by a creditor at a creditors' meeting under this section shall be proportionate to the amount of the debt due by the debtor to the creditor on the day on which the vote is held.
- (10) Where—
- (a) on the taking of a vote at a creditors' meeting under this section, the proposal is not approved in accordance with section 73, or
 - (b) the appropriate court upholds the objection of a creditor to the variation of a Debt Settlement Arrangement coming into effect,
- the Debt Settlement Arrangement concerned shall, without prejudice to the other provisions of this Act, continue in effect without being subject to such variation.
- (11) Subsection (10) shall be without prejudice to the entitlement of the personal insolvency practitioner to propose another variation of the Debt Settlement Arrangement in accordance with this section.
- (12) Subject to subsection (13), an unreasonable refusal by the debtor to give his or her consent—
- (a) under subsection (6) to a proposal for a variation or the calling of a creditors' meeting, or
 - (b) under subsection (2) or (6) of section 72,
- shall be grounds for an application under section 83(1)(g).

[SECTION 67]

- (13) A debtor who refuses to give his or her consent under a provision referred to in subsection (12) shall be considered to be acting reasonably where the proposal in relation to which the consent is sought would require the debtor—
- (a) where there has been an increase in the debtor’s income, to make additional payments in excess of 50 per cent of the increase in his or her income available to him or her after the following deductions (where applicable) are made:
 - (i) income tax;
 - (ii) social insurance contributions;
 - (iii) payments made by him or her in respect of excluded debts;
 - (iv) payments made by him or her in respect of excludable debts that are not permitted debts;
 - (v) such other levies and charges on income as may be prescribed,or
 - (b) to make a payment amounting to more than 50 per cent of the value of any property acquired by the debtor after the coming into effect of the Debt Settlement Arrangement that is proposed to be varied, unless receipt of that property had been anticipated by the terms of that Arrangement.
- (14) A reference in this Chapter to a Debt Settlement Arrangement shall be construed as including such an arrangement as proposed to be varied or, as varied in accordance with this section, unless the context otherwise requires.
- (15) In this section, ‘material change in the debtor’s circumstances’ means a change in the debtor’s circumstances that would materially affect his or her ability to make payments, or otherwise perform his or her obligations, under the Debt Settlement Arrangement, and includes an increase or decrease in the extent of the debtor’s assets, liabilities or income.”.”.

SECTION 70

20. In page 42, between lines 17 and 18, the following inserted:

“Amendment of section 91 of Act of 2012

70. Section 91(3) of the Act of 2012 is amended by the substitution of “specified in subsection (1)(i)” for “specified in subsection (1)(h)”.”.

[SECTION 71]

SECTION 71

21. In page 42, line 33 deleted and the following substituted:

“(b) by deleting subsection (4), and”.

SECTION 77

22. In page 45, line 15 deleted and the following substituted:

“(c) by deleting subsection (4), and”.

SECTION 79

23. In page 45, between lines 33 and 34, the following inserted:

“Amendment of section 119 of Act of 2012

79. The Act of 2012 is amended by substituting the following for section 119:

“Variation of Personal Insolvency Arrangement

119. (1) Subject to this section, a Personal Insolvency Arrangement may be varied in accordance with its terms.

(2) A personal insolvency practitioner, whether on his or her own initiative or on a request made in accordance with subsection (3), shall propose a variation of a Personal Insolvency Arrangement (in this section referred to as a ‘variation’) where—

(a) it appears to the personal insolvency practitioner that there has been a material change in the debtor’s circumstances, and

(b) the personal insolvency practitioner is satisfied that there is a reasonable prospect that a variation that addresses such circumstances would be approved in accordance with this section.

(3) A debtor or creditor who is bound by a Personal Insolvency Arrangement may request the personal insolvency practitioner to propose a variation of the Arrangement, which request shall be—

(a) in writing,

(b) accompanied by information or evidence to support the assertion that there has been a material change in the debtor’s circumstances, and

(c) accompanied by the written consent of the person making the request to the—

(i) making by the personal insolvency practitioner of an enquiry under subsection (4), and

(ii) disclosure by the personal insolvency practitioner of personal data of the person, to the extent necessary for such an enquiry.

[SECTION 79]

- (4) A personal insolvency practitioner shall, within 21 days of receipt of a request under subsection (3), decide whether paragraphs (a) and (b) of subsection (2) apply in relation to the Personal Insolvency Arrangement concerned, and, for that purpose—
 - (a) may request any further information he or she requires from the person who made the request, and
 - (b) may make such enquires as he or she considers necessary in order to arrive at his or her decision.
- (5) For the purpose of deciding, whether under subsection (4) or otherwise, whether paragraphs (a) and (b) of subsection (2) apply in relation to the Personal Insolvency Arrangement concerned, the personal insolvency practitioner may require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement.
- (6) Where the personal insolvency practitioner is satisfied that paragraphs (a) and (b) of subsection (2) apply in relation to the Personal Insolvency Arrangement concerned, he or she shall without delay:
 - (a) require the debtor concerned, where necessary with the assistance of the personal insolvency practitioner, to complete a new Prescribed Financial Statement, unless the debtor has completed a Prescribed Financial Statement under subsection (5) and the information contained in it remains complete and accurate,
 - (b) formulate a proposal for a variation,
 - (c) seek the written consent of the debtor to the proposal and to the calling of a meeting of the creditors of the debtor for the purpose of considering the proposal, and
 - (d) where the consent of the debtor referred to in paragraph (c) has been given, arrange for the holding of the meeting referred to in that paragraph.
- (7) When calling a creditors' meeting to be held under this section, the personal insolvency practitioner shall—
 - (a) give each creditor at least 14 days written notice of the meeting and the date on which, and the time and place at which, the meeting will be held;
 - (b) ensure that the notice referred to in paragraph (a) is accompanied by—
 - (i) a written proposal for the variation of the Personal Insolvency Arrangement,
 - (ii) a report of the personal insolvency practitioner—
 - (I) describing the outcome for the creditors and for the debtor

under the terms of the proposal, and

(II) indicating whether or not he or she is of the opinion that the debtor is reasonably likely to be able to comply with the terms of the Personal Insolvency Arrangement as varied in accordance with the proposal,

(iii) the Prescribed Financial Statement completed by the debtor under subsection (5) or (6), as the case may be, and

(iv) such other information obtained by the personal insolvency practitioner under this section as he or she considers relevant;

and

(c) lodge a copy of the notice referred to in paragraph (a) and the documents referred to in paragraph (b) with the Insolvency Service.

(8) The provisions of sections 99 to 105 and sections 108 to 115 (other than subsections (2) and (3) of section 101, sections 108(9), 109(6), 112(1)(c)(i) (as amended by *section 75 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*), 113(2), 114(3), 115(2)(a)(i) and 115(5)(a) (as amended by *section 77 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*)) and section 120 shall apply in relation to a variation of a Personal Insolvency Arrangement under this section, subject to the following modifications and any other necessary modifications—

(a) a reference to a Personal Insolvency Arrangement shall be construed as a reference to a Personal Insolvency Arrangement as varied in accordance with this Chapter,

(b) a reference to a proposal for a Personal Insolvency Arrangement shall be construed as a reference to a proposal for the variation of a Personal Insolvency Arrangement, and a reference to a proposed Personal Insolvency Arrangement shall be construed as a reference to a proposed variation of a Personal Insolvency Arrangement,

(c) a reference to a Prescribed Financial Statement shall be construed as a reference to the Prescribed Financial Statement completed by the debtor under subsection (5) or (6), as the case may be,

(d) the variation of a Personal Insolvency Arrangement shall not have the effect of extending the duration of that Personal Insolvency Arrangement beyond the maximum duration permitted under section 99(2)(b),

(e) a Personal Insolvency Arrangement as varied under this section shall, in addition to containing the information referred to in section 99(2)(f), make provision for the costs and outlays of the personal insolvency practitioner which relate to this section,

(f) a reference to a notification that a protective certificate has been

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issued shall be construed as a notice under subsection (7) of the calling of a creditors' meeting,

- (g) a reference to the day or date on which a protective certificate is issued, other than in section 102(7), shall be construed as a reference to the date on which a vote at the creditors' meeting under this section is held,
 - (h) where section 103(3) applied to a Personal Insolvency Arrangement, the variation of that Arrangement shall not operate to alter the period referred to in section 103(11)(a),
 - (i) a reference to the market value attributed to security, or the market value of security determined, in accordance with section 105 shall be construed as the value attributed or determined in accordance with section 105 for the purpose of a variation under this section,
 - (j) a reference to a creditors' meeting shall be construed as a reference to a creditors' meeting under this section,
 - (k) where section 108(4) applied to a creditor, that subsection shall continue to apply to that creditor for the purpose of his or her voting rights at a creditors' meeting under this section,
 - (l) a debt that is an unsecured debt on the date on which the vote at a creditors' meeting under this section is held shall be treated as an unsecured debt, notwithstanding that the debt concerned was a secured debt when the vote on the proposal for the Personal Insolvency Arrangement concerned was held, and
 - (m) an adjournment pursuant to section 109(4) may occur once only in the course of a creditors' meeting.
- (9) Where—
- (a) on the taking of a vote at a creditors' meeting under this section, the proposal is not approved in accordance with section 110, or
 - (b) the appropriate court upholds the objection of a creditor to the variation of a Personal Insolvency Arrangement coming into effect, the Personal Insolvency Arrangement concerned shall, without prejudice to the other provisions of this Act, continue in effect without being subject to such variation.
- (10) Subsection (9) shall be without prejudice to the entitlement of the personal insolvency practitioner to propose another variation of the Personal Insolvency Arrangement in accordance with this section.
- (11) Subject to subsection (12), an unreasonable refusal by the debtor to give his or her consent—
- (a) under subsection (6) to a proposal for a variation or the calling of a creditors' meeting, or

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- (b) under subsection (3) or (4) of section 109,
shall be grounds for an application under section 122(1)(g).
- (12) A debtor who refuses to give his or her consent under a provision referred to in subsection (11) shall be considered to be acting reasonably where the proposal in relation to which the consent is sought would require the debtor—
- (a) where there has been an increase in the debtor’s income, to make additional payments in excess of 50 per cent of the increase in his or her income available to him or her after the following deductions (where applicable) are made:
- (i) income tax;
 - (ii) social insurance contributions;
 - (iii) payments made by him or her in respect of excluded debts;
 - (iv) payments made by him or her in respect of excludable debts that are not permitted debts;
 - (v) such other levies and charges on income as may be prescribed,
- or
- (b) to make a payment amounting to more than 50 per cent of the value of any property acquired by the debtor after the coming into effect of the Personal Insolvency Arrangement that is proposed to be varied, unless receipt of that property had been anticipated by the terms of that Arrangement.
- (13) A reference in this Chapter to a Personal Insolvency Arrangement shall be construed as including such an arrangement as proposed to be varied or, as varied in accordance with this section, unless the context otherwise requires.
- (14) In this section, ‘material change in the debtor’s circumstances’ means a change in the debtor’s circumstances that would materially affect his or her ability to make payments, or otherwise perform his or her obligations, under the Personal Insolvency Arrangement, and includes an increase or decrease in the extent of the debtor’s assets, liabilities or income.”.”.

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24. In page 46, between lines 28 and 29, the following inserted:

“Amendment of section 136 of Act of 2012

82. Section 136 of the Act of 2012 is amended by substituting the following for subsection (1):

“(1) The Insolvency Service, with the consent of the Minister, may by regulations prescribe a form (in this Act referred to as a ‘Prescribed Financial Statement’) to be used by persons where required under this Part to complete a Prescribed Financial Statement, which form shall provide for the provision of detailed information relating to the income, assets, liabilities and necessary household expenditure incurred by such persons.”.

25. In page 46, between lines 28 and 29, the following inserted:

“Amendment of section 161 of Act of 2012

83. The Act of 2012 is amended by the substitution of the following for section 161:

“Regulations that may be made by Insolvency Service regarding personal insolvency practitioners

161. (1) The Insolvency Service, with the consent of the Minister, may and, if directed by the Minister to do so and in accordance with the terms of the direction, shall, following consultation with the Minister for Finance and with any other person as the Insolvency Service deems appropriate or as the Minister directs, by regulations provide for any of the following, for the purposes of the authorisation, regulation and supervision of personal insolvency practitioners and the protection of debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements and the maintenance of public confidence in the operation of Debt Settlement Arrangements and Personal Insolvency Arrangements under this Act:

- (a) the requirements applicable to—
 - (i) the authorisation of persons to carry on practice as personal insolvency practitioners;
 - (ii) the supervision and regulation of persons authorised to carry on practice as personal insolvency practitioners in the performance of their functions under this Act;
 - (iii) the dealings of a person authorised to carry on practice as a personal insolvency practitioner with the Insolvency Service; and
 - (iv) the cessation or transfer of practice by persons authorised to carry on practice as personal insolvency practitioners;
- (b) the requirements to be met in the performance of their functions under this Act by personal insolvency practitioners including, without limiting the generality of the foregoing, in relation to:
 - (i) the public interest;

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- (ii) the duties owed to debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements;
 - (iii) the professional and ethical conduct of personal insolvency practitioners;
 - (iv) the maintenance of the confidentiality of the information of debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements;
 - (v) case management in respect of debtors by whom a personal insolvency practitioner is appointed; and
 - (vi) conflicts of interest;
- (c) the qualifications (including levels of training, education, expertise and experience) or any other requirements (including required standards of competence, fitness and probity, and required minimum levels of professional indemnity insurance) for the authorisation of persons to carry on practice as personal insolvency practitioners;
- (d) the terms on which indemnity against losses is to be available to personal insolvency practitioners under any policy of indemnity insurance and the circumstances in which the right to such indemnity is to be excluded or modified;
- (e) the records to be maintained and the information and returns, including in electronic form, to be provided to the Insolvency Service by personal insolvency practitioners;
- (f) the requirements to be met by a personal insolvency practitioner when handling complaints against that personal insolvency practitioner;
- (g) the standards to be adhered to by personal insolvency practitioners in regard to advertising under this Act;
- (h) the circumstances and purposes for which a personal insolvency practitioner may charge fees or costs or seek to recover outlay in respect of work done following engagement by a debtor at any time in performing his or her functions—
- (i) under this Act,
 - (ii) under regulations made under this Act,
 - (iii) under rules of court,
- and the requirements to be met by a personal insolvency practitioner when charging fees or costs or seeking to recover outlays, and

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- (i) any other matter relating to the authorisation, supervision or regulation of personal insolvency practitioners which is incidental to or is considered by the Insolvency Service to be necessary or expedient for the said purposes or all or any of the matters referred to in this subsection.
- (2) The Insolvency Service may do anything which it considers necessary or expedient to monitor a personal insolvency practitioner's compliance with his or her obligations under this Act and regulations made under this Act.”.”.

26. In page 46, between lines 28 and 29, the following inserted:

“Amendment of section 164 of Act of 2012

84. Section 164 of the Act of 2012 is amended by the substitution of the following for subsection (4):

- “(4) An authorisation to carry on practice as a personal insolvency practitioner, unless sooner surrendered or revoked or otherwise ceasing to be in force, shall remain in force for a period to be determined by the Insolvency Service, but such period shall not exceed 5 years from the date on which the authorisation is issued.”.”.

27. In page 46, between lines 28 and 29, the following inserted:

“Amendment of section 37 of Courts of Justice Act 1936

85. Section 37 of the Courts of Justice Act 1936 is amended by the insertion of the following after subsection (1):

- “(1A) Notwithstanding subsection (1), an appeal shall lie to the High Court sitting in Dublin from every judgment given or order or decision made (other than a decision to which section 169(4) of the Personal Insolvency Act 2012 applies) by the Circuit Court in the performance of any function or exercise of any power or jurisdiction conferred on that court by that Act, whether or not oral evidence was given at the hearing or for the determination of the proceedings or matter concerned.”.”.