



ACCOUNTANT  
IN BANKRUPTCY  
SCOTLAND'S INSOLVENCY SERVICE

Debtor's  
guide



The contents of this publication are accurate as at June 2012. Any subsequent amendments will be incorporated in the latest version which is available at:  
**[www.aib.gov.uk/publications/debtors-guide](http://www.aib.gov.uk/publications/debtors-guide)**



You can get more copies of this booklet, or copies of other booklets we produce, by phoning us on **0300 200 2600**

You can also find them on the publications page of our website: **[www.aib.gov.uk](http://www.aib.gov.uk)**

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

# Debtor's Guide

## Contents

1. Introduction	1
2. What is bankruptcy?	2
2.1 What are the consequences of being bankrupt?	2
3. Who can be made bankrupt?	4
3.1 How do I apply for my own bankruptcy?	4
3.1.1 How much does it cost?	4
3.2 What are the conditions for applying for my own bankruptcy?	4
3.2.1 What does Apparent Insolvency mean?	5
3.2.2 What is a Certificate for Sequestration?	6
3.2.3 What does Low Income, Low Assets mean?	6
3.3 What are the conditions for someone else to make me bankrupt?	8
3.4 How long will it take for me to be made bankrupt?	9
4. What happens during my bankruptcy?	10
4.1 Who is the trustee?	10
4.2 What does the Accountant in Bankruptcy do?	10
4.3 What does my trustee do?	11
4.4 What are my responsibilities when I have been made bankrupt?	12

4.5	What happens to the things I own?	14
4.5.1	What are assets?	14
4.5.2	What happens to my home?	14
	What if I own my home?	15
	What if I used to own a home?	15
	What if my property is jointly owned by me and someone else?	16
	Where the home or property is jointly owned, the joint owner cannot sell without the permission of your trustee.	16
	What happens if I cannot pay my mortgage?	16
	What if I rent my home?	16
4.6	What happens to my life policies?	17
4.7	What happens to items on hire purchase?	17
4.8	Will I be asked to make a contribution towards my bankruptcy?	18
4.8.1	Can my income change?	18
4.8.2	How long do I have to pay contributions?	19
4.9	What happens to the money my trustee gathers in?	19
4.10	Who pays the costs of administering my bankruptcy?	19
4.11	How long will my bankruptcy normally last?	20
4.12	Can my bankruptcy end sooner?	21
4.12.1	Offer of composition	21
4.12.2	Recall of bankruptcy	22

5. Bankruptcy restrictions	23
6. What happens after I am discharged?	25
6.1 What happens to my debts after I am discharged?	25
6.2 What happens to my assets after I am discharged?	26
7. What if I am unhappy with the way my bankruptcy is being handled?	27
8. What are the alternatives to bankruptcy?	28
9. Further information	30
9.1 Sources of advice and information	30
9.2 Contact details for the Accountant in Bankruptcy	32



# 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 2008.

Further information on some alternatives to bankruptcy is also 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 online. 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 1985, as amended. 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 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 ask the sheriff to make you bankrupt.

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 what they are owed. You may also have to make a regular payment from your income.

In Scotland bankruptcy is often referred to as sequestration.

### **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 have any savings they will be transferred to your trustee.

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 adviser about this.

## **Public Records**

Your bankruptcy is recorded on a public register called the Register of Insolvencies. Creditors and credit reference agencies use this register to find out if their customers have been made bankrupt. Anyone can search the Register of Insolvencies free of charge. Details of your bankruptcy will remain on the register until two years after your trustee has completed their duties.

### 3. Who can be made bankrupt?

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

#### 3.1 How do I apply for my own bankruptcy?

To apply for your own bankruptcy you must submit an application form along with evidence that you are eligible to apply to the Accountant in Bankruptcy (AiB). Debtor application forms are available from money advisers and the AiB. They can also be downloaded from the AiB website: [www.aib.gov.uk](http://www.aib.gov.uk).

##### 3.1.1 How much does it cost?

It costs £200 to apply for your own bankruptcy. There are no waivers or exemptions to this fee and it cannot be refunded. There is provision to pay this fee in smaller multiple instalments, e.g. 4 x £50. The application can be made when the full fee has been paid.

Details of how to pay, including payment by instalments, are included in the application form.

#### 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 £1,500 or more;
- you must be living in Scotland or have lived in Scotland sometime during the last year;

- you must not have been made bankrupt in the last 5 years, **and**
- you must pay the application fee.

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

- you must be Apparently Insolvent; **or**
- you signed a trust deed which failed to become protected; **or**
- you must have a Certificate for Sequestration; **or**
- you must meet the conditions for the Low Income, Low Assets (LILA) route.

### **3.2.1 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.

**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.

These documents are normally served on you by a Messenger-at-Arms or a Sheriff Officer.

### 3.2.2 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 granted 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.

### 3.2.3 What does Low Income, Low Assets mean?

**Low income** means that your gross weekly income (your income before tax and other deductions) from any source is no more than the national minimum wage for a 40-hour working week.

The National Minimum wage rate from October 2011 is £6.08 per hour. This means that the criteria for low income is a weekly income of £243.20 before deductions. This is worked out as  $£6.08 \times 40 = £243.20$ .

The national minimum wage normally rises at the start of October each year and the criteria for low income therefore also changes. If you wish to find out what the current national minimum wage is, you can visit Her Majesty's Revenue & Customs website: [www.hmrc.gov.uk/payepayroll/day-to-day/nmw.htm](http://www.hmrc.gov.uk/payepayroll/day-to-day/nmw.htm) or speak to a money adviser.

If you receive income support, income-based jobseekers' allowance, working tax credits, pension credits, employment and support allowance, housing benefit or council tax benefit you will be treated as meeting the low income test, even if your actual income is more than £243.20 a week.

When calculating your income, to assess whether you meet the low income criteria, social security benefits or tax credits you receive or any income received by another member of your family will not be counted.

However, your income, pensions, maintenance payments, benefits, tax credits and the income of other family members may be taken into account when considering whether you should pay a contribution towards your bankruptcy.

**Low assets** means that you do not have any 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. Your total assets (including single items and vehicles) must not be worth more than £10,000. You must not own, or jointly, own a house or any other property or land.

### **3.3 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 3.2.1 of this booklet. Your creditors can also prove Apparent Insolvency if you have signed a trust deed which has not become protected 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 interest 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 Accountant in Bankruptcy publication, ‘Trust Deed Guide’.

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

### **3.4 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 the Accountant in Bankruptcy receiving your application. It may take longer if the Accountant in Bankruptcy 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 the sheriff to make you bankrupt, you could be made bankrupt in less than 2 weeks.

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 their 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, the sheriff will not award bankruptcy.

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

## **4. What happens during my bankruptcy?**

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?**

Your trustee is the person who administers your bankruptcy.

When you apply 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 is a Scottish Government official who is responsible for the process of personal bankruptcy in Scotland.

When the Accountant in Bankruptcy is your trustee, her staff will administer your bankruptcy or she may pass your case to an insolvency practitioner who works on her 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?**

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.

Your trustee may interview you at your 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.

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 contact your creditors to advise them of your bankruptcy within 60 days of the date of your bankruptcy. Your trustee may hold meetings with your creditors. Your creditors can elect commissioners to oversee the administration of your bankruptcy at any meetings held.

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 accounts and can appeal to the sheriff about these costs. However, you can only appeal to the sheriff if you can show that it is to your financial benefit.

Your trustee will compile a permanent record of your bankruptcy. This is called the 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 £500 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;
- get any credit for goods or services without telling the lender or supplier that you are bankrupt if you already have credit of £1,000 in total. You may be guilty of a criminal offence if you do not tell them;
- start up a limited company or be involved in the day-to-day management of a limited company; **and**
- act as a Member of 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 1985 (as amended) and your trustee may report you to the Procurator Fiscal.**

## **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 and shares.

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 assets within the 5 years before your bankruptcy for less than their value, they can ask the sheriff to have the transaction reversed and the assets 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 rent it 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 dependents 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 1985 (as amended). Your trustee may report you to the Procurator Fiscal and claim back the property.

## **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.**

If the joint owner does not co-operate in a sale and is unwilling or unable to buy out your trustee's interest in the property, your trustee can ask the sheriff for authority to sell it. The sheriff will consider all circumstances, such as the amount of equity, whether there are children or other dependents living in the home and how the sale will impact on paying your debts.

## **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.

## **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. Endowment policies or policies with an endowment element acquire a surrender value and may 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 stay 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 will look at your income and how much you and your family need to live on. They will assess whether or not you have any surplus income and, if you do, they will expect you to make a contribution from that. They will agree a voluntary contribution amount with you. This is known as an Income Payment Agreement (IPA). You can agree to have deductions taken directly from your wages.

If you cannot reach an agreement, your trustee can ask the sheriff to decide the amount you should pay. The sheriff will take into account any information you provide before making a decision. The sheriff will make an Income Payment Order (IPO) stating the amount you must pay. Your trustee can ask the sheriff to order payments directly from your wages.

### 4.8.1 Can my income change?

Every 6 months your trustee will send you a questionnaire to review your financial position. You must complete and return this. If your financial circumstances change you can ask your trustee to review your contributions. If you have an IPA, your trustee can review the situation and may vary your contribution. If you have an IPO, you or your trustee will have to go back to court to let the sheriff decide if your contribution should be varied. **Even if your circumstances do not change, you must return the questionnaire.**

### 4.8.2 How long do I have to pay contributions?

Both an IPO and IPA may extend beyond the date of discharge of the debtor, and may last up to 3 years from the date of the order. If you stop making your contribution under an IPO, your trustee may report you to the sheriff. Failure to comply with the terms of an IPO is a criminal offence.

If you stop making your contributions under an IPA, your trustee may apply to the sheriff for an IPO to be made. You must contact your trustee as soon as possible if you are unable to continue paying your contribution.

### 4.9 What happens to the money my trustee gathers in?

Your trustee will distribute the money gathered in. 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.

### 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 have 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 towards 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 the bankruptcy may then have their outlay 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?**

If you applied for your own bankruptcy, you will normally be discharged one year after the date the bankruptcy was awarded. If a creditor petitioned for your bankruptcy, you will be discharged one year after the date that the court issued the warrant citing you to appear at a hearing. However, if you do not co-operate with your trustee, they can ask the sheriff to delay your discharge by up to 2 years at a time.

You will not be formally notified that you have been discharged. You can, if you wish, ask the Accountant in Bankruptcy for a certificate of discharge. There will be a charge for this.

Even though 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 co-operate 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 are two ways in which your bankruptcy can end sooner:

### **4.12.1 Offer of composition**

At any time during your bankruptcy you, or another party acting on your behalf, can propose an offer of composition to your creditors.

An offer of composition is a proposal to your creditors to make payment, or part payment, of your debts. An offer of composition must pay creditors at least 25p in the pound after all your trustee's costs and fees have been paid. Creditors will consider the proposal and make a decision about whether to accept, although they may refuse an offer if they think you can afford to pay more. The proposal must be agreed by at least two-thirds in value or a majority of your creditors. If your creditors agree, an application for composition will be sent to the sheriff. You must either pay or offer to pay, or offer acceptable security for all monies due under the terms of the offer of composition before your trustee will agree to the offer going to court. If the court approves the offer you will be discharged from bankruptcy.

### **4.12.2 Recall of bankruptcy**

You can petition the sheriff to recall your bankruptcy if you can show that you should not have been made bankrupt. For example, if for some reason you were able to pay your debts but did not. The law says that until recall is granted, your trustee must continue with your bankruptcy. Recall will not be granted unless you pay or offer acceptable security for everything that you owe. This includes the cost of recalling the bankruptcy, your trustee's costs and fees and all your debts plus interest. Your creditors can object to your recall.

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.

Recall effectively restores you to the position you would have been in had the bankruptcy not happened.

## 5. Bankruptcy restrictions

If your trustee considers that your conduct has been dishonest or blameworthy in some way, **either before or during your bankruptcy**, they will report you to the Accountant in Bankruptcy. The Accountant in Bankruptcy may seek restrictions on your behaviour which can last between 2 and 15 years. Details of the restrictions are recorded on 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.

The Accountant in Bankruptcy will consider the evidence provided by your trustee and may make an application to the sheriff asking for a Bankruptcy Restrictions Order (BRO) to be made against you. The sheriff will consider the application and any other evidence put before them and will decide whether they should impose a BRO. If they do, 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.

Bankruptcy restrictions can include:

- you must disclose 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;
- you may not be a Member of Parliament, Justice of the Peace or a school governor in England and Wales.

**This is not a full list of the bankruptcy restrictions which may be placed on you.**

It is possible for you to make an agreement with the Accountant in Bankruptcy and accept the restrictions rather than go to court. This is called a Bankruptcy Restrictions Undertaking (BRU).

Further information on bankruptcy restrictions is available in the Accountant in Bankruptcy publication, 'Bankruptcy Restrictions – Orders and Undertakings'.

## **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 co-operate 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;
- student 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 of 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.**

The 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, ongoing 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.

Once you are discharged, you can acquire new assets and your trustee will have no claim on these.

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 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 any related 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 the 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.

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 that 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 court action against you. If you do not co-operate with your trustee, your trust deed may fail and your creditors can 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 co-operate 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.

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 the Accountant in Bankruptcy**

#### **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](mailto:aib@aib.gsi.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: 0131 550 1000

Website: [www.cas.org.uk](http://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/>

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  
Telephone: 0131 347 0100  
Website: [www.icas.org.uk](http://www.icas.org.uk)

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

**Law Society of Scotland**

26 Drumsheugh Gardens  
Edinburgh  
EH3 7YR  
Telephone: 0845 113 0018  
Website: [www.lawscot.org.uk](http://www.lawscot.org.uk)  
E-Mail: [cro@lawscot.org.uk](mailto:cro@lawscot.org.uk)

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

अनुरोध करने पर यह प्रकाशन सामुदायिक भाषा संस्करणों एवं वैकल्पिक स्वरूपों में उपलब्ध है। ऐसी व्यवस्था करने के लिए कृपया **0300 200 2600** पर संपर्क करें।

یہ اشاعت درخواست کرنے پر معاشرتی زبان کے نسخوں اور متبادل شکلوں میں دستیاب ہے۔ برائے مہربانی اس کے انتظام کے لئے **0300 200 2600** پر رابطہ کریں۔

এই প্রকাশনাটি অনুরোধসাপেক্ষে জনগোষ্ঠীর ভাষায় লিখিত সংস্করণে এবং বিকল্প ফরম্যাটে পাওয়া যায়। অনুগ্রহ এই ব্যবস্থা করার জন্য **0300 200 2600** নম্বরে যোগাযোগ করুন।

此出版物有社區語言版本和其他格式，  
請致電 **0300 200 2600** 索取。

هذه النشرة متوفرة عند الطلب بإصدارات بلغات الجاليات وبالصيغ البديلة.  
الرجاء الاتصال بالرقم الهاتفي **0300 200 2600** لترتيب هذا.

ਇਹ ਪ੍ਰਕਾਸ਼ਨ ਭਾਈਚਾਰਕ ਭਾਸ਼ਾ ਰੂਪਾਂ ਅਤੇ ਬਦਲਵੇਂ ਫਾਰਮੈਟਾਂ ਵਿਚ ਬਿਨਤੀ 'ਤੇ ਉਪਲਬਧ ਹਨ। ਇਸਦਾ ਪ੍ਰਬੰਧ ਕਰਾਉਣ ਲਈ ਕਿਰਪਾ ਕਰਕੇ **0300 200 2600** 'ਤੇ ਸੰਪਰਕ ਕਰੋ।

Tha am foillseachadh seo ri fhaotainn air iarrtas ann an cànanan coimhearsnachd agus ann an cruthan eile.  
Cuiribh fios gu **0300 200 2600** airson seo a chur air dòigh.

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.**

Kilwinning Ayrshire KA13 6SA  
1 Pennyburn Road  
T 0300 200 2600 F 0300 200 2601  
aib@aib.gsi.gov.uk www.aib.gov.uk

An agency of



The Scottish Government

