

A guide to Bankruptcy



Bankruptcy (England and Wales and Northern Ireland)

Bankruptcy proceedings start with the making of a bankruptcy order by the court. An application for a bankruptcy order may be made by any creditor owed more than £750, or by an individual in financial difficulty.

Immediately on the making of the order, an official called the official receiver becomes manager of the bankrupt's estate, pending the appointment of a trustee. Where there are significant assets, an insolvency practitioner will usually be appointed to act as trustee. Where no insolvency practitioner is appointed, or where there is a vacancy in the office of trustee, the official receiver acts as trustee. The official receiver is an officer of the court and a member of the Insolvency Service.

Subject to certain exemptions, once the order is made, control of a bankrupt's assets pass to the official receiver and then to the trustee. People made bankrupt lose any rights to their property apart from any equipment needed for use in their business, and basic domestic equipment such as clothes, bedding and furniture, and certain pension rights.

There are special rules regarding a bankrupt's home. Generally speaking, if a bankrupt has equity in a house, it may have to be sold. However, the law discourages a trustee from taking steps to force a sale through the court during the first 12 months of the bankruptcy where a bankrupt is married or has young children living at home. New rules introduced in April 2004 give trustees three years from the date of the bankruptcy order to sell the house or otherwise deal with the bankrupt's interest in it. If they do not do so within that time, the property will revert to the bankrupt. And if the value of the equity is less than £1,000, the trustee will not be able to force a sale. There are certain restrictions of bankruptcy which usually last until the bankrupt is discharged (although the assets remain with the trustee).

If someone made bankrupt have surplus income above their needs and those of their dependants, they may be required to make contributions to their creditors for up to three years. Until their discharge, the trustee may also claim any property acquired by the bankrupt after the bankruptcy order, such as assets left to them in a will. During the period of a bankruptcy a bankrupt is subject to certain restrictions. For example,

- They must not obtain credit of more than £500 from anyone without telling that person that they are an un-discharged bankrupt

- They must not carry on business under a name different from that under which they were declared bankrupt without disclosing the fact that they are an un-discharged bankrupt
- They may not act as a company director without the court's consent
- Their credit rating will also be affected
- It may affect their occupation

The bankrupt will usually be discharged from bankruptcy automatically after one year, or even sooner if the official receiver decides to close their file early.

Once discharged, the person made bankrupt is released from their debts, with some exceptions such as court fines, matrimonial debts and certain student loans.

After they have been discharged, bankrupts do not have any right to take back from the trustee any property that was part of their estate in the bankruptcy, and the trustee will remain in office for as long as is necessary to sell the property and distribute the proceeds to the creditors.

The restrictions of bankruptcy may remain if the official receiver applies to court to impose a bankruptcy restrictions order or the bankrupt agrees to sign a bankruptcy restrictions undertaking. These can last for up to 15 years.

Procedure for Bankruptcy

1. Petition

Presented by a creditor or the debtor on grounds of insolvency, or by the supervisor of a voluntary arrangement in appropriate circumstances.

2. Bankruptcy order made by the court

3. Official Receiver

Becomes the receiver of the bankrupt's estate by virtue of the bankruptcy order. The Official Receiver has a duty to investigate the bankrupt's affairs and send a report to the creditors. May call a meeting of creditors to appoint a licensed insolvency practitioner as trustee.

4. Creditors' meeting

Convened by the Official Receiver within three months of the bankruptcy order. A trustee is appointed by a simple majority in value of the creditors. The meeting may also establish a creditors' committee.

5. Duties of trustee

Realise assets comprised in the bankrupt's estate. Agree creditors' claims and distribute any funds by way of a dividend. Call final meeting of creditors at which the creditors receive an account and report on the administration of the estate.

Sequestration (Scotland)

The principle of a formal personal insolvency procedure under the control of the court is similar in Scotland, where it is known as sequestration.

A creditor or an individual can apply to the court for bankruptcy on the ground of insolvency. An interim trustee is appointed to protect the estate until a permanent trustee is either appointed by the court or voted on by a meeting of the creditors.

The Accountant in Bankruptcy acts as trustee in small insolvencies where there are unlikely to be funds to pay a private Insolvency Practitioner. The Accountant in Bankruptcy is also responsible in all cases for overseeing the licensed insolvency practitioners appointed as trustees and all sequestrations.

Debtors (bankrupts) are automatically discharged from the debts after three years, and property comprised in the estate remains with the trustee until their discharge.

The trustee or any creditor can apply to defer the discharge to a maximum of two years. This application must be made before the end of the three year period.

Partnerships in Scotland have a separate legal personality, unlike English partnerships, and are subject to the same insolvency regime as individuals. They are therefore sequestrated too, and none of the corporate insolvency processes are applicable.

Procedure for Sequestration

1. Petition

The application to the court for commencement of bankruptcy is done by way of a petition to the court presented by a creditor or the debtor on grounds of insolvency.

2. Interim Trustee

Appointed by the court to preserve the estate and to call the first meeting of creditors.

3. Permanent Trustee

Elected by meeting of creditors. Where there is no such election the Interim Trustee may be appointed as Permanent Trustee by the court. Commissioner(s) (creditors' committee) may be appointed. The Accountant in Bankruptcy acts where insufficient funds are available to cover the costs of bankruptcy.

4. Duties of Trustee

Realise assets and distribute between the creditors in order of priority, in the same way as under a Protected Trust Deed.