

Parliamentary document 837 – Item 485

**Bill of Legislation
on adjustment of inflation-indexed housing mortgages**

(Submitted to the 143rd legislative session of the Althingi, 2013-2014)

Art. 1
Objective

The objective of this Act is to provide for the framework and arrangements for adjustments to inflation-indexation of household housing mortgages during the period from 1 January 2008 to 31 December 2009.

Art. 2
Authorisation to conclude agreements

The Minister shall be authorised to conclude agreements with pension funds, the Housing Financing Fund and financial undertakings operating in accordance with Act No. 161/2002, on Financial Undertakings, on the implementation and settlement of general adjustment to housing mortgages as provided for in this Act.

Agreements on settlement between the Treasury and parties referred to in the first paragraph shall be arranged so as to create neither a gain nor a loss for the contracting party as a result of payment by the Treasury of the adjustment portion of the mortgage, as provided for in Art. 11.

Art. 3
Scope of adjustments

Adjustments as provided for in this Act shall apply to inflation-indexed housing mortgages granted to individuals by legal entities which fulfil, or fulfilled during the period from 1 January 2008 to 31 December 2009, the same requirements as legal entities referred to in the first paragraph of Art. 2. The requirements are that the loans have been used, in part or in full, to acquire residential housing for personal use in Iceland and that they were in existence during some part of this same period. Interest expense on the same loans must have been recognised as a basis for calculation of interest benefits, in part or in full, during this same period.

Adjustments according to this Act shall apply to households, i.e. individuals, married couples or cohabiting partners who satisfied the requirements for joint taxation within the adjustment period referred to in the first paragraph; the adjustment applies to loans secured by the common residence of a married couple or cohabiting partners, regardless of which party was formally registered as the borrower during the period.

The adjustments do not apply to legal entities, even if the loan was taken out directly or indirectly for the benefit of individuals, including as provided for in Act No. 66/2003, on Residential Co-operative Societies.

The adjustment does not apply to estates of deceased persons. A surviving spouse or

children under 18 years of age, who have taken over the assets and liabilities of the deceased, however, may apply for an adjustment to loans of the deceased person as referred to in the first paragraph.

Art. 4
Application

The application period shall commence on 15 May 2014 and conclude on 1 September 2014.

Individuals may apply to have an adjustment to mortgages referred to in the first paragraph of Art. 3 applied to reduce mortgages in the year of application, cf. Art. 11, and as appropriate as a special personal tax credit, cf. Art. 12. Married couples and cohabiting partners who satisfied the requirements for joint taxation as referred to in the third paragraph of Art. 62 of Act No. 90/2003, on Income Tax, at year-end 2013 may apply jointly for such an adjustment in connection with mortgages which conferred entitlement to interest benefits in 2008-2009 and for which either or both of them were responsible. It makes no difference which of the spouses or partners is formally responsible for the mortgage in the case of a reduction as referred to in Art. 11 in connection with adjustments to mortgages as provided for in the first paragraph of Art. 3.

The application shall be directed to the Directorate of Internal Revenue in the format decided by that office and processed electronically.

An applicant must confirm in making application that he/she authorises the lender in question to communicate the necessary information and documentation to the Directorate of Internal Revenue regarding those real estate mortgages covered by the adjustment, cf. Art. 60 of Act No. 161/2002, on Financial Undertakings, and similar provisions concerning other lenders.

Should an applicant fail to provide the information or submit the documentation requested in the electronic application process the application shall be refused.

Art. 5
Processing of applications

Processing of applications as referred to in Art. 4 shall be carried out by the Directorate of Internal Revenue. Processing shall be based in part on documentation and information on the applicant's real estate mortgage(s) and family status.

Calculation of mortgages as referred to in Art. 7 shall be carried out on the responsibility of the lender in question who shall communicate information thereupon to the Directorate of Internal Revenue.

Art. 6
Acquisition and communication of information

The Directorate of Internal Revenue shall be authorised to acquire all information necessary for processing of applications, including from the Debtors' Ombudsman, credit institutions, other lenders, District Commissioners and the National Registry, regardless of confidentiality obligations of these parties. This shall include information used as a basis as referred to in Articles 7, 8 and 11 in connection with marital status at any given time. The information shall be provided without charge and in such format as decided upon by the Directorate of Internal Revenue.

Utilisation of information possessed by the Directorate of Internal Revenue based on

general tax assessment shall be authorised as necessary.

Notwithstanding the provisions of Art. 117 of Act No. 90/2003, the Directorate of Internal Revenue shall be authorised to communicate information of significance to lenders, such as is necessary for identification in calculation of loans as referred to in Art. 7, deductions as referred to in Art. 8, and other implementation which they may be entrusted to carry out under this Act, cf. Art. 11. Lenders who receive such information are bound by obligations of confidentiality concerning this and may not utilise the information for other purposes than those provided for in this Act. Apart from this, the Directorate of Internal Revenue is bound by an obligation of confidentiality regarding information which it receives on the basis of this Act.

Art. 7

Calculation of individuals' adjustments

Calculation of the adjustment of each mortgage as referred to in the first paragraph of Art. 3 shall be based on the difference between real indexation and adjusted indexation.

Calculation as referred to in the first paragraph shall be based on the assumption that the loan was paid up to date according to the cash flow and loan terms which applied at the beginning of the adjustment period, cf. the first paragraph of Art. 3, net of any excess payments which may have been made during the period. The calculation shall also be based on the principal thus calculated as of the end of the adjustment period of the loan. The cash flow refers to the total of instalments and interest, exclusive of indexation, which was to be paid, taking excess payments into consideration.

Indexation is calculated based on the Consumer Price Index (CPI) on the cash flow and imputed principal at the end of the loan's adjustment period; the total of this indexation is considered to be the real indexation in the calculation.

Indexation based on a reference index is also calculated on the cash flow and imputed principal at the end of the loan's adjustment period; the total of this indexation is considered to be the adjusted indexation in the calculation.

An individual's adjustment and its maximum amount is determined by his/her marital or household status at any given time within the adjustment period.

The total amount of adjustment calculated for an individual, married couple, cohabiting partners who fulfil the requirements for joint taxation because of their marital status, and two or more individuals who jointly owned a home may not, however, exceed ISK 4 million.

Art. 8

Individuals' deductions

From the amount determined as provided for in Art. 7 shall be deducted the individual's total share of any write-down of real estate mortgages taken for the purpose of acquiring residential property for personal use which have lost their collateral following a forced auction or other disposition of the asset after 1 January 2008. The same applies to final write-offs of housing mortgages, special interest subsidies, interest benefits calculated on guarantor mortgages and other financial remedies arranged by the government as listed below:

a. Write-offs of secured claims following the eradication of real estate mortgage claims as provided for in Art. 12 of Act No. 50/2009, on Temporary Mitigation of Residential Mortgage Claims.

b. Write-offs of real estate mortgage claims provided for in an agreement on problem debt restructuring as provided for in Art. 2 of Act No. 107/2009, on Actions to the Benefit of Individuals, Households and Enterprises due to the Banking and Currency Crisis,

cf. the Agreement Concerning Working Procedures for Individuals' Problem Debt Restructuring of 31 October 2010, as amended on 22 December 2010.

c. Debt reduction as provided for in the Agreement among Lenders on the Housing Market Concerning Working Procedures to Assist Over-mortgaged Households of 15 January 2011, cf. also Temporary Provision XIV of Act No. 44/1998, on Housing Affairs, cf. Art. 1 of Act No. 29/2011.

d. Write-offs of real estate mortgage claims following payment mitigation as provided for in Act No. 101/2010, on Payment Mitigation for Individuals. This applies notwithstanding the provisions of Art. 33 of Act No. 101/2010.

e. Write-offs of real estate mortgage claims as provided for under Act No. 103/2010, on Temporary Remedies for Individuals Owning Two Residential Properties. This applies notwithstanding the provisions of the second paragraph of Art. 7 of Act No. 103/2010.

f. Special interest subsidies in accordance with Temporary Provision XLII of Act No. 90/2003, on Income Tax, cf. Art. 6 of Act No. 164/2010.

g. Interest benefits calculated on guarantor mortgages in accordance with Temporary Provision LII of Act No. 90/2003, on Income Tax, cf. Art. 1 of Act No. 43/2013.

Individuals' deductions as provided for in the first paragraph are based on marital or household status, cf. the sixth paragraph of Art. 7, as of the time the write-downs were applied.

Art. 9

Applicant's adjustment amount

The applicant's adjustment amount as provided for in the second paragraph of Art. 4 is the total of the individuals' amounts referred to in Art. 7, taking into consideration individuals' deductions as provided for in Art. 8, in a maximum amount of ISK 4 million per household, whether the party concerned is an individual, a married couple or cohabiting partners who fulfil the requirements for joint taxation because of their marital status at year-end 2013, cf. the first sentence of the third paragraph of Art. 62 of Act No. 90/2003, on Income Tax.

Amounts referred to in the first paragraph shall be neither indexed nor bear interest.

Should the remaining amount be ISK 20,000 or less any right to adjustment shall be cancelled.

Art. 10

Notification of decision on the adjustment amount

The Directorate of Internal Revenue shall notify the applicant of the outcome of the calculation of adjustment electronically once it is available.

Should the outcome of the calculation as referred to in Art. 9 be based on incorrect information, the applicant may request a correction electronically from the Directorate of Internal Revenue within three months of the date of notification.

If the applicant has no objections to the decision on calculation of the adjustment amount he/she shall approve the calculation and implementation of the adjustment as provided for in Art: 11 within three months of the date of notification. After that time the entitlement to adjustment expires.

Art. 11

Implementation of adjustment to reduce the principal of real estate mortgages

If real estate mortgages, which have lost their collateral following a forced auction or other disposition of the asset after 1 January 2008, have not been finally written off towards the applicant, the adjustment amount shall be used to reduce such claims.

If the amount of the remaining adjustment provided for in the first paragraph exceeds ISK 200,000 the adjustment shall be made by reducing indexed and/or non-indexed real estate mortgages in ISK as provided for in this Article. Otherwise the adjustment shall be implemented as provided for in Art. 12.

Adjustment will be made to individual loans by the mortgage lender holding first lien rights dividing the loan into two parts, the original mortgage portion and the adjustment portion. No change will be made to the terms or conditions of the original portion, however, the provisions of the fourth and fifth paragraphs shall apply to the adjustment portion. It is not necessary to have special changes to terms signed or registered when the loan is divided into two parts, and the change is exempt from the Consumer Lending Act, No. 33/2013. If nothing remains of the original portion with first lien rights, but part of the adjustment amount provided for in the fourth paragraph is still undisposed of, the lender holding the next lien rights to the applicant's property shall divide that loan into two parts, the original portion and the adjustment portion, and so forth until the adjustment amount is exhausted or the original portion eradicated. An applicant's real estate loan secured by a mortgage on the property of another individual shall only be the object of such division if the adjustment amount cannot be fully utilised towards real estate mortgages on the applicant's property. The division of a mortgage into an original and an adjustment portion shall not disturb the collateral or lien rights of the loan which shall continue to secure payment of the original and adjusted portion of the loan.

The adjustment amount, in full or in part, comprises the adjustment portion of the loan. This amount shall be utilised as follows for payment towards the adjustment portion until the adjustment amount is fully utilised or the original portion of the loan is exhausted. Disposition shall first be made for the oldest unpaid due date of the loan in the following order: Firstly, of cost due to arrears and penalty interest, then of unpaid interest together with indexation of unpaid interest, and finally of any unpaid principal, together with indexation of the unpaid principal. Similar disposition shall be made for the next oldest unpaid due date, and so forth. Any amount owing on an equalisation account shall then deducted from the adjustment portion of the loan if the applicant has benefited from debt smoothing on the basis of Act No. 63/1985, cf. Act No. 107/2009. After that as much of the accrued interest, indexation on accrued interest and principal and indexation on the principal shall be paid from the adjustment portion of the loan as necessary until the adjustment amount is reached or the original portion of the loan exhausted. The adjustment amount so comprised creates a new principal for the adjustment portion of the loan, which is to bear the same interest as the original portion of the loan from the date of calculation. Accrued, unpaid interest on the adjustment portion of the loan may be added to the principal at 12-month intervals. Next the adjustment amount shall be disposed of by the same method towards a real estate mortgage with the next lien rights on the applicant's property and so forth. If a real estate mortgage of the applicant remains, which is secured by a mortgage on another person's property, this shall be written down in the same manner.

The payer of a divided real estate mortgage shall continue to make payments on the original portion in accordance with the terms of the loan, while the Treasury shall pay the adjustment portion in accordance with an agreement with the contracting party, as referred to in Art. 2, providing the conditions of Art. 16 on authorisation for payment in the budget are satisfied. The adjustment portion of the loan shall be divided into four instalments with the due date for instalments and interest 31 December each year, initially in the year the adjustment is made to the loan. The Treasury shall be authorised to prepay the adjustment

portion and interest in part or in full without any pre-payment charge if 30 days' notice is given of an altered due date. The adjustment portion of loans shall be fully repaid no later than 31 December 2017.

Should a property securing a divided mortgage be sold at forced auction or the payer's estate be placed in liquidation, the right to adjustment shall be cancelled and the original and adjustment portion of the mortgage shall be merged once more. Any amount remaining on the adjustment portion of the mortgage, the principal together with accrued interest, shall be added in a single amount to the original portion of the mortgage. This thereby forms a new principal of the original portion of the mortgage, repayment of which shall be subject in other respects to the terms of the real estate mortgage. It is not necessary to have special changes to terms signed for the merger of the original and adjustment portions of the loan, and this change is exempt from the Consumer Lending Act, No. 33/2013. It is not necessary to register the merger of the loan portions to ensure its legal protection against lower priority mortgage holders.

The Minister may, in a Regulation, set detailed rules on the implementation of adjustments as provided for in this Article, such as on the procedure for dividing a real estate mortgage into an original portion and adjustment portion, the arrangements when the adjustment amount changes or is re-examined and on the details of implementation if the adjustment portion needs to be merged once more with the original portion of the mortgage in full or in part.

Art. 12.

Special personal tax credit

Any adjustment amount which cannot be utilised as provided for in Art. 11 shall create a special personal tax credit.

The special personal tax credit appears as an addition to the general personal tax credit when taxes are assessed as provided for in Point 6 of the first paragraph of Art. 66, cf. Part A of Article 67, of Act No. 90/2003, on Income Tax, however, in such a manner that it shall be spread equally over four years without indexation increase. After the special personal tax credit has been utilised to pay assessed income tax, municipal income tax and capital income tax, any portion of withholding tax equivalent to the remaining personal tax credit shall be refunded without a premium as provided for in Art. 122 of Act No. 90/2003, on Income Tax, and having regard for the provisions of Art. 112 of the same Act. Any portion of the personal tax credit which remains unutilised shall be transferred to the following year until fully utilised or the period for disposition has expired. Unutilised special personal tax credit is transferred between married couples and jointly taxed cohabiting partners upon assessment.

Art. 13

Re-examination of adjustment

Should it come to light that the adjustment amount has been substantially over- or undercalculated, or that its disposition was based on incorrect or unsatisfactory information, the Directorate of Internal Revenue shall then be authorised to see to it that previous decisions as referred to in Articles 10, 11 and 12 are re-examined and shall supervise the implementation of re-examination. In processing cases the Directorate of Internal Revenue shall obtain the necessary documentation and give the parties involved an opportunity to raise objections before taking a decision. Authorisation for re-examination in accordance with this provision shall expire after three years have elapsed from the year of application as referred to in Art. 4.

Should a re-assessment result in recalculation of the adjustment amount, any difference shall be disposed of anew in accordance with Art. 11, whether this increases or reduces the dispositions which have already been carried out.

In the event that the difference is a reduction and [the adjustment amount is] lower than the total amount of reductions already made to mortgage claims, the outstanding balance of the applicant's adjustment mortgages and unutilised personal tax credit, and thereby results in an amount owed by the applicant, the above-mentioned dispositions shall be reversed and the amount outstanding shall be due for payment 10 days after notification is given of recalculation.

Art. 14.

Complaints Committee

A decision on the amount of adjustment as provided for in Art. 9, the implementation of adjustments as provided for in Art. 11 and re-examination as provided for in Art. 13 may be referred to a Complaints Committee appointed by the Minister.

The Complaints Committee shall be comprised of three persons nominated by the Supreme Court. Two of these persons shall satisfy statutory conditions to serve as District Court Judges, and one of them shall chair the Committee. The third Committee member shall have expertise and experience of real estate mortgage lending.

The deadline for referral is three months after the date of the decision, cf. the first paragraph.

Complainants must provide grounds for their complaints and provide the Committee with all documentation in the case, as well as such information and explanations as the Committee deems necessary.

The Complaints Committee may request an opinion from the credit institution concerned or the Directorate of Internal Revenue as appropriate.

A complaint postpones the implementation of an adjustment as provided for in this Act.

The Complaints Committee shall be bound by obligations of confidentiality concerning documentation and information of which it may become aware in the course of its work.

The Committee's rulings shall be final at the administrative level. Any dispute arising from the implementation of this Act may be referred to the courts, provided the Complaints Committee has previously pronounced its ruling.

The Minister may set detailed rules on the work of the Complaints Committee, including its procedures in resolving disputes, payment of the cost of the Committee's work and its location.

Art. 15

Supervision of implementation

The Minister shall supervise the implementation of this Act.

Art. 16.

Financing

Allocations for the implementation of this Act are subject to their approval by the Althingi in the state budget each year. Should budget allocations not be forthcoming the adjustment loan portion of a loan shall be processed as provided for in the sixth paragraph of Art. 11 but any unutilised special personal tax credit shall be cancelled.

Art. 17.

Authorisation for a Regulation

The Minister shall set detailed rules on the implementation of this Act, including on harmonised working procedures and criteria for calculation as provided for in Art. 7 and deductions as provided for in Art. 8. The Minister may also decide in a Regulation on longer time limits as referred to in Art. 10.

Art. 18.

Entry into force

This Act shall enter into force at once.

Art. 19.

Limits of legal applicability

Adjustments provided for in this Act, whether in the form of adjustments to real estate mortgages or a special personal tax credit, shall neither be considered income as referred to in Point 7 of Art. 28 of Act No. 90/2003, on Income Tax, nor included in the income tax base in calculation of income-linked children's or interest benefits as provided for in Parts A and B of Art. 68 of the same Act. Payment by the Treasury of interest on the adjustment loan portion does not give entitlement to interest benefits under those same provisions of Part B of Art. 68 of the same Act. Nor does it have the effect of reducing benefits under Act No. 100/2007, on Social Security, and Act No. 99/2007, on Social Assistance; rent subsidies as provided for in Art. 9 of Act No. 138/1997, on Rent Subsidies; unemployment benefits as provided for in Art. 36 of Act No. 54/2006, on Unemployment Insurance; payments to parents as provided for in Art. 22 of Act No. 22/2006, on Payments to Parents of Chronically Ill or Seriously Handicapped Children, No. 22/2006 [sic]; and student loans from the Icelandic Students' Loan Fund, as provided for in Art. 1 of Act No. 21/1992, on the Icelandic Students' Loan Fund.

Despite the fact that an individual has included inflation-indexed real estate mortgages among those loans on the tax return for 2009 and 2010 which did not grant any entitlement to interest benefits on interest expense, he/she may nonetheless request that such loans be used as a basis for calculation as referred to in Art. 7, provided these loans have verifiably been used for improvements to residential housing during the period covered by the adjustment provided for in this Act. Under such circumstances consideration shall only be given to the said loans in calculating an adjustment as provided for in this Act and no interest benefits shall be determined in this connection as provided for in Part B of Art. 68 of Act No. 90/2003, on Income Tax.

The provisions of Act No. 44/1998, on Housing Affairs, shall not restrict the authorisation of the Housing Financing Fund to participate in an agreement as referred to in Art. 2 and its implementation in accordance with this Act.

Adjustment as provided for in this Act shall be deducted from the updated outstanding balance of mortgage debts on a property in assessing what claims can be considered for eradication under a payment mitigation agreement, cf. Art. 12 of Act No. 50/2009, on Temporary Mitigation of Residential Mortgage Payments, cf. subparagraph a of the first paragraph of Art. 21 of Act No. 101/2010, on Payment Mitigation for Individuals.