

M^cCAMBRIDGE DUFFY



A Guide to a Debt Relief Notice (“DRN”)

Personal Insolvency Act 2012

May 2013

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Disclaimer

The guide is for illustrative / guidance purposes only. The Insolvency Service of Ireland will issue further guidance to Personal Insolvency Practitioners regarding the regulation of the Personal Insolvency Act 2012 which may materially change the information contained within this guide. Please note that all circumstances are individual and a full review of financial position will always be required to ensure the appropriate advice and arrangements (if applicable) are sought.

Introduction

The Personal Insolvency Act was signed into law on 26 December 2012. The Act is designed to alleviate the insolvency burden affecting so many people in the Republic of Ireland. The act is largely based upon similar personal insolvency legislation which has operated very successfully in the UK over the last 20 years.

The Personal Insolvency Act's key function is to enable creditors to recover the debts due to them and to allow insolvent borrowers to repay their debts in a realistic, manageable and orderly manner. The Act has amended Irish Bankruptcy Law and also introduces three new mechanisms as an alternative including a Debt Relief Notice.

What is a DRN?

A Debt Relief Notice is aimed to provide relief for people with a low or no disposable income or assets, who are unable to maintain payments to their Creditors as they fall due. A Debt Relief Notice can write off debts up to and including €20,000.

Eligibility

You are considered suitable for a Debt Relief Notice if you meet the following conditions:-

- You are insolvent in that you are unable to pay your debts in full as they fall due and there is no possible change in circumstances for the next three years.
- Your Net Monthly Disposable Income is €60 or less after deducting your reasonable living expenses for that month. (Living expenses will be calculated by the "Authorised Intermediary" on a case by case basis using the reasonable standard of living and reasonable living expenses provided by Insolvency Service Ireland.
- Your debts amount to or less in respect of qualifying debts.
- Your Current Assets cannot exceed €400. (You are allowed 1 piece of jewellery not exceeding the value of, one motor vehicle not exceeding the value of €2,000 and necessary household equipment/tools with a combined value no greater than €6,000).
- Your domicile must be in the Republic of Ireland, or you must have, within the past year ordinarily resided or had a place of business with the Republic of Ireland.

- You must complete a Prescribed Financial Statement (PFS) and made statutory declaration that it is true and accurate.
- An “Authorised Intermediary” has signed a statement of satisfaction as to your eligibility and the truth and accuracy of your Prescribed Financial Statement

You are NOT considered suitable for a Debt Relief Notice if following conditions apply:-

- 25% or more of your debts have been incurred for the previous 6 months
- You have had a DRN previously
- You are subject to a Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA) now or within the past 5 years.
- You have been the subject of Protective Certificate issued in respect of a DSA or a PIA.
- You have entered into certain transactions at less than market value in the past 2 years.
- You have given preferential treatment to one creditor over another in the past 2 years (e.g. paying off a family member before your Bank or Credit Union)
- You are Bankrupt, subject to a bankruptcy measure or have been discharged from Bankruptcy in the past 5 years.

Debts which CAN be included in a DRN

- ✓ Credit Card Debts
- ✓ Overdrafts
- ✓ Personal Loans
- ✓ Credit Union Loans
- ✓ Utility Bills
- ✓ Store Cards

Debts which CAN be included in a DRN but MUST have creditors consent (Excludable Debts)

- ✓ Taxes, duties, levies owed or payable to the state
- ✓ Local Government charges
- ✓ Amounts due to the Health Executive under the Nursing Home Support Scheme.

- ✓ Annual service charges to owner's management companies (Apartments and Housing estates)
- ✓ Liabilities arising under the Social Welfare Consolidation Act 2005
- ✓ Local Authority Rates.
- ✓ Household Charges.

Debts which CANNOT be included in the DRN (Excluded Debts)

- × Family maintenance payments under court orders.
- × Court fines in respect of criminal offences.
- × Liabilities arising out of injury or wrongful death claims awarded by the Court.
- × Liabilities arising from loans obtained by Fraud.

Key Features of a DRN

- Qualifying Debts cannot be greater than €20,000.
- Disposable income may not be greater than €60 Euros after living expenses have been deducted and are in line with the guidelines provided by the ISI.
- A DRN will last up to 3 years.
- A DRN can only be obtained once in a lifetime.
- A DRN can only be sought through an approved intermediary.
- A DRN will protect a debtor from legal proceedings and other actions by creditors during its validity period. However a secured creditor's right to enforce security will not be affected.
- A DRN can be discharged early by paying 50% of the Debts to creditors that are specified in the DRN.
- If a DRN is successfully obtained then the name of the Debtor will be placed on a Public Register of Debt Relief Notices.
- Upon Completion of a DRN the debtors name will be removed from the Register of Debt Relief Notices.

- Debtor can have no additional Assets other than that allowed under the conditions of a DRN.
- A DRN cannot be obtained if the debtor has been involved in either a DSA or a PIA within the last 5 years.
- A Debtor is not eligible to participate in a DRN if they are currently bankrupt, are subject to a bankruptcy measure or have been discharged from bankruptcy within the past 5 years.

Main steps in the process

Applying

- You can only seek a DRN via an “Authorised intermediary” (i.e. MABS) who will act on your behalf during the application process. The AI will talk to you and advise you on your current financial situation and determine whether a DRN is the most suitable option for you.
- If you are eligible and wish to apply for a DRN then you must put this in writing to your AI.
- The AI will then gather all relevant information and fill out the required forms.
- AI will send the application on your behalf to the Insolvency Service Ireland.
- Should your application be in order and all relevant information included, it will then be sent to court where they will issue the DRN.
- The ISI will then enter details of your DRN on a public Register when it is granted.

Complying

- You must provide all relevant information to the AI.
- You must act in good faith and be honest in your application.
- You must comply in the requests for any further information.
- Your DRN will be subject to a 3 year supervision period.
- Should your circumstances change during the 3 years you must inform the ISI

- If you apply for credit over €650 during the 3 year supervision period you must tell the creditor you are subject to a DRN

Completing

- You can exit the DRN at any stage by paying 50% of the amount owed to the creditors specified in the DRN
- If you comply with the terms of the DRN all debts specified in it will be written off after the 3 year supervision process
- If the DRN is successfully completed, the entry on the public register in respect of the DRN will be removed