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6. Restrictions on bankrupts

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The following abbreviations are used in this chapter:

BRO – Bankruptcy restrictions order

IBRO – Interim bankruptcy restrictions order

BRU – Bankruptcy restrictions undertaking

LLP – Limited liability partnership

IA86 – The Insolvency Act 1986

CDDA 86 – The Company Directors Disqualification Act 1986

EA2002 – The Enterprise Act 2002

Restrictions applicable to individuals subject to bankruptcy orders, bankruptcy restrictions orders, interim bankruptcy restrictions orders and bankruptcy restrictions undertakings

6.1 Introduction

Various disabilities or restrictions are applied under insolvency and other legislation to an individual who is subject to a bankruptcy order and remains undischarged from the proceedings. The restrictions applying under insolvency legislation are triggered by the making of a bankruptcy order and do not apply to an individual after discharge from bankruptcy. However if the Secretary of State or official receiver, acting on a direction of the Secretary of State, apply to the court for a bankruptcy restrictions order (BRO), interim bankruptcy restrictions order (IBRO) or accept from a bankrupt a bankruptcy restrictions undertaking (BRU), when it is considered that a bankrupt has committed significant misconduct. Depending upon the severity of the misconduct, a BRO or BRU imposes the restrictions of bankruptcy upon the individual concerned for a period of between two years and fifteen years^{1, 2}.

This chapter provides guidance to official receivers in establishing which restrictions apply in bankruptcy, and which apply where an individual is subject to a BRO, IBRO or BRU, including consideration of other legislation, regulations, rules etc. which may apply restrictions on an individual as a result of them having been made the subject of a bankruptcy order or BRO/IBRO/BRU.

1. Schedule 4A section 4(2)

Restrictions imposed on bankrupts by insolvency legislation (including CDDA86)

6.2 Introduction

When an individual is subject to a bankruptcy order, he or she is subject to a range of disabilities or restrictions until discharged from bankruptcy.

These disabilities or restrictions are imposed by a variety of sources including the Insolvency Act 1986 (IA86), the Company Directors Disqualification Act 1986 (CDDA86) and other Acts of Parliament, regulations under consumer legislation and local government bye-laws. The Enterprise Act 2002 (EA2002) introduced BROs, IBROs and BRUs to impose restrictions on bankrupts whose conduct has been dishonest, reckless or otherwise culpable (see section on restrictions applicable against an individual subject to a BRO/IBRO or BRU).

6.3 Public protection

The restrictions imposed provide a means of public protection in return for the bankrupt being able to make a fresh start. This part looks at the restrictions imposed on undischarged bankrupts by IA86 as amended by EA2002 and CDDA86. See section on restrictions which apply where an individual is subject to a BRO/IBRO or BRU.

6.4 Obtaining credit whilst undischarged from bankruptcy

If a person subject to a bankruptcy order wishes to obtain credit to the extent of £500 or more, either alone or jointly with another person, they must disclose the fact of their bankruptcy (or that their estate has been sequestrated in Scotland) to the person from whom they seek to obtain credit¹. Failure to disclose the fact of their bankruptcy will render the bankrupt guilty of an offence. If credit is incurred contrary to the law, it is still a valid post-bankruptcy debt for which the bankrupt remains liable.

The £500 limit is for the total amount of debt incurred with a single lender but the limit can also be reached through a series of transactions each smaller than £500 provided that all the transactions were with the same lender and in total add up to £500 or more - as soon as the limit of £500 has been reached, the offence is triggered. Where the bankrupt has committed more than one offence of this type (i.e. obtaining credit with a number of lenders each for an amount (or total amount) of £500 or more without disclosing the bankruptcy), then all such offences should be considered together for the purposes of a BRO allegation or a [criminal referral](#) .

Obtaining credit is specifically stated to include cases when goods are bailed under hire-purchase agreements and conditional sale agreements and also to include payment made to the bankrupt in advance for the supply of goods or services².

1. Section 360 (1) (a)

2. Section 360 (2)

6.5 Operating a bank account whilst undischarged from bankruptcy

An undischarged bankrupt is not prohibited by law from operating a bank account but the restrictions on obtaining credit apply to the operation of any post bankruptcy account. An undischarged bankrupt will not necessarily find it easy to open or operate a bank account, as individual banks make their own commercial decisions and may have a policy of refusing to operate accounts for undischarged bankrupts. If requested to do so, the official receiver may write to a bank to confirm that they have no objection to the undischarged bankrupt operating a bank account but the official receiver must not sign any disclaimer relating to the operation of the account.

6.6 Engaging in business whilst undischarged from bankruptcy

If an undischarged bankrupt wishes to engage directly or indirectly in any business under a name other than that in which they were adjudged bankrupt, they must disclose the name under which they were adjudged bankrupt to all persons with whom they enter into business transactions otherwise they are guilty of an offence¹. For example, if after bankruptcy and before his discharge, Bert Jones wished to trade as 'Cheese Emporium,' he would have to disclose that the proprietor of that business was Bert Jones.

The individual is not prohibited from trading in partnership, although they must still disclose the name in which they were adjudged bankrupt.

6.7 Dispositions of property

Dispositions of property may be rendered void due to the operation of the Insolvency Act. Between the date of the presentation of the petition and the date of the bankruptcy order a disposition of property, including cash, is void unless made with the consent of, or subsequently ratified by the Court. This includes a transfer of an interest in the matrimonial home (Re Flint [1993] Ch 319).

Where a debt is incurred to a banker or other person after the commencement of the bankruptcy by virtue of making a payment which is void under this section, the debt will be deemed to have been incurred before the commencement of the bankruptcy unless:

- the banker or person had notice of the bankruptcy before the debt was incurred, or
- it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made

Dispositions made prior to the presentation of the petition may be set aside, by the court on the application of the trustee, if they were at an undervalue or constituted a preference¹. A general assignment of book debts by a bankrupt who engaged in a business is void against the trustee unless the debts were paid for prior to the presentation of the bankruptcy petition or the assignment has been registered under the Bills of Sale Act 1878².

For more information on antecedent recoveries see chapters 31 and 32.

1. Section 284

2. Section 344

6.8 Fraudulent disposal of property

The bankrupt is guilty of an offence if they make or cause to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, their property, if that disposal was fraudulent¹. The reference to making a transfer of or charge on any property includes causing or conniving at the levying of any execution against that property.

1. Section 357

6.9 Absconding

A bankrupt must hand over the property comprising their estate to the official receiver or the trustee. If a bankrupt leaves England and Wales, or attempts to or makes preparations to leave and has in their possession property which is worth more than the prescribed limit (currently £1,000), they will be guilty of an offence and liable to prosecution¹.

See also chapter 19 which details the civil remedies available to prevent a bankrupt from absconding or leaving the jurisdiction.

1. Section 358

6.10 Restrictions on holding office

Once a bankruptcy order has been made against an individual, there are various offices which the individual must not accept, or must vacate if already held. Restrictions on holding office imposed by other legislation are outlined in the next section.

6.11 Insolvency practitioner

Section 390(4)¹ prohibits a bankrupt from acting as an insolvency practitioner before they are discharged from bankruptcy.

1. Section 390(4)

6.12 Parliamentary disqualification

Where a court in Scotland awards sequestration of an individual's estate that individual is disqualified for sitting or voting in the House of Lords, for being elected to, or sitting or voting in, the House of Commons, and for sitting or voting in a committee of either House¹.

An MP who is made bankrupt in England and Wales and Northern Ireland is not automatically disqualified from membership but would be if they were subject to a BRO or DRRO¹.

The provisions also apply to members of the Scottish Parliament³, National Assembly for Wales⁴ and the Northern Ireland Assembly⁵.

1. Section 427

2. Section 426A

3. Section 427(6A)

4. Section 427(6B)

5. Section 427(6C)

6.13 Liquidation and Creditor's committee

An undischarged bankrupt may not represent a member of a committee¹. A person who has been a member of a committee has their membership terminated automatically in which case the person's trustee in bankruptcy replaces the bankrupt as a member of the committee².

1. Rule 17.17(5) (d)

2. Rule 17.11(a)

6.14 Promotion, formation and management of a company

It is an offence for an undischarged bankrupt to act as a director of, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company, except with the leave of court¹. An application by a bankrupt for leave to act as a director or to take part in the promotion, formation or management of a company is made to the court pursuant to Insolvency Rules 2016 rule 10.128.

If a company has adopted model articles of association, a director is obliged to vacate office if they become bankrupt.

1. Company Director's Disqualification Act 1986 section 11

6.15 Undischarged bankrupt, application for leave to act (CDDA 86)

The court to which a bankrupt must apply for leave to take part in the promotion, formation or management of a company must be the court by which they were adjudged bankrupt. However the application for leave to act is not considered 'local business' and the application shall be transferred to the appropriate Court¹. The bankrupt's application must be supported by a witness statement².

The bankrupt must serve notice of the hearing upon the official receiver and any trustee, together with a copy of the application and the witness statement, not less than 28 days before the hearing date³. The official receiver may file a report with the court, drawing the court's attention to any relevant matters, including whether or not they intend to oppose the application. The official receiver's report should be filed not less than 14 days before the hearing date with a copy being sent to the bankrupt and any trustee⁴. The bankrupt may file, in court, a notice specifying any matters in the official receiver's report which they intend to dispute or deny. A copy of this notice should be sent to the official receiver and any trustee not less than 3 days before the

hearing⁵. The official receiver and any trustee may appear on the hearing of the application, and may make representations and put to the bankrupt such questions as the court may allow⁶.

It is the duty of the official receiver to attend the hearing of the application to oppose it, if they are of the opinion that if leave to act were to be granted it would be contrary to the public interest⁷.

1. Practice Direction – Insolvency Proceedings 2018 Para 3.6/3.7

2. Rule 10.128(1)

3. Rule 10.129(1)

4. Rule 10.129(2)

5. Rule 10.129(6)

6. Rule 10.129(7)

7. Company Director's Disqualification Act 1986 section 11 (3)

6.16 Limited Liability Partnerships

Regulation 4(2) of the Limited Liability Partnership Regulations (SI 2001/1090)¹ applies the CDDA86 to limited liability partnerships (LLPs), all references to a company are to include an LLP and all references to a director include a member of an LLP. As a result of the application of section 11 of the CDDA86, an undischarged bankrupt cannot be a member of an LLP except with the leave of court².

1. Limited Liability Partnership Regulations (Statutory Instrument 2001/1090) Regulation 4(2)

2. Company Director's Disqualification Act 1986 section 11

Restrictions imposed on bankrupts by other legislation

6.17 Introduction

The following sections list some of the restrictions and disqualifications imposed by non-insolvency legislation, which are automatically applied to undischarged bankrupts.

It should be noted that the restrictions listed here are not exhaustive, and non-insolvency legislation affecting restrictions against an undischarged bankrupt may be subject to revision at any time, as such the relevant legislation must be checked.

If a query is raised by an individual as to a restriction which is not on the list below, that should be advised to seek their own independent legal advice and/or consult the necessary governing body.

6.18 Restrictions in force against undischarged bankrupts

The following paragraphs list the most commonly encountered restrictions/disqualifications imposed by other legislation against an undischarged bankrupt.

Disqualification as trustee (charities and pensions)

6.19 Charities Act 2011 s178 - trustee of a charity

Section 178 of the Charities Act 2011 disqualifies anyone who is an undischarged bankrupt (or who has had their estate sequestrated) from acting as a trustee of a charity¹.

1. Charities Act 2011 Section 178

6.20 Pensions Act 1995 s 29(1) (b) – trustee of a pension scheme

Section 29 of the Pensions Act 1995 disqualifies an undischarged bankrupt from being a trustee of a pension scheme, unless the disqualification is waived, on application, by the Pensions Regulator¹.

1. Pensions Act 1995 section 29(1) (b)

Births, deaths and marriages

6.21 Registration of Births, Deaths and Marriages Regulations 1968

An undischarged bankrupt is disqualified from being appointed as a Registrar of births, deaths and marriages as a result of the application of regulation 5(a) (I) (disqualification for appointment) of the Registration of Births, Deaths and Marriages Regulations 1968¹.

1. Registration of Births, Deaths and Marriages Regulations 1968 regulation 5(a) (I)

6.22 Acting as Executor of a will

There are no restrictions upon an undischarged bankrupt that would prevent them from acting as the executor of a will.

Education

6.23 School Governance (Constitution) (England) Regulations 2012/1034 SI Schedule 4 Qualifications and disqualifications

An undischarged bankrupt is not disqualified from holding office, or continuing to hold office, as a school governor¹.

6.24 Federation of Maintained Schools (Wales) Regulations 2014/1132

A person is disqualified from holding or continuing to hold office as a governor of a federation if that person has been made bankrupt or sequestration of that person's estate has been awarded and (in either case) that person has not been discharged and the bankruptcy order has not been annulled or rescinded or a moratorium period under a debt relief order applies in relation to that person².

1. School Governance (Constitution) (England) Regulations 2012/1034 SI Schedule 4 Qualifications and disqualifications Regulation 17 Schedule 4

2. Federation of Maintained Schools (Wales) Regulations 2014/1132 Schedule 7 Para 6

Financial Matters

6.25 Consumer credit licence

The [Financial Conduct Authority \(FCA\)](#) is the regulator of consumer credit, any firm with a consumer credit licence will be listed on the consumer credit register maintained by the FCA. A bankrupt with a consumer credit licence or wishing to obtain a consumer credit licence must notify the FCA of the bankruptcy, the operation of the licence is a matter for the FCA.

6.28 Individual Savings Account Regulations 1998

Following the making of the bankruptcy order against them, an undischarged bankrupt or an individual who is the subject of a bankruptcy restrictions order or an interim order is disqualified from acting as account manager of an account held under the Individual Savings Account Regulations 1998^{1,2}.

1. Individual Savings Account Regulations 1998 regulation 20(1) (b)

2. Statutory Instrument 2006 No.1722 The Enterprise Act 2002 (Disqualification from Office: General) Order 2006 Schedule 2(2) paragraph 13

Housing

6.26 Estate Agents Act 1979 – estate agents

An undischarged bankrupt is disqualified from engaging in estate agency work of any sort otherwise than as an employee of another person. For this purpose the employment of the bankrupt by another person does not include his employment by a body corporate of which he is a director or controller¹.

1. Estate Agents Act 1979 section 23

6.27 Housing Act 1985 "Right to buy" council property

There is a restriction on the "right to buy" under section 121 of the Housing Act 1985, the right to buy cannot be exercised if the person, or one of the persons, to whom the "right to buy" belongs has made a bankruptcy application that has not been determined, has a bankruptcy petition pending against them, or is an undischarged bankrupt¹.

1. Housing Act 1985 section 121

6.28 Housing Act 1996 Schedule 1, Part 2 paragraph 4 as amended by Housing and Regeneration Act 2008 – director/trustee of registered social landlord

Welsh Ministers may remove an officer of a registered social landlord if such person has been made bankrupt¹.

1. Housing Act 1996 Schedule 1, Part 2, paragraph 4

Legal matters

6.29 Mental Capacity Act 2005 – Lasting power of attorney (formerly enduring power of attorney)

The Mental Capacity Act 2005 repealed the Enduring Powers of Attorney Act 1985, and introduced the lasting power of attorney to replace the enduring power of attorney. The legal effect of an enduring power of attorney already made under the law current at the date of its creation is preserved.

Lasting power of attorney is a power under which the donor (the person conferring the power) confers on the donee(s) (the person(s) receiving the power) the authority to make decisions about the donor's personal welfare, property or affairs, and includes the authority to make such decisions where the donor no longer has capacity¹.

The making of a bankruptcy order against the donor (person conferring power) revokes the lasting power of attorney so far as it relates to their property and affairs². An individual who is an undischarged bankrupt may not be appointed as a donee (recipient) of a lasting power of attorney in relation to the donor's property and affairs³, but bankruptcy does not terminate their appointment or revoke the power, in so far as their authority relates to the donor's personal welfare⁴.

1. Mental Capacity Act 2005 Chapter 9 Part 1 paragraph 9

2. Mental Capacity Act 2005 Chapter 9 Part 1 paragraph 13(3)

3. Mental Capacity Act 2005 Chapter 9 Part 1 paragraph 10

4. Mental Capacity Act 2005 Chapter 9 Part 1 paragraph 13 (8)

6.30 Solicitors Act 1974 – suspension of practising certificate (solicitors)

Section 15 of the Solicitors Act 1974 provides that any current practising certificate held by a solicitor is immediately suspended on the making of a bankruptcy order. The Law Society, on application, may lift the suspension of a practising certificate. There is no such restriction placed on practising barristers although as a matter of courtesy the Bar Council wish to be informed of any order made against members¹. [Note 15]

1. Solicitors Act 1974, section 15 and section 16

Transport

6.31 Goods Vehicles (Licensing of Operators) Act 1995 s 26 – operator’s licence

A traffic commissioner who has issued an operator’s licence may revoke, suspend or curtail it where an individual to whom that licence has been issued is made bankrupt. The official receiver should notify the commissioners at the local Traffic Area Office immediately after the bankruptcy order is made¹.

1. Goods Vehicles (Licensing of Operators) Act 1995 section 26

6.32 Public Passenger Vehicles Act 1981 - public service vehicle operators’ licence

A public service vehicle operators’ licence or road service licence is terminated if the individual holding that licence is made bankrupt¹. [Note 17]

1. Public Passenger Vehicles Act 1981 section 57(2) (b)

6.33 MOT Authorised examiner

A Motor Vehicles Test (MOT) authorised examiner shall cease to be authorised if he is adjudged bankrupt¹. This provision does not relate to nominated testers.

1. Motor Vehicles (Tests) Regulations 1981, reg 9

Other considerations concerning restrictions against undischarged bankrupts

6.34 Restrictions on revocation of a county court administration order

Where a person fails to make any payment which he is required to make by virtue of an administration order under Part VI of the County Courts Act 1984¹, the administration order may be revoked². An individual who has an administration order revoked may be subsequently declared bankrupt; as such the Official Receiver should be aware of the restrictions imposed on an individual who has such an order revoked.

1. Part VI of the County Courts Act 1984

2. Section 429

6.35 Disabilities where administration order is revoked

Where the court revokes an administration order due to the individual concerned failing to make required payments, it may direct that section 12 of the CDDA 86 shall apply. Section 12 provides that such a person shall not (except with the leave of court) act as a director or liquidator of, or directly or indirectly take part or be concerned in the promotion, formation or management of, a company for one year¹.

1. Company Director's Disqualification Act 1986 section 12, EA 2002 Schedule23, paragraph 15

6.36 Restrictions applicable under an administration order (IA86 section 429)

As in the case of bankruptcy, a person to whom section 429 applies is prohibited from obtaining credit to the extent of the prescribed amount or greater as set out in s360 (1) (a) and is prohibited from entering into any transaction for the purpose of any business in which he is engaged, without first disclosing that the provisions of section 429 apply to them. A person contravening the provisions of this section is guilty of an offence and liable to imprisonment or a fine, or both.

6.37 Fit and proper person

There are instances in legislation, regulations, bye-laws and private club rules of restrictions which refer to the individual being a 'fit and proper person' which may not disqualify an undischarged bankrupt, but with the concept of culpable bankruptcy and BROs, where the conduct of the individual in question is taken into account, it may be that bankruptcy in itself will not lead to the restrictions being exercised unless the bankruptcy leads to the making of a BRO which would give an indication that the person is not fit and proper. It is not a matter for the official receiver to determine if a bankrupt or an individual subject to a BRO/BRU is a 'fit and proper person' but is down to the relevant governing body assessing the 'fit and proper person' to determine.

6.38 Enlistment in the armed forces

If an undischarged bankrupt wishes to enlist in the armed forces they must notify the recruiting officer of their status.

6.39 Professional bodies

Bankruptcy may also affect a person's membership of professional bodies. The bankrupt should be advised to contact the relevant professional body to determine any restrictions that may apply.

6.40 Disciplinary matter for employees

An individual's bankruptcy may render him/her subject to disciplinary procedures according to the terms of their contract of employment.

Restrictions imposed on individuals subject to BROs/IBROs and BRUs

6.41 Introduction

When an individual is subject to a BRO/IBRO or a BRU, he or she is subject to a range of disabilities or restrictions until the BRO/IBRO or BRU has expired. The court will grant a BRO if it thinks it appropriate to do so having regard to the conduct of the bankrupt. A BRU does not require a court order, the bankrupt offering an undertaking to the Secretary of State by which they agree to be bound by the restrictions. An interim bankruptcy restrictions order (IBRO) is an order made by the

court at a time between an application for a BRO and the determination of the application. An application for an IBRO may be appropriate where the one year period of the bankruptcy will expire before the application for a BRO can be determined and the nature of the misconduct alleged in the BRO report is such that

the public needs interim protection. An IBRO has the same effect as a BRO¹.

1. Schedule 4A paragraph 5(4)

6.42 Post bankruptcy protection of the public

Restrictions will apply to those individuals who, as a result of their misconduct, have been made subject to a BRO/IBRO or BRU, even though they may have been discharged from bankruptcy.

The restrictions will apply for a specified period between 2 years and 15 years from the date of the BRO or any IBRO, whichever is the earlier, or from the date that a BRU is accepted by the Secretary of State. A register of BROs, IBROs and BRUs is maintained by the Secretary of State.

6.43 Restrictions applicable in BROs/IBROs/BRUs

The disabilities or restrictions are imposed by a variety of legislation, regulations and bye-laws, including the IA86, CDDA86 and other Acts of Parliament. BROs/IBROs and BRUs serve to protect the public and business community against the minority of bankrupts who have committed significant misconduct. See the EIG [Effects of a Bankruptcy Restrictions Order](#) for details of the restrictions applied by insolvency and non-insolvency legislation applicable in BROs/IBROs/BRUs. It should be noted these may change at any time and the majority are ones over which The Insolvency Service has no control. Indeed, the Insolvency Service has no responsibility to maintain a definitive list of restrictions; rather it is the responsibility of those subject to a BRO or BRU to comply with the relevant restrictions that may be in place from time to time. In practice this means that the bankrupt will need to seek their own guidance.