

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

EXPLANATORY NOTES

PART 5: DEBT MANAGEMENT AND RELIEF

Commentary on Sections: Part 5

Part 2 - Other conditions

576. This part of the schedule sets out other conditions which the debtor must meet in order to obtain a DRO, specifically that he must not have entered into a transaction at an undervalue or given a preference to another person within the two years prior to the application date, and the determination date. This is in order to avoid a situation where the debtor has disposed of his assets in order to meet the permitted criteria for obtaining a debt relief order, and to protect the position of creditors.

Schedule 19: Schedule 4ZB to the Insolvency Act 1986

577. Debtors who are guilty of misconduct that has in some way contributed to their insolvency will be subject to an enforcement regime that encompasses restrictions orders in the same way as bankruptcy. Schedule 19 sets out who may apply for a debt relief restrictions order or undertaking, possible grounds for obtaining one and gives details as to the timing of an application, the duration of the order or undertaking. Such orders may last from 2-15 years and will serve to protect the public from the culpable debtor. Whilst subject to a restrictions order, the debtor will remain subject the same disabilities as those imposed by the original order – for example he will not be able to obtain credit beyond the prescribed amount without disclosing his status.

Section 109: Debt management schemes

578. This section defines “debt management scheme” as used in this Chapter.

579. Subsections (2) to (4) set out conditions that must be met by all schemes that are seeking approval. Schemes must apply only to individual debtors (i.e. not companies or partnerships) who do not have any debts incurred in the course of business. Schemes may be open to all such individuals or to particular categories (as defined by the particular scheme). Schemes must also allow any debtor to whom the scheme applies to ask that a DRP be arranged. Where such a request is made, the scheme operator, (or an authorised person under the scheme), must decide whether a DRP is appropriate for the debtor (in accordance with the terms of the scheme, some of which may be prescribed under section 111), and if so, arrange the plan.

580. Subsection (5) specifies that the operator of an approved scheme must be a body of persons, (for example, a company or a partnership rather than an individual). Therefore it would be possible for a body such as Citizens Advice, or an existing repayment scheme provider such as the Consumer Credit Counselling Service or Payplan, or for

a private company, to operate an approved scheme. But it would not be possible for an individual to do so.

Section 110: Debt repayment plans

581. This section defines “debt repayment plan” as used in this Chapter. Subsections (2) to (4) outline conditions that must be satisfied by a plan.
582. Subsection (2) introduces the concept of “qualifying debts” and provides that the plan must specify all of the debtors “qualifying debts“. Section 132 provides that a “qualifying debt” is any debt, except for a debt that is secured against an asset, such as a mortgage, or which cannot, by virtue of the terms of the DMS (i.e. terms set by the scheme operator), be included in the plan. (Regulations under section 111 could have the effect of prescribing other classes of debt that may not be included by any scheme, by making such terms a condition of approval).
583. Subsection (3) requires the plan to provide for full or partial payment of the debts specified in accordance with the plan.
584. Subsection (4) makes it clear that it does not matter if a plan requires different amounts to be paid in respect of a specified debt at different times or the payments are insufficient to satisfy the debt in full. (Section 114 provides that in these circumstances the remainder of the debt would be written off provided that the debtor had complied with the terms of the plan).

Section 111: Approval by supervising authority

585. This section enables a supervising authority (see section 129) to approve DMSs. It also permits the Lord Chancellor to make regulations prescribing both the conditions that must be satisfied for a scheme to be approved and any considerations that the authority must or must not take into account when considering a request for approval. These conditions and considerations may, in particular, relate to any of the matters listed in Schedule 21. These include the constitution, governance, size and financial standing of the scheme operator, and the terms and operation of the DMS. Regulations could, for example, specify minimum levels or periods of repayment.

Schedule 21 – Regulations under sections 111 and 113

586. This Schedule specifies provisions that may be made in regulations as to conditions or considerations about the approval of a scheme under section 111, and as to the terms of approval of a DMS under section 113.

Section 112: Applications for approval

587. This section allows the Lord Chancellor to make regulations specifying an application procedure for the approval of DMSs, and provides that such regulations may enable a fee to be charged for an approval application.

Section 113: Terms of approval

588. This section provides that an approval will be subject to terms that may be specified in regulations or in the terms of the approval itself. Such terms might include the duration of the approval, (which could be given for a defined period, for example, for 5 years). Different types of schemes might be approved for different periods. On the expiry of an approval, a fresh approval could be sought. Such regulations might also make provision as to termination of an approval other than by expiry, (for example, termination of an approval if terms of the approval are breached). Other terms to be specified in regulations could include particular requirements that may be imposed on the scheme operator covering such matters as the continued operation of the scheme, and the provision of reports relating to the operation of a scheme.

Section 114: Discharge from specified debts

589. This section specifies that a debtor is discharged from the debts specified in the plan only when all of the payments required under the plan have been made. This allows debts to be partially written off, providing the terms of the plan have been complied with and all the necessary repayments made.

Section 115: Presentation of bankruptcy petition

590. Sections 115 to 118 impose requirements on certain creditors during the currency of a DRP or during a period of protection. (Period of protection is defined at section 133). These sections are based on similar provisions for AOs and EROs (set out at Chapters 1 and 2 of Part 5 of the Act respectively).
591. The first requirement, in section 115, provides that any qualifying creditor of the debtor (section 131 defines “qualifying creditor”) is to be prohibited from presenting a bankruptcy petition against that debtor, during the currency of a DRP, unless regulations provide otherwise or he has the permission of a county court to do so. This section also defines the currency of the plan as beginning when the plan first has effect and ending when the plan ceases to have effect.

Section 116: Remedies other than bankruptcy

592. This section sets out the second requirement. It prohibits, during a period of protection, qualifying creditors from seeking to recover their debt by pursuing any other remedy (that is, other than bankruptcy), unless regulations provide otherwise or the creditor has permission of a county court.

Section 117: Charging of interest etc.

593. This section sets out the third requirement; during a period of protection, qualifying creditors are prohibited from charging any interest, fee or other charge in respect of a qualifying debt unless regulations provide otherwise or the creditor has permission of a county court.

Section 118: Stopping supplies of gas or electricity

594. This section sets out the fourth requirement. In this case, during a period of protection, domestic utility creditors (as defined in subsection (2)) must not stop the supply of gas or electricity or the supply of any associated services unless one of the exemptions mentioned in subsections (4) to (7) applies.

Section 119: Existing county court proceedings to be stayed

595. This section provides that any county court proceedings that were pending against the debtor when the DRP was arranged, must be stayed if the following conditions are met:
- the proceedings relate to a qualifying debt of the debtor’s and they are not bankruptcy proceedings;
 - the creditor under the debt is unable to enforce it because of the prohibition referred to in section 116 (remedies other than bankruptcy); and
 - The county court, in the proceedings, which are to be stayed) has notice of the DRP.
596. Where proceedings are stayed under this section, the county court has discretion to allow the creditor any costs incurred in the stayed proceedings. A scheme operator may, if asked to do so by the debtor or creditor, add those costs to the amount specified in the plan in respect of that debt so long as the operator is not under a duty to terminate the plan (for example, because the new total debt exceeds the scheme’s maximum).

Section 120: Registration of plans

597. This permits regulations to provide for the registration of either an application for a plan to be made or a plan coming into existence in the register of judgments, orders and fines, and enables section 98 of the Courts Act 2003 to be amended by such regulations for this purpose. Registration would provide a mechanism by which potential lenders could check whether a person had applied for a DRP or was currently subject to a DRP.

Section 121: Other debt management arrangements in force

598. This section defines the relationship between DRPs and the other debt management arrangements set out in subsection (7), which are AOs, EROs and DROs. It provides that when a DRP is arranged, it cannot come into effect unless any other debt management arrangement which had effect in relation to the same debtor immediately before the plan was arranged ceases to have effect.

599. Subsection (3) provides that any provision (whether in the plan or elsewhere) about when the plan is to come into effect is subject to the provisions of this section.

600. Provision is also made for the scheme operator to notify the provider of the other arrangements as soon as practicable, or as soon as it becomes aware of their existence, of the approval of the plan. Similar provisions are incorporated in the revised AO and ERO schemes and in the new DRO scheme. This will ensure that no more than one debt management arrangement has effect in respect of the same debtor at the same time.

Section 122: Right of appeal

601. This section introduces the term “affected creditor” which is defined as a creditor with a debt that has been included in the DRP.

602. Subsection (2) allows affected creditors to appeal to a county court against the fact that a plan has been arranged, that their debt has been included in the plan or the terms of the plan but subsection (3) makes it clear that affected creditors may not appeal against the inclusion, in a DRP, of a debt owed to another creditor.

Section 123: Dealing with appeals

603. This section applies if an appeal is made to a county court under section 122. It provides that the court may order the scheme operator to:

- reconsider the decision to arrange a plan;
- reconsider the terms of the plan;
- modify the plan; or
- revoke the plan.

604. Additionally, this section allows the court to make interim provisions in respect of the period before the appeal is determined.

Section 124: Charges by operator of approved schemes

605. This section allows the operator of an approved scheme to recover its costs from either debtors or affected creditors (defined in section 131(1)) or both. The definition of “costs” in subsection (2) will ensure that only reasonable costs are charged.

Section 125: Procedure for termination

606. This section allows regulations to specify a procedure for terminating the approval of a scheme. This procedure may require the supervising authority to give notice and

reasons, conditions that must be met and a period that must elapse before the termination takes effect.

Section 126: Terminating an approval

607. This section provides that a scheme may only be terminated in accordance with the following:
- any terms which the approval is subject to under section 113;
 - any provisions made in regulations under section 125; or
 - any other provisions made under this Chapter.

Section 127: Alternatives to termination

608. This section allows regulations to provide for alternatives to termination of an approval. Such regulations may provide for the transfer of the operation of a scheme to another body (to include transfer of the scheme from the scheme operator to the supervising authority itself). Such a transfer might be appropriate in order to protect debtors and creditors where, for example, the operator of the scheme no longer meets the terms of approval, but the scheme itself does comply with any relevant terms.

Section 128: Effects of end of approval

609. Where the approval of a scheme comes to an end (for whatever reason), this section enables regulations to specify what effect this will have on existing DRPs under that scheme. The section provides an important safeguard for debtors by allowing such regulations to specify that plans can continue to operate, where appropriate, as though the scheme is still approved or as though the plan had been made under a different approved scheme.

Section 129: The supervising authority

610. This section defines the “supervising authority” (the person who approves DMSs), and specifies that that the supervising authority can be either the Lord Chancellor or a person authorised by the Lord Chancellor. This section therefore enables the Lord Chancellor to delegate his approval powers (for example, such powers might be delegated to a judicial or existing national advice body).

Section 130: Regulations

611. This section empowers the Lord Chancellor to make regulations under this Chapter. Regulations will be subject to the affirmative resolution parliamentary procedure on the first occasion they are made under any section or thereafter if regulations are made under section 118(6), if regulations under section 120 amend primary legislation or if regulations amend sections 122 or 123. Otherwise they will be subject to the negative procedure.

Section 131: Main definitions

612. The section sets out the main definitions for this Chapter.

Section 132: Expressions relating to debts

613. This section defines a “qualifying debt” as any debt that is not secured against an asset or which cannot, by virtue of the terms of the DMS, be included in the plan. A “business debt” is defined as a debt incurred in the course of a business.

Section 133: Periods of protection

614. This section defines a “period of protection” as a period beginning when a debtor asks for a plan to be arranged and, if a plan is not arranged, ending when the decision not to arrange the plan is made. Where a plan is made, the period of protection ends when the plan ceases to have effect. The definition is however subject to subsection (4) which provides that where other debt management arrangements are in force immediately preceding a debtor’s request for a plan to be arranged, the period of protection does not begin until the plan is both arranged and comes into effect. This prevents debtors being simultaneously subject to different schemes.