



ACCOUNTANT
IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

**BANKRUPTCY
RESTRICTIONS
GUIDE**
ORDERS AND
UNDERTAKINGS
(BRO/BRUs)





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Bankruptcy Restrictions Guide

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1. Introduction

This booklet provides general information about restrictions that can be imposed on you and will continue after you have been discharged from your bankruptcy, as a result of your **behaviour either before or during your bankruptcy**. It is not intended as a full statement of the law on bankruptcy.

The information in this booklet is intended for:

- > people who have been made bankrupt;
- > people whose creditors (people they owe money to) are taking action to make them bankrupt;
- > people who cannot pay their debts and are considering making themselves bankrupt; and
- > people who are, or may be, subject to bankruptcy restrictions.

The relevant legislation is the Bankruptcy (Scotland) Act 1985, as amended. All bankruptcy-related legislation and publications are available on the Accountant in Bankruptcy (AiB) website at **www.aib.gov.uk**.

The information in this booklet applies to petitions or applications for bankruptcy that are lodged with the court, or with AiB from 1 April 2008.

2. What is a Bankruptcy Restrictions Order (BRO)?

If you are bankrupt and your trustee considers that your behaviour has been dishonest or blameworthy in some way, **either before or during your bankruptcy**, they may report you to AiB. AiB can make an application to a sheriff reporting the facts and asking for a BRO to be made against you. The sheriff will consider the application and any evidence put before them before they make the decision whether to impose a BRO. If they do, you will remain subject to certain restrictions for the period stated in the BRO, which will continue after your discharge from bankruptcy. These restrictions can apply for between 2 and 15 years. The sheriff will decide how long the restrictions will last. The period of the restrictions is dependant on the severity of your misbehaviour.

2.1 What sort of behaviour can lead to a BRO?

Your behaviour both before and during your bankruptcy will be considered when deciding if you should be subject to restrictions. The following are examples of behaviour that could be considered dishonest or blameworthy:

- > not co-operating with your trustee during the period of your bankruptcy;
- > incurring debts that you knew you had no reasonable chance of repaying;
- > giving away assets or selling them at less than their value;
- > deliberately paying off some creditors in preference to others;
- > gambling or making rash speculations or being unreasonably extravagant;
- > failing to keep or produce records that would explain a loss of money or property;

- > fraud or fraudulent breach of trust;
- > causing your debts to increase by neglecting your business affairs;
- > failing to supply goods or services that have been paid for;
- > carrying on a business when you knew or ought to have known that you could not pay your debts.

2.2 What are the restrictions?

You must disclose:

- > to a credit provider that you are subject to bankruptcy restrictions if you, either alone or jointly with another person, wish to get credit of more than £500;
- > to a credit provider that you are subject to bankruptcy restrictions if you, either alone or jointly with another person, apply for credit of any amount, if at the time of applying you already have debts of £1,000 or more; and
- > to anyone you wish to do business with, the name (or trading style) under which you were made bankrupt.

You may not:

- > act as the director of a limited company or take part in its formation, promotion or management, without permission from the court;
- > act as an insolvency practitioner, or as the receiver or manager of the property of a company on behalf of debenture holders; and
- > be a Member of Parliament, Justice of the Peace or a school governor in England or Wales.

There are various other restrictions which are not set out in bankruptcy law. These include not being allowed to act as a local councillor or hold other public offices.

If you wish to check whether bankruptcy restrictions prevent you from being elected to, or remaining in, an office or position within an organisation, you should seek guidance from the appointing or authorising body or group.

2.3 What happens if I am subject to bankruptcy restrictions and I do not comply with them?

The matter may be brought before a sheriff, and you may be prosecuted.

If you take part in the management of a limited company without permission from the court, you will be personally responsible for any debts of the company that arise while you are managing it.

3. When can the Accountant in Bankruptcy apply for a BRO?

In most cases, AiB must apply to a sheriff for a BRO before your discharge from bankruptcy, although they can ask a sheriff for permission to apply later.

If your discharge is deferred beyond a one-year period, the period for making the BRO application will also extend until you are discharged from bankruptcy.

3.1 How will I know if an application for a BRO has been made against me?

AiB will send you a letter to tell you that they intend to apply to a sheriff for a BRO. This letter will detail the behaviour that leads them to consider that bankruptcy restrictions are appropriate and the supporting evidence.

You will have 14 days to respond to this letter.

4. What should I do if I don't think bankruptcy restrictions are appropriate?

If you do not accept that your conduct deserves a bankruptcy restrictions order, you must write to AiB and explain why and provide any documents that support your case. AiB will consider any information that you send and notify you whether or not they still believe a bankruptcy restrictions order is required.

5. What is a Bankruptcy Restrictions Undertaking (BRU)?

If you acknowledge that your conduct was inappropriate, you may agree to enter into a BRU. This has the same effect as a BRO but does not involve going to court.

As you have acknowledged your conduct was inappropriate, the period of the BRU may be shorter than if the court imposes a BRO.

A BRU applies the same restrictions as a BRO and if you breach any of the restrictions this matter may be brought before a sheriff, and you may be prosecuted.

6. What happens if the Accountant in Bankruptcy applies for a BRO?

If you do not reply to the letter AiB has sent you or your reply does not contain adequate information to persuade AiB not to apply for a BRO, the application will proceed to court.

When sending the application to the sheriff, AiB will also make a recommendation about the period of time the BRO should last and what restrictions should apply.

AiB will send you a letter notifying that a BRO application has been made to the sheriff. The letter will include a copy of the application and give details of the alleged misconduct that has been reported. A formal copy of the application will be served on you which will indicate the date the matter will be heard in court. You should speak to a solicitor or Citizens Advice Scotland about this.

You may still agree to a BRU at this stage. If a BRU is agreed prior to the hearing date, the application will be withdrawn.

7. What is an interim BRO?

An interim BRO has the same effect as a BRO.

The Accountant in Bankruptcy can apply to a sheriff for an interim BRO if they believe there is an urgent need to impose restrictions on you before the sheriff can consider the BRO application. A sheriff will only grant an interim BRO if they are satisfied that there are reasonable grounds to expect that the application for a BRO will be successful and it is in the public interest to grant the interim BRO.

You will be notified if an interim BRO application has been made in the same way as for a BRO. You have the same right to defend an interim BRO court action against you as you do for a BRO application.

The interim BRO will cease to be effective when the sheriff makes a decision on the BRO application or you agree to a BRU.

8. What happens after bankruptcy restrictions are imposed?

When bankruptcy restrictions are imposed or agreed they will apply to you immediately.

Details of your bankruptcy restrictions will be entered in a public register, called the Register of Insolvencies, and stay there until one year after the BRO or BRU has expired. The Register of Insolvencies can be accessed from the AiB website at www.aib.gov.uk. Access to the Register of Insolvencies is free.

The bankruptcy restrictions can also be reported in a press release and details about the conduct that brought about the BRO or BRU and the period and restrictions that apply may be published on the AiB website.

8.1 Can I amend the conditions of bankruptcy restrictions?

You may apply to the sheriff for bankruptcy restrictions to be cancelled or the terms varied. You may wish to seek legal advice if you intend to apply to do this. AiB may challenge any application to vary or cancel a BRO or BRU.

9. What are the costs involved with bankruptcy restrictions?

A fee for administering bankruptcy restrictions will be met first from funds accumulated from the sale of your assets and from your income.

When the Accountant in Bankruptcy is the trustee, costs that cannot be met by selling your assets or from contributions will be met from the public purse.

When an insolvency practitioner is the trustee, costs that cannot be met by selling assets or from contributions will be met by the trustee themselves. The insolvency practitioner will consider this before agreeing to act as trustee in your bankruptcy.

You should also be aware that you will still be responsible for any solicitor's costs that you incur.

10. What if my bankruptcy is recalled or an offer of composition is accepted?

Recall of Bankruptcy and Composition are explained in the AiB publications: **Debtors' Guide** and **Creditors' Guide**.

If your bankruptcy is recalled or a composition offer is accepted a sheriff will decide if a BRO or BRU is to be cancelled.

If the sheriff decides that you should still be subject to the conditions of bankruptcy restrictions, you may appeal this decision to the Sheriff Principal, whose decision will be final.

You may wish to take legal advice should you consider this action.

11. What is the complaints procedure for bankruptcy restrictions?

If you are unhappy with the way your bankruptcy restrictions are being handled you should speak to the person dealing with your case.

Full information on AiB's complaints procedure can be found on the website at **www.aib.gov.uk**.

12. Contacts for further information

The Accountant in Bankruptcy

1 Pennyburn Road

Kilwinning

Ayrshire

KA13 6SA

Telephone: 0300 200 2600

Fax: 0300 200 2601

E-Mail: aib@aib.gsi.gov.uk (for general help about the
bankruptcy process)

Website: www.aib.gov.uk

Sources of advice and information

Some useful contacts for free advice on debt:

Money Advice Scotland

Telephone: 0141 572 0237

Website: www.moneyadvicescotland.org.uk

E-mail: Info@moneyadvicescotland.org.uk

Citizens Advice Scotland

Telephone: 0845 450 0351

Website: www.cas.org.uk

National Debtline Scotland

Telephone: 0808 808 4000

Website: <http://www.nationaldebtline.co.uk/scotland/>

Consumer Credit Counselling Service

Telephone: 0800 138 1111

Website: <http://www.cccs.co.uk/>

Trading Standards Scotland

Website: www.scotss.org.uk

Local addresses and telephone numbers for these agencies will be found in your phone book.

For help finding an insolvency practitioner, contact:

Institute of Chartered Accountants of Scotland

CA House

21 Haymarket Yards

Edinburgh

EH12 5BH

Phone: 0131 347 0100

Website: www.icas.org.uk

For help finding a solicitor with specialist knowledge of bankruptcy, contact:

Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

Phone: 0845 113 0018

Website: www.lawscot.org.uk

E-mail: cro@lawscot.org.uk

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Aby otrzymać niniejszy dokument w innej wersji językowej, na kasecie lub w wersji z powiększonym drukiem, prosimy o kontakt: **0300 200 2600**

We have written this booklet for general guidance only.
It is not a detailed or full statement of the law.



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