



Number 10 of 2021

Personal Insolvency (Amendment) Act 2021



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PERSONAL INSOLVENCY (AMENDMENT) ACT 2021

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[No. 10.]

*Personal Insolvency (Amendment)
Act 2021.*

[2021.]

ACTS REFERRED TO

Personal Insolvency Act 2012 (No. 44)

Personal Insolvency Acts 2012 to 2015

Statutory Declarations Act 1938 (No. 37)



Number 10 of 2021

PERSONAL INSOLVENCY (AMENDMENT) ACT 2021

An Act to amend the Personal Insolvency Act 2012 to amend the eligibility criteria for Debt Relief Notices; to make provision for the holding of certain meetings under that Act by remote means; to make further provision in relation to the maximum duration of a Personal Insolvency Arrangement; to provide for the performance of certain functions of a personal insolvency practitioner by other persons in certain circumstances; to provide for the extension of the period of a protective certificate in Debt Settlement Arrangements and Personal Insolvency Arrangements; to extend the time limit for applying for a court review of a proposed Personal Insolvency Arrangement; to amend the conditions for a court review of a proposed Personal Insolvency Arrangement; to make provision for the making of confirmations of truth; and to provide for related matters.

[26th May, 2021]

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act “Principal Act” means the Personal Insolvency Act 2012.

Amendment of section 26 of Principal Act

2. Section 26 of the Principal Act is amended in subsection (2)(c) by the substitution of “€1,500” for “€400”.

Amendment of section 27 of Principal Act

3. Section 27 of the Principal Act is amended by the insertion of the following subsections after subsection (2):

“(2A) For the purposes of subsection (2), ‘meeting’ means a consultation between the approved intermediary and the debtor held in accordance with any regulations made under this section and at which—

- (a) both are present in person at the same time and in the same place, or
- (b) both are not present in person in the same place, but each is able, by means of electronic communications technology, to speak to, to see and to hear the other.

- (2B) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the directions, shall, make regulations in relation to the holding and conduct of meetings referred to in paragraph (a) or (b) of subsection (2A).
- (2C) Without prejudice to the generality of subsection (2B), regulations under that subsection may provide for—
- (a) the circumstances in which a meeting referred to in subsection (2A)(b) shall not be held,
 - (b) the form of electronic communications technology that shall not be used in a meeting referred to in subsection (2A)(b), and
 - (c) the conduct of meetings referred to in subsection (2A).
- (2D) In making regulations under this section the Insolvency Service shall have regard to:
- (a) the need to protect debtors and creditors who are or may become specified debtors or specified creditors;
 - (b) the importance of—
 - (i) ensuring effective access to, and participation in, meetings referred to in subsection (2A) by debtors, and
 - (ii) supporting the development of a relationship of trust and mutual confidence between debtors and approved intermediaries;
 - (c) the need, including having regard to the financial situation of debtors, to ensure efficiency and timeliness in the holding of meetings referred to in subsection (2A);
 - (d) the differing needs of debtors (including having regard to age, health, resources, geographical location, access to private or public transport, access to and familiarity with electronic communications technology, working hours and family and other obligations, including caring obligations) in respect of their participation in a meeting referred to in subsection (2A);
 - (e) the need to ensure that public confidence in the operation of the Debt Relief Notice process is maintained;
 - (f) any other factor that the Insolvency Service considers relevant in ensuring the effective conduct of meetings referred to in subsection (2A).
- (2E) In this section, ‘electronic communications technology’, in relation to a meeting referred to in subsection (2A)(b), means technology that enables real time transmission and real time two-way audio-visual communication.”.

Amendment of section 29 of Principal Act

4. Section 29 of the Principal Act is amended in subsection (2)(c) by the insertion of “or a confirmation of truth” after “statutory declaration”.

Amendment of section 49 of Principal Act

5. Section 49 of the Principal Act is amended—

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

(b) by the insertion of the following subsections after subsection (2):

“(2A) For the purposes of subsection (2), ‘meeting’ means a consultation between the personal insolvency practitioner and the debtor, held in accordance with any regulations made under this section and at which—

(a) both are present in person at the same time and in the same place, or

(b) both are not present in person in the same place, but each is able, by means of electronic communications technology, to speak to, to see and to hear the other.

(2B) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the directions, shall, make regulations in relation to the holding and conduct of meetings referred to in paragraph (a) or (b) of subsection (2A).

(2C) Without prejudice to the generality of subsection (2B), regulations under that subsection may provide for—

(a) the circumstances in which a meeting referred to in subsection (2A) (b) shall not be held,

(b) the form of electronic communications technology that shall not be used in a meeting referred to in subsection (2A)(b), and

(c) the conduct of meetings referred to in subsection (2A).

(2D) In making regulations pursuant to this section the Insolvency Service shall have regard to:

(a) the need to protect debtors and creditors who are or may become parties to Debt Settlement Arrangements or Personal Insolvency Arrangements;

(b) the importance of—

(i) ensuring effective access to, and participation in, meetings referred to in subsection (2A) by debtors, and

- (ii) supporting the development of a relationship of trust and mutual confidence between debtors and personal insolvency practitioners;
 - (c) the need, having regard to the financial situation of debtors, to ensure efficiency and timeliness in the holding of meetings referred to in subsection (2A);
 - (d) the differing needs of debtors (including having regard to age, health, resources, geographical location, access to private or public transport, access to and familiarity with electronic communications technology, working hours and family and other obligations, including caring obligations) in respect of their participation in a meeting referred to in subsection (2A);
 - (e) the need to ensure that public confidence in the operation of the Debt Settlement Arrangement and Personal Insolvency Arrangement processes is maintained;
 - (f) any other factor that the Insolvency Service considers relevant in ensuring the effective conduct of meetings referred to in subsection (2A).
- (2E) In this section, ‘electronic communications technology’, in relation to a meeting referred to in subsection (2A)(b), means technology that enables real time transmission and real time two-way audio-visual communication.”.

Amendment of section 54 of Principal Act

6. Section 54 of the Principal Act is amended in paragraph (d) by the substitution of “6 years” for “5 years” in the second place that it occurs.

Performance by others of certain functions of personal insolvency practitioner

7. The Principal Act is amended by the insertion of the following section after section 54:

“**54A.** (1) Subject to any regulations made under subsection (4), nothing in this Act shall be taken to prevent any person (not being a personal insolvency practitioner)—

- (a) employed by a personal insolvency practitioner or by a partnership in which a personal insolvency practitioner is a partner, or
- (b) having a common employer with a personal insolvency practitioner, from performing, when requested to do so by the personal insolvency practitioner (in this subsection referred to as the ‘requesting personal insolvency practitioner’) and under the requesting personal insolvency practitioner’s direction and control, any function (or any act in relation

to such function) that is authorised or required by or under this Act to be performed by the requesting personal insolvency practitioner.

- (2) Nothing in this Act shall be taken to prevent a personal insolvency practitioner—
- (a) in a partnership in which another personal insolvency practitioner is also a partner,
 - (b) employed by another personal insolvency practitioner or by a partnership in which another personal insolvency practitioner is a partner, or
 - (c) having a common employer with another personal insolvency practitioner,

from performing, subject to any regulations under section 161, when requested to do so by that other personal insolvency practitioner (in this subsection referred to as the ‘requesting personal insolvency practitioner’) and acting under the requesting personal insolvency practitioner’s direction, any function (or any act in relation to such function) that is authorised or required by or under this Act to be performed by the requesting personal insolvency practitioner.

- (3) The requesting personal insolvency practitioner under the subsection concerned shall, for all purposes under this Act, remain responsible in all respects for the performance, pursuant to the subsection concerned, of any function or act by a person referred to in subsection (1) or a personal insolvency practitioner referred to in subsection (2).
- (4) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall, by regulations provide for any of the following:
- (a) the functions (if any) under this Act of a personal insolvency practitioner which may or may not, be performed by a person to whom paragraph (a) or (b) of subsection (1) applies;
 - (b) the qualifications (including levels of training, education, expertise and experience), and any other attributes (including standards of competence, fitness and probity) that a person to whom paragraph (a) or (b) of subsection (1) applies must possess before a particular function of a personal insolvency practitioner may be performed by him or her;
 - (c) the requirement that a person to whom paragraph (a) or (b) of subsection (1) applies, be subject, in the performance of functions or acts pursuant to that subsection, to appropriate supervision, guidance and training by a personal insolvency practitioner.
- (5) Without prejudice to the generality of paragraph (c) of subsection (4), regulations under that paragraph may require, where a person performs

acts or functions pursuant to subsection (1), that the supervision and guidance referred to in the paragraph ensure all or any of the following, where applicable:

- (a) the proper gathering, checking and processing of information regarding a debtor's financial affairs;
- (b) the proper preparation and communication of written or oral information or evidence for any purpose under any enactment;
- (c) the proper management of records and accounts;
- (d) the proper chairing and conduct of creditors' meetings."

Amendment of section 57 of Principal Act

8. Section 57 of the Principal Act is amended in subsection (1)(c) by the insertion of "or a confirmation of truth" after "statutory declaration".

Amendment of section 59 of Principal Act

9. Section 59 of the Principal Act is amended in subsection (2)(c) by the insertion of "or confirmation of truth" after "statutory declaration".

Amendment of section 61 of Principal Act

10. Section 61 of the Principal Act is amended—

- (a) in subsection (5), by the substitution of "subsections (6), (7) and (7A)", for "subsections (6) and (7)",
- (b) in subsection (6), by the insertion of "or extended under subsection (7) or (7A)," after "subsection (2)(a)",
- (c) by the substitution of the following subsection for subsection (7):

"(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 an additional period not exceeding 40 days where—

- (a) the personal insolvency practitioner has been appointed in accordance with section 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."

- (d) by the insertion of the following subsection after subsection (7):

"(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 that, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, it would be just to grant the extension.”,

- (e) in subsection (8), by the substitution of “this section” for “subsection (7)”,
- (f) in subsection (9), by the substitution of “once only under each of subsections (7) and (7A).” for “under subsection (7) once only.”, and
- (g) in subsection (13), by the substitution of “subsections (5), (6), (7) and (7A),” for “subsections (5), (6) and (7).”.

Amendment of section 91 of Principal Act

- 11.** Section 91 of the Principal Act is amended in subsection (1)(e) by the insertion of “or a confirmation of truth” after “statutory declaration”.

Amendment of section 93 of Principal Act

- 12.** Section 93 of the Principal Act is amended in subsection (2)(c) by the insertion of “or confirmation of truth” after “statutory declaration”.

Amendment of section 95 of Principal Act

- 13.** Section 95 of the Principal Act is amended—

- (a) in subsection (5), by the substitution of “subsections (6), (7) and (7A)”, for “subsections (6) and (7)”,
- (b) in subsection (6), by the insertion of “or extended under subsection (7) or (7A),” after “subsection (2)(a)”,
- (c) by the substitution of the following subsection for subsection (7):

“(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 an additional period not exceeding 40 days where—

- (a) the personal insolvency practitioner has been appointed in accordance with section 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.”,
- (d) by the insertion of the following subsection after subsection (7):

“(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 that, by reason of exceptional circumstances or of other factors which are substantially outside the control of the debtor and the personal insolvency practitioner, it would be just to grant the extension.”,

- (e) in subsection (8), by the substitution of “this section” for “subsection (7)”,
- (f) in subsection (9), by the substitution of “once only under each of subsections (7) and (7A).” for “under subsection (7) once only.”, and
- (g) in subsection (13), by the substitution of “subsections (5), (6), (7) and (7A),” for “subsections (5), (6) and (7).”.

Amendment of section 115A of Principal Act

14. Section 115A of the Principal Act is amended—

- (a) in subsection (2), by the substitution of “28 days” for “14 days”,
- (b) in subsection (5), by the substitution of “, whether before or after” for “before”, and
- (c) in subsection (18) by the substitution of the following paragraph for paragraph (b):

“(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.”.

Amendment of section 136 of Principal Act

15. Section 136 of the Principal Act is amended by the substitution of the following subsection for subsection (3):

“(3) A Prescribed Financial Statement made under this Act shall be verified by means of—

- (a) a statutory declaration made under the Statutory Declarations Act 1938, or
- (b) a confirmation of truth.”.

Confirmation of truth

16. The Principal Act is amended by the insertion of the following section after section 140:

- “**140A.**(1) A reference in this Act to a confirmation of truth is a reference to a confirmation of truth made in accordance with this section.
- (2) A confirmation of truth—
- (a) may be made and transmitted by electronic means,
 - (b) shall contain a confirmation that the person making the confirmation of truth has an honest belief that the Prescribed Financial Statement to which the confirmation relates is a complete and accurate statement of the person’s assets, liabilities, income and expenditure,
 - (c) may be signed by the person making it by the person entering his or her name in an electronic format or otherwise electronically as may be prescribed, and
 - (d) shall comply with any other requirements as to its content, verification, authentication or form as may be prescribed.
- (3) Without prejudice to the law as to contempt of court, a person who makes, or causes to be made, a confirmation in a confirmation of truth without an honest belief as to the truth of that confirmation shall be guilty of an offence and 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 €100,000 or imprisonment for a term not exceeding 5 years, or both.
- (4) The Insolvency Service, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall, by regulations—
- (a) prescribe the form of a confirmation of truth, and
 - (b) provide for the matters referred to in subsection (2)(c) and (d).”.

Amendment of section 161 of Principal Act

- 17.** Section 161 of the Principal Act is amended in subsection (1) by the insertion of “(including in relation to the performance by them of functions or acts pursuant to section 54A(2))” after “for the purposes of the authorisation, regulation and supervision of personal insolvency practitioners”.

Short title, collective citation and commencement

- 18.** (1) This Act may be cited as the Personal Insolvency (Amendment) Act 2021.
- (2) The Personal Insolvency Acts 2012 to 2015 and this Act may be cited together as the Personal Insolvency Acts 2012 to 2021.

- (3) 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 either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.