



**An Bille um Chomhshocraíocht Socraíochta Morgáiste d'Áras an Teaghlaigh,
2014**

Family Home Mortgage Settlement Arrangement Bill 2014

Mar a tionscnaíodh

As initiated



**AN BILLE UM CHOMHSHOCRAÍOCHT SOCRAÍOHTA MORGÁISTE D'ÁRAS AN
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FAMILY HOME MORTGAGE SETTLEMENT ARRANGEMENT BILL 2014

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ACTS REFERRED TO

Bankruptcy Act 1988 (No. 27)
Central Bank Act 1989 (No. 16)
Data Protection Acts 1988 and 2003
Personal Insolvency Act 2012 (No. 44)



**AN BILLE UM CHOMHSHOCRAÍOCHT SOCRAÍOCHTA MORGÁISTE D'ÁRAS AN
TEAGHLAIGH, 2014**
FAMILY HOME MORTGAGE SETTLEMENT ARRANGEMENT BILL 2014

Bill

entitled

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An Act to provide for the enactment of a Family Home Mortgage Settlement Arrangement by the Insolvency Service of Ireland to assist mortgage holders in arrears.

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act— 10
- “appropriate court” shall be the Circuit Court;
- “bankruptcy” shall be construed in accordance with the Bankruptcy Act 1988;
- “Code of Conduct on Mortgage Arrears” means the Code of Conduct on Mortgage Arrears published by the Central Bank pursuant to section 117 of the Central Bank Act 1989 and which became effective on 1 July 2013; 15
- “Insolvency Service” means the Insolvency Service of Ireland established by the Personal Insolvency Act 2012;
- “Minister” means the Minister for Justice and Equality;
- “mortgage” means any charge or lien on a residential property which is a family home for securing money or money’s worth; 20
- “mortgagor” means any person deriving title to the mortgaged property under the original mortgage or entitled to redeem the mortgage;
- “mortgagee” means any person or entity having the benefit of a charge or lien and any person deriving title to the mortgage under the original mortgagee;
- “personal data” has the meaning it has in the Data Protection Acts 1988 and 2003; 25
- “personal insolvency practitioner” means a person authorised under Part 5 of the Personal Insolvency Act 2012 to act as a personal insolvency practitioner;
- “protective certificate” means a certificate issued by the appropriate court.

Mortgage Settlement Arrangement

2. (1) Subject to the provisions of this Act, a mortgagor who satisfies the eligibility criteria 30

specified in *section 4* may make a proposal for a Family Home Mortgage Settlement Arrangement with his or her mortgagee in respect of the payment or satisfaction of his or her mortgage.

- (2) A proposal for a Family Home Mortgage Settlement Arrangement shall be made on behalf of a mortgagor by a personal insolvency practitioner in accordance with the provisions of the Personal Insolvency Act 2012. 5
- (3) Where two or more mortgagors are jointly party to the mortgage and each of those mortgagors satisfy the eligibility criteria specified in *section 4*, those mortgagors may jointly propose a Family Home Mortgage Settlement Arrangement and, unless otherwise specified, references in this Act to the “mortgagor” shall be construed as meaning such joint mortgagors. 10

Eligibility

3. A mortgagor may enter into a Family Home Mortgage Settlement Arrangement once only.

Eligibility criteria

4. A mortgagor shall not be eligible to make a proposal for a Family Home Mortgage Settlement Arrangement unless he or she satisfies the following criteria—

- (a) that the mortgagor—
- (i) is domiciled in the State, or
 - (ii) within one year before the date of the application for a Mortgage Settlement Arrangement has ordinarily—
 - (I) resided in the State, or
 - (II) had a place of business in the State;
 - (iii) has entered into the Mortgage Arrears Resolution Process as described in the Code of Conduct on Mortgage Arrears published by the Central Bank pursuant to section 117 of the Central Bank Act 1989; 25
 - (iv) has exhausted the appeals process as set out in the Code of Conduct on Mortgage Arrears published by the Central Bank pursuant to section 117 of the Central Bank Act 1989;
- (b) that the mortgagor has completed a Prescribed Financial Statement and has made a statutory declaration confirming that the statement is a complete and accurate statement of the mortgagor’s assets, liabilities, income and expenditure; 30
- (c) that the personal insolvency practitioner has completed a statement in respect of the mortgagor confirming that he or she is of the opinion that—
- (i) the information contained in the mortgagor’s Prescribed Financial Statement is complete and accurate;
 - (ii) the debtor is eligible to make a proposal for a Family Home Mortgage Settlement Arrangement; 35

- (iii) having considered the Personal Financial Statement completed by the debtor, there is no likelihood of the debtor becoming solvent within the period of 5 years commencing on the date on which the statement is made;
- (d) having regard to the mortgagor's circumstances as set out in the Prescribed Financial Statement, it is appropriate for the mortgagor to make a proposal for a Family Home Mortgage Settlement Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor paying off the arrears on the mortgage; 5
- (e) that the mortgagor is not—
 - (i) an undischarged bankrupt, 10
 - (ii) a discharged bankrupt subject to a bankruptcy payment order,
 - (iii) a person who, as a debtor, is subject to a Personal Insolvency Arrangement which is in effect, or
 - (iv) 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. 15

Application for a Family Home Mortgage Settlement Arrangement

5. (1) Where a personal insolvency practitioner has been to make a proposal for a Family Home Mortgage Settlement Arrangement, the personal insolvency practitioner shall notify the Insolvency Service of the mortgagor's intention to propose a Family Home Mortgage Settlement Arrangement and apply on behalf of the debtor for a Family Home Mortgage Settlement Arrangement. 20
- (2) The application referred to in *subsection (1)* shall be in such form as may be specified by the Insolvency Service and shall be accompanied by such fee (if any) as may be prescribed and the following documents:
 - (a) the statement of the personal insolvency practitioner prepared under *section 4(c)*; 25
 - (b) a document signed by the mortgagor confirming that he or she satisfies the eligibility criteria specified in *section 4(a)*;
 - (c) the Prescribed Financial Statement;
 - (d) a schedule of the arrears of the mortgage;
 - (e) such other information as may be prescribed; 30
 - (f) the mortgagor's written consent to—
 - (i) the disclosure to the Insolvency Service,
 - (ii) the processing by the Insolvency Service, and
 - (iii) the disclosure by the Insolvency Service to the Mortgagee,

of personal data of that mortgagor, to the extent necessary in respect of the Debt Settlement Arrangement procedure provided for in this Chapter. 35
- (3) Where a personal insolvency practitioner becomes aware of any inaccuracy or omission in an application under this section or any document accompanying such an

application, he or she shall inform the Insolvency Service of this fact as soon as practicable and the Insolvency Service shall have regard to any information provided under this subsection for the purposes of its consideration of the application.

Consideration of an application for a Family Home Mortgage Settlement Arrangement by the Insolvency Service

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6. (1) In its consideration of an application under *section 5*, the Insolvency Service shall be entitled to request any further information it requires from the mortgagor or personal insolvency practitioner and to defer further consideration of the application until such information is furnished to it.

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(2) Where a debtor or personal insolvency practitioner fails to provide the information requested by the Insolvency Service under *subsection (1)* within 14 days or such longer period as the Insolvency Service may permit the application shall be deemed to be withdrawn.

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(3) In considering the application for a Family Home Mortgage Settlement Arrangement, the Insolvency Service shall make such enquiries as it considers necessary to satisfy itself:

(a) that the personal insolvency practitioner is a person entitled to act as a personal insolvency practitioner;

(b) having regard to the documents which are required to accompany the application for a Family Home Mortgage Settlement Arrangement—

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(i) that the mortgagor satisfies the eligibility criteria for making a proposal for a Family Home Mortgage Settlement Arrangement specified in *section 4*, and

(ii) the application does not appear to be frivolous or an attempt to frustrate the efforts of the Mortgagee to recover debts due to them.

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(4) Subject to *subsections (5)* to *(7)*, for the purposes of *subsection (3)* the Insolvency Service shall be entitled to presume that the debtor satisfies the eligibility criteria for a Family Home Mortgage Settlement Arrangement if the documents required to be lodged with the Insolvency Service have been so lodged and the Insolvency Service has no reason to believe that the information supplied in or in support of the application is incomplete or inaccurate.

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

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

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

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

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(c) particulars of the liabilities of the mortgagor;

- (d) the employment and income of the mortgagor;
 - (e) payments received by the mortgagor from the Department of Social Protection or other Departments of State or other State bodies or agencies and whether or not such payments are made as agent of any other person;
 - (f) taxes or charges imposed by or under statute paid or owed by the mortgagor, whether within or outside the State and refunds in respect of such taxes and charges which are or may become due to the debtor.
- (7) Nothing in this section shall be construed as requiring the Insolvency Service to make an enquiry in any case. 5
- (8) A person who receives an enquiry from the Insolvency Service pursuant to this section shall be under a duty to furnish the information requested as soon as reasonably practicable. 10
- (9) Notwithstanding anything contained in any enactment, for the purposes of the performance of the functions of the Insolvency Service under this Act information held by a Department of State, the Revenue Commissioners, a local authority or any other State body or agency in relation to a debtor may be furnished to the Insolvency Service. 15

Protective certificate

7. (1) Where the Insolvency Service, following its consideration under *section 6*—
- (a) is satisfied that an application is in order, it shall— 20
 - (i) issue a certificate to that effect,
 - (ii) furnish that certificate together with a copy of the application and supporting documentation to the appropriate court, and
 - (iii) notify the personal insolvency practitioner to that effect,

and 25
 - (b) is not so satisfied, it shall notify the personal insolvency practitioner to that effect and request him or her, within 21 days from the date of the notification, to submit a revised application or to confirm that the application has been withdrawn.
- (2) Where the appropriate court receives the application for a protective certificate and accompanying documentation pursuant to *subsection (1)(a)*, it shall consider the application and documentation and, subject to *subsection (3)*— 30
- (a) if satisfied that the eligibility criteria specified in *section 4* have been satisfied, and the other relevant requirements relating to an application for the issue of a protective certificate have been met, shall issue a protective certificate, and
 - (b) if not so satisfied, shall refuse to issue a protective certificate. 35
- (3) The appropriate court, where it requires further information or evidence for the purpose of its arriving at a decision under *subsection (2)*, may hold a hearing, which hearing shall be on notice to the Insolvency Service, the Mortgagee and the personal insolvency practitioner concerned.

- (4) A hearing referred to in *subsection (3)*, unless the appropriate court considers it appropriate to hold it in public, shall be held otherwise than in public.
- (5) A protective certificate shall be in force for a period of 180 days from the date of its issue.
- (6) A hearing held under *subsection (3)* shall be held with all due expedition. 5
- (7) The period of a protective certificate may be extended under *subsection (7)* once only.
- (8) The registrar of the appropriate court shall notify the Insolvency Service and the personal insolvency practitioner concerned where the court—
 - (a) issues or extends a protective certificate under this section,
 - (b) refuses to issue or extend a protective certificate under this section, or 10
 - (c) decides to hold a hearing referred to in *subsection (3)*.

Effect of protective certificate

- 8. A mortgagee to whom notice of the issue of a protective certificate has been given shall not, whilst the protective certificate remains in force, in relation to the mortgage—
 - (a) initiate any legal proceedings; 15
 - (b) take any step to prosecute legal proceedings already initiated;
 - (c) take any step to secure repossession of the dwelling which is subject to the mortgage;
 - (d) execute or enforce a judgment or order of a court or tribunal against the mortgagor. 20

Proposal for a Family Home Mortgage Settlement Arrangement

- 9. (1) Where a protective certificate has been issued, the personal insolvency practitioner shall as soon as practicable thereafter prepare a proposal for a Family Home Mortgage Settlement Arrangement.
- (2) The proposal may include: 25
 - (a) interest only repayments on the mortgage for a specified period of time;
 - (b) permanently reducing the interest rate on the mortgage;
 - (c) temporarily reducing the interest rate on the mortgage for a specified period of time;
 - (d) an arrangement to pay interest and part of the normal capital amount for a specified period of time; 30
 - (e) deferring payment of all or part of the scheduled mortgage repayment for a specified period of time;
 - (f) extending the term of the mortgage;
 - (g) changing the type of the mortgage; 35

- (h) adding arrears and interest to the principal amount due;
 - (i) equity participation;
 - (j) warehousing part of the mortgage (including through a split mortgage);
 - (k) reducing the principal sum to a specified amount;
 - (l) any voluntary scheme to which the mortgagee has signed up to; 5
 - (m) selling the property subject to the mortgage;
 - (n) a debt for equity option.
- (3) As soon as reasonably practicable the personal insolvency practitioner shall provide a copy of the proposal to the mortgagee. 10
- (4) The mortgagee must document its considerations of each option examined under *subsection (2)*.
- (5) As soon as reasonably practicable the mortgagee shall provide a copy of the response prepared in accordance with *subsection (4)* to the personal insolvency practitioner and the Insolvency Service. 15
- Adjudication of the proposal by the court**
10. (1) Where the Insolvency Service, following its consideration of the response prepared in accordance with *section 9(5)* is in order, it shall—
- (a) furnish that response together with a copy of the proposal for a Family Home Mortgage Settlement Arrangement and supporting documentation to the appropriate court, and 20
 - (b) notify the personal insolvency practitioner and mortgagee to that effect.
- (2) Where the appropriate court receives the application for a Family Home Mortgage Settlement Arrangement, it shall consider the application and documentation and, it shall proceed to hold a hearing into the application, which hearing shall be on notice to the Insolvency Service, the Mortgagee and the personal insolvency practitioner concerned. 25
- (3) A hearing referred to in *subsection (2)*, unless the appropriate court considers it appropriate to hold it in public, shall be held otherwise than in public.
- (4) A hearing held under *subsection (3)* shall be held with all due expedition.
- (5) Following the hearing, the appropriate court shall make such order in relation to the Family Home Mortgage Settlement Arrangement as it considers appropriate. 30

Termination of a Family Home Mortgage Settlement Arrangement

11. (1) Without prejudice to *section 10*, a mortgagee may, at any time during which the arrangement concerned is in effect, apply to the appropriate court to have that Family Home Mortgage Settlement Arrangement terminated, and such application shall be limited to the following grounds:
- (a) a material inaccuracy or omission exists in the Prescribed Financial Statement,

- which causes a material detriment to the mortgagee;
- (b) the mortgagor, when the Family Home Mortgage Settlement Arrangement was proposed, did not satisfy the eligibility criteria specified in section 4;
 - (c) the mortgagor did not comply with the duties and obligations imposed on him or her under the Family Home Mortgage Settlement Arrangement process; 5
 - (d) the mortgagor is in arrears with his or her payments for a period of not less than 12 months.
- (2) For the purposes of subsection (1)(d), a mortgagor is in arrears with his or her payments for a period of not less than 12 months where—
- (a) at the beginning of the 12 month period ending immediately before the day on which the application was made, one or more than one payment in respect of the mortgage became due and payable by the debtor under the Family Home Mortgage Settlement Arrangement, and 10
 - (b) at no time during that 12 month period were any obligations in respect of those payments discharged. 15
- (3) On hearing an application under subsection (1), the appropriate court may—
- (a) dismiss the application,
 - (b) terminate the Family Home Mortgage Settlement Arrangement, or
 - (c) vary the Family Home Mortgage Settlement Arrangement.

- Short title and commencement** 20
- 12.** (1) This Act may be cited as the Family Home Mortgage Settlement Arrangements Act 2014.
- (2) This Act shall come into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions. 25

An Bille um Chomhshocraíocht Socraíochta
Morgáiste d'Áras an Teaghlaigh, 2014

BILLE

(*mar a tionscnaíodh*)

dá ngairtear

Acht do dhéanamh socrú maidir le Seirbhís Dócmhainneachta na hÉireann d'achtú Comhshocraíocht Socraíochta Morgáiste d'Áras an Teaghlaigh chun cabhrú le sealbhóirí morgáiste atá faoi riaráiste.

*An Teachta Micheál Mac Craith a thug isteach,
16 Nollaig, 2014*

Family Home Mortgage Settlement
Arrangement Bill 2014

BILL

(*as initiated*)

entitled

An Act to provide for the enactment of a Family Home Mortgage Settlement Arrangement by the Insolvency Service of Ireland to assist mortgage holders in arrears.

*Introduced by Deputy Michael McGrath,
16th December, 2014*

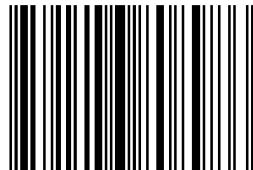
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