

Delegation from the Minister of Finance and the Minister for Social Development and Employment to the Chief Executive of the Ministry of Social Development to Write-Off Crown Assets

The Minister of Finance and the Minister for Social Development and Employment, under the authority given by the Cabinet in CAB (92) M 40/7b, and pursuant to clause 5 of Schedule 6 of the Public Service Act 2020, delegate to the Chief Executive of the Ministry of Social Development the following authority to approve the write-off of Crown assets (including debt) managed by the Ministry of Social Development ("MSD").

All previous delegations to the Chief Executive to approve write-off of Crown assets are revoked when this instrument comes into effect.

This instrument comes into effect on 21 June 2022.

Interpretation

In this instrument, unless the context otherwise requires, —

Debt means an amount owed by any person to the Crown in respect of MSD, and includes a debt due to the Crown as defined in regulation 206 of the Social Security Regulations 2018 (**benefit debt**), and a debt of the kind described in clause 6(1) of Schedule 9 of the Education and Training Act 2020 (**student debt**); and **debtor** has a corresponding meaning.

MSD means the responsible department within the meaning of Schedule 2 of the Social Security Act 2018.

Criteria for Debt Write-off

The Chief Executive is authorised to write off debt to which the following criteria apply.

A Debtor Insolvent

- 1 The debt has become irrecoverable because:
 - (a) The debtor has been adjudicated bankrupt; and
 - (b) The Official Assignee has confirmed that the debtor has been automatically discharged from that bankruptcy after 3 years or has been granted a

discharge from bankruptcy by the High Court and that discharge has not been reversed.

- 2 The debt has become irrecoverable because:
 - (a) The debtor has been admitted to the No Asset Procedure under section 363 of the Insolvency Act 2006; and
 - (b) The Official Assignee has confirmed that debtor has been discharged from the No Asset Procedure under section 377 of the Insolvency Act 2006.
- 3 Nothing in clause 1 or 2 applies to any debt established due to fraud, apart from fraud balances included in the No Asset Procedure before 10 March 2009.

B Agent Insolvent

The debtor has, in good faith, paid an agent of the Crown funds for the purpose of repaying that particular Crown debt and that agent has become insolvent before the funds were remitted.

C Debtor is deceased

The debtor is deceased and the debt:

- 1 Cannot be recovered (where the Chief Executive determines that all avenues or recovery have been exhausted);
- OR:**
- 2 Is uneconomic to recover (where the Chief Executive determines that the expected cost of recovery outweighs the expected return).

D The debt or the identity of the debtor cannot be proven

Debt cannot be proven

- 1 Insufficient file or database information exists for the debt to be accurately proven; and
- 2 Legal advice has been received that MSD would be unable to prove the debt to the satisfaction of a Court.

OR:

Identity or debtor cannot be proven

- 1 Insufficient information exists for the debtor to be identified in law (for example where no date of birth and IRD number is held for the debtor); or
- 2 Legal advice has been received that the alleged debtor cannot be lawfully identified with the debt.

E Debt cannot be proven to a Court's satisfaction

- 1 Civil proceedings have been issued; and
- 2 A Court finds that the full amount of debt (A) is not proven; and
- 3 Legal advice has been received that A cannot be recovered.

F Foreign Exchange Balances

- 1 There is a remaining credit or debit balance on a debtor's account following receipt of an agreed sum in foreign currency; and
- 2 The amount written off does not exceed \$1,000.00 for any one debt.

G The debt has become statute barred

- 1 The debt has been established for more than 6 years; and
- 2 No acknowledgement of the debt has been received from the debtor for more than 6 years; and
- 3 The debtor has never agreed in writing, to owing the debt or entered into any repayment arrangement, or made any repayments during the preceding 6 years; and
- 4 There is no possibility of a deduction notice being issued in respect of the debt, including a deduction from benefit or allowance payment.

H Debt cannot be recovered due to estoppel in accordance with the Property Law Act 2007

The debt cannot be recovered due to the application of section 74B of the Property Law Act 2007 in relation to:

- 1 *A student debt of less than \$5,000 where:*
 - (a) Payment was made wholly or partly by mistake whether of law or fact; and
 - (b) The debtor received the payment in good faith; and
 - (c) The debtor has so altered his or her position in reliance on the validity of payment; and
 - (d) It would be inequitable to recover the payment whether in full or in part, having regard to all possible implications in relation to other persons.

OR:

2 *A student debt of \$5,000 or more, or any other debt (of any value) other than a benefit debt where:*

- (a) Payment was made wholly or partly by mistake whether of law or fact; and
- (b) The debtor received the payment in good faith; and
- (c) The debtor has so altered his or her position in reliance on the validity of the payment; and
- (d) It would be inequitable to recover the payment whether in full or in part, having regard to all possible implications in relation to other persons; and
- (e) Legal advice has been received that the above criteria is met.

I Debt established before 26 September 2002 provisionally written off under section 86(9A) Social Security Act 1964

- 1 The debt arose as a result of an error made by an officer or employee of MSD; and
- 2 The error was not intentionally contributed to by the debtor; and
- 3 The debtor received the amount in good faith; and
- 4 The debtor has so altered his or her position in reliance of the validity of the payment that it would be inequitable in all the circumstances, including the debtor's financial circumstances to require repayment; and
- 5 The debtor's circumstances had not so changed in the succeeding 3 months as to justify repayment of the debt.

J Debt established on or after 26 September 2002 and before 26 November 2018 that cannot be recovered in accordance with section 86(9A) Social Security Act 1964

- 1 The debt is a sum comprising all or part of a debt caused wholly or partly by an error (within the meaning of section 86(9B) of the Social Security Act 1964) made by an officer or employee of MSD or an individual working in MSD as a contractor or as a secondee from elsewhere in the State services¹; and
 - (a) The error was not intentionally contributed to by the debtor; and
 - (b) The debtor received that sum in good faith; and
 - (c) The debtor changed his or her position in the belief that he or she was entitled to that sum and would not have to pay or repay that sum; and
 - (d) It would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery of that sum.

¹ "State services" has variously been defined in the State Sector Act 1988 and is currently defined in the Public Service Act 2020. The decision-maker should consider the particular definition in force at the relevant time when the error occurred.

OR:

- 2 A decision that the debt is non-recoverable under section 86(9A) has been made by a Benefits Review Committee, a Social Security Appeal Authority, or higher courts on appeal.

K Debt established on or after 26 November 2018 that cannot be recovered in accordance with regulation 208 Social Security Regulations 2018

- 1 The debt is a sum comprising all or part of a debt caused wholly or partly by an error (within the meaning of regulation 208 of the Social Security Regulations 2018) made by an officer or employee of MSD or an individual working in MSD as a contractor or as a secondee from elsewhere in the State services; and
- (a) The error was not intentionally contributed to by the debtor; and
 - (b) The debtor received that sum in good faith; and
 - (c) The debtor changed his or her position in the belief that he or she was entitled to that sum and would not have to pay or repay that sum; and
 - (d) It would be inequitable in all the circumstances, including the debtor's financial circumstances to permit recovery of that sum.

OR:

- 2 A decision that the debt is non-recoverable under regulation 208 has been made by a Benefits Review Committee, a Social Security Appeal Authority, or higher courts on appeal.

L The debtor is a participant in a Witness Protection or Relocation Programme

Advice is received from the Data Integrity Unit that the debtor is a participant in a witness protection or relocation programme and debt recovery should not take place.

M All economic avenues of collection have been exhausted and the debt is less than \$20,000

- 1 *Debt \$50 or less automatic write off after 70 calendar days where:*
The debtor owes between \$0.01 and \$50.00 (in total) and there have been no repayments during the previous 70 calendar days;

OR:

- 2 *Debt less than \$200 where:*
The debtor owes between \$50.01 and \$199.99 (in total) and there have been no

repayments during the previous 6 months for innocent debts, or during the previous 12 months for fraudulent debts;

OR:

3 *Debt less than \$1,000 where:*

The debtor owes between \$200.00 and \$999.99 (in total) and there have been no repayments during the previous 12 months for innocent debts, or during the previous 2 years for fraudulent debts;

OR:

4 *Debt less than \$2,000 where:*

- (a) The debtor owes less than \$2,000 and there have been no repayments during the preceding 2 years for innocent debts, or during the previous 4 years for fraudulent debts; and
- (b) It is established that the debtor does not reside at the last known address or no longer works at the last known place of employment; and
- (c) Current debtor records do not appear on any MSD databases; and
- (d) Current debtor records do not appear on any public databases e.g. credit reference checks, internet search; and
- (e) Current debtor records do not appear in any information matching exercises with other government agencies e.g. IRD, ACC, Customs; and
- (f) Exhaustive searches have been completed with utility companies e.g. power companies, electronic white pages and banks;

OR:

5 *Innocent breach debt of \$2,000 or more and less than \$20,000 where:*

- (a) The debtor owes \$2,000 or more and less than \$20,000 as an innocent breach debt; and
- (b) There has been no ability to gain repayment or communicate with the debtor for at least 6 years; and
- (c) Current debtor records do not appear on any MSD databases; and
- (d) Current debtor records do not appear on any public databases e.g. credit reference checks, internet search; and
- (e) Current debtor records do not appear in any information matching exercises with other government agencies e.g. IRD, ACC, Customs; and
- (f) Exhaustive searches have been completed with utility companies e.g. power companies, electronic white pages and banks;

OR:

6 *Fraudulent breach debt of \$2,000 or more and less than \$20,000 where:*

- (a) The debtor owes \$2,000 or more and less than \$20,000 as fraudulent breach debt; and

- (b) There has been no ability to gain repayment or communicate with the debtor for at least 10 years; and
- (c) Current debtor records do not appear on any MSD databases; and
- (d) Current debtor records do not appear on any public databases e.g. credit reference checks, internet search; and
- (e) Current debtor records do not appear in any information matching exercises with other government agencies e.g. IRD, ACC, Customs; and
- (f) Exhaustive searches are completed with utility companies e.g. power companies, electronic white pages and banks.

N Proceeds of sale of Assets seized by Court order, and Otherwise Paid to the Crown

- 1 A Court has made an assets forfeiture order, the property specified in the order have been disposed of, and the money resulting from the disposal have been applied in accordance with section 82 of the Criminal Proceeds (Recovery) Act 2009; and
- 2 The Crown has been paid money under section 82(1)(d) of the Criminal Proceeds (Recovery) Act 2009 and the amount of any debt to be written-off under this delegation does not exceed that amount so paid to the Crown.



Hon Grant Robertson
Minister of Finance

Hon Carmel Sepuloni
Minister for Social Development and
Employment

Date: 12/6/22

Date: _____