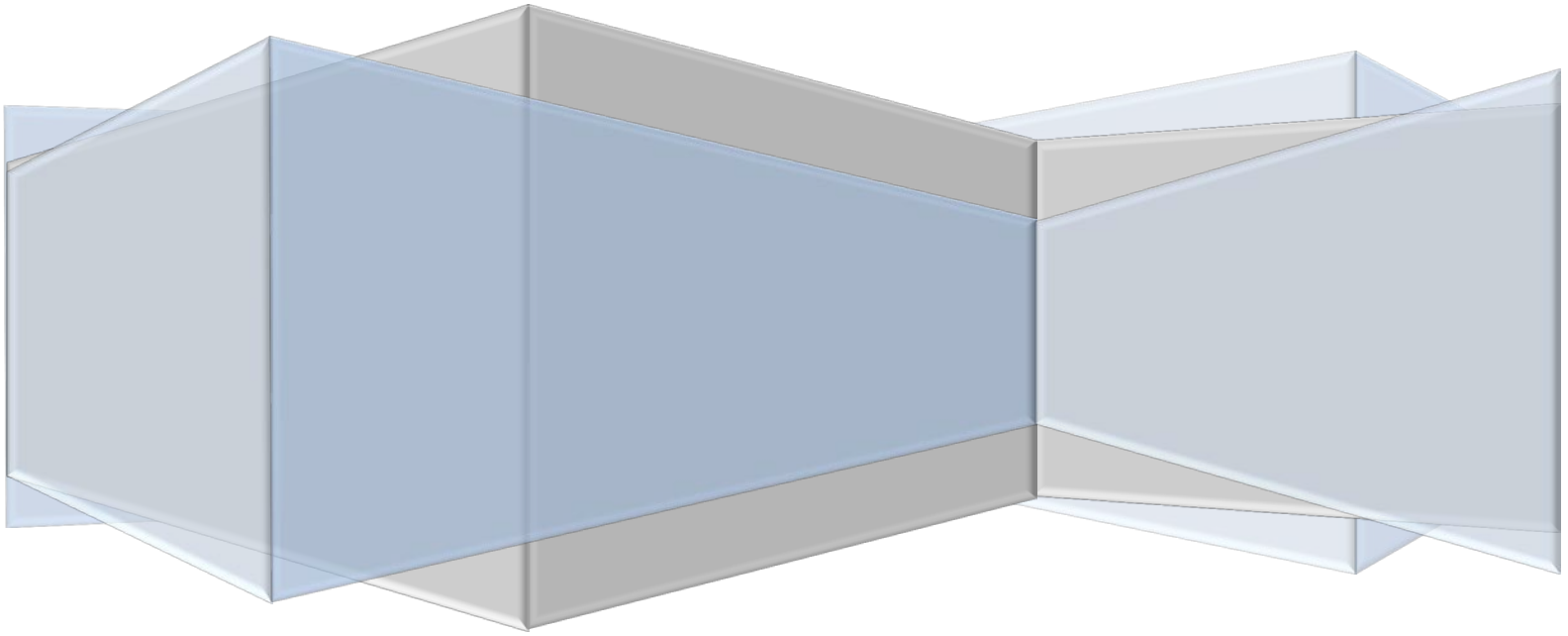
MABS

Submission on Part 3 of the Personal Insolvency Act, 2012



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INTRODUCTION

ABOUT MABS

The Money Advice and Budgeting Service (MABS), was established in 1992 to help people on a low income to cope with debts and take control of their own finances. It is a free, confidential and independent service. It currently comprises 51 MABS Services, located in over 60 offices nationwide, from which the face-to-face support provided by MABS staff is available. MABS is funded and supported by the Citizens Information Board.

MABS primary concern is to enable people to avoid debt problems relating to day-to-day living expenses and to work with its clients with the aim of supporting them to attain, or return to, a position of financial self-reliance.

MABS National Development was established in 2004 to further develop service provision by the MABS network of companies, through provision of technical, social policy, educational, promotional, project and other supports; it also provides the MABS National Helpline.

Twenty five years since its foundation, MABS continues to play a vital role in assisting over 40,000 new clients/callers each year in addressing their financial difficulties. All MABS companies are 'Approved Intermediaries' (AI's) and are authorised to support applicants with the Debt Relief Notice (DRN) process. Since 2015, MABS has a new service, Dedicated Mortgage Arrears MABS (DMA MABS), which provides support to people who are in late-stage mortgage arrears. MABS is also the 'Gateway to Debt Advice' under the newly established ABHAILE Service.

MABS works closely with a range of stakeholders both nationally and locally to support its client group. MABS is currently involved in a variety of consultative groups, steering committees and partnership projects with a variety of government departments and agencies, regulators, creditors, and their representative bodies, as well as NGO's of social concern, at national level, with the overall aim of reflecting the issues affecting the MABS client group (low-income households) and effecting positive change for them.

MABS CLIENT PROFILE

In 2016, there were 19,866 new clients in MABS and the MABS National Helpline dealt with almost 21,000 callers. There were a further 5,509 new clients in the first quarter of 2017 and 6,054 callers to the MABS National Helpline during the same period. Since 2013, 1,008 DRN's, processed with the

support of MABS, have been approved. The DMA MABS Service has supported over 3,800 clients over the course of 2016 and 2017.

The demographic profile of MABS clients has remained relatively stable over many years but the numbers of mortgaged clients has steadily increased since the recession began. A change has also recently started to occur in the percentage of MABS clients that are waged/self-employed. In Q1 2017, that figure stood at 44.5% with the remainder reliant on social welfare, in Q1 2016 the figures were 38% (waged/self-employed), with 62% on social welfare. MABS clients are heavily concentrated in the 41-65 year age bracket, but the number of clients aged 65+ has been growing gradually for the last number of years[1].

APPROACH TO COMPLETING THIS SUBMISSION

In preparing this submission MABS National Development asked MABS Services to provide feedback on their and their clients' experiences of accessing the insolvency processes, with particular focus on the operation of Part 3 of the Personal Insolvency Act, 2012, i.e. the Debt Relief Notice, Debt Settlement Arrangement and Personal Insolvency Arrangements. While not in scope for this submission, many MABS staff are of the view that insolvency is still not accessible to their clients because their income is too low. Other clients remain excluded from the potential of the Debt Relief Notice due to some of the eligibility criteria. There is a strong view emerging from staff that a 'Public Personal Insolvency Practitioner (PIP)' service is required to achieve insolvency solutions for MABS clients and, where an insolvency solution is not possible, to provide support with bankruptcy. MABS is currently represented on the ISI Consultative Forum and has made a submission to the Chair of that Forum in respect of eligibility and operational issues arising in respect of Debt Relief Notices, which are referenced again within this submission for completeness.

DEBT RELIEF NOTICES

MABS is the main provider of Debt Relief Notices in the State through the Approved Intermediary Service, a network of qualified and trained professional insolvency practitioners authorised by the ISI. Through the course of our work, it has emerged that the Eligibility Criteria contained in section 26 of the Act present barriers to many potential debtors in accessing a Debt Relief Notice.

SUPERVISION PERIOD

[1] See https://www.mabs.ie/en/about_us/mabs_statistics.html,

MABS proposes a reduction in the 3 year supervision period for Debt Relief Notices (DRN) to one year. MABS 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/ AIs 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.

PREFERENCES AND TRANSACTIONS AT AN UNDERVALUE

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.

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.

EXCLUDABLE DEBTS

Rent arrears, whether owed to a private landlord or local authority / housing agency, is currently a qualifying debt that must be included in the application for a Debt Relief Notice. As a consequence, many debtors who have managed to secure affordable accommodation but who have fallen behind in payments to their landlords are discouraged from applying for a Debt Relief Notice due to fear of eviction or other consequences (e.g. that repairs to the property would not be carried out in a timely manner, that they may be refused access to waiting lists in other local authority areas) that would have a negative impact on their reasonable standard of living.

If rent arrears owing to a debtor's current landlord could be included in the definition of "excludable debt", the debtor would have discretion to include this debt in the Debt Relief Notice application having been advised of the possible consequences of doing so by the Approved Intermediary.

VEHICLE – VALUE THRESHOLD

The majority of Debt Relief Notices have been granted to debtors living in Dublin, Leinster and the South-East of the country, areas with well-established transport links. There is, however, a cohort of low income, low asset debtors in other counties who are currently ineligible due to the need to have a reliable vehicle. This need is particularly prevalent where public transport and road networks are not reliable. The threshold of €2,000 for a vehicle in these areas is too low for sustained use and the cost of repair to such a vehicle would be prohibitive. Research by the website motorcheck.ie, conducted in 2014[2], estimated that the value of used cars has increased by as much as 32% in the previous four years, reporting that the buyer of a three year old car in 2013 would pay an average of €2,135 more than the buyer of a three year old car in 2010. Accordingly, we submit that an increase in the value threshold for an exempted vehicle be increased from €2,000 to €5,000 to allow those debtors in remote areas to avail of the Debt Relief Notice process.

[2] http://www.motorcheck.ie/blog/inflation-in-the-used-car-market/

VEHICLE – MODIFIED TO TAKE ACCOUNT OF A DISABILITY

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.

INCREASE IN INCOME – SECTION 36 OBLIGATION

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 one 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. Furthermore, the section 36 income calculation takes no account of the Reasonable Living Expenses (RLE) provided by section 23 and published by the Insolvency Service. 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.

DEBT RELIEF NOTICE PROCESS – PROPOSED CHANGES TO SECTIONS 27 TO 29

The experience of MABS' Approved Intermediaries indicates that much of the time is spent by the debtor gathering verifying documentation for debts and expenditure items and the AI verifying the legal title to the creditor, where necessary. The requirement for the Prescribed Financial Statement to be true and accurate necessitates the collation of up to date verifying documentation in the absence of a comprehensive credit register, such as is used in the UK.

Apart from the requirement to have recourse to the courts in every Debt Relief Notice application (a constitutional requirement for the protection of the property rights of the creditor), the main differences in how a DRN and DRO application is processed are:

a) the ability of an approved intermediary in the UK to verify the information provided to them in a debtor's statement with reference to a comprehensive online credit database. The ICB is not fit for this purpose as it is incomplete and discretionary for those members who are signed up to it and while the Central Bank of Ireland is currently introducing a Central Credit

Register, the restrictions on the type and levels of debt reported will reduce its efficacy for insolvency purposes; and

b) the information verification and application are completed in one sitting with the DRO process. Again, this is not available to the Irish process, not only due to the legislation, but also due to the need to properly verify the debts being put forward.

The unforeseen consequences of the current drafting of the legislation mean that where the verification process has not yielded a response from the specified creditors, if the debtor presents a lower amount in the Prescribed Financial Statement than is actually outstanding in respect of a specified debt, the creditor can continue to enforce the balance of that debt notwithstanding the issue of a Debt Relief Notice. This is clearly contrary to the spirit and intention of the legislation.

At the request of the ISI, MABS has previously submitted suggested amendments to section 27 and section 29 which would streamline the process and we attach same as an appendix hereto by way of formal submission.

DEBTOR RIGHT TO APPEAL / CHALLENGE DECISIONS

While the ISI has the right to apply to the Circuit Court for a termination of the DRN, the debtor does not have any right to defend himself against this termination in the event that the ISI is acting on misinformation in doing so or, indeed, to challenge or appeal any other aspect of the process. We therefore suggest the inclusion of a non-judicial appeals mechanism for debtors who may feel aggrieved in respect of the process.

DEATH OF A DEBTOR DURING THE SUPERVISION PERIOD

The legislation is silent as to the process involved on the death of a debtor during the supervision period. The DSA and PIA Protocols provide that creditors have discretion to elect to treat the payments received in full and final settlement of the arrangement or to seek payment from the estate of the debtor. This is predicated on the basis of a DSA or PIA being an arrangement between the debtor and his or her creditors, which is not the case with a DRN whereby the ISI certifies that the application is in order and the Circuit Court approves it. Given the lack of resources a DRN debtor has at his disposal in life, it would be anomalous for a lacuna in the legislation to allow creditors to pursue a debtor's estate when the debts would have been written off at the end of the supervision period. We accordingly submit that the legislation make specific provision for the DRN to be deemed completed on the death of a debtor and the specified debts discharged.

TOO POOR FOR INSOLVENCY – DSA/PIA

ABHAILE SCHEME

MABS, as 'Gateway to Debt Advice', currently operates the Abhaile Scheme, making vouchers available for insolvent debtors in late stage mortgage arrears to speak with a Consultation Solicitor or Personal Insolvency Practitioner (PIP) in respect of their circumstances and to explore options including insolvency arrangements. This Scheme has been in operation since July 2016. To date, almost 6,000 vouchers have been issued for advice from a PIP, with a further 181 in respect of appeals under section 115A of the Personal Insolvency Act, 2012 – the appeal of a rejection at a creditors' meeting. While this Scheme provides indebted debtors important additional support, the data issued by the ISI in the last three quarters indicates that without a change in the legislation to widen the net of those eligible to avail of insolvency arrangements, the proportion of applicants being assisted by way of an insolvency arrangement is reducing on a quarterly basis (Table 1 and 2).

Table 1 – Debt Settlement Arrangements, Q3 2016 – Q1 2017

DSA	Applicants	PC	Arrangements	Arrangements as % of Applications
2016 Q3	98	64	57	58.16
2016 Q4	116	81	43	37.06
2017 Q1	93	69	27	29.03

Table 2 – Personal Insolvency Arrangements, Q3 2016 – Q1 2017

PIA	Applicants	PC	Arrangements	Arrangements as % of Applications
2016 Q3	703	353	180	25.60
2016 Q4	935	445	173	18.50
2017 Q1	1144	427	179	15.65

REASONABLE LIVING EXPENSES AND FUTURE SOLVENCY

Section 99(2)(e) of the Personal Insolvency Act, 2012 provides

> a Personal Insolvency Arrangement shall not contain any terms which would require the debtor to make payments of such an amount that the debtor would not have sufficient income to maintain a reasonable standard of living for the debtor and his or her dependants

Where this is interpreted literally by the PIP, it precludes debtors with an income below that provided for by the Reasonable Living Expenses Guidelines issued by the ISI, effectively barring access to these debtors notwithstanding their capacity to enter into sustainable arrangements with their creditors on a voluntary basis. A provision explicitly allowing a PIP discretion to determine the viability of an arrangement for a debtor whose income is below RLE, based on evidence of sustained payments over a 12-18 month period, would greatly enhance access and opportunity to avail of insolvency.

While not strictly contained in Chapter 3 of the Act, the calculation of set costs in respect of a pre-school child is considerably lower than any other age category. It may be the case that this factors in the availability of the Early Childhood Care and Education Scheme, however for many insolvent debtors, particularly those in low-paid or precarious employment, this would not be applicable and places them at an unfair disadvantage.

CREDITOR VETO

Creditors continue to exercise a disproportionate amount of power in the DSA / PIA processes. The introduction of an exhaustive list of criteria on which a creditor would not be allowed to vote against an arrangement would ensure that spurious objections would be avoided and the debtor would, in accordance with the principles of the Personal Insolvency Act, 2012, avail of a fresh start.

Section 115A of the Personal Insolvency Act, 2012, which introduced an appeals mechanism for debtors wishing to avail of a PIA is also limited in scope as the conditions for accessing same, that is the requirement that the mortgage be in arrears at or before the 1st January 2015, must be approved by a class of creditors and must contain a 'relevant debt', restricts access to those debtors whose arrears arose after this date.

PROTRACTED PROCESSES

We have made a detailed submission in respect of amendments that would enhance the application process for a DRN. Similarly, MABS clients have reported that the process for accessing an insolvency arrangement is cumbersome and time-consuming. This is compounded where a client has capacity or vulnerability issues. For debtors with low income and low assets (as opposed to the 'no income, no

asset' debtors eligible for a DRN), a shorter, simpler process could be employed to allow them to move through insolvency and achieve a fresh start within a reasonable period, similar to an IVA in the UK. This process could be based on the BPFI / MABS Operational Protocol for unsecured debt as either a replacement for or an alternative to the full DSA procedure.

LAND AND CONVEYANCING LAW REFORM ACT, 2013 - ADJOURNMENTS

In the experience of MABS staff who attend repossession hearings regularly, one of the main issues presenting is application of the maximum adjournment of two months introduced by section 2(2) of the Land and Conveyancing Law Reform Act, 2013. This is insufficient to allow borrowers to gather the necessary documentation, take advice from a PIP and have an application for a Protective Certificate approved by the appropriate court. An amending provision affording the County Registrar discretion to determine the appropriate adjournment based on the circumstances and complexity of the case would have a greater impact on the availability of insolvency arrangements to borrowers in mortgage arrears.

ACCESS TO INSOLVENCY ARRANGEMENTS

ONCE PER LIFETIME

Each insolvency arrangement may only be accessed once by a debtor. This essentially acts as a barrier to younger debtors struggling with unsustainable debt for fear that they may be precluded from accessing an arrangement in the future should some unforeseen event befall them. In other jurisdictions, such as the UK, borrowers may avail of insolvency arrangements after 6 years has elapsed from the date of their previous arrangement. An amendment to the Personal Insolvency Act, 2012 to allow borrowers to access arrangements more than once would support the use of the legislation as an economic tool providing a fresh start to those who need it and enabling them to meaningfully participate in economic society.

REGULATION OF PERSONAL INSOLVENCY PRACTITIONERS

In MABS experience, in many cases the quality of work conducted by PIPs for their clients is of a high standard, particularly amongst PIPs who have specialised in this area over other practice areas and have become conversant with all aspects of the legislation including section 115A appeals. However, the client experience is sometimes less positive with clients who have left MABS to avail of the services of a PIP sometimes returning some months later with increasing debts and an additional bill for advisory services. A quality assurance framework for PIPs, containing standards for achievement

in every case, would encourage higher-level engagement in the process. This would include a comprehensive template letter detailing all aspects of the section 52 advices given and basis for same.

CONCLUSION

The introduction of the Personal Insolvency Act, 2012 was a welcome addition to the suite of options available to over-indebted borrowers when it was introduced in December 2012. Once it became operational, however, it soon became apparent that it was administratively cumbersome and available, with the exception of DRNs, primarily to those who could afford to access it. As outlined above some significant augmentation of the legislation is required if it is to meet its objective of enabling insolvent debtors to resolve their indebtedness in an orderly and rational manner without recourse to bankruptcy.

APPENDIX – PROPOSED DEBT RELIEF NOTICE PROCESS

Initiation of Debt

Relief Notice process

27. (1) A debtor who wishes to become a specified debtor shall request a meeting with an approved intermediary who shall provide the debtor with the following information and advice—

(a) the eligibility criteria under *section 26*,

(b) the general effect of making an application under *section 29*, and the consequences, including any adverse consequences, for the debtor in the event of his or her becoming a specified debtor,

(*b*) the other option or options (if any) available to him or her for addressing his or her financial difficulties including, in particular, becoming party to a Debt Settlement Arrangement, Personal Insolvency Arrangement or bankruptcy, and the general effect of choosing one or more than one of those options,

(*c*) the fee (if any) that is prescribed for making an application under *section 29*.

(2) Where the debtor, following the meeting referred to in *subsection (1)*, wishes to apply for a Debt Relief Notice, he or she shall confirm that fact in writing to the approved intermediary and submit to an approved intermediary -

(a) a written statement disclosing all of the debtor's financial affairs, which statement shall include such information as may be prescribed in relation to—

(i) his or her creditors,

(ii) his or her debts and other liabilities,

(iii) his or her assets, and

(iv) the efforts made by him or her to reach an alternative repayment arrangement with his or her creditors,

(*b*) information that fully discloses his or her financial affairs to the approved intermediary,

(c) his or her written consent to the—

(i) making by the approved intermediary of an enquiry under subsection (3), and

(ii) disclosure by the approved intermediary of personal data of the debtor, to the extent necessary for such an enquiry, and

(d) such other information as may be prescribed.

(3) The approved intermediary, on receipt of the information referred to in *subsection (2)*, shall examine that information and, having regard to the obligation of the debtor under *subsections (7)* and *(8),* shall –

(a) determine whether the debtor, in the opinion of the approved intermediary, satisfies the eligibility criteria specified in section 26(2), and

(b) if the approved intermediary is of such opinion referred to in *section 27(3)(a)*, for the purposes of subsections (5) and (6), make such enquiries as he or she considers appropriate to verify the value of a debt or other liability disclosed by the debtor under this section.

Any enquiries made by the approved intermediary pursuant to this section shall not be deemed to reactivate any debt for the purpose of the Statute of Limitations 1957.

(4) Where a creditor who receives an enquiry from the approved intermediary pursuant to this section does not furnish the information requested within 21 days of the making of the enquiry, the approved intermediary shall be entitled for the purposes of subsection (5) to presume that the value of the debt or liability concerned is that disclosed by the debtor and the creditor shall not be entitled to pursue any residual balance should the amount used by the approved intermediary in verifying the value of the debt or other liability in accordance with subsection (3) be less than the actual amount outstanding in respect of that debt or other liability.

(5) On the expiry of the 21 days referred to in subsection (4), the approved intermediary shall complete an application for a Debt Relief Notice in the prescribed from, such application to include a Prescribed Financial Statement completed by the approved intermediary on behalf of the debtor together with a statement to the effect that, in the opinion of the approved intermediary on the basis of the information provided by the debtor –

(a) the information contained in the debtor's Prescribed Financial Statement is true and accurate in all material respects, and

(b) the debtor satisfies the eligibility criteria specified in *section 26(2)*.

(6) On completion by the approved intermediary of the application and Prescribed Financial Statement referred to in subsection (5), the approved intermediary shall furnish to the debtor the completed application form, Prescribed Financial Statement and documentation referred to in *section 29(2)(b) to (h)* for verification and signing by the debtor.

(7) A debtor who participates in the Debt Relief Notice process (including a debtor who becomes a specified debtor), is at all times under an obligation to act in good faith and to co-operate fully in the process.

(8) A person referred to in *subsection (7)*, in his or her dealings with the approved intermediary concerned, shall—

(*a*) make full and honest disclosure to that approved intermediary of all of his or her assets, income and liabilities and of all other circumstances that are relevant to that process,

(*b*) comply with any reasonable request from the approved intermediary to provide assistance, documents and information, including any debt, tax, employment,

business, social welfare or other financial records, necessary for the application of the process to the debtor's case or the performance of the approved intermediary's functions, and

(*c*) ensure that, to the best of his or her knowledge, the Prescribed Financial Statement completed under this section is true, accurate and complete.

(9) A debtor to whom subsection (6) refers shall return the application documentation to the approved intermediary no later than 14 days after receipt by the debtor of such documentation.

(10) On receipt by the approved intermediary of the signed documentation referred to in subsection (9) from the debtor, the approved intermediary shall submit the application to the Insolvency Service in accordance with *section 29(2).*

Creditor consent required for issue of Debt Relief Notice in respect of excludable debt.

28.— (1) A Debt Relief Notice shall be issued in respect of an excludable debt only where the creditor concerned has consented, or is deemed to have consented, in accordance with this section, to the issue of such a Debt Relief Notice.

(2) Where a debtor who wishes an application under *section 29* to be made on his or her behalf wishes the Debt Relief Notice concerned to be issued in respect of an excludable debt, the approved intermediary concerned shall, without delay, notify the creditor concerned of that fact, which notification shall be accompanied by—

(*a*) such information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed, and

(*b*) a request in writing that the creditor confirm, in writing, whether or not the creditor consents, for the purposes of this section, to the Debt Relief Notice being issued in respect of the debt.

(3) A creditor shall comply with a request under *subsection (2)(b)* within 21 days of receipt of the notification under that subsection.

(4) Where a creditor does not comply with *subsection (3)*, the creditor shall be deemed to have consented to the issue of a Debt Relief Notice in respect of the debt concerned.

(5) In this Chapter, "permitted debt" means an excludable debt to which *subsection (1)* applies.

Application for Debt Relief Notice.

29.— (1) An application for a Debt Relief Notice may only be made—

(*a*) on behalf of a debtor who has made the confirmation referred to in *section 27(2)*, and

(*b*) by an approved intermediary who is satisfied, in relation to that debtor, of the matters referred to in *paragraphs (a)* and *(b)* of *section 27(5)*.

(2) An application referred to in *subsection (1)* shall be made to the Insolvency Service, shall be in such form as may be prescribed by the Insolvency Service and shall be accompanied by such fee (if any) as may be prescribed and the following documents—

(*a*) a copy of the statement made by the approved intermediary under *section 27(5)*;

(*b*) a document signed by the debtor confirming that he or she satisfies the eligibility criteria specified in *section 26(2)*;

(c) the Prescribed Financial Statement completed under section 27, in relation to which the statement referred to in paragraph (a) was made, and a statutory declaration made by the debtor confirming that the Prescribed Financial Statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure;

(*d*) a schedule of the creditors of the debtor and the debts concerned, as specified in the Prescribed Financial Statement referred to in paragraph (c), stating in relation to each such creditor—

(i) the amount of each debt due to that creditor,

(ii) whether the creditor concerned is a secured creditor and, if so, the details of any security held in respect of the debt concerned, and

(iii) where the debt is an excludable debt, whether that debt is a permitted debt within the meaning of section *28*;

(*e*) the debtor's written consent to—

(i) the disclosure to the Insolvency Service,

(ii) the processing by the Insolvency Service, and

(iii) the disclosure by the Insolvency Service to creditors of the debtor concerned, of personal data of that debtor, to the extent necessary in respect of the Debt Relief Notice process;

(*f*) the debtor's written consent to the making of any enquiry under *section 30* relating to the debtor by the Insolvency Service;

(*g*) a document signed by the debtor stating whether, to the best of his or her knowledge, there is any judgment or court order in force against him or her which relates to a debt which is a qualifying debt;

(*h*) such other information about the debtor's affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed.

(3) A debtor on whose behalf an application under *subsection (1)* has been made shall notify the approved intermediary concerned as soon as practicable if the debtor becomes aware of—

(*a*) any error in, or omission from, the information supplied to the Insolvency Service in, or in support of, the application;

(*b*) any material change in his or her circumstances between the application date and the date on which the application is reviewed under *section 31(2)* that would affect the debtor's eligibility for the issue of a Debt Relief Notice.

(4) An approved intermediary who receives information under *subsection (3)* shall, without delay, furnish that information to the Insolvency Service.

(5) An application under this section may be withdrawn by the approved intermediary at any time prior to the issue of a Debt Relief Notice under *section 31*.