

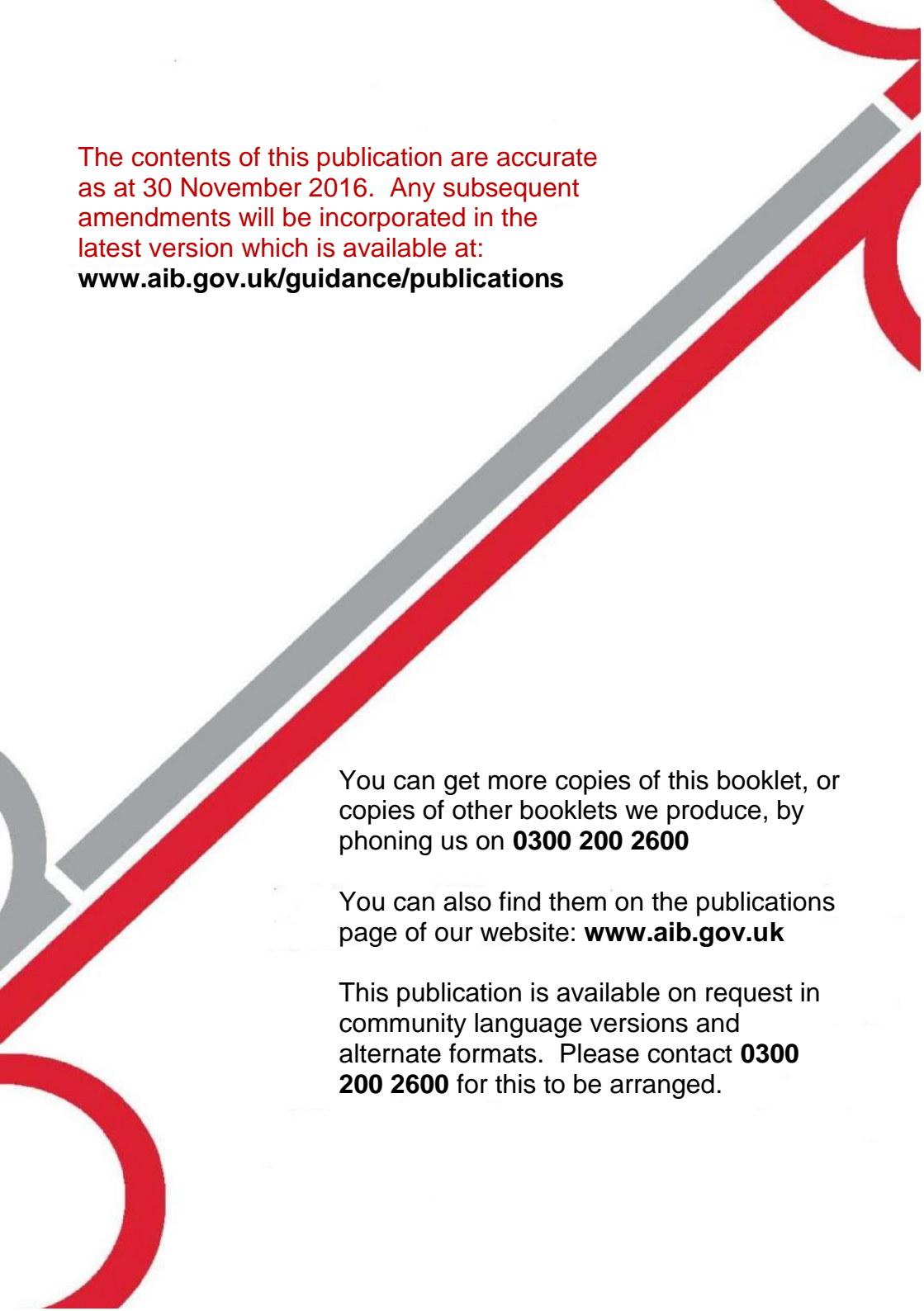


ACCOUNTANT  
IN BANKRUPTCY  
SCOTLAND'S INSOLVENCY SERVICE

Debtor's guide







The contents of this publication are accurate as at 30 November 2016. Any subsequent amendments will be incorporated in the latest version which is available at:  
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## 1. Introduction

This booklet provides general advice on bankruptcy for people who owe money (debtors) and is not intended as a full statement of the law.

This booklet is intended for:

- People whose creditors are taking action to make them bankrupt. (Creditors are people you owe money to).
- People who have been made bankrupt by their creditors.
- People who cannot pay their debts and are considering making themselves bankrupt.

It is **not** intended for people who were made bankrupt before 1 April 2015.

Further information on some alternatives to bankruptcy is included later in this booklet.

It is a serious matter if you do not pay what you owe. Getting advice as soon as possible can help you to deal with your debts and your creditors. There are a number of people who can give free confidential and impartial advice in your local area. Some organisations may also give information and advice over the telephone or on-line. People that can give free, face-to-face advice include: advisers in Citizens Advice Bureaux and Local Authority money advisers. You can find contact details of some organisations at the back of this booklet.

The main legislation relevant to Bankruptcy is the Bankruptcy (Scotland) Act 2016. All bankruptcy related legislation and publications are available on the Accountant in Bankruptcy website at **[www.aib.gov.uk](http://www.aib.gov.uk)**.

## 2. What is Bankruptcy?

Bankruptcy (also known as sequestration in Scotland) is a legal declaration that someone cannot pay their debts. If you cannot afford to pay your debts as they become due, you may be able to apply to the Accountant in Bankruptcy for your own bankruptcy. Your creditors or a trustee in a trust deed may also make you bankrupt by submitting a petition to the sheriff court.

The conditions for becoming bankrupt are described later in this booklet.

If you are declared bankrupt, control of things that you own, including your home, is passed to your trustee (the person who administers your bankruptcy) who may sell them to pay your creditors the money they are owed. You may also have to make a regular payment from your income.

## **2.1 What are the consequences of being bankrupt?**

The following are some of the consequences of becoming bankrupt:

### **Employment**

Some employers do not allow people who are bankrupt to work for them, most commonly financial institutions. Before you sign your application form, you should check the terms of your contract carefully or speak to your employer.

### **Credit Rating**

Credit Reference agencies will record details of your bankruptcy and your credit rating will be affected for many years. It may become difficult or more expensive to get credit after your bankruptcy.

### **Bank Accounts**

Your bank may freeze or close your account and you may have to open a different bank account. Your bank may still allow you to have your salary or benefits paid into an account.



If you experience any difficulties with your bank account when you are bankrupt, you should speak to your bank or a money adviser.

### **Service Providers**

Some companies, for example gas, or electricity suppliers, may have concerns about the way they provide their services to you. They may wish to change the way they receive payments from you. This could include installing a meter or setting up a pre-payment plan. You can speak to a money advisor about this.

### **Public Records**

Your bankruptcy is recorded on a public register called the Register of Insolvencies (RoI). Creditors and credit reference agencies use this register to find out if their current customers have been made bankrupt. Anyone can search the RoI free of charge. A link to the RoI is available on the Accountant in Bankruptcy's website at **[www.aib.gsi.gov.uk](http://www.aib.gsi.gov.uk)**. Details of your bankruptcy will remain on the RoI until 2 years after your trustee has completed their duties and obtained their discharge. The RoI lists details of Scottish bankruptcies (sequestrations) and trust deeds only.

## **3. Who can be made bankrupt?**

Individuals (including sole traders), some business and partnerships, trusts and some other unincorporated organisations can be made bankrupt. Limited companies registered at Companies House cannot be made bankrupt.

A deceased individual's estate can be made bankrupt by an executor.

### **3.1. What does Minimal Asset Process mean?**

Minimal Asset Process (MAP) is a route into bankruptcy which requires you to meet certain criteria. You must not have a single asset worth more than £1,000. This excludes a vehicle worth up to £3,000 which you reasonably require, for example, to get to work. The total value of your total assets cannot be more than £2,000 (excluding a vehicle mentioned above). You must not own, or

jointly, own a house or any other property or land and you must not have debts of more than £17,000.

To qualify for bankruptcy through MAP you have to meet the above conditions and also need to have been in receipt of benefits for at least 6 months or have been assessed as not required to make a contribution towards your bankruptcy. You will also require a Certificate for Sequestration which must have been signed by a qualified money adviser. The AiB will conduct checks to ensure the accuracy of your declaration. You may be asked to provide evidence in support of your application. If you are unable to provide the requested information or your declaration is found to be inaccurate, your application will be rejected and your fee retained.

In all bankruptcies, a Debtor Contribution Order (DCO) fixes a contribution. If you are awarded bankruptcy through MAP your DCO will fix your contribution at zero. A DCO generally lasts for 48 months or the equivalent weekly period. If your circumstances change before you are discharged from your bankruptcy then a reassessment of your income and expenditure will be completed. If this re-assessment confirms that you have a surplus income you will be asked to pay this each month for the remainder of the DCO unless there is a further change to your circumstances.

In a bankruptcy awarded through MAP you will be discharged after 6 months (as long as you co-operate with your trustee). However, your trustee will remain in office for a further 6 months to finalise your bankruptcy. During this 6 month period you will be under certain restrictions. These are that you:

- Cannot borrow more than £2,000 either solely or jointly without disclosing your status as a discharged bankrupt to the person who is providing credit; and
- Cannot engage in a business unless certain criteria are met.

If you do not comply with the above conditions, then you will have been deemed to have committed an offence and are liable on conviction to:

- A fine,
- Imprisonment, **or**
- Both a fine and imprisonment.

### **3.1.1 What does Apparent Insolvency mean?**

Apparent Insolvency is a legal term that shows you cannot pay your debts as they become due. The most common types of evidence used to prove Apparent Insolvency are:

**A Charge for Payment** – this is a legal document with the words ‘Charge for Payment’ at the top. It means that you owe money to your creditor and that you should pay them within 14 days. If you do not pay within this period, the Charge for Payment expires and can be used to prove you are apparently insolvent from the 15<sup>th</sup> day it was served on you.

**A Statutory Demand** – this is a legal document with the words ‘Statutory Demand’ at the top. It is a final formal demand for payment and if you do not pay within 21 days, the Statutory Demand expires and can be used to prove you are Apparently Insolvent from the 22<sup>nd</sup> day it was served on you.

A Charge for Payment and Statutory Demand are normally served on you by a Messenger-at-Arms or a Sheriff Officer.

### **Granting of a trust deed**

If you have been granted a trust deed, this constitutes Apparent Insolvency. However, you can only be made bankrupt by the trustee in your trust deed or creditors if your trust deed has failed, or if your trustee believes that it is in the best interest of your creditors. You cannot apply for your own bankruptcy if you have entered a trust deed which has become protected.

## **A Debt Payment Programme in a Debt Arrangement Scheme (DAS)**

If you have had a debt payment programme in the Debt Arrangement Scheme this also constitutes Apparent Insolvency. You or your creditors can only apply for your bankruptcy if the DPP has been revoked and a creditor has undertaken diligence (legal action) against you.

### **3.1.2 What is a Certificate for Sequestration?**

A Certificate for Sequestration is granted by an authorised person and certifies that you have demonstrated to them that you are unable to pay your debts as they become due. This may involve submitting evidence of your income, assets (such as funds held in bank accounts) and evidence of your liabilities (such as invoices and demand notices).

Most money advisers, insolvency practitioners and some people who work for insolvency practitioners are authorised to grant a certificate.

You can use the Certificate for Sequestration to apply for your own bankruptcy. You must apply within 30 days of the certificate being issued or it will no longer be valid. There is no charge for obtaining a certificate for sequestration, but the authorised person may charge you a fee for the advice they give you.

### **3.2 What are the conditions for applying for my own bankruptcy?**

If you have decided that you want to make yourself bankrupt you must meet all of the following conditions:

- ✓ you must owe a total debt of at least £1,500, but no more than £17,000 for MAP. If your debts are over £17,000, or own

assets valuing £2,000 or more then you can only apply for bankruptcy under the full administration route

- ✓ you must have received money advice from a money adviser
- ✓ you must be living in Scotland, have lived in Scotland or have established a place of business in Scotland, in the year immediately preceding the date of your application
- ✓ you must not have been made bankrupt in the last 5 years;
- ✓ you cannot apply for bankruptcy through MAP if you have been made bankrupt through MAP in the previous 10 years
- ✓ you must pay the application fee

You must also meet **one** of the following conditions:

- ✓ you must meet the conditions for MAP; **or**
- ✓ you must be Apparently Insolvent; **or**
- ✓ you must have a Certificate of Sequestration.

### **3.3 How do I apply for my own bankruptcy?**

To apply for your own bankruptcy you must submit an application to the Accountant in Bankruptcy along with evidence that you are eligible to apply. Your money adviser should be able to complete an on-line application on your behalf which will result in an instant submission. Alternatively, you can submit a paper copy although this may delay the application process. Debtor application forms are available from money advisors and Accountant in Bankruptcy (AiB). They can also be downloaded from AiB's website: **[www.aib.gov.uk](http://www.aib.gov.uk)**.

If you are thinking of applying for bankruptcy but require more time to think things over and are concerned about what your creditors

could do in the meantime, you can intimate to AiB that you are interested in applying for bankruptcy. This can be done by requesting what is called a moratorium application form from AiB. Once you have returned your completed moratorium application form to AiB, your details will be recorded on the RoI. You then have 6 weeks, from the date the entry is made on the RoI, to decide if you want to proceed with a bankruptcy application. During this 6 week period your creditors cannot take any diligence (legal action) against you.

**You cannot intimate debt for relief more than once in any 12 month period, this includes trust deeds and the debt arrangement scheme.**

### **3.3.1 How much does it cost?**

Depending on which route into bankruptcy you apply through there are two different costs. It costs £90 to submit an application through the Minimal Asset Process (MAP) or £200 for full administration which is through the Apparent Insolvency (AI) or Certificate for Sequestration (CFS) routes.

If you apply through the MAP route but do not qualify, to proceed with your bankruptcy you will be required to pay a further £110 and provide any further evidence required to show you qualify under Apparent Insolvency or have a valid Certificate for Sequestration.

**There are no waivers or exemptions to the cost of an application and it cannot be refunded.** Your bankruptcy application will not be considered until the full fee is paid.

Details of how to pay are included in the application form.

## **3.4 What are the conditions for someone else to make me bankrupt?**

### **Creditors**

If you owe someone money they may be able to make you bankrupt. Your creditors can ask a sheriff to make you bankrupt if:

- ✓ you owe them at least £3,000 – this will include any fees, interest or charges added to what you owe; **and**
- ✓ they have provided you with a copy of a statutory booklet called the 'Debt Advice and Information Package'; **and**
- ✓ you are Apparently Insolvent. Apparent Insolvency is explained in section 3.1.2 of this booklet. Your creditors can also prove Apparent Insolvency if you have signed a trust deed which has not become protected or if your Debt Payment Program has been revoked or if you have formally advised them in writing that you are unable to pay your debts.

### **The trustee in a trust deed**

If you sign a trust deed and you do not co-operate with your trustee, they have the right to ask the sheriff to make you bankrupt. They have to show that an award of bankruptcy would be in the best interests of your creditors or that you have failed to comply with your obligations under the trust deed. Further information on trust deeds is available in the AiB publication, 'Trust Deed Guide'.

If someone is taking action to make you bankrupt you will be notified by the creditor or trustee.

### **3.5 How long will it take for me to be made bankrupt?**

If you apply to The Accountant in Bankruptcy for your own bankruptcy, you will normally be made bankrupt within 5 working days of AiB receiving your application. It may take longer if AiB has to write to you to ask for more information or evidence. Your application may be refused if you do not provide evidence that you satisfy the conditions for bankruptcy, or if you have not paid the correct fee.

When a creditor or a trustee in a trust deed asks a sheriff to make you bankrupt, you could be made bankrupt within a short period of time.

Where a creditor has asked the sheriff to make you bankrupt, you will be served with a document called a warrant to cite, which tells you when your case will be heard by the sheriff at a hearing. You can attend the court hearing yourself or someone can represent you. At the hearing the sheriff will decide if you should be made bankrupt.

If you appear or are represented at the hearing and provide evidence about your circumstances, the sheriff may decide to postpone the decision if they are satisfied that you will pay what you owe within 6 weeks or if you plan to repay your debts through the Debt Arrangement Scheme.

If you provide evidence that you have paid everything you owe to the creditor before the day of the hearing, it is unlikely the sheriff will award bankruptcy.

If you do nothing the sheriff is likely to award the bankruptcy.

## **4. What happens after my bankruptcy is awarded?**

If you are made bankrupt, you will be sent a letter confirming that you are bankrupt and giving details of your trustee.

### **4.1 Who is the trustee?**

If you apply for bankruptcy under the MAP criteria, The Accountant in Bankruptcy will be your trustee. Otherwise, when applying for your own bankruptcy, you can choose who will be your trustee. The Accountant in Bankruptcy will be your trustee unless you have



nominated an insolvency practitioner who has consented in writing to your nomination.

When a creditor or trustee asks the sheriff to make you bankrupt, they can also nominate The Accountant in Bankruptcy or an insolvency practitioner. If an insolvency practitioner has not been nominated, The Accountant in Bankruptcy will be your trustee.

## **4.2 What does the Accountant in Bankruptcy do?**

The Accountant in Bankruptcy (AiB) is a Scottish Government official who is responsible for the process of personal bankruptcy in Scotland.

When The Accountant in Bankruptcy is your trustee, their staff will administer your bankruptcy or your case may be passed to an insolvency practitioner who works on The Accountant's behalf. It will make no difference to how your bankruptcy is administered, but you will be told who is dealing with your bankruptcy.

The Accountant in Bankruptcy also supervises the work of other trustees.

## **4.3 What does my trustee do?**

### **This section does not apply to any bankruptcy awarded under MAP**

At the beginning of your bankruptcy, your trustee will ask you to provide information about your finances and your assets. They will also require information about what you owe, who you owe money to, your income and what you spend. Your trustee is entitled to ask you to provide evidence, such as wage slips, bills and bank statements.

If you are awarded a full administration bankruptcy, your trustee may interview you at home, visit your business premises or ask you

to come to their office. They may also write to you or speak to you on the telephone. They will also manage your Debtor Contribution Order (DCO) which will last 48 months or the weekly equivalent (unless you have sufficient assets to be able to pay off your bankruptcy in full). Every 6 months after your bankruptcy is awarded, your trustee will ask you to complete a form called a Current State of Affairs which will confirm your circumstances at that time.

**You must always co-operate with your trustee. Failure to do so can result in your bankruptcy lasting longer or restrictions being placed on you. You could also be committing a criminal offence for which you could be fined, sent to prison or both.**

Your trustee will charge a fee for the work they do. They normally produce accounts at the end of the first year and at regular intervals until they are discharged. Their accounts have to be approved by The Accountant in Bankruptcy or elected commissioners.

You will be sent details of the trustee's costs and remuneration (fees) but this is not a bill and you are not directly responsible for paying them. You can ask to see the account and can appeal to the sheriff about these costs, if you can show that it is to your financial benefit. The sheriff's decision is final.

Your trustee will compile a permanent record of your bankruptcy. This is called a sederunt book and contains copies of court orders, accounts and records of meetings but not general correspondence.

#### **4.4 What are my responsibilities when I have been made bankrupt?**

It is important that you understand your responsibilities. These are some of the things you must and must not do:

**You must:**

- ✓ co-operate fully with your trustee at all times; **and**

- ✓ keep your trustee informed of any changes in your circumstances, for example, if you move house or if your financial circumstances change.

**You must not:**

- ✓ get credit for goods or services for more than £2000 from any lender or supplier without telling them that you are bankrupt. You may be guilty of a criminal offence if you do not tell them about the bankruptcy;
- ✓ start up a limited company or be involved in the day-to-day management of a limited company; **and**
- ✓ act as a Member of the Scottish Parliament, as a member of any local council, a Justice of the Peace or a member of a school board.

**This is not a complete list of your responsibilities. Your trustee will tell you exactly what is expected of you. If you do not comply with your responsibilities, you may be committing a criminal offence under the Bankruptcy (Scotland) Act 2016 and your trustee may report you to the Procurator Fiscal.**

#### **4.4.1 Financial education**

Your trustee may decide that you complete a course for financial education. This would only be the case if, in the opinion of your trustee, it would be appropriate for you and any of the following reasons applied:

- ✓ you have been awarded bankruptcy within the 5 year period after last being made bankrupt.
- ✓ you were granted a protected trust deed within the 5 year period prior to being awarded bankruptcy.

- ✓ you participated in a debt management programme under the Debt Arrangement Scheme within the 5 year prior to being awarded bankruptcy.
- ✓ you are subject to, or under investigation with a view to, an application being made for a bankruptcy restriction order.
- ✓ the trustee considers that the pattern of your behaviour, whether before or after the award of bankruptcy, is such that you would benefit from a financial education course.
- ✓ you agree to complete a financial education course.

## **4.5 What happens to the things I own?**

Your trustee will ingather your assets (the things that you own), including any land and buildings, and sell them to pay the costs of managing your bankruptcy and your debts.

### **4.5.1 What are assets?**

Your assets are items such as money, savings, property, vehicles, life policies, jewellery, shares and Payment Protection Insurance Compensation (PPI).

Control of your assets passes to your trustee when you are made bankrupt. The right to any money or assets due to you, such as business debts, also transfers to your trustee.

You will normally be allowed to keep items you need for day-to-day living, such as clothes, furniture, household linens, floor covering, anything used for cooking or cleaning, educational items and children's toys. You can also keep any tools you need for your trade, up to a value of £1,000. You may be able to keep a vehicle reasonably required by you that has a value of no more than £3,000.

During your bankruptcy you must tell your trustee about any new assets you acquire. This could include, for example, money or an inheritance.

If your trustee thinks you have sold, given away or disposed of any asset within the 5 years before your bankruptcy for less than their value, they can ask the sheriff to have the transaction reversed and the asset returned.

#### **4.5.2 What happens to my home?**

What happens to your home will depend on a number of things, such as whether you own, or live with family or friends.

##### **What if I own my home?**

If you own your home, or any other property, control will transfer to your trustee along with your other assets. Your trustee will always carry out a search of the Land Registers to make sure you own the property. Your trustee can sell your home or allow your spouse, partner or family member to buy out the trustee's interest in it. If your trustee decides to sell it, the property may be sold on the open market. Your trustee must obtain the best price possible. **You are not allowed to sell any property you own.**

Your trustee will take many things into consideration when deciding what to do with the property, including: the value, whether you have any loans secured on it and if there are children or other dependants living in the property.

If you do own a property, either on your own or with somebody else, it is in your best interest to obtain independent legal advice as soon as possible and preferably before you are bankrupt. Even after you are discharged from your bankruptcy, your trustee may continue to deal with your property. It does not automatically transfer back to you.

##### **What if I used to own a home?**

If you used to own all or part of a home (or any other property) and sold it or gave it to your spouse, partner or to anyone else, your trustee will check that you sold it for full value. Your trustee will also ask you to explain what happened to any money you received for the property. If you have disposed of your home or tried to hide any proceeds from a sale, you may have committed a criminal offence under the Bankruptcy (Scotland) Act 2016. Your trustee may report you to the Procurator Fiscal and, apply for the transfer of the property back into your name.

### **What if my property is jointly owned by me and someone else?**

If you own your home jointly with your spouse, partner or someone else, your trustee will discuss options with all parties. Co-operation of the joint owner(s) will minimise the stress and costs of dealing with your share of the home.

Your trustee can agree to the joint owner(s) buying out their interest in the home. This can be in a lump sum payment, by instalments or through a re-mortgage package. Your trustee and the joint owner(s) will each be responsible for their own legal expenses.

### **Where the home or property is jointly owned, the joint owner cannot sell without the permission of your trustee.**

### **What happens if I cannot pay my mortgage?**

If you have a loan secured on your house and you do not continue to make your mortgage or loan payments, your secured lender can repossess the house. Your trustee is powerless to stop the repossession of the property. If your house is repossessed and is sold by the lender, any proceeds left after your debt is paid will be transferred to your trustee. If there is a shortfall with the sale this may be included in your bankruptcy.

### **What if I rent my home?**

If you rent your home, your trustee normally has no interest in the house provided you can show proof that it is rented. However, you may have to move if your trustee thinks you are paying too much rent. They can apply to the sheriff to set a limit on how much rent you should pay, to allow you to pay a contribution towards the costs of your bankruptcy and payment of your debts.

If you have rent arrears, your landlord should not take any action to collect them once you have been made bankrupt. They can, however, take action and seek your eviction if you fail to pay your rent after the date of your bankruptcy.

#### **4.6 What happens to my life policies?**

Your trustee will need to know about any life assurance policies you have as they may be assets in your bankruptcy. Some policies only pay out on death. Other policies, for example, endowment policies, pay out either on death or on a predetermined date. Your trustee will register their interest in your life policies which means that in the event of your death during the bankruptcy, the funds from the policy will be paid to your bankruptcy. Endowment policies or policies with an endowment element acquire a surrender value and may also be cashed in. Your trustee may do this to bring funds into your bankruptcy. Often an endowment policy will be formally assigned to your bank or building society to pay off all or some of your mortgage with the proceeds of the policy.

What happens to your assigned endowment policy when you are bankrupt will depend on what happens with your house.

#### **4.7 What happens to items on hire purchase?**

These items often remain the property of the company which supplied the finance for their purchase. They may be taken away and sold by that company.

#### **4.8 Will I be asked to make a contribution towards my bankruptcy?**

Your trustee may want you to make a contribution from your income or pension to help towards the cost of your bankruptcy and your debts. They will not take a contribution from social security benefits or tax credits.

Your trustee or money adviser (as part of the application process), will assess your income and expenditure to calculate if you have any surplus income available to make a contribution.

The Accountant in Bankruptcy will make the Debtor Contribution Order (DCO) fixing your contribution. The DCO lasts for 48 months or the equivalent weekly period. Your trustee will oversee all contribution payments. You are allowed to ask for a payment break of up to 6 months, however, the DCO end date will change in order for all required payments to be met. **You can only apply for one payment break within the 48 month period of the DCO.**

You will only be granted a payment break in the following circumstances:

- There has been a reduction of at least 50% in your disposable income; and
- You have not previously applied for a payment break

If you do not co-operate with the trustee and do not make the agreed payments then your trustee will request payment of your DCO direct from your bank, employer or any other 3<sup>rd</sup> party. **Your trustee may also request that your discharge from bankruptcy is deferred indefinitely.**

#### **4.8.1 Review of your circumstances**

If your circumstances change you must advise your trustee **immediately**. If there has been any significant changes to your income or expenditure, your trustee will re-calculate your DCO. If you are on social security benefits only, a DCO will be made, fixing your contribution at zero. This will only change if you gain



employment or start receiving income other than benefits before you are discharged from bankruptcy. Your trustee will ask you to make a contribution if after an assessment of your finances it shows that you have surplus income. Your contribution will then be amended with an amount to pay. This will run for the remainder of the DCO.

Every 6 months, until your DCO ends, your trustee will send you a questionnaire to review your financial circumstances. This form is called 'A Current State of Affairs'. You must complete and return this. It is important to keep your trustee up to date with any changes i.e. change of address, contact details, income and expenditure. **If your trustee cannot make contact with you they will assume that you are not co-operating and may request your discharge from bankruptcy will be deferred indefinitely.**

If you are unhappy about your DCO you can request a review to be carried out by AiB.

#### **4.9 What happens to the money my trustee ingathers?**

Your trustee will distribute the money ingathered. They will invite claims from all your creditors. Your trustee will deduct their fees and costs and distribute any remaining funds to your creditors. Any payments (known as dividends) made to your creditors may not cover the full amount of the debt. Any remaining debts will be discharged and you will not be obligated to pay them. However, there are some exceptions to this. Please see page 27 for a full list of the liabilities which are exempt from discharge.

#### **4.10 Who pays the costs of administering my bankruptcy?**

The costs of administering your bankruptcy will be met from funds accumulated from the sale of your assets and from contributions that you made from your income. These include the fees and costs of the trustee and will be paid before any payments are made to your creditors.

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. **However, the public purse will not make any payment toward the debts owed to your creditors.**

Where the sale of assets and income from your contributions produce enough funds to pay all the administration costs, a creditor who petitioned for your bankruptcy may then have their outlay (costs incurred) in making the petition reimbursed. Their debt and the debts of other creditors are then considered equally after this.

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.

#### **4.11 How long will my bankruptcy normally last?**

Normally your bankruptcy will be discharged one year after the date the bankruptcy was awarded. However, if you were awarded bankruptcy under the Minimal Asset Process (MAP), you will normally be discharged after 6 months.

You will be informed of your discharge either by post or email depending on your preferred method of communication.

**Your discharge is dependent on your co-operation. Your trustee can defer your discharge indefinitely if you do not cooperate.**

If you were awarded bankruptcy through the MAP route and your trustee discovers that;

- you have liabilities over £17,000 or;
- you have an income from which you can pay a contribution or;

- you have assets totalling over £2,000 or own any land or property

then your bankruptcy will no longer meet MAP criteria. Your case will be transferred to full administration and you will no longer be automatically discharged 6 months after your award. If you have deliberately concealed assets or deliberately made a false declaration, then you may be placed under a Bankruptcy restrictions Order, and your discharge may be deferred indefinitely. See AiB's website for more details [www.aib.gov.uk](http://www.aib.gov.uk)

If your case is transferred from MAP to full administration as a result of you not providing accurate information then this will result in an additional charge of £110 to meet AiB's administration fee. **You will not receive your discharge from bankruptcy until this additional fee is paid.**

**Even if you have been discharged, your bankruptcy will not be finished until your trustee is discharged from their duties.** The trustee will not be discharged until they have finished dealing with all of your assets and the administration of your case. **You must cooperate with your trustee until they are discharged.**

You will be notified of your trustee's application for discharge.

## **4.12 Can my bankruptcy end sooner?**

There is one way which your bankruptcy can end sooner, this is called Recall. Recall can be achieved by applying to the Accountant in Bankruptcy or the sheriff. Your creditors can object to your recall.

### **4.12.1 Recall by AiB**

AiB can only grant a recall where you have the funds to pay all your debts, fees and charges. If AiB rejects an application for recall, you, your trustee, or a creditor can request a review of that decision from AiB. If you are dissatisfied with that review then you, or the persons previously mentioned, can appeal to the sheriff.

#### **4.12.2 Recall by the sheriff**

The sheriff will award recall in all other circumstances, which includes the fact that you can prove that you should not have been made bankrupt.

The effect of recall is that it restores the debtor, or any person affected by the bankruptcy to the position they were in if the bankruptcy had not been awarded.

The creditor who made you bankrupt can also petition the sheriff for recall of your bankruptcy if they have made you bankrupt in error. If a creditor petitions they will be liable for your trustee's fees and the cost of the recall.

## 5. Bankruptcy Restrictions Order

If your trustee considers that your conduct has been dishonest or blameworthy in some way, **either before or during your bankruptcy**, they will report this to AiB. AiB will consider the evidence provided by your trustee and decide whether a Bankruptcy Restrictions Order (BRO) is appropriate. AiB can only award a BRO for a minimum of 2 years and up to, but not including, 5 years. If AiB feel that a longer term BRO is appropriate then the Accountant will request that the sheriff impose a BRO. The sheriff can impose a BRO for between 5 and 15 years. You will remain subject to certain restrictions for the period stated in the BRO even after you are discharged from your bankruptcy. **You are committing a criminal offence if you fail to comply with the terms of your Bankruptcy Restrictions Order.**

Details of the restrictions are recorded in the Register of Insolvencies. The following are examples of behaviours that could be considered dishonest or blameworthy:

- incurring debts that you knew you had no reasonable chance of repaying;
- giving away assets or selling them at less than their value;
- gambling or making rash speculations or being unreasonably extravagant;
- not co-operating with your trustee during the period of your bankruptcy.

This is not a full list of the bankruptcy restrictions which may be placed on you. Further information on bankruptcy restrictions is available in the AiB Publication, 'Bankruptcy Restrictions Guide'. A PDF version is available to view or download from the Accountant in Bankruptcy's website.

## 6. What happens after I am discharged?

If you are making a contribution you must continue to pay it to your trustee even after you have been discharged from your bankruptcy. After your discharge, your bankruptcy will not be finished until your trustee has completed the administration of the bankruptcy and they are discharged from their duties. **You must continue to cooperate with your trustee until they are discharged.**

## **6.1 What happens to my debts after I am discharged?**

Once you are discharged you do not have to repay the debts which you had when you were made bankrupt, although there are some exceptions to this.

You are still responsible for paying:

- fines, penalties, compensation and forfeiture orders imposed by any court;
- any liability due to fraud including benefit overpayments;
- any obligation to pay aliment;
- some students loans; and
- money owed to someone who holds a security on your property, such as a mortgage or secured loan.

If you owe money to the Department for Work and Pensions your trustee will be able to advise you if this money needs to be paid back after your bankruptcy ends.

Apart from the exceptions listed above, your pre-bankruptcy creditors will not be able to take any legal action against you to recover their debts.

**However, you are still responsible for paying any contributions agreed with your trustee.**

A creditor can still take action against anyone else, for example, your spouse, who had a joint liability for the debt.

You are still responsible for making payments to your secured creditor, for example, for the mortgage on your house.

You are also responsible for repaying any debts which you have run up after you were made bankrupt, for example, on-going liabilities for rent, council tax, gas, electricity or telephone bills.

## **6.2 What happens to my assets after I am discharged?**

Your bankruptcy does not end with your discharge. Your trustee still has a duty to sell the assets that transferred to them. Even after your discharge, your trustee has the power to realise any assets. If your trustee has been discharged and then subsequently discovers that you had an asset which they were entitled to sell they can apply to be reappointed as your trustee. This will allow them the opportunity to ingather the monetary value of that asset, either by selling the asset or having you or a third party buy out the trustee's interest. A discharged trustee can request reappointment up to 5 years from the date of bankruptcy should they become aware of any assets that they did not previously know about. However, they must be able to show the sheriff that their reappointment would be of benefit to your bankrupt estate.

If there are assets or money remaining at the end of your bankruptcy, and your trustee has recovered all of the costs of your bankruptcy and paid your creditors in full, plus interest, they will be returned to you.

If your trustee decides that they do not intend to sell your house, either on the open market or privately, they will formally abandon their interest in it. Only then are you entitled to sell it. Your trustee must make a decision about whether to sell your house within 1 year of your bankruptcy and must take action within 3 years of your bankruptcy.

## **7. What if I am unhappy with the way my bankruptcy is being handled?**

If you are unhappy with the way your bankruptcy is being handled you should, in the first instance, speak to your trustee.

If the Accountant in Bankruptcy is your trustee and you cannot resolve the issues by speaking to her staff or the insolvency practitioner acting on her behalf, you should write to her.

Insolvency Practitioners are regulated by statutory rules and must be members of an approved body. If your trustee is a private insolvency practitioner and you cannot resolve the issues you have by speaking to them, you should contact their governing body. Details of their governing body can be found on their headed notepaper. You can also write to The Accountant in Bankruptcy or, where there are commissioners, to them.

Full information on Accountant in Bankruptcy's complaints procedure can be found on the website at **[www.aib.gov.uk](http://www.aib.gov.uk)**.

If you are dissatisfied with the actions of your trustee you can also ask a sheriff to look into the matter.

## **8. What are the alternatives to bankruptcy?**

Bankruptcy is a last resort for debt relief and you may still have other options. You should seek financial advice. Citizens Advice Scotland and Local Authority money advisers will provide free and impartial advice on your options and may be able to help you fill in forms or liaise with your creditors.

Some of the other options available include:

### **Debt Management Plan**



This is an informal arrangement with your creditors to pay your debts over an extended period of time. You can arrange a plan directly with your creditors or with the help of a money adviser at a Local Authority money advice unit or Citizens Advice Scotland. While creditors may agree to the repayment plan, they do not have to agree to freeze interest or charges. Your creditors can decide at any time that they no longer wish to accept payments and can pursue you for the debt using other methods.

## **Debt Arrangement Scheme (DAS)**

DAS is a statutory scheme run by the Scottish Government to help you pay your debts by giving you more time to pay without the threat of court action from your creditors. DAS freezes interest, fees and charges on your debt from the date your DAS payment programme is approved and these will be written off if you complete the programme.

Prior to applying for DAS you can submit a moratorium application which will provide you with a 6 week period where your creditors cannot take any diligence (legal action) against you. You can only submit one moratorium application within a 12 month period.

A money Adviser will help you decide if DAS is right for you. You can find contact information at the back of this booklet or find a money adviser near you on the DAS website at: **[www.dasscotland.gov.uk/find-a-money-adviser](http://www.dasscotland.gov.uk/find-a-money-adviser)**. The Scheme protects your assets, including your home (as long as you keep up your mortgage payments).

For further information on DAS contact your local money advice centre. Further information is also available on the DAS website: **[www.dasscotland.gov.uk](http://www.dasscotland.gov.uk)**.

## **Trust Deeds**

A trust deed is a formal arrangement between you and an insolvency practitioner who becomes your trustee. To enter into a trust deed you must either have assets (this includes your home if you own it wholly or jointly) that can be sold or you must be able to make regular payments to your trustee from your income.

A trust deed can become protected. This means that your creditors cannot take court action against you for the debts you owed when the trust deed was agreed provided you keep to the terms of the trust deed. If your creditors do not agree to your trust deed becoming protected, they can still take legal action to recover what you owe them, including making you bankrupt.

Your trustee can also apply to make you bankrupt if you do not cooperate with them.

It is important to note that your trustee can apply to make you bankrupt at any time during the trust deed, if they think that this would raise more money for creditors, although this does not happen often.

Prior to entering a trust deed you can submit a moratorium application which will provide you with a 6 week period where your creditors cannot take any diligence (legal action) against you.

Further information on trust deeds can also be found in the Accountant in Bankruptcy publication, 'Trust Deed Guide'.

## 9. Further information

### 9.1 Contact details for Accountant in Bankruptcy

Accountant in Bankruptcy  
1 Pennyburn Road  
Kilwinning  
Ayrshire  
KA13 6SA

Telephone: 0300 200 2600

Fax: 0300 200 2601

E-mail: [\*\*aib@aib.gov.uk\*\*](mailto:aib@aib.gov.uk) (for general help about the  
bankruptcy process) Website:

[\*\*www.aib.gov.uk\*\*](http://www.aib.gov.uk)

## **9.2 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](http://www.moneyadvicescotland.org.uk)

E-mail: [Info@moneyadvicescotland.org.uk](mailto:Info@moneyadvicescotland.org.uk)

### **Citizens Advice Scotland**

Telephone: 0808 800 9060

Website: [www.adviceguide.org.uk/Scotland](http://www.adviceguide.org.uk/Scotland)

### **National Debtline Scotland**

Telephone: 0808 808 4000

Website: [www.nationaldebtline.org/S/Pages/default.aspx](http://www.nationaldebtline.org/S/Pages/default.aspx)

### **StepChange Debt Charity**

Telephone: 0800 138 1111

Website: <http://www.stepchange.org>

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 Accountant of Scotland**

CA House

21 Haymarket Yards

Edinburgh

EH12 5BH

Telephone: 0131 347 0100

Website: [www.icas.org.uk](http://www.icas.org.uk)

### **Insolvency Practitioners Association**

Valiant House

4-10 Heneage Lane

London  
EC3A 5DQ

Telephone: 020 7623 5108  
Website: [www.insolvency-practitioners.org.uk](http://www.insolvency-practitioners.org.uk)

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

**Law Society of Scotland**  
26 Drumsheugh Gardens  
Edinburgh  
EH3 7YR

Telephone: 0131 226 7411  
Website: [www.lawscot.org.uk](http://www.lawscot.org.uk)  
E-mail: [lawscot@lawscot.org.uk](mailto:lawscot@lawscot.org.uk)

### **Using your personal information**

Personal information which you supply to Accountant in Bankruptcy (AiB) may be used in a number of different ways to enable AiB to act in accordance with the Bankruptcy (Scotland) Act 2016 and other relevant legislation. For example:

- to determine bankruptcy applications and Debt Arrangement Scheme (DAS) debt
- payment programmes
- for the collection of fees and contributions
- to identify and sell assets
- to supervise the administration of bankruptcies, protected trust deeds and debt payment programmes
- for statistical analysis purposes

In order to complete these statutory duties and tasks we do need to collect and process personal information about you and sometimes about third parties. In certain circumstances we may share personal information with others, for example: our agents; banks; credit reference agencies; creditors and local authorities.

If you are made bankrupt, sign a trust deed, apply for a DAS debt payment programme or register a moratorium, your details must be recorded in a public register which is available for anyone to access free of charge. If you are made subject to a Bankruptcy Restriction Order (BRO), details of your BRO will also be recorded on the AiB website.

We, or an agent acting on our behalf may contact you to discuss your experience of using our services as part of our on-going commitment to improve customer service. If you do not wish us to contact you for this purpose, please let us know.

Our [full privacy statement](#) details how we process personal information and your right to request to see, amend or delete information which we hold about you, is published on our website: [www.aib.gsi.gov.uk](http://www.aib.gsi.gov.uk).

If you wish a copy of our privacy statement you can write to us at:

Accountant in Bankruptcy  
1 Pennyburn Road  
Kilwinning  
Ayrshire  
KA13 6SA

You can also email us at: [gdpr@aib.gov.uk](mailto:gdpr@aib.gov.uk) or phone us on 0300 200 2600 and ask to speak with our Data Protection Officer.

This publication is available on request in community language versions and alternative formats. Please contact **0300 200 2600** for this to be arranged.

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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

This booklet is for general guidance only.  
It is not a detailed or full statement of the law.



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