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*Number 60 of 2015*

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**Bankruptcy (Amendment) Act 2015**

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ACTS REFERRED TO

Bankruptcy Act 1988 (No. 27)

Bankruptcy Acts 1988 to 2011

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Family Home Protection Act 1976 (No. 27)

Personal Insolvency Act 2012 (No. 44)



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Number 60 of 2015

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## **BANKRUPTCY (AMENDMENT) ACT 2015**

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An Act to reduce the term of bankruptcy and bankruptcy payment orders in certain circumstances; to provide for the automatic re-vesting in the bankrupt of his or her family home, shared home or principal private residence in certain circumstances; and for those and other purposes to amend the Bankruptcy Act 1988. [25th December, 2015]

**Be it enacted by the Oireachtas as follows:**

### **Definitions**

1. In this Act—

“Act of 1988” means the Bankruptcy Act 1988;

“Act of 2012” means the Personal Insolvency Act 2012.

### **Amendment of section 3 of Act of 1988**

2. Section 3 of the Act of 1988 is amended in subsection (1) by the insertion of the following definition:

“ ‘principal private residence’ has the same meaning as it has in section 2 of the Personal Insolvency Act 2012 subject to the modification that a reference to the debtor shall be taken to be a reference to the bankrupt;”.

### **Amendment of section 12 of Act of 1988**

3. Section 12 (amended by section 146 of the Act of 2012) of the Act of 1988 is amended by the substitution of the following subsection for subsection (1):

“(1) The petitioning creditor shall at his own cost present his petition and prosecute it and, subject to subsection (2), the Court shall, at or after the hearing of the creditors’ petition under section 14, make an order for the payment of such costs out of the estate of the bankrupt in course of priority to be settled by rules of court.”.

### **Amendment of section 17 of Act of 1988**

4. (1) Subject to *subsection (2)*, section 17 of the Act of 1988 is amended by the deletion of subsection (3).

- (2) Where on the day of coming into operation of this section a statutory sitting has been appointed under section 17(3) of the Act of 1988 for that day or a subsequent day or on that day of coming into operation a statutory sitting appointed under that section stands adjourned, the Act of 1988 shall apply to that statutory sitting or adjourned statutory sitting, as the case may be, as if the amendments effected by *subsection (1)* and *sections 3, 5, 13 and 14* had not been made.

**Amendment of section 18 of Act of 1988**

5. Section 18 of the Act of 1988 is amended by the substitution of the following subsection for subsection (1):

“(1) The creditors of a bankrupt may—

- (a) choose and appoint a person (in this Act referred to as the ‘creditors’ assignee’) to represent them in the administration of the bankrupt’s estate, and
- (b) not later than 90 days after the date of the making of the adjudication order in respect of that bankruptcy apply to Court for confirmation of that appointment.”.

**Amendment of section 19 of Act of 1988**

6. Section 19 of the Act of 1988 is amended, in paragraph (a), by the substitution of “such books of account, other papers or records (including copies of such books of account, other papers or records held in electronic form)” for “such books of account or other papers”.

**Amendment of section 21 of Act of 1988**

7. Section 21 of the Act of 1988 is amended by the substitution of the following subsection for subsection (3):

“(3) The Court may require him to produce any books of account, other papers or records (including copies of such books of account, other papers or records held in electronic form) in his possession or control relating to the matters aforesaid but, where he claims any lien on books, papers or records produced by him, the production shall be without prejudice to that lien and the Court may determine all questions in relation to the lien.”.

**Amendment of section 56 of Act of 1988**

8. Section 56 of the Act of 1988 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) Subject to subsection (5), where any of the property (other than after-acquired property) of a bankrupt consists of—

- (a) any unprofitable contract, or
- (b) any other property which—
  - (i) is unsaleable,
  - (ii) is not readily saleable for any reason whatsoever (including because the property is subject to any mortgage, charge, lien or other security), or
  - (iii) gives rise to a liability to pay money or perform any other onerous act,

the Official Assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time disclaim the property.”,

and

- (b) by the deletion of subsection (2).

#### **Amendment of section 61 of Act of 1988**

#### **9. Section 61 of the Act of 1988 is amended—**

- (a) by the substitution of the following subsection for subsection (4):

“(4) Notwithstanding any provision to the contrary contained in subsection (3), no disposition of property of a bankrupt, arranging debtor or person dying insolvent, which comprises—

- (a) a family home (within the meaning of the Family Home Protection Act 1976) of the bankrupt or the bankrupt’s spouse, or
- (b) a shared home (within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) of the bankrupt or the bankrupt’s civil partner (within the meaning of that Act),

shall be made without the prior sanction of the Court and any disposition made without such sanction shall be void.”,

and

- (b) by the substitution of the following subsection for subsection (5):

“(5) On an application by the Official Assignee under subsection (4) for an order for the disposition of a family home or shared home, the Court, notwithstanding anything contained in this or any other enactment, shall have power to order postponement of the disposition of the family home or shared home, as the case may be, having regard to the interests of the creditors, spouse or civil partner (within the meaning of the Civil Partnership and Certain Rights and Obligations of

Cohabitants Act 2010), and any dependants, of the bankrupt, arranging debtor or person dying insolvent, as the case may be, as well as to all the circumstances of the case.”.

#### **Amendment of section 85 of Act of 1988**

**10.** Section 85 (amended by section 157 of the Act of 2012) of the Act of 1988 is amended—

- (a) by the substitution of the following subsections for subsections (1) and (2):
- “(1) Subject to subsection (2) and section 85A, every bankruptcy shall, on the 1st anniversary of the date of the making of the adjudication order in respect of that bankruptcy, unless prior to that date the bankruptcy has been discharged or annulled, stand discharged.
- (2) (a) Where an adjudication order in respect of a bankruptcy would, but for *section 10* of the *Bankruptcy (Amendment) Act 2015*, expire on any day during the period of 6 months from the commencement of that section, the bankruptcy concerned shall, subject to section 85A, stand discharged on that day unless it has otherwise been discharged or annulled.
- (b) Where an adjudication order in respect of a bankruptcy would, but for *section 10* of the *Bankruptcy (Amendment) Act 2015*, expire at any time after the expiration of 6 months from the commencement of that section, the bankruptcy concerned shall, subject to section 85A, stand discharged on the later of—
- (i) 6 months after that commencement, or
- (ii) one year from the date that the adjudication order was made, unless it has otherwise been discharged or annulled.”,
- (b) in subsection (3), by the substitution of “Subject to subsection (3A), where a bankruptcy is discharged” for “Where a bankruptcy is discharged”, and
- (c) by the insertion of the following subsections after subsection (3):
- “(3A) Subject to subsections (3B) to (3F), where on the 3rd anniversary of the date of the making of the adjudication order in respect of a bankruptcy—
- (a) the unrealised property of the bankrupt referred to in subsection (3) includes an estate or interest in what was, at the date of the making of the adjudication order, the family home, shared home or principal private residence of the bankrupt, and
- (b) in the case of the family home or shared home, the Official Assignee has not applied to the Court for an order for sale of that home,

that estate or interest shall, on that 3rd anniversary, stand re-vested in the bankrupt without the need for any conveyance, assignment or transfer.

(3B) Subject to subsections (3E) and (3F), where prior to the 3rd anniversary of the date of the making of the adjudication order in respect of a bankruptcy the Official Assignee—

(a) has applied to the Court for an order for sale in respect of what was at the date of that adjudication the family home or shared home of the bankrupt, and

(b) that application is dismissed by the Court,

the Court shall, unless it does not consider it just to do so in all the circumstances, make an order that the estate or interest of the bankrupt in that family home or shared home shall stand re-vested in the bankrupt from such date as is specified in the order without the need for any conveyance, assignment or transfer.

(3C) Subject to subsections (3E) and (3F), subsection (3A) shall not apply where at any time after the date of the making of the adjudication order in respect of the bankruptcy but prior to the 3rd anniversary of that date—

(a) the Official Assignee and the bankrupt have entered into an agreement in writing, for consideration or otherwise, that any estate or interest of the bankrupt in what was, at the date of adjudication, the family home, shared home or principal private residence of that bankrupt will not re-vest in that bankrupt, or

(b) on application by the bankrupt or the Official Assignee, the Court, where it considers it just to do so, makes an order that any estate or interest of the bankrupt in what was, at the date of adjudication, the family home, shared home or the principal private residence of that bankrupt will not re-vest in that bankrupt.

(3D) Subsection (3A) shall not apply where, on application by the Official Assignee at any time after the date of the making of the adjudication order in respect of that bankruptcy but prior to the 3rd anniversary of that date, the Court substitutes for that 3rd anniversary such longer period as the Court considers just in all the circumstances.

(3E) Where the Court makes an order under subsection (3D), subsections (3A), (3B) and (3C) shall apply subject to the modification that each reference to the 3rd anniversary in those subsections shall be taken to be a reference to the longer period substituted by the Court under subsection (3D) for such 3rd anniversary.

(3F) Where an order of adjudication in bankruptcy was made more than 2 years and six months prior to the day of coming into operation of *section 10* of the *Bankruptcy (Amendment) Act 2015*, subsections (3A),

(3B) and (3C) shall apply subject to the modification that each reference to the 3rd anniversary in those subsections shall be taken to be a reference to the day falling 6 months after the day of coming into operation of that section.

(3G) Where an estate or interest in a family home, shared home or principal private residence has re-vested in a bankrupt in accordance with this section, the Official Assignee shall, on the application of the bankrupt, issue a certificate in such form as may be prescribed confirming that the estate or interest has re-vested in that bankrupt.”,

and

(d) by the substitution of the following subsection for subsection (6):

“(6) (a) In this section and in sections 85A to 85D, ‘bankrupt’ includes personal representatives and assigns.

(b) In this section, ‘family home’ and ‘shared home’ have the same meaning as they have in section 61.”.

#### **Amendment of section 85A of Act of 1988**

**11.** Section 85A (inserted by section 157 of the Act of 2012) of the Act of 1988 is amended by the substitution of the following subsection for subsection (4):

“(4) Where the Court is satisfied that the bankrupt has—

- (a) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or
- (b) hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of the creditors of the bankrupt,

the Court may, where it considers just to do so, order that, in place of the discharge provided for in section 85, the bankruptcy shall stand discharged on such later date—

- (i) being not later than the 8th anniversary of the date of the making of the adjudication order, as the Court considers just, or
- (ii) being not later than the 15th anniversary of the date of the making of the adjudication order, which the Court considers just in view of the seriousness of the failure to co-operate referred to in paragraph (a) or the extent to which income or assets referred to in paragraph (b) were hidden or not disclosed, or both, as the case may be.”.

#### **Amendment of section 85D of Act of 1988**

**12.** Section 85D (inserted by section 157 of the Act of 2012) of the Act of 1988 is amended—

(a) by the substitution of the following subsections for subsection (3):

“(3) Subject to subsections (3A) and (3B), an order made under subsection (1) shall have effect for no longer than 3 years from the date of the order coming into operation, and where, during the order’s validity, the Court has varied the order under subsection (5), such variation shall not cause the order to have effect for a period of more than 3 years, and in any event, any order made under subsection (1) or varied under subsection (5) shall cease to have effect on the 4th anniversary of the date on which the bankrupt was adjudicated bankrupt.

(3A) (a) Where a bankruptcy payment order would, but for *section 12* of the *Bankruptcy (Amendment) Act 2015*, expire on any day during the period of 6 months from the commencement of that section, the bankruptcy payment order concerned shall, subject to subsection (3B), stand discharged on that day unless it has otherwise been discharged or annulled.

(b) Where a bankruptcy payment order would, but for *section 12* of the *Bankruptcy (Amendment) Act 2015*, expire at any time after the expiration of 6 months from the commencement of that section, the bankruptcy payment order concerned shall, subject to subsection (3B), stand discharged on the later of—

(i) 6 months after that commencement, or

(ii) 3 years from the date that bankruptcy payment order was made, unless it has otherwise been discharged or annulled.

(3B) Where the Court has made an order under section 85A(4), the bankruptcy payment order made under subsection (1) shall have effect for no longer than 5 years from the date of that bankruptcy payment order coming into operation, and where, during that bankruptcy payment order’s validity, the court has varied that order under subsection (5) such variation shall not cause that order to have effect for a period of more than 5 years, and in any event, any bankruptcy payment order made under subsection (1) or varied under subsection (5) shall cease to have effect on the 8th anniversary of the date on which the bankrupt was adjudicated bankrupt.”.

### **Order for winding up**

**13.** The Act of 1988 is amended by the substitution of the following section for section 110:

“**110.** Where at least three-fifths in number and value of the creditors voting at a meeting of the creditors, either in person or by a person authorised in writing in that behalf, by resolution declare that the estate of the bankrupt be wound up by a trustee and a committee of inspection, and appoint for that purpose a trustee and a committee of inspection of not more than 5 creditors qualified to vote at the meeting, the Court may on application

being made to it in that behalf not later than 90 days after the date of the making of the adjudication order in respect of that bankruptcy, order that the property of the bankrupt be so wound up.”.

**Amendment of section 112 of Act of 1988**

**14.** Section 112 of the Act of 1988 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) In the winding up the trustee shall be subject to the control of the Court and shall have regard to any directions given to him by the committee of inspection or by resolution of the creditors.”,

and

(b) in subsection (3), by the substitution of “Where on an application to it under section 110 the Court makes an order referred to in that section it shall at the same time make provision for” for “The statutory sitting shall make provision for”.

**Amendment of section 123 of Act of 1988**

**15.** Section 123 of the Act of 1988 is amended in subsection (1)—

(a) by the substitution of the following paragraph for paragraph (c):

“(c) fails to deliver up to the Official Assignee, or as he or the Court directs, all books, papers and records (including copies of such books, papers and records held in electronic form) in his possession or under his control relating to his estate and which he is required by law to deliver up, or”,

(b) by the substitution of the following paragraph for paragraph (h):

“(h) prevents the production of any book, paper or record (including copies of any book, paper or record held in electronic form) affecting or relating to his estate, or”,

(c) by the substitution of the following paragraph for paragraph (i):

“(i) conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification of any book, paper or record (including any such book, paper or record held in electronic form) affecting or relating to his estate, or”,

and

(d) by the substitution of the following paragraph for paragraph (j):

“(j) makes or is privy to the making of any false entry in any book, paper or record (including any such book, paper or record held in electronic form) affecting or relating to the estate, or”.

**Short title, collective citation and commencement**

- 16.** (1) This Act may be cited as the Bankruptcy (Amendment) Act 2015.
- (2) The Bankruptcy Acts 1988 to 2011 and this Act may be cited together as the Bankruptcy Acts 1988 to 2015.
- (3) This Act shall come into operation on such day or days as the Minister for Justice and Equality may by order appoint, either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.