

GUIDE TO

BANKRUPTCY

when?
where ?
who
what?



CUSTOMER SERVICE EXCELLENCE



INVESTOR IN PEOPLE

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1. About this guide

This guide tells you what happens if you are made bankrupt in England and Wales.

This booklet is for general guidance only. If bankruptcy proceedings are taken against you, or you are thinking of making yourself bankrupt, you should seek your own legal or financial advice from a Citizens Advice Bureau, a solicitor, a qualified accountant, an authorised insolvency practitioner, a reputable financial adviser or a debt advice centre.

Other organisations also offer insolvency advice and debt counselling. Some of them are entirely reputable and offer a professional service. However, others are controlled by individuals with no obvious qualifications who appear to be motivated mainly by a desire to exploit an already difficult situation. **Beware, particularly of unsolicited approaches through the post or by telephone.**

a. If you are not bankrupt

Bankruptcy is a serious matter. You will have to give up any possessions of value and your interest in your home. (Section 7 gives details of things you do not have to give up.) It will almost certainly involve the closure of any business you run and the dismissal of your employees. Bankruptcy will also impose certain restrictions on you.

You do not have to become bankrupt just because you are in debt. Look at the alternatives to bankruptcy as soon as possible in case they are more suitable in your situation. A leaflet called "Alternatives to Bankruptcy" is available from your local official receiver's office or on-line at the Insolvency Service website at www.insolvency.gov.uk

b. If you are already bankrupt

Sections 2-12 explain the bankruptcy procedure. The official receiver will give you further instructions. You can still propose a voluntary arrangement (details in section 13) which could annul the bankruptcy.

A separate leaflet called "Can my bankruptcy be cancelled? Information on annulment of a bankruptcy order" is available from your local official receiver's office or on-line at the Insolvency Service website at www.insolvency.gov.uk. You should consider this leaflet if you think that you should not have been made bankrupt or if all your bankruptcy debts and the fees and expenses of the bankruptcy proceedings can be paid or secured in full.

2. What is bankruptcy?

Bankruptcy is one way of dealing with debts you cannot pay. The bankruptcy proceedings:

- free you from overwhelming debts so you can make a fresh start, subject to some restrictions (see section 8); and
- make sure your assets are shared out fairly among your creditors.

Anyone can go bankrupt, including individual members of a partnership. There are different insolvency procedures for dealing with companies and for partnerships themselves. Separate leaflets about these insolvency procedures are available (see section 16).

3. How are you made bankrupt?

A court makes a bankruptcy order only after a bankruptcy petition has been presented. It is usually presented either:

- by yourself (debtor's petition); or
- by one or more creditors who are owed at least ?750 by you and that amount is unsecured (creditor's petition).

A bankruptcy order can still be made even if you refuse to acknowledge the proceedings or refuse to agree to them. You should therefore co-operate fully once the bankruptcy proceedings have begun. If you dispute the creditor's claim, you should try and reach a settlement before the bankruptcy petition is due to be heard. Trying to do so after the bankruptcy order has been made is both difficult and expensive.

To find out more information please see the following leaflets:

- **How to petition for you own bankruptcy**
- **How to make someone bankrupt**

4. Where is the bankruptcy order made?

Bankruptcy petitions are usually presented at the High Court in London or at a county court near to where you trade or live. A petition can be presented against you even if you are not present in England or Wales at that time. This can happen when you normally live in, or within the previous 3 years have had residential or business connections with, England or Wales.

If you now normally live or work in another EU country (apart from Denmark) it is unlikely that you can be made bankrupt in England or Wales, even if you have had residential or business connections here within the previous 3 years. If this applies to you, you may wish to seek separate legal advice.

Sometimes government departments start bankruptcy proceedings in the High Court in London or in one of the District Registries. If you did not trade or do not live in the London area, your case will usually be transferred to the appropriate local county court and, if a bankruptcy order is made, it will be dealt with by the local official receiver.

Once the bankruptcy order has been made the official receiver will give notice of the order in the 'London Gazette', which is an official publication that contains legal notices. In addition, the official receiver has discretion to advertise the order in any other way, if he or she thinks it is appropriate to do so.

5. Who will deal with your case?

a. The official receiver

An official receiver is appointed by the Secretary of State and is an officer of the court. The official receiver has responsibility for administering your bankruptcy and protecting your assets from the date of the bankruptcy order. He or she will also act as trustee of your bankruptcy estate unless an insolvency practitioner is appointed.

The official receiver is also responsible for looking into your financial affairs for the period before and during your bankruptcy. He or she may report to the court and has to report to your creditors. The official receiver must also report any matters which indicate that you may have committed criminal offences in connection with your bankruptcy or that your behaviour has been dishonest or you have been in some way to blame for your bankruptcy.

The official receiver will give notice of the bankruptcy order to courts, sheriffs, bailiffs, HM Revenue and Customs, the Land Registry and any relevant professional bodies. Enquiries will also be made of banks; building societies; mortgage, pension and insurance companies; solicitors, landlords and any other persons or organisations who may be able to provide details of any assets or liabilities that you have, or have had, an interest in (either on your own or jointly with others). Third parties will also be asked about any other matters relating to your bankruptcy.

If you are unhappy with the way your case is handled by the official receiver you should follow the procedure set out in our leaflet 'Complaints Procedure: Information on making a complaint'.

You can order copies of our publications by calling the Publications Orderline on 0845 015 0010. Alternatively you can download the leaflet from our website, www.insolvency.gov.uk

b. An insolvency practitioner

Insolvency practitioners are individuals who specialise in insolvency work. An insolvency practitioner, who must be authorised by either the Department for Business Enterprise and Regulatory Reform (BERR) or the appropriate professional body, can be appointed trustee instead of the official receiver. He or she is then responsible for disposing of your assets and making payments to your creditors.

If you wish to complain about the professional conduct of a private sector insolvency practitioner trustee (or liquidator), you should write to his or her licensing body (Recognised Professional Body or RPB). You can find more details in our leaflet 'How to make a complaint against an Insolvency Practitioner'. The insolvency practitioner should give you details of their RPB, or call the Insolvency Enquiry line on 0845 602 9848. Alternatively you can email the Insolvency Enquiry Line at Insolvency.Enquiryline@insolvency.gsi.gov.uk.

To find out more information please see the following leaflets:

- **What happens when you are interviewed by the official receiver**
- **Complaints procedure**
- **How to make a complaint against an Insolvency Practitioner**

6. What are your duties as a bankrupt?

When a bankruptcy order has been made, you must:

- comply with the official receiver's request to provide information about your financial affairs. The official receiver may request that you attend at his or her office for an interview - the court will give you the address of the official receiver. (Note: usually before the interview, you will be sent or given a questionnaire which you should fill in as fully and accurately as possible, or you can fill in this form online on our website at www.insolvency.gov.uk in 'Complete your forms online'.) If the official receiver does not ask that you attend at the office for an interview, you will be sent a letter which will set out what is required of you. Again it is likely that you will be asked to complete a questionnaire. You should note that in either circumstance, any questionnaire completed **before** the bankruptcy order, supplied to you by an adviser or another third party, will not be acceptable;
- give the official receiver a full list of your assets and details of what you owe and to whom (your creditors);
- look after and then hand over your assets to the official receiver together with all your books, records, bank statements, insurance policies and other papers* relating to your property and financial affairs;
- tell your trustee about assets and increases in income you obtain during your bankruptcy. (Note: by law you must inform your trustee of any property which becomes yours during the bankruptcy. Such property includes lump sum cash payments that you may receive, for example redundancy payments, property or money left in a will);
- stop using your bank, building society, credit card and similar accounts straightaway (see section 8);
- not obtain credit of ?500 or more from any person without first disclosing the fact that you are bankrupt (see section 8);
- not make payments direct to your creditors (but see section 7a).

You may also have to go to court and explain why you are in debt. If you do not co-operate, you could be arrested.

*Your books and papers will normally be destroyed after your trustee has finished with them. However, you can have them back, provided they have not already been destroyed, if the court annuls your bankruptcy (see section 9).