

Relate

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The journal of developments in social services, policy and legislation in Ireland

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An overview of the rules for this scheme.

Personal Insolvency Act 2012

Introduction

The Personal Insolvency Act 2012 has been passed but requires one or more Commencement Orders to bring it into effect. It is expected that these will be introduced during the first half of 2013.

In summary, the Act provides for three new processes for dealing with debt and it changes some of the laws on bankruptcy. The three new processes are:

- Debt Relief Notices (DRN) to allow for the write-off of debt up to €20,000, subject to a three-year supervision period, for people with virtually no assets and very little income
- Debt Settlement Arrangements (DSA) for the agreed settlement of unsecured debt over a period of five years
- Personal Insolvency Arrangements (PIA) for the agreed settlement of secured debt of up to €3 million (which can be increased by agreement with the creditors) and unsecured debt over a period of six years

The Act also provides for the establishment of the Insolvency Service of Ireland (ISI), which will implement the new arrangements under the supervision of the courts. The Insolvency Service is being put in place and a director and some staff have been appointed. The Service is required to draw up various guidelines, for example, on what constitutes reasonable expenses for a debtor and these are expected to be completed during the first quarter of 2013.

The ISI expects to have a website available shortly. It is proposed to have a system that allows all documents to be filed online – a new provision in the Act specifically provides for the electronic transmission of documents to and from the Insolvency Service and the courts.

Several regulations are also required, for example, on the regulation of Personal Insolvency Practitioners (PIPs). It is expected that the licensing of Personal Insolvency Practitioners will start in April and May 2013.

The original Personal Insolvency Bill was described in some detail in the August 2012 issue of *Relate*. Changes were outlined in the October 2012 issue. Since then, many further changes have been made. Many of the most recent changes are technical and/or clarifying changes. Here we outline the main substantive changes that have been made. The Personal Insolvency Act 2012 can be found at: oireachtas.ie.

A revised Explanatory Memorandum about the Act has been made available:

oireachtas.ie/documents/bills28/bills2012/5812/PersonalInsolvencyBill2012Revised_memo2.pdf.

Insolvency Service of Ireland

The Insolvency Service now has the following additional functions:

- To authorise, supervise and regulate Personal Insolvency Practitioners (PIPs)
- To issue guidelines on what constitutes a reasonable standard of living and reasonable living expenses for debtors
- To arrange for the provision of education and training of Approved Intermediaries (AIs) and PIPs

Reasonable standard of living/living expenses

The new arrangements provide that debtors must be left with enough income to maintain a reasonable standard of living for themselves and their dependants.

The Act provides that the Insolvency Service will draw up guidelines annually on what constitutes a reasonable standard of living and reasonable living expenses. These guidelines will be publicly available. When preparing these guidelines, the Insolvency Service is obliged to consult the Minister for Justice and Equality, the Minister for Finance and the Minister for Social Protection and any other bodies it considers appropriate, or as the Minister for Justice and Equality may direct.

When drawing up the guidelines, the ISI must have regard to:

- Measures and indicators of poverty set out in Government policy publications on poverty and social inclusion
- Official statistics and surveys relating to household income and expenditure published by the Central Statistics Office

- The Consumer Price Index or any equivalent index
- Differences in the size and composition of households, and the differing needs of people, having regard to age, health and whether they have a physical, sensory, mental health or intellectual disability
- The need to facilitate the social inclusion of debtors and their dependants, and their active participation in economic activity
- Such other information as the Insolvency Service considers appropriate

The guidelines may provide examples of what may and what may not be allowed as reasonable living expenses.

The Minister for Justice and Equality has said that he expects that the Insolvency Service would have regard to the expertise of Money Advice and Budgeting Service (MABS) when drawing up guidelines. While the guidelines are expected to be reviewed annually, the Minister did not consider it likely that there would be public consultation on the matter every year.

Debt Relief Notices

One of the conditions for getting a Debt Relief Notice (DRN) is that your net monthly disposable income, after deductions for reasonable living expenses and payments to cover debts that are not covered by the process, must be €60 a month or less and the total value of your assets must be €400 or less.

Disposable income

Your net disposable income takes account of your income from salary, wages, pensions and contributions from other household members. The only payment that is not taken into account is Child Benefit. Deductions are then made for:

- Income tax, PRSI and other charges and levies on income (for example, Universal Social Charge)
- Payments made in respect of *excluded* debts and *excludable* debts (unless they are *permitted* debts - see page 3)
- Reasonable living expenses

Assets

The total value of your assets must be €400 or less. Assets are assessed at market value and include savings, shares and property. The following assets are not assessed:

- Essential household equipment and appliances and books, tools or equipment needed for employment or business, up to a total value of €6,000
- One item of personal jewellery to a maximum value of €750

- A motor vehicle up to a value of €2,000 (up from €1,200 in the original Bill) or a vehicle that has been adapted for a person with a disability (the debtor or a dependant of the debtor).
- Pension assets (the value of your *pension pot*); however, if you are entitled to receive a pension income, that is taken into account in assessing your disposable income
- Where you or a dependant is attending primary or secondary school, books or equipment that are reasonably necessary to enable you to participate in and complete the course

Increase in income after a Debt Relief Notice is granted

If your net monthly income increases by €400 or more after you have been granted a Debt Relief Notice, you must surrender half of the increase to the Insolvency Service (the limit was €250 in the original Bill). In this context, your net monthly income is income less income tax, PRSI, income levies (for example, USC) and payments made in respect of excluded and excludable debts (unless permitted – see below).

Excluded and excludable debt

Changes have been made in relation to excluded debts under the three new processes. Certain debts are now *excludable* and others are *excluded*. Excludable debts may be included in the process if the relevant creditor explicitly consents. If that happens, the excludable debts are described as *permitted* debts.

Excludable debts are mainly debts owing to the State.

They are:

- Taxes, duties or levies owed to the State, such as income tax, the new Local Property Tax, VAT, capital taxes
- Service charges owed to local authorities
- Household Charge
- Rates
- Money owed under the Nursing Homes Support Scheme (in respect of a loan advanced by the HSE to a nursing home resident to cover the amount due from the principal private residence)
- Money owed to the Department of Social Protection (such debt was not mentioned in the original Bill)
- Debts due to owners' management companies in respect of annual service charges or contributions due for multi-unit developments (this is the only non-State debt in this category)

Excluded debts are:

- Debts under family law orders, such as maintenance orders for spouses and children
- Debts due under court awards for personal injury or death
- Debts arising from a loan (or forbearance of a loan) obtained through fraud or similar wrongdoing
- Debts arising under court orders made under the Proceeds of Crime Acts or fines imposed by the courts for criminal offences.

Debts incurred in previous six months

You are not eligible for a Debt Relief Notice if you incurred 25% or more of your debts in the six months before you applied. The Act now also provides that you are not eligible for a Debt Settlement Arrangement or a Personal Insolvency Arrangement if you incurred 25% of your relevant debts in the six months before applying for a protective certificate.

Pensions

None of the new processes requires you to hand over your investment in a pension scheme (what is generally described as your *pension pot*) or to draw down your pension early. However, your income from a pension is taken into account in all cases. If you are entitled to receive a pension income but have not exercised an option to do so, you will be regarded as receiving it. This will also apply if you are entitled to exercise such an option within six months of getting a Debt Relief Notice (DRN) or within six years and six months of applying for a Debt Settlement Arrangement (DSA) or seven years and six months before applying for a Personal Insolvency Arrangement (PIA).

Excessive pension contributions

If you apply for a DSA or PIA, a creditor or the Personal Insolvency Practitioner may apply to the court for relief if it is considered that you made excessive contributions to your pension in the three years before the protective certificate was issued. If the court considers that this happened, it can order the pension administrators to pay the excess amount to the Personal Insolvency Practitioner for distribution among your creditors. The court must consider a range of factors in making any such order – the main point is to establish whether your pension contributions were designed to meet your genuine pension obligations and needs or whether they were designed to put your assets beyond the reach of your creditors.

Debt Settlement Arrangement

There was a provision in the original Bill whereby a Debt Settlement Arrangement could be ended by a creditors' meeting if the Personal Insolvency Practitioner considered that:

- There had been a material change in your circumstances that would affect your ability to make repayments under the arrangement
- or
- You entered the arrangement in the knowledge that you did not meet the requirements

This provision has been removed. The PIP may now apply to the court to have the arrangement ended.

Personal Insolvency Arrangement

Credit limit

You may not get credit for any amount over €650 (€1000 in the original Bill) without informing the lender that you are the subject of a Personal Insolvency Arrangement. This is the same amount as applies to a Debt Relief Notice and a Debt Settlement Arrangement.

Value of security

If there is a disagreement about the value of a security that is included in the arrangement, an independent valuation may be carried out – the cost of this must be met half and half by the creditor and the Personal Insolvency Practitioner.

Review of new arrangements

The Act provides that the three new arrangements will be reviewed. This review will start within three years of the arrangements coming into operation (five in the original Bill) and will be completed within a year. A report setting out the review findings must be prepared and laid before the Houses of the Oireachtas.

Regulation of Personal Insolvency Practitioners

All applications for Debt Settlement Arrangements and Personal Insolvency Arrangements must be made through a Personal Insolvency Practitioner (PIP). The Insolvency Service will make regulations for the authorisation, control and supervision of PIPs. These regulations will set out how authorisation to practise as a PIP will be granted, the standards to be observed, the qualifications required and the circumstances and purposes for which PIPs may charge fees or recover costs.

Regulations on standards to be observed by PIPs may cover matters such as:

- The public interest
- The duties owed to debtors and creditors
- Professional and ethical conduct
- The confidentiality of the information of debtors and creditors
- Conflicts of interest

The Insolvency Service will maintain a Register of Personal Insolvency Practitioners which will be available to the public.

The Insolvency Service will have responsibility for authorising people to act as PIPs. It will have the power to make inquiries from the Central Bank and the Gardaí about applicants for authorisation as PIPs. The Act requires that PIPs be competent to carry out the service but does not specify that particular qualifications are needed. In practice, it is likely that most PIPs will be accountants, lawyers, professional mediators or financial advisors. Decisions by the Insolvency Service to refuse authorisation or to refuse to investigate a complaint against a PIP (see below) may be appealed to the Circuit Court.

PIPs will be obliged to keep records of their activities in relation to debtors for at least six years. They must have professional indemnity insurance. They may charge fees and costs but these must be in accordance with the regulations made by the Insolvency Service or in accordance with a Debt Settlement Arrangement or Personal Insolvency Arrangement when the relevant arrangement comes into effect.

The Insolvency Service will have wide powers to control and supervise the work of PIPs, including making regulations about bank accounts that PIPs may open for keeping the money received from debtors and applying to the High Court for various orders in relation to such accounts.

Complaints about PIPs

The Act also provides for a complaints system to deal with allegations of improper conduct by a PIP. If there is a genuine complaint of improper conduct, the Insolvency Service must investigate it unless it can be resolved by mediation or other informal means. The ISI may also carry out investigations on its own initiative.

Investigation will be carried out by inspectors, who will be members of the ISI's staff. There will be a panel of people on a Personal Insolvency Practitioners Complaints Committee. When an inspector is appointed to carry out an investigation, the Insolvency Service must ask the Minister for Justice and Equality to appoint a Complaints Committee from this panel.

There must be at least seven members of the panel. A Complaints Committee will be composed of at least three people, at least one of whom must be a lawyer.

The Insolvency Service will have the power to apply to the High Court to suspend the PIP's authorisation if this is necessary to protect debtors or creditors. This may be done on an *ex parte* basis (without notice to the PIP) if there is an immediate risk of financial harm to debtors or creditors.

Inspectors will have wide investigative powers, including the power to enter and search premises and to carry out oral hearings under oath. As with all investigations, fair procedures must be applied. A report of the investigation must be sent to the Complaints Committee. The Complaints Committee will have the power to conduct an oral hearing. It must decide whether or not there was improper conduct and, if there was, may impose a minor sanction. The PIP may appeal to the High Court against such a sanction. If the Complaints Committee considers that a *major sanction* is required, it must refer the matter to the High Court for decision.

A minor sanction could be a caution or a reprimand. A major sanction means that the PIP may be prohibited from acting as a PIP or suspended for a period and/or may be required to pay the costs of the ISI's investigation up to a maximum of €30,000.

Information about the imposition of a major sanction *must* be made public and information about a minor sanction *may* be made public.

Specialist judges of the Circuit Court

When the original Bill was published, it was considered that the role of the courts in overseeing the new insolvency arrangements would be exercised mainly by the registrars of the Circuit Court – usually known as county registrars. However, the Act now provides for the appointment of *specialist judges* of the Circuit Court to perform this function. The current judges of the Circuit Court are *ordinary judges*.

The Act provides that those eligible to be appointed as specialist judges of the Circuit Court are county registrars with at least two years' experience and, at a later stage, not later than 1 January 2014, people who are already eligible to be ordinary Circuit Court judges (lawyers with 10 years' experience and District Court judges). The legislation provides for a maximum of eight specialist judges but it is expected that six will be appointed in the initial phase.

All judges in Ireland are appointed by the President on the nomination of the Government. The Judicial Appointments Advisory Board (JAAB) receives applications and makes recommendations about appointments as judges but these are not binding on the Government. Initially, the JAAB will be asked to recommend county registrars to fill these specialist judge positions. The specialist judges will be available throughout the year and will not be confined to traditional law terms.

The Minister for Justice and Equality has said that he expects that the specialist judges will also take on some of the duties that will be exercisable by the Circuit Court under the proposed mental capacity legislation. This legislation is expected to be published in 2013.

Bankruptcy

With regard to bankruptcy, the major change in the Act is that the period of bankruptcy will be reduced to three years. The *Official Assignee* (OA) or a creditor may apply to the courts to object to the discharge of a debtor from bankruptcy if the debtor has failed to co-operate with the Official Assignee or has hidden or failed to disclose income or assets. The court may suspend the discharge or extend the period – up to a maximum of eight years.

The Official Assignee is the court official to whom the assets of most bankrupts are transferred and who then administers the estate of the bankrupt person. Sometimes the assets are transferred to a trustee in bankruptcy. The effect is the same.

Pensions

The Act also provides for the treatment of pension pots in bankruptcy. A future entitlement to a pension will not vest in the Official Assignee (which means that the bankrupt's pension assets are not transferred to the OA). However, pension income that is in payment or where there is an entitlement to payment may be claimed by the Official Assignee or a trustee in bankruptcy. Where a bankrupt has made excessive contributions to a pension scheme in the three years before being adjudicated a bankrupt, the OA or trustee may apply to court for an order to make the excessive amount available for distribution to the creditors.

Reasonable living expenses

When making an order for a bankrupt to make payments to the Official Assignee from income or assets, the court must have regard to the reasonable living expenses of the bankrupt and his/her family. The court may also have regard to guidelines issued by the OA or the Insolvency Service.

Rent Supplement

Introduction

Entitlement to Rent Supplement and the amount payable are issues that frequently arise for clients of Citizens Information Services. The rules are complex and have changed quite frequently in recent years. No changes were announced in the recent Budget but there are plans to make further changes to housing supports.

The aim of the Rent Supplement scheme is to provide short-term income support to people living in private rented accommodation who do not have enough income to meet their accommodation needs. Approximately 89,000 families in private rented accommodation are getting Rent Supplement at present; 42,000 of these were awarded Rent Supplement in 2012. The scheme cost about €436 million in 2012. The numbers getting Rent Supplement increased from just under 60,000 in 2007 to almost 97,000 in 2011 before declining in 2012.

Here we look at the main rules that apply to Rent Supplement and some of the problems that arise.

You must be in need of housing support

In order to qualify for Rent Supplement, you must first of all meet one of the following requirements:

- At the time you apply, you must have been living in private rented accommodation or in accommodation for homeless people or in an institution for at least 183 days (6 months) within the previous year. You must be able to show that you could afford the rent at the beginning of your tenancy and that you could have continued to pay rent but are unable to do so because of a substantial change in your circumstances which occurred after you started renting.

or

- You must have had an assessment of housing need carried out within the previous year and have been deemed by the local authority to be eligible for and in need of social housing support.

If you do not meet one of these requirements, you will be referred to the local authority for an assessment of housing need. You will not get Rent Supplement while that assessment is being carried out.

Suitable accommodation

The accommodation that you are renting must be suited to your needs – it must not be too large or too small for your family.

Rent limits

The rent must be within limits set by the Department of Social Protection. The current maximum rent levels were set on 1 January 2012 and remain in place until June 2013. The maximum levels take account of family size and vary from place to place. They aim to reflect market rents in the particular area. For example, the maximum rent level for a couple with two children in Dublin Fingal is €825 a week. The lowest maximum level for such a family is €375 in Leitrim. The limits may be increased if there are exceptional circumstances, for example, in the case of people with disabilities in specially adapted accommodation or homeless people.

Landlord's tax compliance

Your landlord must be in compliance with the rules on tax registration.

Working and education

As a general rule, you must not be working full-time or be in full-time education (unless you are participating in the Back to Education Programme). Full-time working is defined as more than 29 hours a week unless you are eligible for the Rental Accommodation Scheme (RAS). You must not have a spouse or partner engaged in full-time employment.

Local authority accommodation

You may be refused Rent Supplement if you have left local authority accommodation without a good reason or if you have been excluded from local authority accommodation because of anti-social behaviour. You may also be refused if, within any 12-month period, you have refused a second offer of accommodation under any social housing scheme.

Habitual and lawful residence

You must meet the habitual residence requirement. It is difficult to give a summary of what this means. You must be lawfully resident in the State and you then must be able to show that you have a genuine connection to the State. The factors that are taken into account include:

- Length and continuity of residence in Ireland
- Length and purpose of any absence from Ireland
- Nature and pattern of employment
- Your main centre of interest

- Your future intentions to live in Ireland as it appears from the evidence
- It is sometimes stated that you need to have lived in Ireland (or the UK) for the two years before applying but this is not necessarily the case. Having lived here for two years helps to establish habitual residence but it is not absolutely essential.

The Department of Social Protection guidelines on habitual residence are at: www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx

You may not get Rent Supplement while you are awaiting a decision on an application for refugee status or permission to remain.

Means test

You must pass a means test. Virtually all of your income is taken into account in the means test. The following are the main items that are not taken into account:

- Child Benefit, including equivalent payments from other EU countries
- Mobility Allowance
- Guardian's Payment (Contributory or Non-Contributory)
- Payments received from the Health Service Executive for foster children
- Payments for accommodating children under the Child Care Act
- Income from Gaeltacht students
- Domiciliary Care Allowance
- Grants or allowances under a scheme promoting the welfare of blind people
- Money received from charitable organisations
- Compensation awarded by the Compensation Tribunal in respect of Hepatitis C contracted from certain blood products; compensation awarded to those who have disabilities caused by Thalidomide and to those getting compensation under the Residential Institutions Redress Board
- Higher education maintenance grants (student grants)
- Respite Care Grant

Gross income from employment, less PRSI and reasonable travel expenses, is taken into account. Other necessary expenses may be allowed in the case of self-employment.

Additional income disregards

Certain amounts of income are disregarded – the main ones are as follows:

Pensioners

There is a special income disregard for people aged 65 and over. This is any additional income equal to the difference between the maximum rate of State (Contributory) Pension for your circumstances and the relevant rate of weekly Supplementary Welfare Allowance (SWA). The effect of this is that, if your only income is a State (Contributory) Pension, then you should only make the minimum contribution of €30 (single person) or €35 (couple) towards your rent.

Carer's Allowance

If you are one of a couple and getting Carer's Allowance, the amount disregarded is the rate of Carer's Allowance in payment less the rate of SWA increase in respect of a qualified adult. In the case of a single person or a lone parent who is getting Carer's Allowance, the amount disregarded is the rate of Carer's Allowance in payment less the personal rate of SWA. All of the half-rate Carer's Allowance is disregarded in full.

In practice, what this means is that if you are in receipt of Carer's Allowance either as one or a couple or as a single person or lone parent, your Carer's Allowance is disregarded in the means test for Rent Supplement.

Earnings from rehabilitative employment

Up to €120 a week of earnings from rehabilitative employment can be disregarded. However, this disregard cannot be applied together with the additional income disregard (see below). The disregard that is most beneficial is applied.

Additional income disregard

If you have income above the standard weekly rate of SWA, the first €75 of such additional income, together with 25% of any additional income above €75, is disregarded.

Additional income includes income from part-time employment or self-employment (under 30 hours a week), any employment or training scheme (for example, Community Employment or FÁS training course), Family Income Supplement (FIS) and maintenance payments over €95.23.

This disregard for additional income allows for Rent Supplement to be gradually withdrawn as your earnings increase.

Maintenance

If your former spouse or partner pays maintenance, some of this will be assessed in the means test for Rent Supplement. Maintenance is assessed as additional household income and the additional income disregard is used. If your only additional income is maintenance, all of your maintenance payment up to €95.23 a week is assessed in full (because it is considered to be a contribution towards your housing expenses).

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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The additional income disregard of €75 applies to sums above this so that any maintenance between €95.23 and €170.23 is not taken into account and 25% of all maintenance over €170.23 is also not taken into account.

Amount of Rent Supplement

Rent Supplement is normally calculated to ensure that, after the payment of rent, you have an income equal to the weekly rate of SWA appropriate to your family circumstances less a minimum contribution that you are required to pay. The weekly minimum contribution is €30 for a single adult household and €35 for a couple.

If accommodation is provided through the Capital Assistance Scheme (this is a funding scheme for voluntary housing organisations), the maximum amount of Rent Supplement payable is €55 a week for single people and €60 a week for couples.

Refusal of landlords to take Rent Supplement tenants

Some landlords refuse to accept tenants who are getting Rent Supplement. This is not illegal and does not infringe the equal status legislation. The Equal Status Acts prohibit discrimination on a range of grounds but do not prohibit this type of discrimination.

Changes to housing supports

Rental Accommodation Scheme

Since 2005, the Government has been aiming to move people from Rent Supplement to the Rental Accommodation Scheme (RAS). Since then, almost 38,000 households have transferred to RAS. It cost €135m in 2012.

RAS gives local authorities responsibility for meeting the longer-term housing needs of people getting Rent Supplement for 18 months or more. Local authorities enter into contracts with private rented accommodation providers and the voluntary sector to provide the accommodation. The local authority pays the rent to the provider and agrees a contribution from you.

You may remain in the scheme if you get full-time employment and meet other conditions. If your income increases, you are expected to pay more towards the rent.

Housing Assistance Payment

In March 2012, the Government announced its intention to transfer responsibility for the provision of rental assistance to people with a long-term housing need from the Department of Social Protection, which administers Rent Supplement, to local authorities, using a new Housing Assistance Payment (HAP). A steering group chaired by the Department of the Environment, Community and Local Government has been established to develop proposals to give effect to this transfer. It is planned that pilot testing of HAP arrangements will start in the second half of 2013 and that the transfer will start from January 2014.

It is envisaged that the new Housing Assistance Payment will be paid on the tenants' behalf directly to the landlord. The rental contribution from tenants will be set by reference to the differential rent for the area. It is also intended that automated deduction of rental payments from DSP payments will be available. The Social Welfare Act 2012 (see *Relate*, January 2013) provides for deduction of rent amounts from social welfare payments, but this provision is not yet in effect.

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