

29th June 2017

Consultation on Personal Insolvency Acts, Part 3,
Civil Law Reform Division,
Department of Justice and Equality,
Bishop's Square,
Redmond's Hill,
Dublin 2.

By Email to: civil_law_reform_inbox@justice.ie

Re: Consultation – Personal Insolvency Acts, Part 3.

Dear Sir/Madam,

I refer to the invitation of the Department of Justice and Equality for the views of interested parties on the operation of Part 3 of the Personal Insolvency Acts 2012-2015.

I am writing to you in my capacity as Chair of the Insolvency Service of Ireland Consultative Forum ("Forum"). The Forum was established following the Government decision of the 13th May 2015 which agreed a number of measures to support mortgage holders who are in arrears. One of the measures included in that decision provided that;

"The ISI Consultative Forum will keep its (the ISI's) operational effectiveness under close review, reporting to the Minister for Justice and Equality and making recommendations for improvements as appropriate."

The Forum consists of members from a number of insolvency stakeholder groups including creditors and creditor representatives, personal insolvency practitioners and personal insolvency practitioners' representatives, debtor representatives, the Court Service and the ISI. I have attached the full membership of the Forum in Appendix A for your information.

The Forum met on four occasions between March and June 2017 to consider proposals from individual members on their recommended amendments to the Personal Insolvency Acts 2012-2015. The Forum considered these proposals and reached agreement in principle on nine proposals. A brief summary of each of the nine proposals is set out below and Appendix B contains a more detailed paper on each proposal. Individual members will also be making submissions in their own capacity to the consultation process on the operation of the Personal Insolvency Acts 2012-2015.

1. Debt Relief Notice: Supervision Period Reduction to one year

There was broad agreement in principle that the Debt Relief Notice supervision period be reduced from three years to one year.

2. Debt Relief Notice: Removal of Preference as an Eligibility Criterion

There was broad agreement in principle that the Preference eligibility criterion for a Debt Relief Notice be removed.

3. Debt Relief Notice: Debtor's Obligations – Increase in Income

There was broad agreement in principle that the obligations on a debtor to surrender a portion of an income increase would only apply when the increased income exceeded the relevant ISI reasonable living expenses guidelines.

4. Debt Relief Notice: Increase Motor Vehicle Value Threshold

There was broad agreement in principle that the motor vehicle value threshold for a Debt Relief Notice be increased from €2,000 to €5,000.

5. Debt Relief Notice: Vehicle-Modified to take account of a disability

There was broad agreement in principle that the provisions of Section 26 (6) (c) (iii)(ii) be extended to take into consideration vehicles that are required by the debtor or his or her dependent(s) on the basis of a medical need.

6. Time Periods

There was broad agreement in principle that the Personal Insolvency Acts 2012-2015 should define references to 'days' within the legislation as 'working days'.

7. Notifications following Creditor's Meetings & Court Outcomes

There was broad agreement in principle that the Personal Insolvency Acts 2012-2015 be amended to facilitate the provision of notifications of the outcome of key steps in the insolvency process to creditors.

8. Personal Insolvency Practitioner to be permitted to nominate the Chairman of Creditors Meeting

There was broad agreement in principle to allow a Personal Insolvency Practitioner to nominate a Chairman of a Creditors Meeting.

9. ISI Role and Court Requirements

There was broad agreement in principle that some functions currently undertaken by Courts, could be undertaken by the ISI in the following areas;

- Granting and Extending Protective Certificates;
- Granting Debt Relief Notices;
- Approval of DSA and PIA Arrangements;
- Approval of Variations to DSA and PIA Arrangements.

For Information

The Forum also identified two other areas where improvements could be made to make the insolvency process more efficient. Both are set out at Section 10 of Appendix B for information.

If you have any questions or require clarification on any of the above please do not hesitate to contact me.

Yours sincerely,



Lorcan O'Connor
Chair of the ISI Consultative Forum

Appendix A

List of Members of the Consultative Forum	
Lorcan O'Connor (Chair)	Insolvency Service of Ireland
Niamh Murphy	Banking and Payments Federation Ireland
Anthea Ormiston	Bank of Ireland
Paul Joyce	Free Legal Advice Centre
Paddy Purtill	Revenue Commissioners
David Hall	Irish Mortgage Holders Organisation
Ronan Duffy	Personal Insolvency Practitioner
Michael Bolger	Irish Society of Insolvency Practitioners
Gavan Barlow	Allied Irish Bank
John Hogan	Personal Insolvency Practitioner
Michael Peacock	Watch Portfolio Management
Breege-Anne Murphy	Irish League of Credit Unions
Tara Cheevers	Association of Personal Insolvency Practitioners
Mitchell O'Brien	Association of Personal Insolvency Practitioners
Annmarie O'Connor	MABS National Development
Elaine Larke	Credit Union Development Association
Patrick Johnson	Court Service

Appendix B

1. Debt Relief Notice: Supervision Period Reduction to One Year

1.1 Background/Issue

MABS proposes a reduction in the 3 year supervision period for Debt Relief Notices (DRN) to one year. MABS Approved Intermediaries (AIs) have been supporting eligible borrowers with the Debt Relief Notice application process since the introduction of the legislation and views the cohort of potentially eligible borrowers as amongst the most vulnerable of its clients. Their financial situation is often very fragile and unsustainable and they are inclined to manage their money day-by-day or, at best, week-by-week. In this context, while such clients stand to benefit from the process, the duration of the supervision period is perceived by them as lengthy and onerous and MABS advisers/ AI's find that prospective applicants are put-off by the length of the commitment they must make to the process over a 3 year time frame.

The Bankruptcy (Amendment) Act, 2015 deals primarily with the reduction in the term of Bankruptcy, from three years to one year. As the rationale for including a three year supervision period for Debt Relief Notices was to tie in with the bankruptcy period, it should now be possible to propose a similar reduction to the Debt Relief Notice supervision period as that proposed for a bankruptcy term. This would align both bankruptcy and Debt Relief Notices with similar schemes in other jurisdictions such as the UK and Northern Ireland.

1.2 Practical considerations/Linkages

If the proposed change is made a practical consideration arising is the need to promote the changed process to eligible borrowers. MABS believe that such a change would bring a much larger cohort of borrowers into the ambit of the legislation but that promotion needs to be more targeted to ensure that the borrowers who can benefit become aware of the potential to access a 'fresh-start'. While ancillary to the legislation, such a fresh-start, in MABS view, could be supported and enhanced for borrowers/applicants through joint working with a MABS money advisor over the course of the shorter supervision

period in order to ensure that borrowers' overall financial position is enhanced by the process and that in so far as possible it returns the borrower to a position of financial self-reliance.

It was further felt that an amendment should be included, in the event of a change of circumstances, to be defined, that a payment order could be imposed post-DRN, similar to the Bankruptcy Payment Order, extending the term to three years.

1.3 Summary of proposed change

The reduction in the three year supervision period would have the same beneficial impacts for eligible debtors for a DRN as for those eligible for bankruptcy. Such a reduction would also obviously reduce the cost to the State (primarily the ISI) of work associated with the 3 year supervision period.

Inclusion of criteria whereby a change of debtor's circumstances would warrant the introduction of a payment order, thereby extending the term to three years.

2. Debt Relief Notice: Removal of Preference as an Eligibility Criterion

2.1 Background/Issue

Preference as an eligibility criterion acts as a barrier to accessing Debt Relief Notices, particularly as there is no requirement of intent to prefer in order to have created one, as in the case of fraudulent preference in Bankruptcy or corporate insolvency. Further, in light of the express provision made in section 23 of the Act for the ISI to provide guidance on a Reasonable Standard of Living, priority payments made to safeguard a debtor's reasonable accommodation needs (e.g. repaying rent arrears); essential utilities; liberty (e.g. payment of Instalment Orders to avoid committal proceedings); or debts associated with the health of a debtor or their dependants, these payments should be expressly excluded from the definition of preference.

2.2 Practical considerations/Linkages

The Debt Relief Notice is the only remedy available pursuant to the Act for which preference is an eligibility criterion. In both the Debt Settlement Arrangement and Personal Insolvency Arrangement processes it is a ground for a creditor objection if made within 3 years of the application. Considering that the demographic of debtors applying for a Debt Relief Notice is likely to be at a greater risk of poverty, eviction and loss of basic utilities than that availing of the other insolvency options, with any preferential payments likely to be considerably lower, it is anomalous that such preferences have far greater consequences in terms of access to insolvency.

Furthermore, where a preference is given to a creditor for the prevention of homelessness, essential utilities or loss of liberty, these payments should be exempted on the grounds that they were made in protection of the debtors reasonable standard of living as provided for in section 23 of the Act, and section 23 would take precedence over section 26 in this regard.

2.3 Summary of proposed change

To change the eligibility criteria to remove preference and transactions at an undervalue and instead insert these as further grounds for creditor objection.

3. Debt Relief Notice: Debtor's Obligations – Increase in Income

3.1 Background/Issue

Section 36(3) provides for an obligation on the debtor whose income increases during the supervision period by €400 or more per month to surrender 50% of such increase to the Insolvency Service for distribution to the specified creditors in accordance with section 38. Section 36(4) defines “income” as:

“...his or her income as stated in the documents provided, or documents submitted by him or her, or on his or her behalf, under section 29, less the following deductions:

- (a) Income tax;*
- (b) Social insurance contributions;*

- (c) *Payments made by him or her in respect of excluded debts;*
- (d) *Payments made by him or her in respect of excludable debts that are not permitted debts;*
- (e) *Such other levies and charges on the specified debtor's income as may be prescribed."*

In a recent case, a debtor applied for and was awarded Family Income Supplement (FIS) during the supervision period. As FIS is an income for the purpose of the Personal Insolvency Act, 2012 (Act) and the increase caused by the FIS award was in excess of €400 per month, the debtor advised the Insolvency Service of the increase and surrendered 50% of same for distribution to his creditors. This is completely at odds with the spirit of the Act and the rationale for awarding FIS which, pursuant to section 228 of the Social Welfare Consolidation Act, 2005 is granted to families whose income falls below a certain monetary threshold deemed suitable for families of that composition.

The definition of income detailed in section 36(4) of the Act, as stated above, further obliges debtors who are currently repaying excluded or excludable (non-permitted) debts at a rate of €400 or more per month to surrender a sum on the discharge of that excluded or excludable (non-permitted) debt.

For example – Debtor on basic social welfare payment with maintenance arrears payable at €400 per month:

	Income as per DRN application	Income post-payment of Excluded Debt
Income	814.67	814.67
Less income tax	0	0
Less Social Insurance Contribution	0	0
Less payments to Excluded Debts	400.00	0
Less payments to Excludable, non-permitted, debts	0	0
Less levies	0	0
Income as per section 37(4)	414.67	814.67

Accordingly, while the debtor's actual income source has not increased, his income as calculated in accordance with section 37(4) as increased by €400 and, accordingly, he will be obliged to surrender €200 to the ISI for distribution to his creditors.

Furthermore, the above calculation takes no account of the Reasonable Living Expenses (RLE) provided by section 23 and guidance thereon published by the Insolvency Service. In the above example, where

the debtor is a single person living alone with no car, his RLE set costs (excluding accommodation or special circumstances) are €938.14 – over €500 more than the income set out above. In no other arrangement provided by the Act is a debtor required to live on less than the Reasonable Living Expenses provided by the ISI and, accordingly, we submit that section 36 be amended to provide that where the debtor's income as calculated pursuant to section 36(4) is less than the debtor's Reasonable Living Expenses at the time of that calculation, the requirement to surrender 50% of any increase shall not apply, and that exemptions be made for those in receipt of Supplementary Welfare Allowances.

Under a voluntary arrangement the same debtor would advise their creditors of their change in circumstances – however if they remained so significantly under the relevant RLE - their money advisor in general, while always encouraging clients to pay what they can afford, would not advise that the available money be allocated to their unsecured creditors, nor in the main, would their unsecured creditors seek additional payments on this basis. In this regard a voluntary arrangement will remain more attractive to many debtors.

3.2 Practical considerations/Linkages

Obviously this proposal is linked to the proposed decrease in the supervision period to one year, as previously outlined.

3.3 Summary of proposed change

This change is proposed to ensure that borrowers already living below the RLE who access State – payments which are recognised as essential for the welfare of themselves/their household are not required to surrender such income in whole or in part during the supervision period, particularly where, notwithstanding such increase, the debtor's income remains below the Reasonable Living Expenses as determined with regard to section 23 of the Personal Insolvency Act, 2013.

4. Debt Relief Notice: Increase Motor Vehicle Value Threshold

4.1 Background/Issue

A Debt Relief Notice (“DRN”) is a debt solution specifically for people who have low income, few assets and unsecured debts up to €35,000. The eligibility criteria for a DRN are set out in the Personal Insolvency Act 2012 (“the Act”). To qualify for a DRN a debtor must have net disposable income of €60 or less per month calculated by taking into account a debtor’s income and assets and allowing the debtor reasonable living expenses. Section 26 of the Act allows a debtor to retain:

“one motor vehicle, where that motor vehicle is reasonably necessary in order for him or her to carry out his or her everyday activities and—

(1) is worth €2,000 or less, or is worth such other amount as the Minister may prescribe “...

The €2,000 motor valuation has been the subject of some discussion between the Insolvency Service of Ireland (“ISI”) and the head office of the Money Advice & Budgeting Service (“MABS”) over the last two years. The feedback from MABS offices around the country – with particular emphasis on more rural locations – was that this threshold was too low and that the low threshold meant that debtors on very low incomes but with a relatively modest valued motor vehicle were ineligible to apply for a DRN. In addition, MABS, in its 2015 Pre-Budget Submission, highlighted the fact that the Act makes no exception for vehicles used solely for business use and the €2,000 motor vehicle limit may affect a debtor’s ability to make a living.¹

4.2 Practical considerations/Linkages

Car ownership in Ireland is generally quite high and on the rise. According to the 2011 census, 1.36 million Irish households had at least one car, an increase of 186,000 from 2006. In 2011, 91% of households in rural areas owned at least one car, compared with 78% of households in urban areas. Of those households with a car, 60% in rural areas had two cars or more, in contrast to 44% in urban areas².

Lack of access to adequate public transport is an important factor in car ownership in rural locations. 69% of the country’s commuters travel to work by car. 21% of commuters in Dublin avail of the public

¹ https://www.mabs.ie/downloads/reports_submissions/MABS_Pre_Budget_Submission_2015.pdf, p. 13

² http://www.cso.ie/en/media/csoie/census/documents/thisisirelandpart2census2011/This_is_Ireland_Highlights_P2_Full_doc.pdf, p. 37

transport, while around 2% of commuters in rural areas – and towns with populations of less than 1,500 - travel by public transport.³

The reasonable living expenses allow for the cost of an NCT test every two years, indicating a car that is less than 10-years old, and the reasonable living expenses allow an amount of less than €200 a year to cover the vehicle servicing costs to include repairs. Therefore, the reasonable living expenses are predicated on a reasonably modern motor vehicle with only general maintenance costs.

The Bankruptcy Act 1988 allows a bankrupt to retain “excepted articles” not exceeding in value of €6,000. In general, a car represents a significant portion of the excepted articles of a bankrupt. This €6,000 excepted articles limit must be borne in mind in any review of the DRN motor vehicle limit.

The need to enable insolvent debtors to resolve their indebtedness (including by determining that debts stand discharged in certain circumstances) in an orderly and rational manner without recourse to bankruptcy, and thereby facilitate active participation of such persons in economic activity in the State is one of the objectives set out in its long title to the Personal Insolvency Act 2012. It may be argued that if the €2,000 motor vehicle is denying otherwise eligible debtors from availing of a DRN, then such debtors are not being facilitated to participate in economic activity.

5.2.1 Motor Vehicle

The €2,000 value is designed to reflect that of a motor vehicle of the type that is reasonably necessary for the debtor to carry out his or her everyday activities. The ISI is not aware of any research carried out at the time the legislation was drafted as to what type of vehicle €2,000 represented and in fact the value was increased from €1,200 to €2,000 as the Bill progressed through the Oireachtas.

There can be no doubt that the purpose of the legislation is to have an entry qualification to DRN based on a motor vehicle value. However, the legislature left the option with the Minister to prescribe the motor vehicle value threshold be other than €2,000 in the future.

The ISI obtained a data set from Cars Ireland of over 8,000 motor vehicles advertised for sale in March 2017 whose values were between €2,000 and €6,000. This data showed that less than 10% of vehicles for sale had a value between €2,000 and €2,500 and that a motor vehicle with a value between €2,000 and €2,500 would, in general, have a manufacture year of 2004, that is, be a 13-year old motor vehicle. The age of the vehicle changes as the motor vehicle limit increases. A motor value between €3,000 and €3,500 in general equates to a 2006 motor vehicle and a motor value between €4,000 and €4,500 in

³http://www.cso.ie/en/media/csoie/census/documents/census2011profile10/Profile_10_Full_Document.pdf, p. 11

general equates to a 2007 motor vehicle. Finally, a motor value of €5,000 in general equates to a 2008 motor vehicle, that is, a 9-year old vehicle.

4.3 Summary of proposed change

The ISI proposes that the Minister by Statutory Instrument prescribe the value threshold of a motor vehicle reasonably necessary for a debtor to carry out his or her everyday activities be set at €5,000 for the purposes of section 26(6)(c)(iii)(l) of the Personal Insolvency Act 2012. This value equates to a 9-year old motor vehicle and is in line with the NCT and servicing costs provided for in the ISI published reasonable living expenses.

5. Debt Relief Notice: Vehicle-Modified to take account of a disability

5.1 Background/Issue

The Act further provides that a vehicle of any value may be treated as an exempted asset where it has been modified to take account of a disability of the debtor's or of their dependent(s). While this is a welcome carve-out from the general vehicular threshold referenced above, it only takes account of disabilities requiring physical adaptation of the motor vehicle, and does not provide for other types of disability. This issue arose in a specific case in November 2014 whereby the debtor had an illness which meant that availing of public transport would result in a serious risk to his health. He purchased a car with the assistance of a specific purpose grant from the HSE and the car he chose was that recommended by the association for the illness concerned. Unfortunately, while there was an established medical need for the vehicle, the vehicle was not modified to take account of the illness concerned (as this was not required) and the Court was unable to grant the Debt Relief Notice due to the prescriptive nature of section 26(6). Accordingly, we submit that the subsection concerned be amended to include vehicles that are either modified to take account of a disability of the debtor's or of their dependent(s) or are required on the basis of a medical need.

5.2 Practical considerations/Linkages

The proofs required from a medical practitioner will need consideration as it is likely that a medical practitioner will not refer to a specific vehicle but rather the specifications required.

5.3 Summary of proposed change

The rationale for the change is as described above; MABS do not believe that the legislation intended a situation whereby a borrower with a chronic illness and with a medical need for a particular vehicle, would be excluded from the ambit of the legislation by virtue of the fact that, while required, their vehicle has not been specially adapted.

6. Time Periods

6.1 Background Issue

The Personal Insolvency Act 2012 (as amended) provides for various time limits and there are over one hundred references to the word “day” in the legislation. There is no definition of “day” included in the interpretation section of the Personal Insolvency Act.

6.2 Practical Considerations/ Linkages

Participants in the personal insolvency process work within various timeframes from the commencement of the application for a Protective Certificate (PC) to implementation of the insolvency arrangements, if approved by the Courts. There are various participants/ professionals involved in the process and differences in the understanding of what “day” means can vary from one participant/ professional to another. This can lead to inconsistency in approaches. In our view, improved clarity around working days would see a resulting decrease in the number of PC extensions currently issued. There may be a requirement to extend this approach to relevant Statutory Instruments also.

6.3 Summary of proposed change

Our suggestion is that there be definitions around “day” which would exclude public holidays, Saturdays and Sundays. This would make it clear what should/ should not be included in timeframes.

The following wording could be adopted:

“day/ days” means any day other than a public holiday or a Saturday or Sunday.

“public holiday” means a day which is a public holiday under the Organisation of Working Time Act 1997.

7. Notifications following Creditor’s Meetings & Court Outcomes

7.1 Background/Issue

At present, notifications in relation to the outcome of creditors meetings, variations, Court proceedings etc. are provided to relevant Creditors in a limited range of circumstances. This has led to a high level of uncertainty regarding cases in progress. According to the latest ISI statistics, 25% of Protective Certificates have been classified as ‘expired’. The current process also limits the efficiency and effectiveness of the insolvency framework for all involved in the insolvency process. Notifications would ensure that stakeholders focus on working with those engaging with the insolvency process while also ensuring that adequate steps to identify issues related to cases not proceeding are put in place.

7.2 Summary of proposed change

We propose that the Act is amended to facilitate the provision of notification of the outcome of key steps in the insolvency process to Creditors. Notification is generally provided by electronic means so there should be limited additional impact on current procedures. In the event that the role of the ISI is extended to include notifications, the proposal can be reviewed to align with the new process.

The amendments relate to specific steps in the insolvency process including:

1. Notification following Creditors meeting

Section 75, insert the following:

Where a Debt Settlement Arrangement is rejected or, as the case may be, deemed to have been rejected at a creditors’ meeting in accordance with section 73, the personal insolvency practitioner shall as soon as

practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned of that rejection or, as the case may be, deemed rejection, which notification shall be accompanied by —

(a) (i) subject to subparagraph (ii), a certificate with the result of the vote taken at the creditors' meeting, identifying the number of votes, in value of the creditors present and voting, in favour of and against the proposed Debt Settlement Arrangement or

(ii) where section 73(7) applies to the proposal, a certificate to that effect,

Section 112A, insert the following:

Where a Personal Insolvency Arrangement is rejected at a creditors' meeting in accordance with section 110 or, as the case may be, deemed under section 108 to have been rejected, the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned of that rejection or, as the case may be, deemed rejection, which notification shall be accompanied by —

(a) (i) subject to subparagraph (ii), a certificate with the result of the vote taken at the creditors' meeting, identifying the proportions of the respective categories of votes cast by those voting at the creditors' meeting, or

(ii) where the proposal is deemed under section 108(8)(a) (as amended by section 15 (b) of the Personal Insolvency (Amendment) Act 2015) to have been rejected, a certificate to that effect,

2. Notification regarding a Variation

DSA Variation (Subsection 82 (9))

Where the variation of a Debt Settlement Arrangement is rejected under subsection (7), the personal insolvency practitioner shall as soon as practicable notify the Insolvency Service and each creditor concerned of the fact.

PIA Variation - Section 109 (6) applies the amendments covered under section 112A

3. Notification of outcome of Court

Extend subsection 78 (7) DSA

On receipt of a notification under subsection (6), the personal insolvency practitioner shall notify each creditor concerned whether the court—

(a) approves or refuses to approve the coming into effect of the Debt Settlement Arrangement under this section, or

(b) decides to hold a hearing referred to in subsection (3).

Extend subsection 115 (6) PIA

On receipt of a notification under subsection (6), the personal insolvency practitioner shall notify each creditor concerned whether the court—

(a) approves or refuses to approve the coming into effect of the Personal Insolvency Arrangement under this section, or

(b) decides to hold a hearing referred to in subsection (3).

4. Notification of outcome of an appeal

Extend Section 115A (11)

On receipt of a notification under subsection (11), the personal insolvency practitioner shall notify each creditor concerned where the court makes or refuses to make an order under subsection (9)

8. PIP to be permitted to nominate the Chairman of a Creditors' Meeting

8.1 Background/Issue

As it stands, the conduct of a creditors' meeting to approve or vary an insolvency arrangement is governed by Statutory Instrument 335 ("S.I. 335").

S.I. 335 defines the "chairperson" in relation to a creditors' meeting as follows:

"'chairperson' means the personal insolvency practitioner for the time being standing appointed pursuant to the Act in respect of the debtor (party, or who wishes to become party), to the Debt Settlement Arrangement or Personal Insolvency Arrangement the subject of the relevant creditors' meeting;"

As the number of insolvency arrangement increase so do the number of creditors' meetings. APIP respectfully submits that it is impractical to require the PIP to be the chairman of each creditors' meeting. It is understood that a PIP can attend a creditors' meeting by phone or electronically via Skype. However, clause 9 of S.I. 335 requires a PIP to be within the state at the time of the creditors' meeting:

“Chairperson to be physically present in State.

Nothing in these Regulations shall permit the chairperson to be outside the State during the holding of a creditors' meeting.”

8.2 Summary of proposed change

APIP proposes the following change to the definition of "chairperson" in paragraph 3 of S.I. 335 of 2013 to read:

“chairperson” means the personal insolvency practitioner for the time being standing appointed pursuant to the Act in respect of the debtor (party, or who wishes to become party), to the Debt Settlement Arrangement or Personal Insolvency Arrangement the subject of the relevant creditors' meeting; **or a person over the age of 18 years (who may be an employee, agent, representative or servant of the personal insolvency practitioner) that has been nominated by the personal insolvency practitioner to act as chairperson for the creditors meeting”.**

The Consultative Forum supports the amending of the definition of chairperson subject to the personal insolvency practitioner, who stands appointed in respect of the debtor, retaining responsibility for meeting the requirements of the Personal Insolvency legislation undertaken by their nominee. This proposal is not expected to give rise to additional costs.

9. ISI Role and Court Requirements

9.1 Background/Issue

There was broad agreement in principle that some functions currently undertaken by Courts, could be undertaken by the ISI in the following areas;

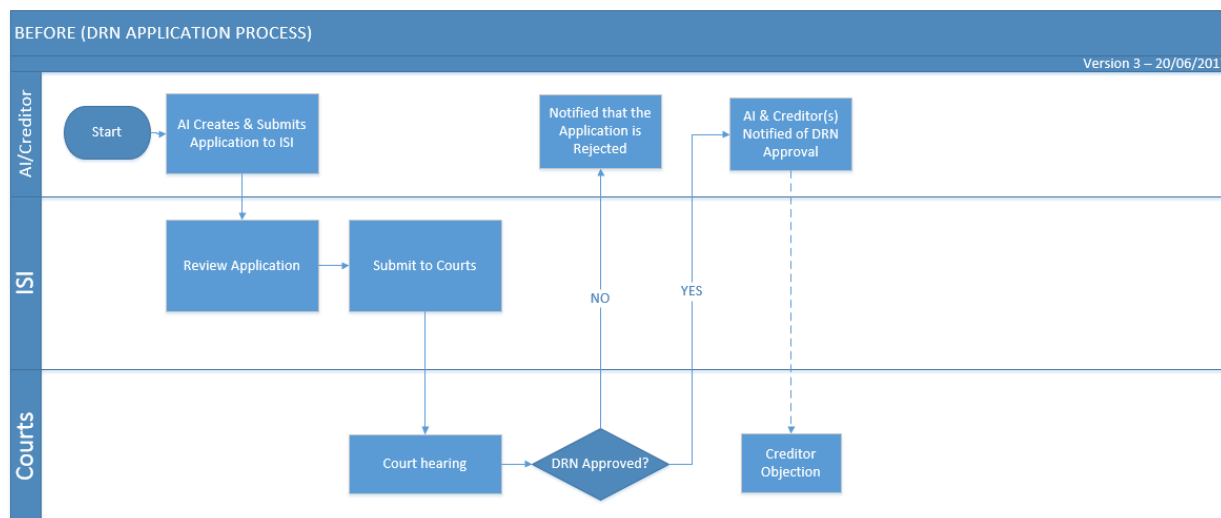
- Granting and Extending Protective Certificates;
- Granting Debt Relief Notices;
- Approval of DSA and PIA Arrangements;
- Approval of Variations to DSA and PIA Arrangements.

9.2 Summary of Current and Proposed Procedure

The ISI has set out below the current procedures and the proposed procedures were it to undertake some of the functions currently undertaken by Courts in each of the four areas listed above. The Consultative Forum assumes that reasonable timelines would apply where appropriate.

9.2.1 DRN - Current Procedure

Diagram 1a sets out the current DRN procedure.

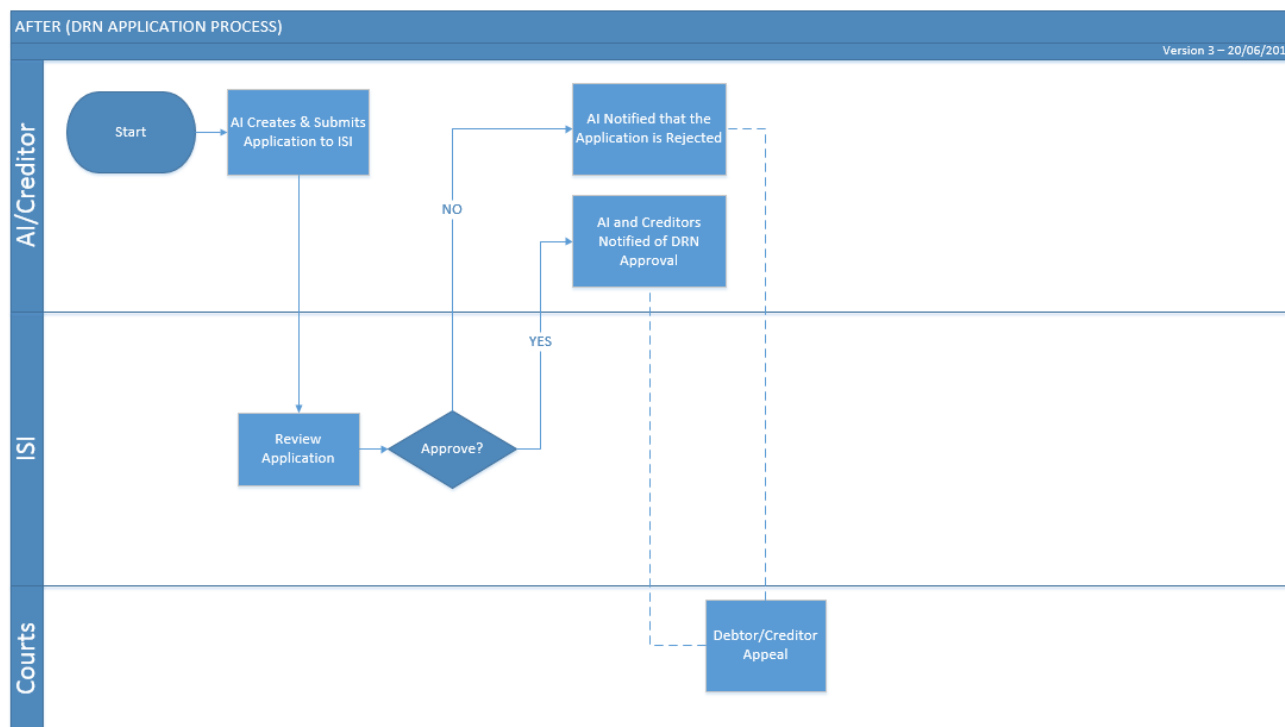


An application for a DRN is made by an Approved Intermediary on behalf of a debtor to the ISI. The ISI reviews the application, and when the ISI is satisfied that the application is in order having regard to specified criteria, forwards it to the appropriate court for decision. Where the court is satisfied that the specified criteria have been satisfied and that the debts specified in the application are qualifying debts, it shall issue a DRN. Where the court is not so satisfied it shall refuse to issue a DRN.

A specified creditor under a DRN who is aggrieved by the inclusion of its debt in a DRN may lodge a notice to the appropriate court within the supervision period and on specified grounds.

9.2.2 DRN - Proposed Procedure

Diagram 1b sets out the proposed DRN procedure.



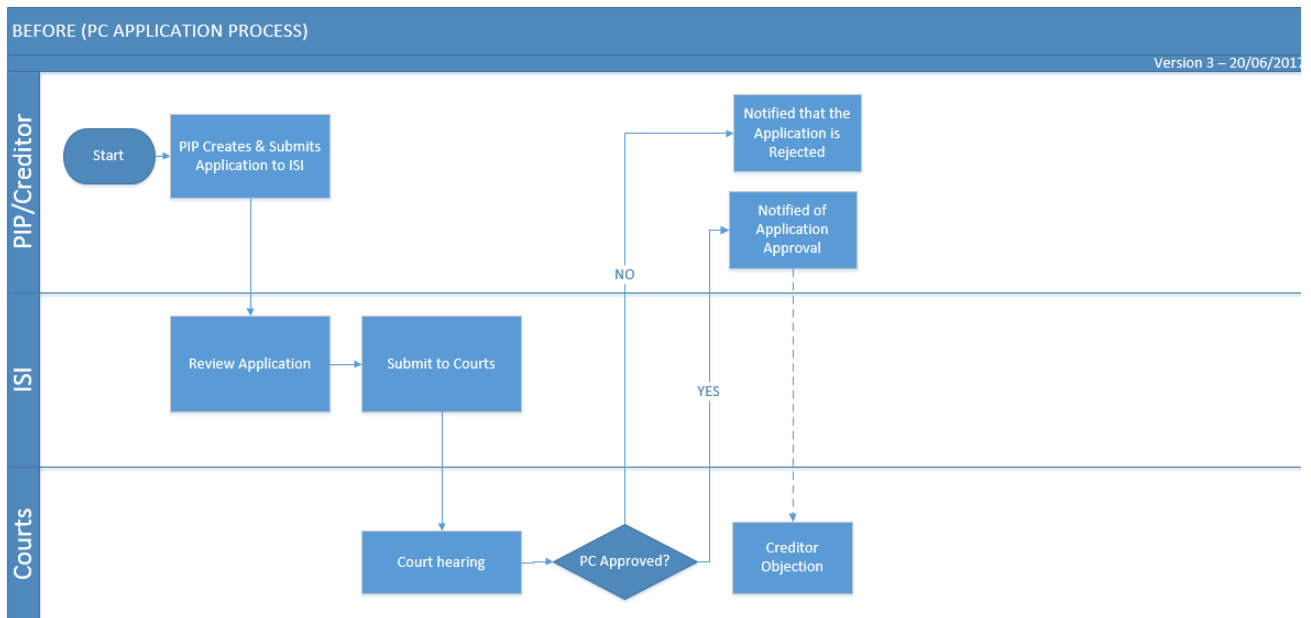
An application for a DRN shall be made by an Approved Intermediary on behalf of a debtor to the ISI . The ISI shall be given all necessary powers to consider an application for a DRN. Where the ISI is satisfied that the specified criteria have been satisfied and the debts specified are qualifying debts, it shall issue a DRN. Where the ISI is not satisfied, it shall refuse to issue a DRN.

Where the ISI has refused to issue a DRN, the ISI shall set out the reasons for same and the Approved Intermediary on behalf of the debtor may, within a specified period and on specified grounds, appeal this decision to the appropriate court.

A specified creditor under a DRN who is aggrieved by the inclusion of its debt in a DRN may, within a specified period and on specified grounds, appeal the ISI’s decision to the appropriate court.

9.2.3 PC – Current Procedure

Diagram 2a sets out the current PC procedure.

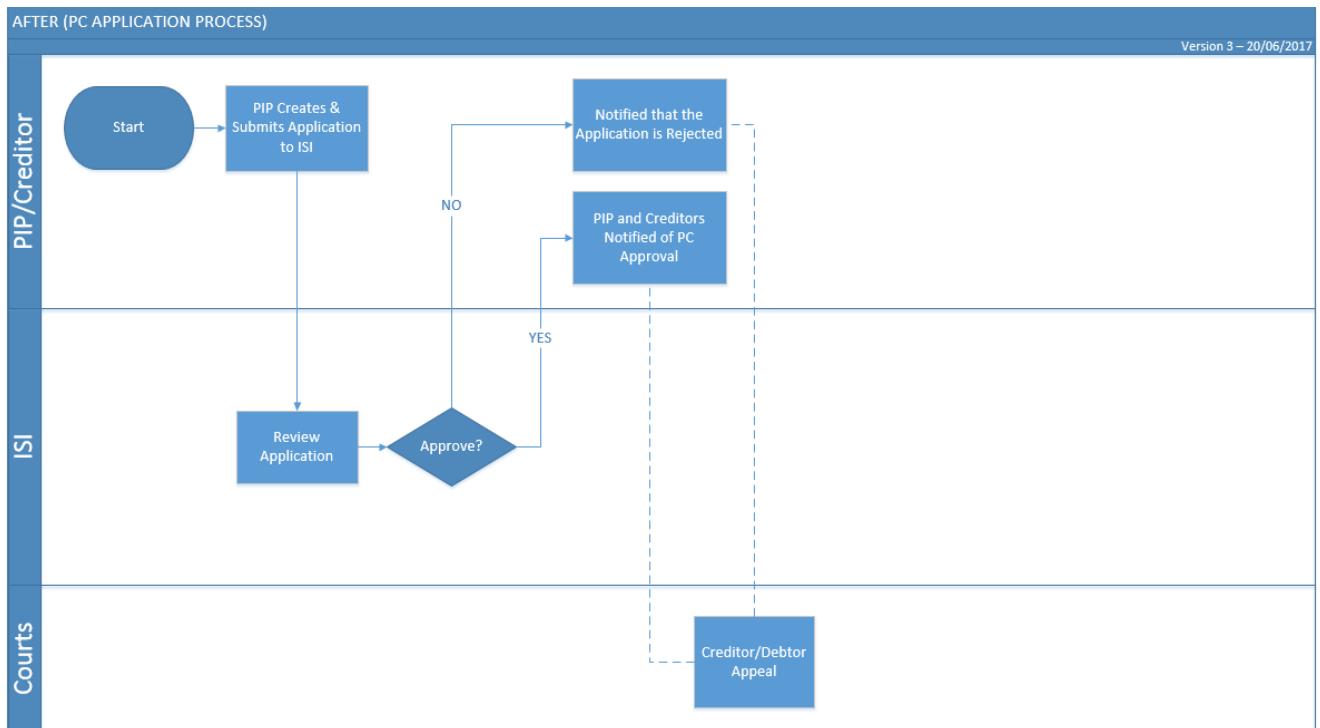


An application for a PC shall be made by a PIP to the ISI. The ISI reviews the application, and when the ISI is satisfied that the application is in order having regard to specified criteria, forwards it to the appropriate court for decision. Where the court is satisfied that the specified criteria have been satisfied and that other relevant requirements have been met, it shall issue a PC. Where the court is not so satisfied, it shall refuse to issue a PC.

Where a creditor is aggrieved by the issuance of a PC, they may lodge within a specified period, a notice to the appropriate court, with must be determined by the court in accordance with the Act.

9.2.4 PC – Proposed Procedure

Diagram 2b sets out the proposed PC procedure.



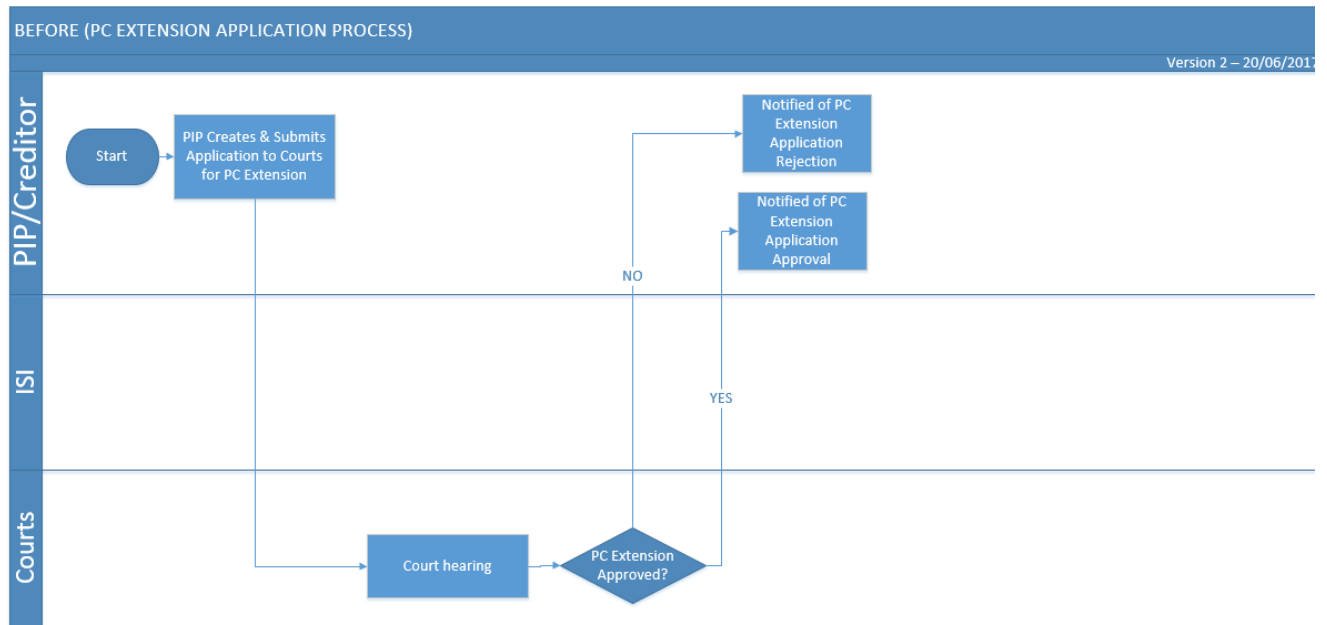
An application for a PC shall be made by a PIP to the ISI. The ISI shall be given all necessary powers to consider an application for a PC. Where the ISI is satisfied that the application is in order having regard to specified criteria, it shall issue a PC. Where the ISI is not satisfied the application is in order having regard to specified criteria, it shall refuse to issue a PC.

Where the ISI has refused to issue a PC, the ISI shall set out the reasons for same and the PIP on behalf of the debtor may, within a specified period and on specified grounds, appeal this decision to the appropriate court.

Where a creditor is aggrieved by the issue of a PC, they shall lodge within a specified period, a notice to the appropriate court, which must be determined by the court in accordance with specified matters.

9.2.5 PC Extension – Current Procedure

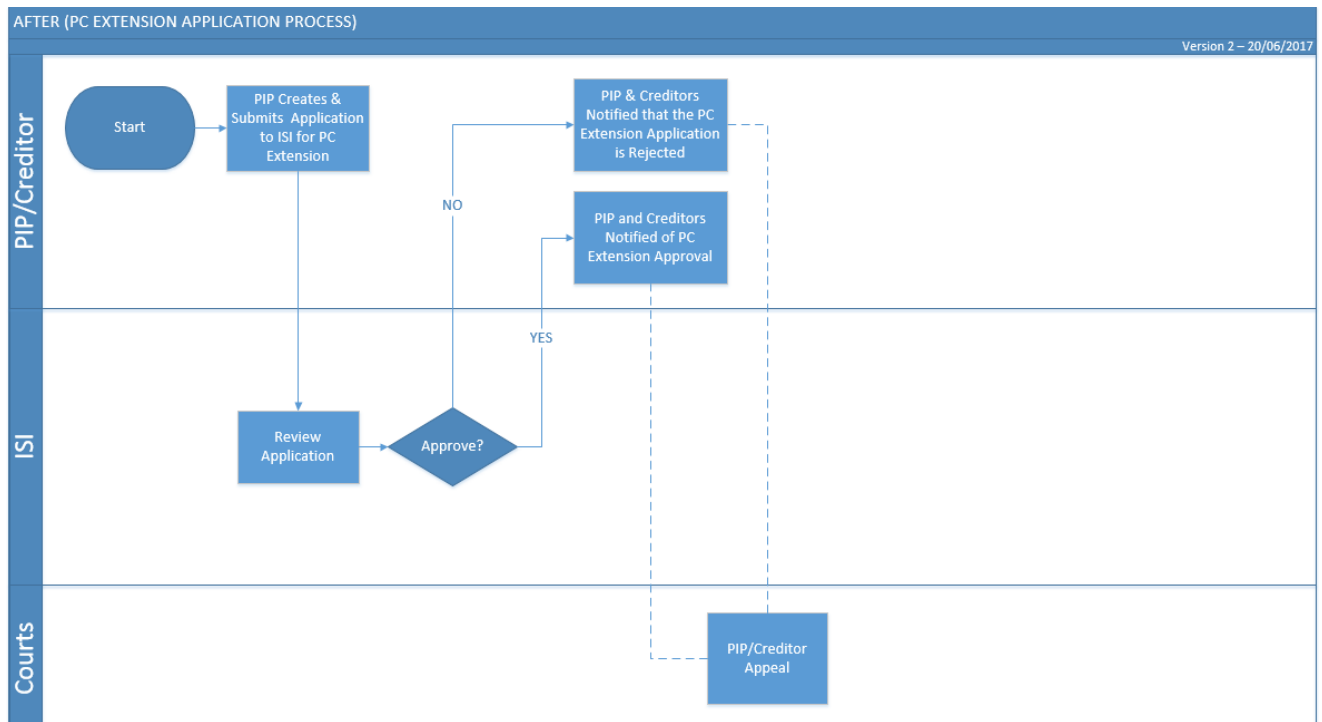
Diagram 3a sets out the current PC extension procedure.



Where a PC has issued the appropriate court may, on application by a PIP, extend the period of that PC for further specified periods, where the court is satisfied as to specified matters.

9.2.6 PC Extension – Proposed Procedure

Diagram 3b sets out the proposed PC extension procedure.



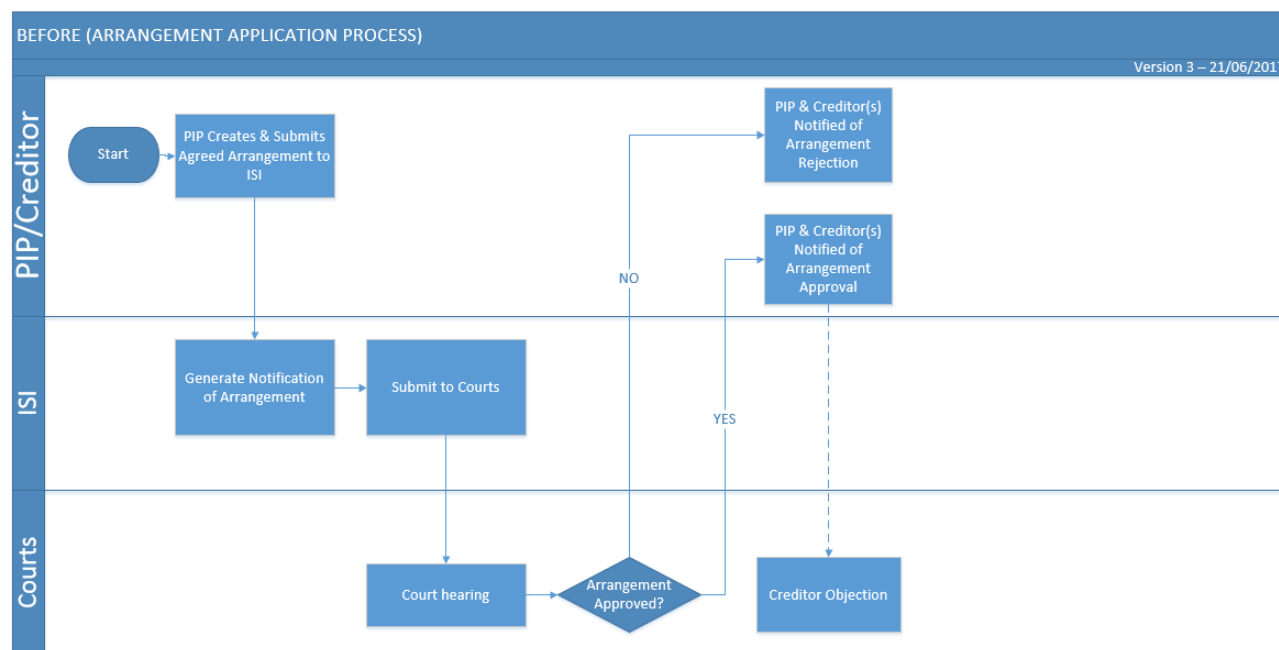
Where a PC has issued the ISI may, on application by a PIP, extend the period of that PC for further specified periods, where the ISI is satisfied as to specified matters.

Where the ISI has refused to extend a PC, the ISI shall set out the reasons for same and the PIP may, within a specified period and on specified grounds, appeal this decision to the appropriate court.

A creditor aggrieved by the extension of a PC may, within a specified period and on specified grounds, appeal the ISI’s decision to the appropriate court.

9.2.7 Approval of DSA and PIA arrangements – Current Procedure

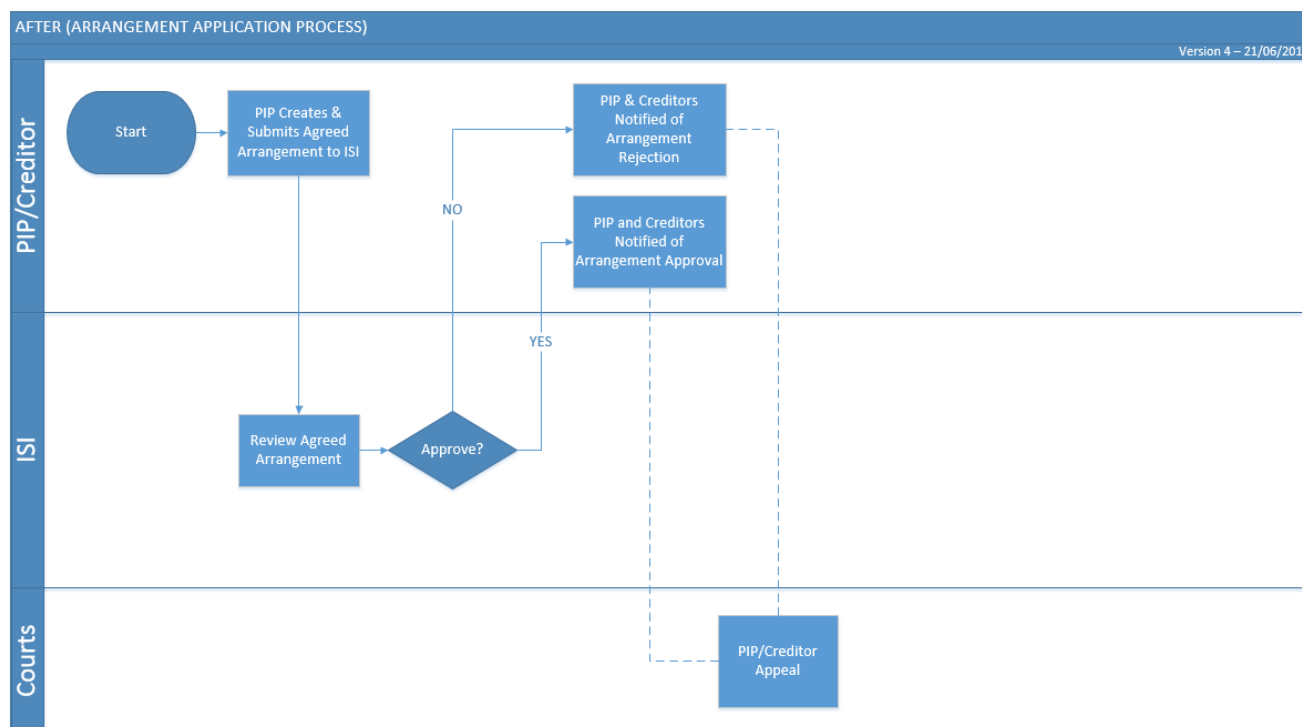
Diagram 4a sets out the current DSA/PIA approval procedure.



Where a DSA/PIA (“Arrangement”) is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI and each creditor of this approval and shall provide the ISI with all necessary documentation. Where there is no objection to the proposal, the appropriate court will proceed to consider it, and may approve or refuse to approve it. A creditor may lodge a notice of objection to the coming into effect of the Arrangement with the appropriate court within a specified period and on specified grounds. Where satisfied that the objection should not be allowed and that the Arrangement satisfies specified criteria, the appropriate court shall approve the Arrangement. Where the court is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the appropriate court shall refuse to approve the Arrangement.

9.2.8 Approval of DSA and PIA arrangements – Proposed Procedure

Diagram 4b sets out the proposed DSA/PIA approval procedure.

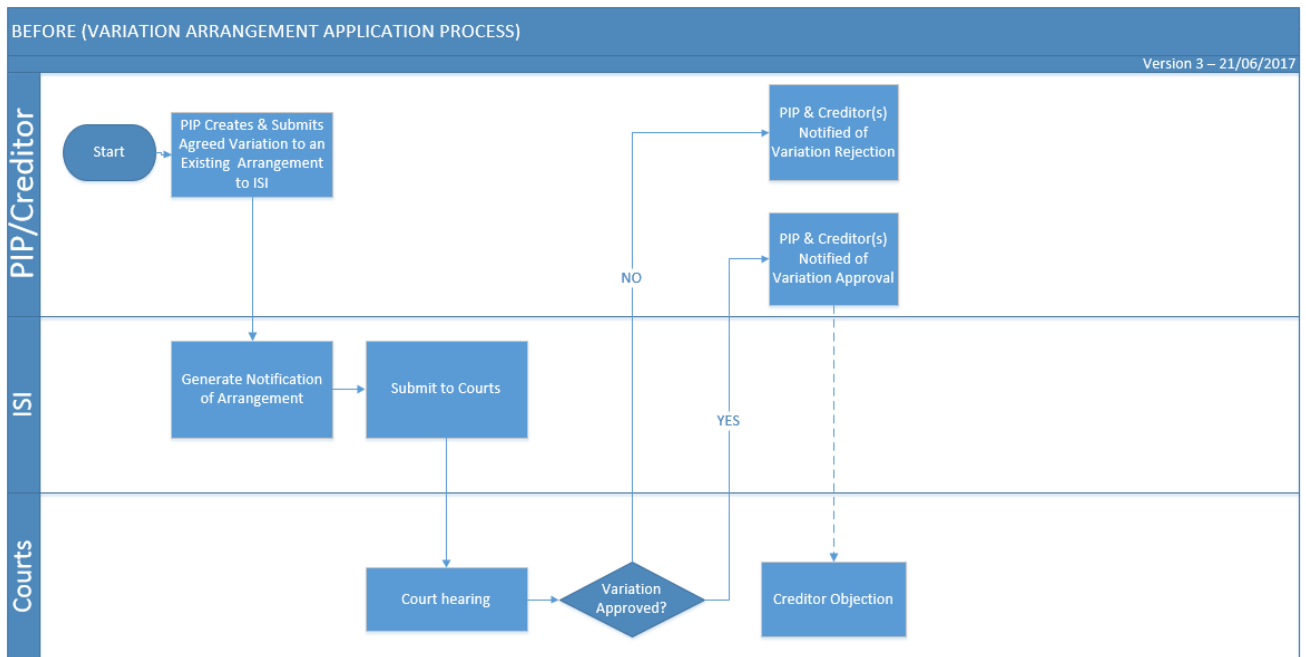


Where an Arrangement is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI of this approval and shall provide the ISI with all necessary documentation. Where there is no objection to the proposal, the ISI will proceed to consider it, and may approve or refuse to approve it. A creditor may lodge a notice of objection to the coming into effect of the Arrangement with the ISI within a specified period and on specified grounds. The ISI shall be given all necessary powers to consider the coming into effect of the Arrangement and any objections thereto. Where satisfied that the objection should not be allowed and that the Arrangement satisfies specified criteria, the ISI shall approve the Arrangement. Where the ISI is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the ISI shall refuse to approve the Arrangement.

Where the ISI has approved or refused to approve the Arrangement, the ISI shall set out the reasons for same and any affected party may, within a specified period and on specified grounds, appeal this decision to the appropriate court.

9.2.9 Approval of Variations to DSA and PIA arrangements – Current Procedure

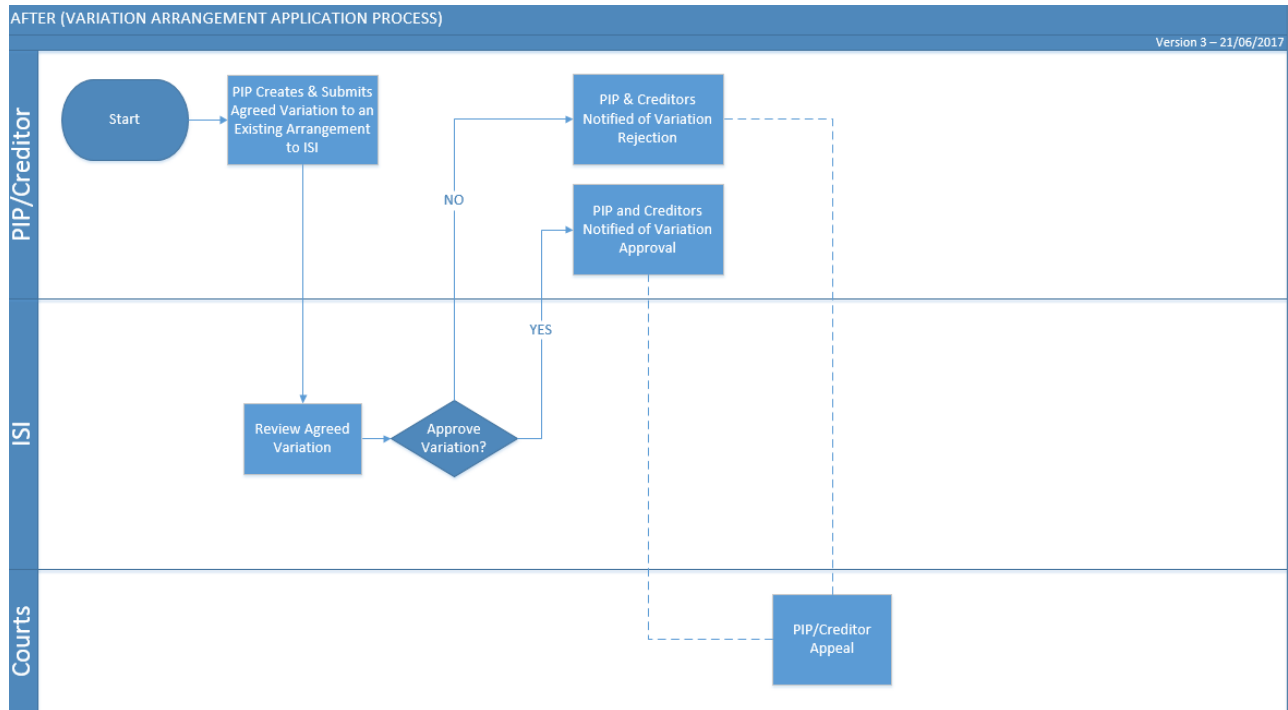
Diagram 5a sets out the current DSA/PIA variation approval procedure.



Where a proposed variation to a DSA/PIA (“Variation”) is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI of this approval and shall provide the ISI with all necessary documentation. A creditor may lodge a notice of objection to the coming into effect of the Variation with the appropriate court within a specified period and on specified grounds. Where satisfied that the objection should not be allowed and that the Variation satisfies specified criteria, the court shall approve the Variation. Where the court is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the court shall refuse to approve the Variation.

9.2.10 Approval of Variations to DSA and PIA arrangements – Proposed Procedure

Diagram 5b sets out the proposed DSA/PIA variation approval procedure.



Where a Variation is approved or deemed to be approved by the creditor(s), the PIP shall notify the ISI of this approval and shall provide the ISI with all necessary documentation. A creditor may lodge a notice of objection to the coming into effect of the Variation with the ISI within a specified period and on specified grounds. The ISI shall be given all necessary powers to consider the coming into effect of the Variation and any objections thereto. Where satisfied that the objection should not be allowed and that the Variation satisfies specified criteria, the ISI shall approve the Variation. Where the ISI is satisfied that the objection should be allowed, or where it is not satisfied that specified criteria have been met, the ISI shall refuse to approve the Variation.

Where the ISI has approved or refused to approve the Variation, the ISI shall set out the reasons for same and any affected party may, within a specified period and on specified grounds, appeal this decision to the appropriate court.

10. For Information

The Forum also identified two other areas where improvements could be made to make the insolvency process more efficient;

- a) The potential opportunity for a revised PFS to be used following court approval of an insolvency arrangement in certain circumstances such as the annual review of an insolvency arrangement where there has been no material change in a debtor's circumstances;
- b) The potential efficiency of the PIP not having to complete a brand new arrangement proposal each time a variation to an insolvency arrangement is required.

The Consultative Forum's initial view is that these areas can be dealt with by statutory instrument pursuant to section 136 of the Personal Insolvency Act 2012 following detailed consideration by the Protocol Oversight Committee in the second half of 2017. The Consultative Forum wish to bring to the Department's attention that should it transpire that an amendment to primary legislation is required to effect the outcome of the Protocol Oversight Committee deliberations then the Consultative Forum will bring this to the Department's attention well in advance of the Department's deadline for laying a report before each House of the Oireachtas.