

General Scheme of Personal Insolvency (Amendment) [No. 1] Bill 2020

Head 1- Amendment of section 26 of the Personal Insolvency Acts

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Head 1- Amendment of section 26 of the Personal Insolvency Acts

Provide that:

Section 26 of the Personal Insolvency Act 2012 is amended by the substitution of the following for subsection (2)(c):

“(c) has assets, calculated in accordance with subsection (6), worth €1,500 or less;”

Explanatory Note:

The purpose of this amendment is to increase the asset ceiling for a debtor to be eligible for a Debt Relief Notice, from €400 to €1,500. (Certain essential assets of a debtor are excluded in calculating this ceiling, as set out below.)

Section 26 sets out the eligibility criteria for an insolvent debtor applying for a Debt Relief Notice (‘DRN’). The Debt Relief Notice is one of the three statutory insolvency solutions provided under the Personal Insolvency Acts (along with the Debt Settlement Arrangement and the Personal Insolvency Arrangement).

The DRN is suited to an insolvent person with very little, or no, disposable income or assets that they could use to repay what they owe, and whose total qualifying debts do not exceed €35,000.

To be eligible for a DRN, the person must:

- have debts (secured and/or unsecured) not exceeding €35,000 in total,
- show that s/he is unlikely to be able to repay those debts, and that it is unlikely his/her financial situation will improve within the next 3 years;
- have net income (including welfare benefits other than child benefit) not exceeding €60 per month, after various deductions including reasonable living expenses for the debtor and any dependants; and
- ***have assets of maximum value €400 euro.*** (The following assets are *excluded* in calculating this maximum value:
 - reasonably necessary household items for the debtor and any dependants, and books, tools or other equipment used by the debtor that are reasonably necessary for their work, up to a maximum total value of €6,000;
 - one motor vehicle which is reasonably necessary for the debtor’s everyday activities, which is worth not more than €5,000 (S.I. 594/2017), or is specially designed/adapted to the disability of the debtor or of their dependent;
 - one item of personal jewellery (up to a maximum value of €750); and
 - reasonably necessary books, materials and equipment for the debtor or dependent to participate in education.)

In addition, a DRN may not be issued to any person who has obtained a DRN previously; or who has either been bankrupt, or obtained a Debt Settlement Arrangement or Personal Insolvency Arrangement, within the previous 6 years.

MABS, the Money Advice and Budgeting Service, recommended in September 2020 that the replacement ceiling of €1,000 (proposed in 2017 in the statutory review of the Personal Insolvency Acts), should be increased to €1,500, to take account of a difficulty that has emerged in relation to the payment in lump sums of certain State social protection grants, allowances or benefits, including Fuel Allowance and Carer's Support Grant.

Such payments, lodged to the person's bank or credit union account, can have the effect of bringing a person over a €1,000 ceiling.

Head 2 - Amendment of section 27 of the Personal Insolvency Acts

Provide that:

Section 27 of the Personal Insolvency Act 2012 is amended by the insertion of the following new subsection after subsection (2):

(2A)

(a) For the purposes of subsection (2), 'meeting' means:

- (i) a gathering of the debtor and the approved intermediary, both present in person at the same time and in the same location, or*
- (ii) [an interaction/ a remote gathering] of the debtor and the approved intermediary by means of electronic communications technology.*

(b) The Insolvency Service, with the consent of the Minister, may by regulations provide for meetings under subsection (2) to be held by means of electronic communications technology.

(c) In making any regulations under paragraph (b), the Insolvency Service may prescribe the electronic communications technology by which the meeting is to be conducted and shall have regard to:

- (i) the risks to public health, and in particular to the health and safety of debtors and approved intermediaries, posed by the disease known as COVID-19,*
- (ii) such regulations and orders as have been made by the Minister for Health under, respectively, sections 31A and 31B of the Health Act 1947, as inserted by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, and*
- (iii) any other factors which, in the view of the Insolvency Service, make it desirable, in the interests of effective access and participation by the debtor, to hold the meeting by means of electronic communications technology.*

(d) In this section, "electronic communications technology", means technology that enables real time transmission and real time two-way audio-visual or audio communication enabling the debtor and the approved intermediary to participate in the meeting from separate locations. '

Explanatory Note

The intention of this amendment is to ensure that the important preliminary advisory meeting which the Act requires, may be either a face to face meeting, or – in appropriate

circumstances – by means of remote communications technology. This will be particularly relevant in the context of COVID-19 restrictions, which may make a face to face meeting impracticable, but need not be limited to that context.

Section 27 of the Personal Insolvency Acts sets out how the Debt Relief Notice (DRN) process is initiated. Under subsection (1), the debtor provides detailed information on his or her financial difficulties and resources to an Approved Intermediary (AI), a regulated financial adviser who is authorised by the Insolvency Service of Ireland. Subsection (2) provides that:

*“(2) Following receipt of the information referred to in subsection (1), the approved intermediary **shall hold a meeting with the debtor, and, at that meeting ...**”*

the AI will advise the debtor, based on the information provided, whether s/he is eligible to apply for a DRN, what that process involves and its pros and cons for the debtor, and of any alternative options (Personal Insolvency Arrangement, Debt Settlement Arrangement, bankruptcy, ...) and their general effect.

Subsections (3) onwards set out the concrete steps to be taken if, following that advice meeting with the AI, the debtor wishes to authorise the AI to act on his or her behalf in preparing a DRN application.

The Acts do not define what is meant by a ‘meeting’ in this section, but it is understood to refer to a gathering of two or more persons both present in the same place at the same time.

However, the meeting between the debtor and the AI must also take place in a timely manner; and may be urgent, if the debtor’s financial position is precarious.

In the context of the COVID-19 pandemic and of social distancing guidelines, particularly for older debtors, the presence of the debtor and the AI in the same place for a face to face meeting may not always be practicable within the necessary time frame.

Provision should therefore be made to enable alternative meetings, using electronic communications technology, where that is possible for the debtor and AI concerned. It appears desirable for detailed provision on the use of such technology to be made by the Insolvency Service of Ireland, with the approval of the Minister.

Head 3- Amendment of section 49 of the Personal Insolvency Acts

Provide that:

Section 49 of the Personal Insolvency Acts is amended by the insertion of the following subsection after subsection (2):

(2A)

(a) For the purposes of subsection (2), ‘meeting’ means:

- (i) a gathering of the debtor and the approved intermediary, both present in person at the same time and in the same location, or*
- (ii) [an interaction/ a remote gathering] of the debtor and the approved intermediary by means of electronic communications technology.*

(b) The Insolvency Service, with the consent of the Minister, may by regulations provide for meetings under subsection (2) to be held by means of electronic communications technology.

(c) In making any regulations under paragraph (b), the Insolvency Service may prescribe the electronic communications technology by which the meeting is to be conducted and shall have regard to:

- (i) the risks to public health, and in particular to the health and safety of debtors and approved intermediaries, posed by the disease known as COVID-19,*
- (ii) such regulations and orders as have been made by the Minister for Health under, respectively, sections 31A and 31B of the Health Act 1947, as inserted by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, and*
- (iii) any other factors which, in the view of the Insolvency Service, make it desirable, in the interests of effective access and participation by the debtor, to hold the meeting by means of electronic communications technology.*

(d) In this section “electronic communications technology”, means technology that enables real time transmission and real time two-way audio-visual or audio communication enabling the debtor and the approved intermediary to participate in the meeting from separate locations. ‘

Explanatory Note

The intention of this amendment is to ensure that the important preliminary advisory meeting which the Act requires, may be either a face to face meeting, or – in appropriate circumstances – by means of remote communications technology. This will be

particularly relevant in the context of COVID-19 restrictions, which may make a face to face meeting impracticable, but need not be limited to that context.

Section 49 of the Act sets out how the debtor initiates an application under the Acts for a Debt Settlement Arrangement (DSA) or for a Personal Insolvency Arrangement (PIA). Under subsection (1), the debtor provides detailed information on his or her financial difficulties and resources to a Personal Insolvency Practitioner ('PIP'), a regulated financial adviser who is authorised by the Insolvency Service of Ireland. Subsection (2) provides that:

“(2) Following receipt of the information referred to in subsection (1), the personal insolvency practitioner ... shall hold a meeting with the debtor...”

at which the PIP will advise the debtor, based on the information provided, of his or her options for addressing their financial difficulties (Personal Insolvency Arrangement, Debt Settlement Arrangement, bankruptcy, ...), whether the debtor is eligible for the options considered, the process involved for each option, and its pros and cons for the debtor.

Subsections (3) onwards set out the concrete steps to be taken if, following that advice meeting with the PIP, the debtor wishes to appoint the PIP to act on his or her behalf in preparing a DSA or PIA application.

The Acts do not define what is meant by a 'meeting' in this section, but it is understood to refer to a gathering of two or more persons, both present in the same place at the same time.

However, the meeting between the debtor and the PIP must also take place in a timely manner; and may be urgent, if the debtor's financial position is precarious.

In the context of the COVID-19 pandemic and of social distancing guidelines, particularly for older debtors, the presence of the debtor and the PIP in the same place for a face to face meeting may not always be practicable within the necessary time frame. In addition, local public health restrictions arising from the pandemic may at times make it difficult for debtors and PIPs to travel to meet each other, particularly if based on rural areas.

Provision should therefore be made to enable alternative meetings using electronic communications technology, where that is possible for the debtor and PIP concerned. It appears desirable for detailed provision on the use of such technology to be made by the Insolvency Service, with the approval of the Minister.

Head 4 - Amendment of section 54 of the Personal Insolvency Acts

Provide that:

Section 54 of the Personal Insolvency Acts is amended by the substitution of the following for paragraph (d):

“(d) having regard to the debtor’s circumstances as set out in the Prescribed Financial Statement, it is appropriate for the debtor to make a proposal for a Debt Settlement Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor becoming solvent within a period of not more than 5 years or, as the case may be, it is appropriate for the debtor to make a proposal for a Personal Insolvency Arrangement as there is a reasonable prospect that the debtor entering into such an arrangement would facilitate the debtor becoming solvent within a period of not more than 56 years.”

Explanatory Note

This is a technical amendment, but one which is important to avoid any lack of clarity on a key issue which is very relevant to other sections under amendment.

It seeks to correct a typographical error in the final words of Section 54 of the Personal Insolvency Acts, which prescribe the contents of a key statement to be made by the debtor’s personal insolvency practitioner (‘PIP’). Under section 91(1)(f), the debtor is not eligible to propose a Personal Insolvency Arrangement unless the PIP has completed this statement.

Under subsection (d), the statement must confirm that in the PIP’s professional opinion, it is appropriate for the debtor to propose a Personal Insolvency Arrangement (‘PIA’) to his or her creditors, as there is a reasonable prospect that entering into such an arrangement will facilitate the debtor returning to solvency within the maximum duration of the arrangement. The maximum duration of the Arrangement is material: for example, a debtor may be able to propose a repayment structure which is manageable for him or her, and at the same time sufficient to obtain the consent of their creditors, if the debtor has a six year period available to them, but not over a shorter period.

However, the current wording of section 54(d) incorrectly states the maximum duration of a PIA as 5 years. In fact, the maximum duration of a Personal Insolvency Arrangement is 6 years (‘72 months’), as specified in s. 99(2)(b).

Head 5- Delegation and outsourcing by personal insolvency practitioner

Provide that:

Part 3, Chapter 2 of the Personal Insolvency Acts is amended by the insertion after section 54 of the following new section:

“Delegation and outsourcing by personal insolvency practitioner

54A.

- (1) *Nothing in this Act shall be taken to prevent any person*
- (a) *employed by a personal insolvency practitioner, or*
 - (b) *otherwise acting under the control and supervision of a personal insolvency practitioner and having a common employer with that personal insolvency practitioner,*
- from discharging any function (or performing any act in relation to such function) that is authorised or required by this Act to be discharged by a personal insolvency practitioner.*
- (2) *Nothing in this Act shall be taken to prevent any person, other than the person referred to in subsection (1), engaged by or on behalf of a personal insolvency practitioner from carrying out any activity associated with the functions of the personal insolvency practitioner.*
- (3) *Notwithstanding subsection (1) or subsection (2), the personal insolvency practitioner concerned shall, for all purposes under this Act, remain responsible in all respects for [the exercise of] his or her functions under this Act.”*

Explanatory Note

Part 3, Chapter 2 (sections 48 to 54) of the Personal Insolvency Acts provides for the debtor to appoint a personal insolvency practitioner (‘PIP’), where a debtor wishes to become a party to a Debt Settlement Arrangement or a Personal Insolvency Arrangement.

There are provisions in the Act permitting a PIP to delegate certain administrative tasks to staff. Section 49(2), moreover, allows a PIP to delegate to ‘*an employee of that personal insolvency practitioner acting under his or her direction and control*’, the holding of the required statutory meeting with the debtor to advise him or her of their options for returning to solvency and to explain the process, likely effect, and pros and cons for the debtor, of those options.

However, there is no provision permitting a PIP to delegate other required functions under the Act to a member of his or her staff acting under the PIP’s supervision and control. This creates difficulty where a PIP is dealing with numerous cases: for example, a court date in one debtor’s case, which can be fixed at short notice, may conflict with a date fixed for a different debtor’s case in a different court Circuit, or

with a date committed for chairing the statutory creditors' meeting in the case of a third debtor.

This new section is intended to enable a PIP to delegate more tasks - including, for example, the chairing of a creditors' meeting - to a member of their staff or to a colleague in the same firm, who is operating under their direction and control. At the same time, the section seeks to ensure that the PIP will remain responsible for the exercise by such a person of any of the PIP's functions or duties under the Personal Insolvency Acts.

The proposed amendment will also provide necessary flexibility to accommodate social distancing requirements – if, for example, a PIP is obliged to self-isolate for a period if a client tests positive – and will assist with managing any increase in workload arising from the economic impact of the pandemic.

Head 6 – Amendment of section 61 of the Personal Insolvency Acts

Provide that:

Section 61 of the Personal Insolvency Acts is amended by:

(a) the substitution for subsection (5) of the following :

*“(5) Subject to subsections (6), (7) **and** (7A) and section 76(2), a protective certificate shall be in force for a period of 70 days from the date of its issue.”*

(aa) the substitution for subsection (6) of the following :

‘(6) Where a protective certificate has been issued pursuant to subsection (2)(a) [or extended under subsection (7) or (7A)], the appropriate court may, on application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where—

(a) the debtor and the personal insolvency practitioner satisfy the court that they have acted in good faith and with reasonable expedition, and

(b) the court is satisfied that it is likely that a proposal for a Debt Settlement Arrangement which is likely—

(i) to be accepted by the creditors, and

(ii) to be successfully completed by the debtor,

will be made if the extension is granted. ‘

(b) the substitution for subsection (7) of the following :

*“(7) Where a protective certificate has been issued pursuant to subsection (2)(a) or extended under subsection (6) **or** (7A), the appropriate court may on application to that court **by a personal insolvency practitioner** extend the period of the protective certificate by ~~a further~~ **an** additional period not exceeding 40 days where—*

*(a) the personal insolvency practitioner has been appointed in accordance with section ~~49(7)~~ **49A, 49B or 49C** and*

(b) the court is satisfied that the extension is necessary to enable the personal insolvency practitioner so appointed to perform his or her functions under this Chapter.”

(c) the insertion after subsection (7) of the following new subsection :

“(7A) Where a protective certificate has been issued pursuant to subsection (2)(a), or extended under subsection (6) or (7), the appropriate court may on application to that court by the personal insolvency practitioner, extend

the period of the protective certificate by an additional period not exceeding 40 days, where the court is satisfied, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, that it would be just to permit the extension.”

(d) the substitution for subsection (8) of the following :

*“(8) A hearing held under **this section** ~~subsection (7)~~ shall be held with all due expedition.”*

(e) the substitution for subsection (9) of the following :

*“(9) The period of a protective certificate may be extended ~~under subsection (7)~~ once only **under each of subsections (7) and (7A)**.”*

and

(f) the substitution for subsection (13) of the following:

*“(13) Notwithstanding the provisions of subsections (5), (6), (7) **and (7A)**, a protective certificate that is in force on the date on which a proposal for a Debt Settlement Arrangement is approved in accordance with section 73 shall continue in force until it ceases to have effect in accordance with section 76.”*

Explanatory Note

A Protective Certificate is a key preliminary step, under the Personal Insolvency Acts, for an insolvent debtor who wishes to restructure his or her debts, and return to solvency, by proposing a Debt Settlement Arrangement for the agreement of his or her creditors. (A Debt Settlement Arrangement (‘DSA’) is designed for resolving unsecured debts only).

This amendment will clarify the two different situations in which a Protective Certificate may be extended - currently, there is an outdated reference in the wording of the section, which gives rise to confusion. And it will allow, exceptionally, for a further extension, if the court considers that it would be just in response to circumstances outside the control of the debtor; this change is particularly important and necessary, in the light of the COVID-19 pandemic.

The Protective Certificate is a Court order, which remains in force for 70 days after date of issue, and temporarily restrains creditors from taking action to enforce the debts owed by the debtor. It seeks, in this way, to provide a brief protected period, during which the debtor’s Personal Insolvency Practitioner (‘PIP’) can formulate a viable Debt Settlement Arrangement proposal for the debtor, present it to creditors, and seek to secure their acceptance by the necessary qualified majority vote.

Under the current provisions, the Court may extend the 70-day period for up to 40 days, in two different situations: under section 61(6), and under section 61(7).

Subsection (6) provides that the Court may, on application by the debtor's PIP, extend the period of the protective certificate '*by an additional period not exceeding 40 days*', if the Court is satisfied on two conditions:

- that the debtor and his or her PIP have 'acted in good faith and with reasonable expedition', and
- that if the extension is granted, it is '*likely*' that a DSA proposal will be made which is '*likely to be accepted by the creditors, and to be successfully completed by the debtor*'.

Subsection (7) provides that the Court may, on application, extend the period of the protective certificate by '*a further additional period not exceeding 40 days*' where –

- the debtor has appointed a new PIP to represent him or her, under section 49(7) of the Act, and
- the Court is satisfied that such extension is '*necessary to enable the [PIP] so appointed to perform his or her functions*' in relation to a Debt Settlement Arrangement.

Section 49(7) formerly provided for the debtor to appoint a replacement PIP, if the PIP s/he had first appointed became incapable of acting for the debtor (for specified reasons such as illness, death, resignation or loss of ISI authorisation.) However, that section was deleted in 2013 and replaced with new provisions located elsewhere in the Act – sections 49A, 49B and 49C. The reference here to subsection 49(7) therefore needs to be updated.

A new subsection (7A) is also proposed, providing a new power for the court to grant a further extension to a protective certificate, not exceeding 40 days, where the court is satisfied that it would be just to do so, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and of the PIP.

Under the proposed amendments, subsections (6), (7) and (7A) will each provide for a possible extension of up to 40 days. However, each subsection is directed to specified, and quite different, circumstances.

The proposed new (7A) has been developed to respond to the economic impact of COVID-19 on small businesses and on employment. For example, the debtor's financial situation may fluctuate unpredictably at short notice, for reasons outside their control, due to temporary business closures under public health requirements, or to temporary lay-offs, pay cuts or short time working arising from the economic impact of the pandemic. In such a situation the PIP may not immediately be able to gauge what will be the new financial position of the debtor and what revisions might be required to the debtor's proposal for a Debt Settlement Arrangement. More time may be needed to resolve these questions.

The new extension proposed at (7A) should assist the PIP in ensuring that any proposal will still be sustainable for the debtor and realistic for the creditors, if and when such a situation of uncertainty arises.

Head 7: Amendment of section 95 of the Personal Insolvency Acts

Provide that:

Section 95 of the Personal Insolvency Acts is amended by:

(a) the substitution for subsection (5) of the following :

*“(5) Subject to subsections (6), (7) **and (7A)** and sections 113(2) and 115A(5), a protective certificate shall be in force for a period of 70 days from the date of its issue.”*

(aa) the substitution for subsection (6) of the following :

*‘(6) Where a protective certificate has been issued pursuant to subsection (2)(a) **or extended under subsection (7) or (7A)**, the appropriate court may, on application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where—*

(a) the debtor and the personal insolvency practitioner satisfy the court that they have acted in good faith and with reasonable expedition, and

(b) the court is satisfied that it is likely that a proposal for a Personal Insolvency Arrangement which is likely—

(i) to be accepted by the creditors, and

(ii) to be successfully completed by the debtor,

will be made if the extension is granted.’

(b) the substitution for subsection (7) of the following :

*“(7) Where a protective certificate has been issued pursuant to subsection (2)(a) or extended under subsection (6) **or 7A**, the appropriate court may on application to that court **by a personal insolvency practitioner** extend the period of the protective certificate by a further additional period not exceeding 40 days where—*

*“(a) the personal insolvency practitioner has been appointed in accordance with section ~~49(9)~~ **49A, 49B or 49C**, and*

(b) the court is satisfied that the extension is necessary to enable the personal insolvency practitioner so appointed to perform his or her functions under this Chapter.”.

(c) the insertion after subsection (7) of the following new subsection :

“(7A) Where a protective certificate has been issued pursuant to subsection (2)(a), or extended under subsection (6) or (7), the appropriate court may on

application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where the court is satisfied, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, that it would be just to permit the extension.”

(d) the substitution for subsection (8) of the following:

*“(8) A hearing under **this section** shall be held with all due expedition.”*

(h) the substitution for subsection (9) of the following :

*“(9) The period of a protective certificate may be extended **once only under each of subsections (7) and (7A).**”*

(i) the substitution for subsection (13) of the following :

*“(13) Notwithstanding the provisions of subsections (5), (6), (7) **and (7A)**, a protective certificate that is in force on the date on which a proposal for a Personal Insolvency Arrangement is approved in accordance with section 110 shall continue in force until it ceases to have effect in accordance with section 113.”*

Explanatory Note

A Protective Certificate is a key preliminary step, under the Personal Insolvency Acts, for an insolvent debtor who wishes to restructure his or her debts, and return to solvency, by proposing a Personal Insolvency Arrangement for the agreement of his or her creditors. (A Personal Insolvency Arrangement (‘PIA’) is designed for resolving secured debt, and may also include unsecured debts).

This amendment will clarify the two different situations in which a Protective Certificate may be extended - currently, there is an outdated reference in the wording of the section, which could give rise to confusion. And it will allow, exceptionally, for a further extension, if the court considers that it would be just in response to circumstances outside the control of the debtor. This change is particularly important and necessary, in the light of the COVID-19 pandemic.

The Protective Certificate is a Court order, which remains in force for 70 days from the date of issue, and temporarily restrains creditors from taking action to enforce the debts owed by the debtor. It seeks, in this way, to provide a brief protected period, during which the debtor’s Personal Insolvency Practitioner (‘PIP’) can formulate a viable Personal Insolvency Arrangement proposal for the debtor, present it to creditors, and seek to secure their acceptance by the necessary triple majority vote.

Under the current provisions, the Court may extend the 70-day period for up to 40 days, in two different situations: under section 95(6), and under section 95(7).

Subsection (6) provides that the Court may, on application by the debtor's PIP, extend the period of the protective certificate '*by an additional period not exceeding 40 days*', if the Court is satisfied on two conditions:

- that the debtor and his or her PIP have 'acted in good faith and with reasonable expedition', and
- that if the extension is granted, it is '*likely*' that a proposal will be made for a Personal Insolvency Arrangement which is '*likely to be accepted by the creditors, and to be successfully completed by the debtor*'.

Subsection (7) provides that the Court may, on application, extend the period of the protective certificate by '*a further additional period not exceeding 40 days*' where –

- the debtor has appointed a new PIP to represent him or her, under section 49(9) of the Act, and
- the Court is satisfied that such extension is '*necessary to enable the [PIP] so appointed to perform his or her functions*' in relation to a Personal Insolvency Arrangement.

The reference here to appointment of a replacement PIP needs to be updated. Firstly, the reference to section 49(9) should have been to section 49(7) in the 2012 Act, which provided for the debtor to appoint a replacement PIP. (Section 49(9) was an ancillary provision on the validity of acts done by the original and replacement PIP respectively: it did not deal with the appointment of either of them, and it was deleted in 2013.)

Secondly, while section 49(7) formerly provided for the debtor to appoint a replacement PIP, if the PIP s/he had first appointed became incapable of acting for the debtor (for specified reasons such as illness, death, resignation or loss of ISI authorisation) - that section was also deleted in 2013, when it was replaced with new provisions located elsewhere in the Act – sections 49A, 49B and 49C.

The amendment, accordingly, proposes to update and clarify subsection 95(7), to refer to the provisions now in effect regarding the appointment of a replacement PIP.

A new subsection (7A) is also proposed, providing a new power for the court to grant a further extension to a protective certificate, not exceeding 40 days, where the court is satisfied that it would be just to do so, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and of the PIP.

Under the proposed amendments, subsections (6), (7) and (7A) will each provide for a possible extension of up to 40 days. However, each subsection is directed to specified, and quite different, circumstances.

The proposed new (7A) has been developed to respond to the economic impact of COVID-19 on small businesses and on employment. For example, the debtor's financial situation may fluctuate unpredictably at short notice, for reasons outside their control, due to temporary business closures under public health requirements, or to temporary lay-offs, pay cuts or short time working arising from the economic impact of the pandemic. In such a situation the PIP may not immediately be able to gauge what will be the new financial position of the debtor and what revisions might be required to the debtor's proposal for a Personal Insolvency Arrangement. More time may be needed to resolve these questions.

The new extension proposed at (7A) should assist the PIP in ensuring that any proposal will still be sustainable for the debtor and realistic for the creditors, if and when such a situation of uncertainty arises.

Head 8: Amendment of section 115A (2) of the Personal Insolvency Acts

Provide that:

Section 115A of the Personal Insolvency Acts is amended by:

(a) the substitution in subsection (2), for ‘*An application under this section shall be made not later than 14 days after the creditors’ meeting ...*’, of

‘*An application under this section shall, **subject to subsection (2A)**, be made not later than 14 days after the creditors’ meeting ...*’;

(b) the insertion after subsection (2) of the following new subsection:

“(2A) The appropriate court may, on application to it by a personal insolvency practitioner on behalf of the debtor, extend the period referred to in subsection (2) within which an application shall be made under subsection (1), where the court is satisfied that:

- (a) the failure to make such application within the period referred to in subsection (2) was due to exceptional circumstances which were outside the control of the debtor or, as the case may be, of the personal insolvency practitioner, and***
- (b) such extension would in all the circumstances be fair in relation to the debtor, and would not be unfairly prejudicial to any interested party,***

and for this purpose the Court shall have regard to all the relevant circumstances, including:

- (i) the length of time that has elapsed since the creditors’ meeting or, as the case may be, since receipt of the notice of the creditor concerned under section 111A(6); and***
- (ii) the matters contained in subsection (10)(a) and any relevant conduct of the debtor and of a creditor subsequent to the issue of the protective certificate under section 95.”.***

Explanatory Note

The intention of the proposed amendments is to allow a possibility, in limited circumstances, to extend the 14-day time limit for a debtor’s Personal Insolvency Practitioner (‘PIP’) to make an application to Court under section 115A. (The High Court has held that the 14-day time limit is currently unextendable.)

The application under section 115A is of particular importance, as this section provides a potentially far-reaching power for the court to review, in certain circumstances, the rejection by creditors of a debtor’s proposal for a Personal Insolvency Arrangement which includes mortgage arrears on the debtor’s home. The court has power to overrule

the creditors' decision and to impose the rejected proposal, enabling the debtor to remain in their home, if it is satisfied on all the criteria set out in section 115A, including that there is no unfair prejudice to the relevant creditor.¹

Under subsection 115A(1), the debtor's PIP may only apply to the Court for review under section 115A if:

- the PIP, on behalf of the debtor, has made a proposal for a Personal Insolvency Arrangement to the debtor's creditors,
- the debts to be resolved by the debtor's proposal include mortgage arrears on the debtor's home which are a 'relevant debt' under section 115A(18) (see Head 9)
- the proposal has not been approved at the creditors' meeting by the required triple majority under section 110(1) - or, in a case where only one creditor would be entitled to vote on the debtor's proposal, has not been approved by that 'sole creditor' under section 111A(6);
- the PIP considers that there are reasonable grounds for applying to the court for a review under section 115A, and
- the debtor has instructed the PIP in writing to make such an application.

Under the criteria for the review, set out in section 115A, the Court must be satisfied that the proposed Arrangement has been formulated fully in accordance with all the Act's statutory conditions and requirements to protect the rights of the different parties.

These include:

- that the proposed Arrangement provides a reasonable prospect of -
 - o resolving the debtor's indebtedness without recourse to bankruptcy,
 - o enabling the creditors to recover the debts due, to the extent that the debtor's means reasonably permit, and
 - o enabling the debtor to remain in his or her home, if possible, and where the cost of doing so is not disproportionately large;
- and that the proposed Arrangement :
 - o has been approved by a simple majority by value in at least one class of creditors,
 - o is fair and equitable to each class of creditors that has not approved the proposal and whose claims would be impaired by it, and
 - o is not unfairly prejudicial to the interests of any affected party.

Given the importance of the issues at stake for the debtor, the amendment proposes to allow the Court a discretion to extend the 14 day period, in exceptional circumstances where it would be fair, in all the circumstances, to do so. For example, should the debtor, or the PIP, fall seriously ill during the 14 days following the creditors' meeting, due to COVID-19 or otherwise, the debtor may be unable to instruct the PIP as required by s. 115A(1), or the PIP may be unable to complete the range of complex steps required of him or her in making the application.

¹ Baker J, *Michael Ennis*, High Court, 2017 IEHC 120.

Head 9: Amendment of section 115A(18) of the Personal Insolvency Acts

Provide that:

Section 115A of the Personal Insolvency Acts is amended by the substitution of the following for subsection (18):

“(18) In this section, ‘relevant debt’ means a debt:

(a) the payment for which is secured by security in or over the debtor’s principal private residence, and

(b) in respect of which the debtor—

(i) is in arrears with his or her payments,

or

(ii) having been in arrears with his or her payments, has entered into an alternative repayment arrangement with the secured creditor concerned. ”

Explanatory Note

Section 115A (see also Explanatory Note to Head 8) is a key protection for borrowers under the Personal Insolvency Acts, introduced by the Personal Insolvency (Amendment) Act 2015.

It allows an insolvent debtor, whose proposal to resolve their debts by way of a Personal Insolvency Arrangement (‘PIA’) has been rejected by their creditor(s), to apply to the Court for review of the proposal and the refusal. If the Court is satisfied that the proposal meets all the required statutory conditions, and that the additional requirements of section 115A are met, it has a discretion to impose the proposal on the creditors – if satisfied that this causes no unfair prejudice to interested parties. The proposal then becomes legally binding on debtor and the creditors.

The court review under section 115A is available only where debts included in the debtor’s Personal Insolvency Arrangement proposal to the creditors, include a ‘*relevant debt*’. As it currently stands, section 115A(18) defines a ‘*relevant debt*’ as meaning:

- mortgage arrears (or arrears of similarly secured payments) on the debtor’s home (‘principal private residence’),
- where, on a ‘cut-off’ date of 1 January 2015, the borrower:
 - either was already in home mortgage arrears,
 - or had already entered an alternative repayment arrangement with their secured creditor to resolve home mortgage arrears that previously existed.

Accordingly, a person whose home mortgage arrears only arose after 1 January 2015 is excluded, under the current wording of subsection 18(b), from availing of the section 115A court review.

However, this would mean that following the unexpected and serious economic impact of COVID-19 on some small businesses, sectors and workers, any person who, for

example, has fallen into arrears on their home mortgage due to loss of employment, business or income arising from the pandemic, would be shut out from availing of the court review under section 115A, despite its importance as a protection for borrowers.

*‘The COVID-19 pandemic has resulted in an unprecedented shock to Ireland’s economy and has left thousands of households and businesses across the country on reduced incomes.’*² Most of the economy shut down during peak public health restrictions, mid-March to mid-May, and ability to re-open and resume business activity has varied. Some sectors and sub-sectors remain, in general, very severely affected³. Over 1.2 million people were still receiving State supports at the end of June (either the Pandemic Unemployment Payment or the Temporary Wage Support Scheme.) 76% of those receiving the TWSS worked for SMEs⁴. Many self-employed individuals, employees (particularly with more precarious contracts) and businesses have thus had to deal with prolonged closures, pay cuts, loss of income/contracts, reduced working hours, and job cuts. These have led to financial difficulties for some previously viable businesses and individuals, despite the safety net provided by extensive government supports and subsidies.

It is proposed, therefore, to delete both references in paragraph (b) to a cut-off date of 1 January 2015, so that homeowners who have fallen into arrears after that date will also be able to avail of the review. Creditors will continue to be protected by the very extensive range of protective conditions and balances contained in the Acts.

² *COVID-19 Payment Breaks – who has needed them?:* July 2020, Central Bank ‘Behind the Data’ Series, www.centralbank.ie.

³ *Focus on Sectors 2020*, (reports on initial impact of the pandemic in 16 sectors), 22 August 2020, Department of Business Enterprise and Innovation.

⁴ *SME Monitor*, 11 August 2020, Banking and Payments Federation of Ireland.

Head 10 - Statement of Truth (new Section 140A of the Personal Insolvency Acts)

Provide that:

Part 3, Chapter 6 of the Personal Insolvency Acts is amended by the insertion after section 140 of the following new section:

Statement of Truth

‘140A.

(1) Subject to subsection (2), where, under any provision of this Act, or any other enactment or rule of law —

(a) evidence is to be given on, or a document or information is to be verified by affidavit or statutory declaration, and

(b) a document may be lodged or filed, or is required to be lodged or filed, or an application may be made, or is required to be made, by electronic means in accordance with section 140,

rules of court may, notwithstanding any other enactment or rule of law, make provision for a statement, which shall be known as a statement of truth, to be made and transmitted by electronic means in place of the affidavit or statutory declaration concerned and subject to such conditions and exceptions as may be specified by such rules.

(2) A statement of truth—

(a) may be in electronic form,

(b) shall contain a statement that the person making the statement of truth has an honest belief that the facts stated therein are true,

(c) may be signed by the person making it by that person entering his or her name in an electronic format or otherwise electronically as may be permitted by rules of court, and

(d) shall comply with any other requirements as to its content, verification, authentication or form as may be prescribed by rules of court.

(3) Where rules of court have made provision for the matters referred to in subsection (1), any reference in this Act, or in any other enactment in relation to any proceedings under this Act, to an affidavit or a statutory declaration shall be construed as including a reference to a statement of truth, which may be made in place of such affidavit or statutory declaration by virtue of that subsection.

(4) Without prejudice to the law as to contempt of court, a person who makes, or causes to be made, a statement in a statement of truth without an honest belief as to the truth of that statement shall be guilty of an offence.

(5) A person guilty of an offence under subsection (4) shall be liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both. ’

Explanatory Note

The purpose of this amendment is to provide, should a specific provision in the Personal Insolvency Acts be legally desirable due to the specific structure of proceedings under those Acts:

- for the making of a Statement of Truth (which does not have to be formally sworn or witnessed), as an alternative to an affidavit or statutory declaration where required, in the specific context of personal insolvency proceedings, and
- to provide for the making of specific Rules of Court in this respect, that can take account of particular statutory requirements arising from the Personal Insolvency Acts.

The Personal Insolvency Acts often require parties to file proceedings or documents electronically with the Insolvency Service in the first instance, rather than with the Court: the Insolvency Service is then required to carry out initial processing and checking, before transmitting the file electronically to the courts.

The proposed text of new Section 140A on Statements of Truth takes account of the relevant provisions in the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020; and in section 141 Personal Insolvency Acts, on the electronic transmission of documents.

Head 11 - Interpretation**Provide that:**

(1) In this Bill, –

“the Principal Act” means the Personal Insolvency Act 2012;”

Explanatory Note

This Head is a standard interpretation provision.

Head 12 – Collective citation and commencement

Provide that:

(1) This Act and the Personal Insolvency Acts 2012 to 2015 may be cited together as the Personal Insolvency Acts 2012 to 2020;

(2) This Act shall come into operation on such day or days as may be fixed by order or orders made by the Minister for Justice and Equality, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

Explanatory Note

This is a standard provision.