

Think Ahead

ACCA

**TECHNICAL RELEASE 01/2024**

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**Personal Insolvency (Amendment) Act 2021**

This publication has been jointly developed by the member bodies of the Consultative Committee of Accountancy Bodies – Ireland (CCAB-I), being the Institute of Chartered Accountants in Ireland, The Association of Chartered Certified Accountants, The Institute of Certified Public Accountants and Chartered Institute of Management Accountants.

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## **A. Introduction**

Provisions of the Personal Insolvency (Amendment) Act, 2021 ("the 2021 Act") reflect practical amendments arising from Covid-19 and also the evolving nature of the existing legislation governing personal insolvency.

The Personal Insolvency (Amendment) Act 2021 completed its passage through the Houses of the Oireachtas on 19 May 2021, and was signed into law by the President on 26 May 2021. Some provisions are yet to come into effect.

This Technical Release summarises key changes made by the 2021 Act to the Personal Insolvency Act, 2012 ("the Principal Act") which include:

- i. Increase in assets from €400 to €1,500 for DRN cases.
- ii. Replacement of a "confirmation of truth" in lieu of a "statutory declaration".
- iii. Enables electronic meetings.
- iv. Enables staff on behalf of the PIP to take certain steps under the Acts.
- v. Allow a third protective certificate extension in certain circumstances.
- vi. Enlarges the time for bringing a 115A application from 14 days to 28 days.
- vii. Removes the 1 January 2015 arrears gateway.

This Technical Release is intended to assist members in understanding the changes made to personal insolvency legislation. However, it does not purport to be a detailed analysis of the provisions of the 2021 Act.

Save for the amendments set out herein, *TA/02 2016 Personal Insolvency (Amendment) Act 2015*, is still of relevance and guidance to members.

Statutory references are to the relevant sections of the 2012 Act, unless otherwise indicated.

## **B. Debt Relief Notice (DRN)**

Section 26 is amended and increases the maximum amount of "assets" held by a person wishing to avail of a DRN from €400 to €1,500. (Section 2 of the 2021 Act).

Section 27 is amended and enlarges the definition of meeting (between the Debtor and Approved Intermediary) to include an electronic meeting (by means of electronic communications technology, to speak to, to see and to hear the other.) (Section 3 of the 2021 Act).

## **C. Debt Settlement Agreement (DSA)**

Section 49 is amended and enlarges the definition of "meeting" (between the Debtor and Personal Insolvency Practitioner) to include an electronic meeting (by means of electronic

communications technology, to speak to, to see and to hear the other.) (Section 5 of the 2021 Act).

This allows the mandatory advisory meeting on personal insolvency solutions, between the debtor and their authorised financial adviser (Approved Intermediary or Personal Insolvency Practitioner), to take place via remote communications technology (RCT), rather than face to face, subject to some protective conditions. The Insolvency Service of Ireland has power to regulate the types of RCT by regulations, to ensure that advisory standards are maintained.

Section 54A is inserted to allow a Personal Insolvency Practitioner ('PIP') to delegate certain statutory functions under the Principal Act, such as chairing creditors' meetings, to another person employed by the PIP, or working with him/her in the same firm, subject to certain conditions. The delegating PIP will remain responsible for the performance of that function by the person to whom s/he has delegated it. (Section 7 of the 2021 Act).

Section 61 is amended and section 61(7A) is inserted to allow a new power for the court to extend, for up to 40 days, an insolvent debtor's 'protective certificate' (a court order, protecting the debtor against creditor enforcement for a limited period while their personal insolvency practitioner puts together a debt restructure package that creditors can agree) – if the Court is satisfied that this would be just due to exceptional circumstances, or to other factors outside the control of the debtor or their personal insolvency practitioner. The amendment also clarifies the two existing situations where a protective certificate can be extended. (Section 10 of the 2021 Act).

#### **D. Personal Insolvency Arrangement (PIA)**

Section 95 is amended and section 95(7A) is inserted to allow a new power for the court to extend, for up to 40 days, an insolvent debtor's 'protective certificate' (a court order, protecting the debtor against creditor enforcement for a limited period while their personal insolvency practitioner puts together a debt restructure package that creditors can agree) – if the Court is satisfied that this would be just due to exceptional circumstances, or to other factors outside the control of the debtor or their personal insolvency practitioner. The amendment also clarifies the two existing situations where a protective certificate can be extended. (Section 13 of the 2021 Act).

Section 115A has three separate amendments (*115A introduced (in 2015) the right of a debtor to apply to court for review*, if their creditor(s) refuse the debtor's proposal for a personal insolvency arrangement that includes the debtor's home mortgage arrears). (Section 14 of the 2021 Act).

Section 115A (2): is amended and *extends the deadline for the debtor's Personal Insolvency Practitioner ('PIP') to apply to court for the review under section 115A*, from 14 days to 28 days from the date of the creditor refusal. The current 14-day deadline is cannot be extended.

Section 115A (5): is amended and clarifies that where a debtor's PIP applies for court review under section 115A within that 28-day period, *the debtor's protective certificate continues in force* until the court has decided the review application (or any appeal).

Section 115A (18): amends the condition in section 115A that in order to be eligible for a court review, the personal insolvency proposal rejected by the debtor's creditor(s) must include arrears on the debtor's home mortgage that first arose before 1 January 2015. The amendment *removes the cut-off date of 1 January 2015*, so that a borrower whose home mortgage arrears first arose after that date is also eligible to apply to court for review.

Section 136 is amended to enable a confirmation of truth be used to verify a Prescribed Financial Statement rather than just a statutory declaration. The amendments allow the debtor to make a *written Confirmation of Truth* (which does not need to be formally sworn or witnessed) as an alternative to the statutory declaration, while retaining penalties for a person making statements that he or she does not honestly believe to be true. Section 140(A) is inserted into the Act to enable the confirmation of truth provisions. (Sections 15 and 16 of the 2021 Act). This is a modernising and cost-saving reform (similar to the provision introduced by the Civil Law (Miscellaneous Provisions) Act 2020 for a person to provide a Statement of Truth, in place of an affidavit or statutory declaration, when lodging documents in a court).

Section	Effective date	Statutory Instrument	S.I. of 2021
1 – 3	25 June 2021	Personal Insolvency (Amendment) Act 2021 (Commencement) Order 2021	305
4	Not yet commenced		
5 – 7	25 June 2021	Personal Insolvency (Amendment) Act 2021 (Commencement) Order 2021	305
8 - 9	Not yet commenced		
10	25 June 2021	Personal Insolvency (Amendment) Act 2021 (Commencement) Order 2021	305
11 - 12	Not yet commenced		
13 - 14	25 June 2021	Personal Insolvency (Amendment) Act 2021 (Commencement) Order 2021	305
15 - 16	Not yet commenced		
17 - 18	25 June 2021	Personal Insolvency (Amendment) Act 2021 (Commencement) Order 2021	305

