



# Bill Digest

## Land & Conveyancing Law Reform (Amendment) Bill 2019

No. 19 of 2019

Daniel Hurley, Parliamentary Researcher, Law



07 March 2019

### Abstract

The [Land and Conveyancing Law Reform \(Amendment\) Bill 2019](#) provides for further protections for homeowners who face repossessions. The Bill adds a new section 2A to the [Land and Conveyancing Law Reform Act 2013](#) which will require a Court to have regard to a series of factors when considering an application for repossession. The Bill also incorporates elements from the [Keeping People in Their Homes](#) PMB introduced by Minister of State Kevin 'Boxer' Moran.

## Contents

Glossary .....	1
Summary .....	1
Table of Provisions .....	3
Background.....	4
Repossession.....	4
Recent developments aimed at addressing personal insolvency .....	5
<i>Personal Insolvency Act 2012</i> .....	6
S.I. 142/2016: <i>EU (Consumer Mortgage Credit Agreements) Regulations 2016</i> .....	7
The Financial Services and Pensions Ombudsman [the FSPO] .....	8
Opinion of the European Central Bank.....	9
Principal Provisions of the Bill .....	11
Adjournment of proceedings.....	11
Procedures to apply in certain proceedings .....	11

**Bill published:** 28<sup>th</sup> February 2019

**Second stage debate:** N/A

**This Digest may be cited as:** Oireachtas Library & Research Service, 2019, *Bill Digest: Land & Conveyancing Law Reform (Amendment) Bill 2019*.

## Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as Bill Digests are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

## Glossary

<b>Designated scheme</b>	A “designated scheme” has the meaning prescribed to it under section 3 of the Bill.
<b>The Minister</b>	A reference to “the Minister” in this Bill Digest is a reference to the Minister for Justice and Equality.
<b>Mortgagee</b>	A “mortgagee” is the lender in a mortgage.
<b>Mortgagor</b>	A “mortgagor” is the borrower in a mortgage.
<b>Principal private residence</b>	A reference a “principal private residence” is a reference to a dwelling in which the mortgagor ordinarily resides and includes any building, structure, vehicle or vessel together with any garden or portion of ground attached to and occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling.
<b>Personal Insolvency Arrangement [PIA]</b>	A “PIA” is a debt resolution mechanism introduced in <a href="#">Part 3 Chapter 4</a> of the <a href="#">Personal Insolvency Act 2012</a> for people who cannot afford to pay their personal debts.
<b>Personal Insolvency Practitioner [PIP]</b>	A “PIP” is a professional who is authorised by the Insolvency Service of Ireland [ISI] and will act on behalf of the person applying for a PIA.

## Summary

The [Land and Conveyancing Law Reform \(Amendment\) Bill 2019](#) [the Bill] was published by the Minister for Justice and Equality [the Minister] on 28<sup>th</sup> February 2019. The Government approved drafting of the Bill on 29th May 2018.<sup>1</sup> No General Scheme was made publically available in relation to the Bill. No Pre-Legislative Scrutiny was carried out in relation to this Bill.

The purpose of the Bill is to insert a new section into the [Land and Conveyancing Law Reform Act 2013](#) to address the situation that arises when a borrower is unable to avail of an insolvency remedy under the provisions of the 2013 Act. The proposed section provides that when a court is considering an application for a possession order it shall have regard to the following factors:

- the overall proportionality of the application for a repossession order;
- the circumstances of those resident in the property;
- the details of, and responses to, any proposals put forward by either party which would enable the borrower to remain in the property, including participation in a Government scheme for distressed mortgage holders.<sup>2</sup>

The Bill also provides that a court may have regard to these factors when it is making any other appropriate order. The Bill has its origin in the “[Keeping People in Their Homes](#)” PMB which was

<sup>1</sup> See <http://justice.ie/en/JELR/Pages/PR18000165>.

<sup>2</sup> *Ibid.*

introduced by Kevin ‘Boxer’ Moran TD. Speaking on Cabinet approval for the drafting of the Bill, Minister for State, Kevin ‘Boxer’ Moran stated the following:

“The proposed Bill reflects the Government’s resolve in addressing the issue of mortgage arrears and it now offers the Courts the opportunity to assess possession orders on a proportionality basis as set out in EU law. This legislation is very important to me and I am pleased that Cabinet has approved drafting today. I look forward to seeing this Bill on the statute books as a further protection for those facing repossession orders.”<sup>3</sup>

On 14<sup>th</sup> January 2019 the Bill was submitted by the Department of Justice, Equality and Law Reform to the European Central Bank [ECB] for an opinion. This was delivered by the ECB on 18 February 2019.<sup>4</sup> The key observations of the ECB are discussed below.

### **Further related Library & Research Service resources**

A Bills Tracker page on the Bill is available on the Library & Research Service’s internal website accessed [here](#) (available to those with access to the Oireachtas intranet).

A Bills Tracker page on the *Land and Conveyancing Law Reform Act 2013* is available on the Library & Research Service’s internal website accessed [here](#) (available to those with access to the Oireachtas intranet).

---

<sup>3</sup> *Ibid.*

<sup>4</sup> See Opinion of the European Central Bank of 18 February 2019 on court orders for possession of principal private residences (CON/2019/8), available at [https://www.ecb.europa.eu/ecb/legal/pdf/en\\_opinion\\_con-2019-8\\_ie\\_on\\_court\\_orders\\_for\\_possession\\_of\\_principal\\_private\\_residences.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/en_opinion_con-2019-8_ie_on_court_orders_for_possession_of_principal_private_residences.pdf).

## Table of Provisions

Section	Title	Effect
1.	Definition	Provides for the <i>Land and Conveyancing Law Reform Act 2013</i> to be referred to in the Bill as the “Act of 2013”.
2.	Amendment of section 2 of Act of 2013	Provides for consequential amendments to <a href="#">section 2</a> of the 2013 Act to include references to the new section 2A in relation to section 2(5) and section 2(7) of the 2013 Act.
3.	Procedures to apply in certain proceedings	Provides for the introduction of a new section 2A, containing nine subsections, into the 2013 Act. This section sets out matters which a court must have regard to where it is considering granting an order for possession in repossession proceedings. This section also provides factors which the court may have regard to in determining whether the grant of an order of possession is proportionate. This provision also clarifies matters relating to Personal Insolvency Arrangements [PIAs] and when they come to an end.
4.	Short title and commencement	Standard provision that defines the short title of the Bill and provides for commencement by Ministerial order. Commencement orders may be limited to particular provisions of the Bill or purposes.

## Background

This Bill Digest provides general background information in relation to:

- repossession;
- recent developments aimed at addressing personal insolvency;
- the [Personal Insolvency Act 2012](#);
- EU (Consumer Mortgage Credit Agreements) Regulations 2016 [[S.I. 142/2016](#)]; and
- the Financial Services and Pensions Ombudsman.

## Repossession

Repossession occurs where a mortgage is taken out as a security over a property debt and there is a corresponding failure to repay the debt. This results in the surrender of the property which is sold to settle the debt. The Bill forms part of a considerable legislative regime introduced following the financial crash of 2009 to assist distressed home owners facing financial difficulties arising from personal debt and the potential of losing their homes. Repossession is supposed to represent a last resort which is only sought by credit institutions where all other restructuring and repayment options have been exhausted. The Irish Times reported in March 2018, that nearly 8,200 repossessions have taken place since the financial crash,<sup>5</sup> of these 2,700 came on foot of court orders, with the rest being voluntary.<sup>6</sup>

Where repossession takes place voluntarily the lending institution must get a court order to repossess or sell the property unless there is consent in writing 7 days before the repossession or sale. In cases of involuntary repossession, cases may commence in the Circuit Court or the High Court with applications for an Order of Possession. All repossessions relating to mortgages involving a principal private residence must be commenced in the Circuit Court as set out in [Section 3](#) of the [Land and Conveyancing Law Reform Act 2013](#). The procedure for commencing repossession proceedings is set out in [Order 5B](#) of the Circuit Court Rules. Cases are heard before the County Registrar and are transferred to a judge's list where a *prima facie* defence is disclosed in the Defendant's affidavit. Where a *prima facie* defence (below) is not disclosed the County Registrar can order repossession. Cases are listed in the [Legal Diary](#) under the relevant County Registrar's Civil list.

Unfortunately detailed statistics are not available in relation to repossession proceedings in the courts. Free Legal Advice Centres (FLAC)<sup>7</sup> has recommended that the Central Bank of Ireland and Courts Service work together to provide the following categories of statistical information:

A **prima facie defence** is one where on the face of it there is sufficient evidence supporting it to require an answer from the party bringing the claim.

<sup>5</sup> See Eoin Burke-Kennedy, "Homes of nearly 8,200 Irish mortgage holders repossessed since crash" Irish Times (09 March, 2018) <https://www.irishtimes.com/business/economy/homes-of-nearly-8-200-irish-mortgage-holders-repossessed-since-crash-1.3421091>.

<sup>6</sup> *Ibid.*

<sup>7</sup> FLAC is an advocacy group and human rights organisation which promotes access to justice.

- the number of the current cases against borrowers who form part of the 32,953 accounts in arrears for over two years;
- the number of these cases concerned properties in negative equity;
- the number of defendant borrowers who have not responded to the proceedings;
- the number of defendant borrowers who entered an appearance in response to the proceedings;
- the number that followed the appearance with a defence in the form of the required replying affidavit;
- the number of cases have been struck out or withdrawn and on what basis;
- the number of Possession Orders have been granted but have not yet been executed; and
- the number of cases currently before Circuit Courts across the country.<sup>8</sup>

FLAC has also recommended that a dedicated court/tribunal be set up with a jurisdiction limited to assessing problem mortgage arrears on a case-by-case basis with a view to proposing resolutions.<sup>9</sup>

### Recent developments aimed at addressing personal insolvency

The Bill is the most recent measure introduced to address increases in repossessions brought about by the collapse in the housing market following the financial crash. These measures include:

- **Abhaile**: this is the national Mortgage Arrears Resolution Service which was launched in October 2016. Abhaile provides free legal, financial and insolvency services to those in serious risk of losing their homes. Abhaile is coordinated by the Department of Justice and Equality and the Department of Social Protection.
- **Money Advice & Budgeting Service [MABS]**: this provides confidential assistance and support with individuals who are struggling to cope with debt. For people facing court proceedings MABS also operates a national network of court mentors. The role of MABS has been expanded in recent years with it now acting as a gateway to the Abhaile scheme.
- **Code of Conduct on Mortgage Arrears**: The Central Bank has issued a series of codes of conduct on mortgage arrears, with the most recent version coming into effect on 1<sup>st</sup> July, 2013.<sup>10</sup> This requires all lenders to put in place a Mortgage Arrears Resolution Process [MARP]. The MARP will generally provide for a series of protections for cooperating borrowers and is aimed at constructively addressing arrears. Lenders are required to inform any borrowers facing arrears of their MARP and also to direct distressed borrowers to the various independent services available, such as MABS.
- **Mortgage to Rent Scheme [MTR]**: The National Mortgage to Rent Scheme was updated in February 2017 to introduce new measures which will cover an increasing number of households. MTR operates to allow people facing losing their family home to stay in their home as social housing tenants. To avail of this scheme a number of criteria must be met. The property must be voluntarily surrendered to an Approved Housing Body who operates as a landlord. The tenant will have the opportunity to buy out the property at the end of a 5 year period at the market value of the property, although this is an unlikely outcome unless the financial position of the applicant alters significant in the 5 year period. Of the 4,475 cases which have been submitted under the MTR, only 445 have been completed. 3,043 applications

---

<sup>8</sup> FLAC, *The Courts Service Statement of Strategy 2018-2020: A submission by FLAC to the Courts Service* (October, 2017), at p. 16-17.

<sup>9</sup> *Ibid.*

<sup>10</sup> Available at <https://www.centralbank.ie/docs/default-source/Regulation/consumer-protection/other-codes-of-conduct/24-gns-4-2-7-2013-ccma.pdf?sfvrsn=4>.

were deemed ineligible or terminated during the application process, while 987 applications are actively being processed.<sup>11</sup>

- **The Insolvency Service of Ireland [ISI]:** The ISI is an independent statutory body which was established in March 2013. Its primary purpose is to restore insolvent people to solvency through the mechanisms set out in the [Personal Insolvency Act 2012](#).

### *Personal Insolvency Act 2012<sup>12</sup>*

[Part 3](#) of the 2012 Act introduced three new mechanisms which are aimed at assisting individuals struggling with debt. These three measures cannot be entered into simultaneously and can each only be availed of once in an applicant's lifetime. The measures are all managed to some extent by the ISI. Initially the effectiveness of the 2012 Act was hampered by the unwillingness of certain creditors to engage with Personal Insolvency Arrangements [PIAs]. This was remedied by the introduction of the [Personal Insolvency \(Amendment\) Act 2015<sup>13</sup>](#) which provides for a system of review of unreasonably rejected PIAs by the appropriate court.

The 2012 Act introduced the following new mechanisms:

- A **Debt Relief Notice<sup>14</sup>** [DRN] can be sought in relation to qualifying unsecured debt<sup>15</sup> up to €35,000 allowing it to be written off subject to a three year supervisory period. Applications are made to the ISI through Approved Intermediaries<sup>16</sup>. In some cases the creditor's consent will be required. There are a number of conditions required in relation to your level of disposable income and assets. A DRN has the effect of freezing any legal proceedings and preventing new proceedings being taken against qualifying debt during the three year period.
- A **Debt Settlement Arrangement<sup>17</sup>** [DSA] allows for the agreed settlement of qualifying unsecured debts over a period of 5 years. An application for a DSA is carried out by a Personal Insolvency Practitioner<sup>18</sup> [PIP]. Pending a DSA proposal the financial information of the applicant is sent to the ISI which issues a certificate to the Circuit or High Court (depending on the level of debt) from which a protective certificate can be granted. The grant of a protective certificate has the effect of freezing legal proceedings and preventing new proceedings being commenced in respect of qualifying debt for a initial period of 70 days, which can be extended by a further 40 days. The DSA proposal must be accepted by 65% (in value) of the applicant's creditors for it to take effect.

---

<sup>11</sup> These figures are accurate up to December 2018 and are accessible from the Housing Agency's website at <https://www.housingagency.ie/our-services/housing-supply-services/mortgage-to-rent.aspx>.

<sup>12</sup> The Bill's Tracker page for this legislation is available [here](#).

<sup>13</sup> The Bill's Tracker page for this legislation is available [here](#).

<sup>14</sup> Set out in [Part 3 Chapter 1](#) of the 2012 Act. For more information on DRNs and how they operate see: [http://www.citizensinformation.ie/en/money\\_and\\_tax/personal\\_finance/debt/personal\\_insolvency/debt\\_relief\\_notices.html](http://www.citizensinformation.ie/en/money_and_tax/personal_finance/debt/personal_insolvency/debt_relief_notices.html).

<sup>15</sup> A mortgage is a secured debt and therefore a DRN does not apply in respect of this debt.

<sup>16</sup> Approved Intermediaries are a network of qualified debt advice professionals appointed by the ISI to deal with Debt Relief Notices and are experts in the area of debt advice.

<sup>17</sup> Set out in [Part 3 Chapter 3](#) of the 2012 Act. For more information on DSAs see: [http://www.citizensinformation.ie/en/money\\_and\\_tax/personal\\_finance/debt/personal\\_insolvency/debt\\_settlement\\_arrangements.html](http://www.citizensinformation.ie/en/money_and_tax/personal_finance/debt/personal_insolvency/debt_settlement_arrangements.html).

<sup>18</sup> This is a professional authorised by the ISI who acts on behalf of the applicant throughout the DSA process

- The third new mechanism introduced by the 2012 Act is the **Personal Insolvency Arrangement**<sup>19</sup> [PIA]. A PIA applies in respect of secured debts totalling no more than €3 million and has similar procedural requirements to a DSA. A protective certificate can be granted in the same fashion as set out for DSAs. There are special conditions relating to mortgage arrears which must be met. Where successful a PIA allows for the restructuring of secured debts and the write off of unsecured debt. There is no discharge from secured debt unless explicitly provided for in the PIA. The main aim of a PIA is that at the end of the arrangement an applicant will be able to continue to reside in and retain ownership of their family home.

Discussing the regime introduced by the 2012 Act, O'Brien<sup>20</sup> notes:

“... [T]he principles underlying the three new debt solutions have proved to work, although it is suggested that a number of other enhancements to the existing framework may be required in order to drive efficiencies, reduce barriers to entry and to improve the overall process.”<sup>21</sup>

### **S.I. 142/2016: EU (Consumer Mortgage Credit Agreements) Regulations 2016**

The [European Union \(Consumer Mortgage Credit Agreements\) Regulations 2016](#) [the 2016 Regulations] transpose the [Mortgage Credit Directive \(Directive 2014/17/EU\)](#). The 2016 Regulations introduce measures aimed at harmonising consumer protection procedures in relation to mortgages. The 2016 Regulations require mortgage lenders and mortgage intermediaries (such as mortgage brokers) to provide standard pre-contract information to consumers in the form of the European Standardised Information Sheet. The 2016 Regulations came into effect on 21<sup>st</sup> March, 2016.

Among the principal provisions of the 2016 Regulations are:

- Regulation 8(1): requires creditors and mortgage credit intermediaries to “act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumer” when providing credit to consumers;
- Regulation 8(3): requires creditors and mortgage credit intermediaries to remunerate their staff in a manner consistent with compliance of the Regulations, i.e. they cannot reward staff who encourage or facilitate reckless lending to meet targets at the expense of consumers;
- Regulation 11: provides that any marketing or advertising of consumer credit agreements shall be “fair, clear and not misleading”;
- Regulation 15(4): requires creditors to provide a thirty day “reflection period” during which period the person seeking the mortgage can accept or reject the offer. During this period the creditor is bound by the agreement;
- Regulation 19: requires creditors and mortgage credit intermediaries to carry out creditworthiness assessments of consumers prior to concluding any credit arrangement with a view to determining the consumer’s capacity to honour the obligations under the credit agreement; and

---

<sup>19</sup> Set out in [Part 3 Chapter 4](#) of the 2012 Act. For more information on PIAs see: [http://www.citizensinformation.ie/en/money\\_and\\_tax/personal\\_finance/debt/personal\\_insolvency/personal\\_insolvency\\_arrangements.html](http://www.citizensinformation.ie/en/money_and_tax/personal_finance/debt/personal_insolvency/personal_insolvency_arrangements.html).

<sup>20</sup> Karen O'Brien LLB, LLM (International Commercial Law), PhD Researcher/Law Tutor, School of Law at the University of Limerick.

<sup>21</sup> Karen O'Brien, “Overview of the Irish Personal Insolvency Regime in 2018” (2018) 25(4) *Commercial Law Practitioner* 94, at p. 98.

- Regulation 29: requires creditors to exercise “reasonable forbearance” prior to initiating possession proceedings and at a minimum to act in accordance with Central Bank codes of practice.

## The Financial Services and Pensions Ombudsman [the FSPO]

The FSPO was formed with the merging of the Financial Services Ombudsman and the Pensions Ombudsman. The [Financial Services and Pensions Ombudsman Act 2017](#), which gave effect to this merger, came into force on the 1<sup>st</sup> January, 2018. The FSPO is an independent body charged with investigating, mediating and adjudicating on unresolved consumer complaints relating to financial service providers, including mortgage lenders. Complaints can be made to the FSPO relating to an offer for a financial services product, the provision of a financial services product or the failure to provide any financial services product. Under [section 44\(2\)\(b\)](#) of the 2017 Act, a complaint cannot be made to the FSPO until the financial service provider has been given a reasonable opportunity to deal with the complaint. The FSPO has extensive powers of investigation under [section 47](#) of the 2017 Act.

### Key powers of investigation under section 47

- Section 47(3) provides that the Ombudsman can require a person in possession of information relevant to their investigation to provide that information in writing or orally, or to produce to him any document containing that information;
- Section 47(6) provides that the Ombudsman has the power to enter and inspect business premises, or any document found on a premises, where financial service providers carry on their business;
- Section 47(8) provides that the Ombudsman in investigating a complaint shall “have all the powers, rights and privileges vested in the High Court or a judge of that court on the hearing of civil proceedings in respect of the examination of witnesses, including the administration of oaths and affirmations and the examination of witnesses outside the State.”

## Opinion of the European Central Bank

On 14<sup>th</sup> January 2019 the Bill was submitted by the Department of Justice, Equality and Law Reform to the ECB for an opinion. This was delivered by the ECB on 18 February 2019.<sup>22</sup> The ECB's competence to deliver an opinion is based on [Articles 127\(4\) and 282\(5\) of the Treaty on the Functioning of the European Union](#) and the sixth indent of [Article 2\(1\) of Council Decision 98/415/EC](#).<sup>23</sup>

The ECB makes three principal observations in its opinion:

1. That the matters listed in the Bill partly reflect the case law of the Irish Supreme Court<sup>24</sup> on this topic, and the Code of Conduct on Mortgage Arrears, introduced by the Central Bank of Ireland (CBI) in 2013, while the draft law also expressly sets out the range of matters which a court is obliged to take into account when considering whether to make or refuse a possession order.
2. That the measures provided for in the Bill may impact financial institutions ability to address issues relating to non-performing loans [NPLs]. It recommends that further consideration is given to the potential for the measures in the Bill to protract what are already lengthy legal proceedings, resulting in increased legal costs. The ECB also note that:

“If banks (or secondary market purchasers of assets) are deprived of efficient tools to work out NPLs in an effective and timely manner, this could result in unnecessarily high levels of NPLs and private sector debt, which in turn have an adverse impact on financial stability and could undermine future credit supply. Moreover, when pricing mortgages, banks take account of many factors, including the actual and future cost of funding, expenses and overheads, the cost of capital, and expected credit losses. The impact of the draft law on these factors, and in particular on the ability of the lender to enforce security and the potential corresponding increase in default rates, should also be carefully considered. This is because additional costs are likely to be passed on to future borrowers, and could result in a significant impact on mortgage pricing and availability.”<sup>25</sup>
3. That the measures provided for in the Bill may impact the secondary market for credit institution assets. The ECB highlight the important role of secondary markets in relation to the transfer of NPLs from the balance sheets of credit institutions, and the significance of this in relation to ensuring financial stability. The ECB also raised concerns about a provision which would apply where the lender was not the original lender which provided the court may take into account in determining the proportionality of an order for

---

<sup>22</sup> See Opinion of the European Central Bank of 18 February 2019 on court orders for possession of principal private residences (CON/2019/8), available at [https://www.ecb.europa.eu/ecb/legal/pdf/en\\_opinion\\_con-2019-8\\_ie\\_on\\_court\\_orders\\_for\\_possession\\_of\\_principal\\_private\\_residences\\_.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/en_opinion_con-2019-8_ie_on_court_orders_for_possession_of_principal_private_residences_.pdf).

<sup>23</sup> The ECB's competence arises in this case as the Bill relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets and the tasks conferred upon the ECB concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty.

<sup>24</sup> *Launceston Property Finance Limited v. Burke*, [2017] IESC 62.

<sup>25</sup> See Opinion of the European Central Bank of 18 February 2019, Note 21, at para 2.2.4.

possession the advised market value of the principal private residence at the time the new lender acquired the mortgage. The ECB called for clarity in respect of how an assessment of this factor would assist a court in determining proportionality in circumstances where the seeking of an order for possession is meant to be a last resort.<sup>26</sup> The ECB went on to state:

“The draft law should also consider how issues of adverse selection may be avoided. While lenders remain responsible for prudently assessing collateral values, it is important to maintain sufficient incentives for repayment and effective safeguards to prevent strategic defaults.”<sup>27</sup>

---

<sup>26</sup> The Bill as published does not provide for this factor to be considered in determining proportionality.

<sup>27</sup> See Opinion of the European Central Bank of 18 February 2019, Note 21, at para 2.3.3.

## Principal Provisions of the Bill

This section of the Digest examines the main provisions of the Bill. The Bill comprises four sections. Section 1 of the Bill sets out that reference to the “Act of 2013” refers to the *Land and Conveyancing Law Reform Act 2013*. Section 4 of the Bill relates to the short title and commencement of the Bill. These are standard provisions and for that reason they are not discussed below. A short synopsis of each provision is given in the Table of Provisions (above).

### Adjournment of proceedings

The 2013 Act provides that a court may, when considering whether to grant a repossession order to a lender in respect of a borrower’s principal private residence, adjourn the proceedings to facilitate consultation with a personal insolvency practitioner [PIP] with a view to concluding a Personal Insolvency Arrangement [PIA] in respect of the borrower under the 2012 Act. A successfully concluded PIA will act as an alternative to repossession and will permit the borrower to remain in his or her principal private residence.

Section 2 of the Bill provides for consequential amendments to [section 2](#) of the 2013 Act. Section 2 of the 2013 Act relates to adjournments of proceedings to facilitate the making of PIAs. These amendments provide for the inclusion of references to the new section 2A in relation to section 2(5) and section 2(7) of the 2013 Act. Section 2(5) of the 2013 Act provides that where an adjournment takes place under section 2, the court may direct that the proceedings stand adjourned to another venue in the same circuit of the Circuit Court.<sup>28</sup> Section 2(7) of the 2013 Act defines a number of relevant terms that apply in relation to section 2 and [section 3](#).

### Procedures to apply in certain proceedings

Section 3 of the Bill sets out the content of the new section 2A. Section 2A contains 9 subsections. These are each discussed separately below.

#### Scope of Section 2A

Section 2A(1) sets out the types of proceedings under section 2 of the 2013 Act in which the new section 2A will apply. These include where an adjournment is granted under section 2 of the 2013 Act, where an adjournment was applied for under section 2(2) of the 2013 Act and this adjournment application was refused, where the mortgagor has participated in good faith in a designated scheme or where the mortgagor has engaged the services of a PIP but no PIA was made or the PIA has come to an end.

#### Mandatory and discretionary matters for the court’s consideration

Section 2A(2) provides that where the court is considering whether to grant an order for possession it shall take account of the matters set out in subsection 3 and other additional matters

---

<sup>28</sup> More information about the different sittings and circuits of the Circuit Court is available at <http://www.courts.ie/Courts.ie/Library3.nsf/16c93c36d3635d5180256e3f003a4580/d9a558ece086f70e8025833d0052f1f1?OpenDocument>.

it considers appropriate. The court may consider the matters set out in subsection 3 in relation to the making of any other orders it considers appropriate in the circumstances.

### Relevant factors

Section 2A(3) lists out the relevant matters to be considered by the court. These include:

- (a) the proportionality of making an order in all the circumstances;
- (b) the circumstances of the mortgagor and their dependants where the residence is their principal private residence;
- (c) whether the mortgagee has made a statement offering terms of settlement that would allow the mortgagor and their dependants to remain in the principal private residence;
- (d) the details of any proposals made by or on behalf of the mortgagor to enable the mortgagor and their dependants to reside at the principal private residence (including proposals relating to participation in designated schemes) or to secure alternative accommodation;
- (e) the response of the mortgagee to proposals under section 2A(3)(d); and
- (f) the conduct of the parties in relation to attempts to resolve the arrears arising from the mortgage.

### Relevant factors for determining proportionality

Section 2A(4) sets out the following factors which a court may consider when determining the proportionality of orders under section 2A(3)(a). These include:

- (a) the total amount that remains to be paid to the mortgagee on foot of the mortgage or associated loan agreement;
- (b) the amount of arrears of payments due; and
- (c) the advised market value of the principal private residence on the date on which the proceedings were commenced.

### PIA clarification

Section 2A(5) sets out that section 2A applies where a proposal for a PIA that includes measures relating to the principal private residence has either not been made or has been made but the PIA procedure has come to an end.

Section 2A(6) specifies for the purposes of section 2A when a PIA procedure is considered to have come to an end. These include:

- where a PIP has prepared a PIA to which the debtor consents to the calling of a creditors' meeting to consider the PIA, but the meeting does not take place before the expiry of the protective certificate ([section 106\(3\)](#) of the 2012 Act);
- where following a vote at a creditors' meeting the PIA is not approved ([section 108\(8\)\(b\)](#) of the 2012 Act);
- where there is only one creditor and they do not approve the PIA, or the PIP fails to give the creditor a written notice of the proposal before the expiry of the protective certificate ([section 111A](#) (8) and (9) of the 2012 Act);

- where a court upholds an objection to a PIA under [section 120](#) of the 2012 Act ([section 114\(3\)](#) of the 2012 Act);
- where an application for a court review of a PIA has been made in accordance with [section 115A](#) of the 2012 Act and the court refuses to make an order confirming the coming into effect of the PIA; and
- where the PIA is deemed to have failed after a six month arrears default ([section 123](#) of the 2012 Act).

### Designated schemes

Section 2A(7) provides that the Minister may designate schemes to come under section 2A. Schemes may be designated once the Minister is satisfied the scheme seeks to enable people to address arrears relating to the principal private residence and facilitate people remaining in their principal private residence, and it is reasonably likely that the assistance will be provided under the scheme.

### Advised market value

Section 2A(8) defines advised market value of a principal private residence as “such value as specified in a statement of the advised market value of the principal private residence, provided by a licensee.”

### Definitions

Section 2A(9) sets out a number of definitions of various terms that are used in section 2A.



## Contact:

Houses of the Oireachtas  
Leinster House  
Kildare Street  
Dublin 2  
D02 XR20

[www.oireachtas.ie](http://www.oireachtas.ie)  
Tel: +353 (0)1 6183000 or 076 1001700  
Twitter: @OireachtasNews

Library & Research Service  
Tel: +353 (0)1 6184701  
Email: [library.and.research@oireachtas.ie](mailto:library.and.research@oireachtas.ie)

Connect with us

