

DSA

Guide to a Debt Settlement Arrangement



A Debt Settlement Arrangement enables an eligible insolvent debtor to reach agreement with unsecured creditors in relation to the settlement of his or her debts where the debtor is insolvent and satisfies other statutory requirements.

DISCLAIMER

This guide has been produced by the Insolvency Service of Ireland (ISI) and is intended as a general, introductory, non-technical guide for interested debtors in relation to the availability of, and the process involved in seeking a Debt Settlement Arrangement under the Personal Insolvency Act 2012. If, after reading this guide, you require further information of a general nature, please consult the ISI website, www.isi.gov.ie, or contact the ISI's office by the various means detailed on the inside back cover of this guide.

The ISI has no role in providing legal advice or interpreting the law and this guide is not an interpretation of, or advice on the law. In addition, the ISI has no role in providing financial advice. If you are in doubt in relation to your legal or financial position, please take appropriate professional advice or contact a personal insolvency practitioner, as appropriate.

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Key features of a DSA

Part 1

Background Information

1. Introduction

The role of the Insolvency Service of Ireland is to restore insolvent debtors to solvency in a fair, transparent and equitable way.

The Personal Insolvency Act 2012 (“the Act”) continues the reform of the Bankruptcy Act 1988 and includes the introduction of an automatic discharge from bankruptcy after three years, subject to certain conditions. It also introduces three new alternatives to bankruptcy (“new arrangements”), of which a Debt Settlement Arrangement (DSA) is one.

The ISI believes the new arrangements will play an important part in addressing difficulties currently faced by many insolvent debtors and their creditors by enabling a resolution of over-indebtedness in an orderly and rational manner without recourse to bankruptcy. It is important for debtors and creditors to be fully informed of the consequences of entering into one of these arrangements and any alternative options they may have before so doing including voluntary agreements outside the Act.

In operating the new arrangements, it is important for all stakeholders involved in them to adhere to the principle of fairness. A fair balance must always be struck between the interests of the debtor and his or her creditors. While no creditor should be unfairly prejudiced, it is also hoped that creditors will fully engage in the new arrangements. A debtor who fully complies with one of the new arrangements will return to solvency - this outcome is in the best interest of all concerned.

2. About this guide

This guide is published by ISI. The ISI was established to administer certain measures under the Act. If a debtor cannot pay his/her debts in full as they fall due, then he/she is insolvent.

A Debt Settlement Arrangement (DSA) is one of the several potential solutions that a debtor may be able to avail of to address his/her financial difficulties. This guide gives an overview of the process involved in seeking and obtaining a DSA.

If you are thinking of seeking a DSA you should consult a Personal Insolvency Practitioner (PIP).

This guide outlines what you need to consider before you decide to seek a DSA. You should read it carefully and seek further information and advice if necessary.

There may be other solutions to your debt situation. You should explore the alternatives to a DSA, as soon as possible in case they are more suitable for your particular situation.

More details of the legislation, the new insolvency arrangements, the work of the ISI and a list of PIPs are available on the ISI website, www.isi.gov.ie.

Part 2

Detailed Information

3. What is a DSA?

The Act makes provision for a new insolvency procedure called a Debt Settlement Arrangement (DSA). A DSA can be entered into between a debtor and his/her unsecured creditors.

A DSA only includes unsecured debts without a limit on the amount of debt. However, certain unsecured debts cannot be included and certain other unsecured debts require the consent of the creditor prior to being included.

The DSA differs from a Personal Insolvency Arrangement (PIA) as it only includes unsecured debts. Unsecured debts are debts where the unsecured creditor would not be entitled to seize specific assets if the debtor fails to make repayments because that creditor does not hold security over those assets. Secured debts cannot be covered in a DSA. A DSA must be agreed by the debtor and approved at a creditor's meeting by 65% of creditors (in value). In addition it must be processed by the ISI and approved by the Court.

Under a DSA, a debtor's unsecured debts subject to the DSA, will be settled over a period of up to 5 years (extendable to 6 years in certain circumstances).

If successfully complied with, the debtor will be discharged from debts specified in the DSA at the end of the period.

4. Who is eligible to seek a DSA?

A DSA is not suitable for, or available to, every debtor. There may be other options open to an insolvent debtor, depending on their circumstances.

You are only eligible to seek a DSA if you meet the general conditions set out below:

- ✓ You are insolvent in that you are unable to pay your debts in full as they fall due;
- ✓ You have one or more unsecured creditors;
- ✓ 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 within the Republic of Ireland;
- ✓ You have completed a Prescribed Financial Statement and made a signed statutory declaration that it is true and accurate;
- ✓ You have obtained a statement from the PIP which confirms that the PIP is of the opinion that:
 - the information in the PFS is true and accurate;
 - the debtor is eligible to make a proposal for a DSA; and
 - having considered the PFS there is no likelihood of the debtor becoming solvent in the next 5 years;
 - if the debtor enters into a DSA there is a reasonable prospect they will become solvent within the next 5 years.

- ✗ You must not have incurred 25% or more of your debt during the past 6 months;
- ✗ You must not be the subject of a Debt Relief Notice (DRN) now or within the past 3 years;
- ✗ You must not be the subject of a Personal Insolvency Arrangement (PIA) now or within the past 5 years;
- ✗ You must not have been the subject of a DSA previously;
- ✗ You must not be bankrupt or subject to a bankruptcy measure, or have been discharged from bankruptcy in the past 5 years;
- ✗ You must not have been the subject of a Protective Certificate issued in respect of a DSA in the past year.

What type of debt may or may not be included in a DSA?

May be included

- Personal loans
- Credit Union loans
- Business/commercial loans
- Credit card loans
- Store cards
- Overdrafts
- Personal guarantees

Requires consent of creditors to be included*

“Excludable Debts”

- Taxes, duties, levies owed or payable to the State
- Local government charges
- Amounts due to the Health Service 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

Cannot be included

“Excluded debts”

- Family maintenance payments under Court orders
- Court fines in respect of criminal offences
- Liabilities arising out of personal injury or wrongful death claims awarded by the Court
- Liabilities arising from loans obtained by fraud
- Secured debts

This list is not exhaustive, if you are unsure if your debt can be included in a DSA talk to a Personal Insolvency Practitioner.

*Creditor consent to include debt may be requested in which case it becomes a permitted debt. If no response is received the creditor will be deemed to have consented.

5. How to seek a DSA and who will deal with your case?

You can only seek a DSA via a PIP who will act on your behalf throughout the process. The ISI will maintain a list of PIPs which is available on the ISI website, www.isi.gov.ie. Part 3 of this guidebook outlines the detailed steps involved in the DSA process.

6. How much will a DSA cost?

The PIP must at the outset of the DSA process provide you in writing with details of the fee arrangements and likely costs involved in entering into a DSA. Like any other professional providing a service, a PIP may charge a consultation fee to go through your financial situation to determine if you are eligible to apply. After that, any PIP fees are built into the DSA repayment.

ISI has waived its fees until the end of 2015.

7. What is a Protective Certificate?

A certificate issued by the Court which offers you and your assets protection from legal proceedings by creditors while you are applying for a DSA. In general, a Protective Certificate remains in force for 70 days but it may be extended in limited circumstances.

8. How does a DSA come into effect?

Following the issue of a Protective Certificate a DSA will be formulated by the PIP, agreed by you, approved by a qualified majority of your creditors' voting at a creditors meeting, processed by the ISI, approved by the Court and details of it registered in a public register maintained by the ISI.

Creditors representing 65% or more of the total amount of the debts due, must vote at the meeting, in favour of the proposal for the DSA to be approved.

A more detailed breakdown of the process is contained in Part 3 of this guide.

9. What are your main duties and obligations in connection with a DSA?

- You are under an obligation to act in good faith in your dealings with the PIP and make a full disclosure to the PIP of all your assets, income and liabilities and any circumstances that may have a bearing on your application.

You should be aware that under the Act it is a criminal offence to knowingly or recklessly give information which is materially false or misleading in your application for a Protective Certificate.

- You have a duty to comply with any reasonable request from your PIP to provide assistance, documentation and any other information deemed necessary including debt, employment, business, social welfare or other financial records.
- You must inform the PIP if your circumstances change during the lifetime of the arrangement which affects your ability to make repayments under the DSA.
- You have a duty not to obtain credit either on your own or with any other person for an amount of more than €650 from any person without informing that person you are subject to a DSA.
- You have a duty not to transfer, lease, grant security over, or otherwise dispose of any interest in property above a prescribed value other than in accordance with the DSA.
- You have a duty to inform the PIP if you become aware of any inaccuracy or omission in your application.
- You have a duty not to pay to creditors any additional payments separate to the DSA in respect of debts covered in the DSA.

10. How will participating in a DSA affect you?

A DSA will protect you and your assets from legal proceedings which otherwise could be taken by creditors covered by the DSA provided you continue to meet your obligations under the DSA. You will not be protected from your secured creditors under a DSA. If you have secured creditors, your PIP will advise you on whether a PIA is appropriate for you.

Will it affect your employment?

The Act does not require that a person's employment be affected, however, certain professions may be governed by bodies where members personal finances are subject to regulatory requirements.

What happens to your principal private residence?

The DSA is for unsecured debts therefore you should be able to keep your principal private residence. In arranging a DSA the PIP should not require you to sell or leave your principal private residence. If you wish to move out, or if the PIP considers that the costs of continuing to reside in your principal private residence are disproportionately large, the PIP will discuss the matter with you.

What happens to your vehicle?

A DSA will not require a debtor to sell assets that are reasonably necessary for the debtor's business or employment. As part of the DSA, the PIP will discuss with you whether your vehicle is suitable and necessary to meet your needs. The PIP may suggest that you sell or downsize your vehicle.

What happens to your pension?

Pension Income

Ongoing pension income receivable by you, or an entitlement to a pension lump sum or income in accordance with the tax code, will be treated as an asset or, as applicable, income for the purpose of a DSA. The terms of the DSA may provide for payment of some or all of that pension lump sum or income to creditors during the DSA period.

Pension Fund

Your pension fund will be excluded from any DSA arrangement if it is a "relevant pension arrangement" for the purposes of the Act. Approved Retirement Funds

do not fall into this category and may be included in a DSA. There will be an onus on you to be transparent in relation to all historical pension contributions and the PIP will review these. Where the PIP or a creditor considers that you have made excessive pension contributions within 3 years prior to application for a Protective Certificate, an application can be made to the Court to recover these contributions for distribution to creditors.

Will details of your DSA be published anywhere?

Should you enter into a DSA, your details (name, address, year of birth, date of coming into effect of DSA and any other information the ISI deems relevant) will be placed on an electronic public Register of Debt Settlement Arrangements. Members of the public can inspect the Register and request copies of entries contained on the Register. Upon successful completion of the DSA, the ISI will record notice of completion of the arrangement on the Register. Within 3 months the ISI shall remove from the Register of Debt Settlement Arrangements all information recorded in it in respect of the DSA.

What happens if you seek to obtain credit from someone while you are subject to a DSA?

If you seek to obtain credit of an amount of more than €650 while you are subject to a DSA, you must inform the creditor that you are a specified debtor subject to a DSA.

You should be aware that factors such as the entry of your details on the Register for DSAs may be relevant to your credit rating and may influence any information about you held by rating reference agencies such as the Irish Credit Bureau (or the Central Credit Register).

Lenders retain the right to take into account a debtor's credit history in assessing the merits of a credit application. This means you may find it more difficult to get credit in the future.

11. What happens if your circumstances change during the lifetime of a DSA?

If your circumstances change during the lifetime of the DSA, thereby affecting your ability to make repayments under the DSA, you must inform the PIP. The PIP will then advise you whether it is necessary to apply for a variation to the DSA. If the PIP is of the view that you need to apply for a variation he/she will prepare a variation proposal. If you approve the variation proposal your creditors will then be given an opportunity to vote on this proposal. This proposal will have to be approved by 65% of creditors in value for it to come into effect.

12. What causes a DSA to fail?

A DSA will be deemed to have failed if you are in arrears with your payments for a period of six months.

A creditor or your PIP may also apply to Court to have a DSA terminated on certain grounds, including non-fulfilment of your duties under the DSA process or if you are in arrears with your payments for a period of three months.

13. What happens when a DSA fails?

When a DSA fails you can expect to be liable in full for all the debts covered by the DSA (including any arrears, charges and interest that have accrued, less any amounts you have paid to your creditors during the DSA) unless the DSA otherwise provides or the Court orders otherwise. You will no longer be protected from any legal or other action taken by your creditors.

The ISI will record the failure of the DSA on the Register of Debt Settlement Arrangements. Those details shall, within 3 months after the date on which the arrangement would have ended (had it not failed) be removed from the Register of DSAs and all information recorded in it in respect of the DSA.

Part 3

The Process

14. What are the main steps involved for you?

The chart on the next page provides an overview of the DSA process. The chart is followed by a more detailed breakdown of the debtor journey, from seeking a Protective Certificate through to the successful completion of a DSA. Your PIP will be able to explain each of the steps to you.

The debtor journey outlines the steps of the DSA process and does not detail the steps you might take prior to seeking a DSA which may involve obtaining financial or legal advice on your debt situation or engaging with your creditors.

Please note that the debtor journey assumes an uncontested application for a DSA and its successful outcome and involves a simplification of the detailed process provided for in the Act. It assumes that there is no scheme variation during the lifetime of the DSA. You should be prepared for an actual DSA process to be more complicated and potentially to involve steps not covered by the chart or the debtor journey. Your PIP will discuss the process more fully with you.



This is simplified diagram of the DSA process which assumes the debtor meets all the necessary requirements throughout and no variation to the DSA required

15. Debtor Journey – Step by Step

Step 1 – Applying to the Court for a Protective Certificate through the ISI

1. You assess your debt position and realise that you are unable to pay your debts in full as they fall due.
2. You decide that you would like to talk to a PIP.
3. You talk to a PIP and provide full details of your financial circumstances so he/she can understand your financial position.
4. The PIP will then:
 - advise you of the available options to address your financial difficulties and outline whether the PIP considers that you meet the qualifying criteria for a DSA (the advice to be confirmed in writing);
 - provide information on DSAs and their likely costs;
 - provide information on fee arrangements and other conditions of the PIP's appointment.
5. If you still wish to go ahead with the application for a DSA you can appoint the PIP.
6. The PIP should then confirm in writing that he/she will act as a PIP for you.
7. At this stage the PIP will assist you in filling out a detailed financial statement known as a Prescribed Financial Statement (PFS). This is a detailed electronic form that is designed to capture all key financial information about you. As part of this process you will have to provide supporting documentation e.g. bank statements, bills, payslips, receipts etc.
8. After completing the PFS, the PIP will further advise you of your options for addressing your financial difficulties, whether you are eligible for a DSA and in the PIP's opinion if a DSA is the most appropriate option for you.
9. If you decide to proceed and apply for a DSA you must instruct your PIP in writing of your decision.
10. The PIP will then examine your PFS and if the PIP is satisfied that all is in order the PIP will prepare a statement confirming that they are of the opinion that:

- the information in your PFS is true and accurate;
- you are eligible to make an application for a DSA;
- having considered the PFS there is no likelihood of you becoming solvent within 5 years;
- that if you enter into a DSA there is a reasonable prospect of you becoming solvent within 5 years.

11. You are required to sign a statutory declaration (in the presence of a witness authorised to witness such declarations- such as a practising solicitor, Peace Commissioner, Commissioner for Oaths or Notary Public) affirming that the PFS is a complete and accurate statement of your assets, liabilities and expenditure.

12. You will be asked to complete and sign some documents to accompany your application. Your application must be accompanied by:

- a copy of the statement made by the PIP;
- a document signed by you confirming that you satisfy the eligibility criteria for a DSA;
- a completed PFS form and statutory declaration;
- a schedule of your creditors and amount owed to each; whether the creditor is a secured creditor or not (if so, you must provide details of any security);
- your written consent to enable :
 - the PIP to disclose your personal data to the ISI;
 - the ISI to process your application;
 - the ISI to make any necessary enquiries about you;
 - the ISI to disclose your personal data to the creditors concerned, as required.

13. The PIP will then submit your completed application to the ISI for consideration. If all the information is in order, the ISI will then forward your application to the appropriate Court.

14. If the Court approves your application the Court will issue a Protective Certificate and the PIP will inform you of same.

15. Certificate and the PIP will inform you of same.

16. Your name, address, year of birth and the date of issue of the Protective Certificate will be added to the Register of Protective Certificates on the ISI website.

Step 2 – Agree to a DSA proposal

1. Once the Court has issued the Protective Certificate you will then liaise with your PIP in order for the PIP to prepare a proposal for a DSA. You will be required to provide an honest and accurate account of your living expenses, life plans and any circumstances that may have a bearing on the extent to which you can pay your current and future debts.
2. The PIP will also liaise with your creditors when drawing up the proposal for a DSA and, where relevant, will have regard to their preferences regarding the terms of the DSA.
3. The PIP will then provide you with a draft proposal for your DSA which you must review.
4. If you approve the proposal you should sign and return it to the PIP and give your consent to the calling of your creditors to a meeting to approve the DSA.
5. The PIP will then issue a number of documents to your creditors that will include details of the proposed DSA and the completed PFS.
6. You should make yourself available for the PIP to contact you with queries in relation to the DSA proposal.
7. Where the DSA has been approved at the creditors' meeting by 65% of creditors in value, the PIP will notify your creditors and the ISI. The ISI will notify the Court and the Court will consider approving the DSA subject to any creditor's objection.
8. The PIP will inform you whether the Court has approved the DSA.
9. Where the DSA is approved, your name, address, year of birth and the date of the coming into effect of the DSA will be entered on the Register on the ISI website, www.isi.gov.ie.

Please note, the DSA may be in operation for up to five years (extendable to six) so it is important you review the proposal carefully and only sign or approve the proposal after carefully satisfying yourself that you will be able to meet your obligations under the DSA.

Step 3 – Meeting obligations of a DSA

1. Following the Courts approval, the PIP will contact you and you will be required to implement the terms of the DSA.
2. You will be required to make payments to your creditors through the PIP throughout the lifetime of the DSA, unless the DSA otherwise provides.
3. The PIP will monitor the implementation of the DSA throughout its lifetime.
4. The PIP will carry out reviews of the DSA at least once a year and you will be required to fill out a further PFS as part of the review process. Your PIP will distribute a copy of this PFS to your creditors.

Step 4 – Successful Completion of the DSA

1. Where you have complied with your obligations under the DSA for the full term, you will be considered to have successfully completed the DSA at the end of the DSA period. The PIP will inform you, your creditors and the ISI of successful completion of the DSA.
2. The ISI will record the successful completion of the DSA on the Register of Debt Settlement Arrangements and all information shall be removed within 3 months of receiving the notification of its successful completion.
3. You will be discharged from the debts which are included in the DSA.
4. You will now be solvent.

Part 4

Supplementary Information

16. Related Insolvency Service of Ireland Publications

Other relevant publications are available on the ISI website www.isi.gov.ie. A number of scenarios are also available on the website indicating the possible outcome of a DSA application for a given set of circumstances.

17. How to make a complaint?

If you are unhappy with the way your case has been handled by the ISI or a PIP, it is within your rights to make a complaint. See the separate information document '*Complaints Procedures*' for further details.

18. Data Protection

If you apply for a DSA you will have to provide written consent for the ISI to access your personal data, as appropriate. You should note that if you successfully obtain a DSA:

- your information will be placed on a public Register; and
- your creditors will receive a copy of your Prescribed Financial Statement periodically.

The ISI will comply with the Data Protection Act of 1988 and the Data Protection (Amendment) Act of 2003 except where it is exempted in the case of an investigation process.

19. Glossary of terms

The Act

Personal Insolvency Act 2012.

Asset

A possession that has some monetary value or can produce a cash flow. An asset can therefore be used to discharge debts.

Bankruptcy

Bankruptcy is ‘an option of last resort’. It is a personal insolvency process available under the Bankruptcy Act 1988, as amended, where a person cannot pay his/her debts. In most cases, once a person has been made bankrupt, an official (the “Official Assignee”) takes control of the person’s property and realises that property to discharge debts of the bankrupt.

Creditor

A person who is owed money by a debtor.

Debt

Debt is money that a person must repay.

Debtor

A person who owes money (a debt) to a creditor.

Debt Relief Notice (DRN)

A DRN is a personal insolvency measure provided for under the Act which covers debts up to €35,000 but certain restrictions apply.

Debt Settlement Arrangement (DSA)

A DSA is a personal insolvency measure provided for under the Act which does not cover secured debts.

Insolvency Service of Ireland (ISI)

The ISI is the statutory body established under the Act which is responsible for, amongst other things, monitoring the operation of the arrangements relating to personal insolvency provided for in the Act; the authorisation and regulation of Personal Insolvency Practitioners and certain other functions specified in the Act.

Insolvent

A person is insolvent if they are unable to pay their debts in full as they fall due.

New Arrangements

“New arrangements” refers to the three new measures introduced under the Act—the Debt Relief Notice; Debt Settlement Arrangement and Personal Insolvency Arrangement.

Personal Insolvency Arrangement (PIA)

A PIA is a personal insolvency measure provided for under the Act which covers both unsecured and secured debt.

Personal Insolvency Practitioner (PIP)

A PIP liaises between the debtor and the creditors in relation to a PIA or DSA; is authorised and regulated by the Insolvency Service of Ireland and has functions under the Act with respect to a PIA or DSA. The PIP will be the person who advises the debtor directly and negotiates the arrangement on his/her behalf.

Prescribed Financial Statement (PFS)

A statement in prescribed form of the debtor’s full financial position detailing his or her income, expenditure, assets and liabilities. A PFS will form part of any application by a debtor for one of the new arrangements.

Protective Certificate

A Certificate issued by a Court which protects the debtor against legal proceedings or other actions by a creditor in respect of debts for a limited time while a PIA or DSA is being put in place.

Secured creditor

A creditor who holds a specific claim (usually a property interest) over one or more of a debtor’s assets as security for a secured debt. An example would be a mortgage or charge over a house.

Secured debt

A debt backed or secured by an asset to reduce the risk associated with the debt by use of arrangements which make the asset available to the secured creditor to discharge the debt before general/unsecured creditors (e.g. a mortgage or charge over a house used as security for a housing loan. If the debtor defaults or fails to meet one of the terms of repayment, the bank may

seize his/her house to sell, using the proceeds towards the settlement of outstanding debts).

Statutory declaration

A written, signed and witnessed statement which allows a person to formally affirm something to be true before a person authorised to witness them (such as a practising solicitor) in accordance with the Statutory Declarations Act 1938. A statutory declaration will form part of any application by a debtor for one of the new arrangements.

Unsecured creditor

A creditor who does not have a specific claim (usually a property interest) over the debtor's assets.

Unsecured debt

A debt where the unsecured creditor would not be entitled to seize specific assets if the debtor fails to make repayments because that creditor does not hold security over those assets.

The Insolvency Service of Ireland's objective is to restore people who are insolvent to solvency in a fair, transparent and equitable way.

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Key features of a DSA

- A Debt Settlement Arrangement (DSA) is a statutory arrangement between an insolvent debtor and his/her creditors.
- A DSA can only include unsecured debts, secured debt cannot be included in a DSA.
- A DSA can last up to 5 years (with a possible 12 month extension).
- A DSA can only be obtained once in a lifetime.
- A DSA can only be sought through a Personal Insolvency Practitioner (PIP).
- In order to come into effect, a DSA must be formulated by the PIP, agreed by the debtor, approved by a qualified majority of creditors voting at a creditors meeting, processed by the Insolvency Service of Ireland (ISI), approved by the appropriate Court and details of it registered on a public Register maintained by the ISI.
- A DSA will protect a debtor and his/her assets from legal proceedings and other actions which could otherwise be taken by unsecured creditors during the period the DSA is in force.
- A DSA which is successfully completed will discharge the debtor from his/her unsecured debts which are subject to the DSA, at the end of the relevant period.
- Details of a DSA (including its successful completion) will be recorded on a public Register and all information shall be removed within 3 months of receiving the notification of its successful completion.