

Debt and the Consequences

Important information to help you deal with
your creditors and debt



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You can get more copies of this booklet, or copies of other booklets we produce, by phoning the Accountant in Bankruptcy's helpline on **0845 762 6171**.

(You can also find them on the Publications page of the Accountant in Bankruptcy's website: <http://www.aib.gov.uk>)

This publication is available on request in community language versions and alternative format. Please contact **0845 612 6460** for this to be arranged.

Debt and the Consequences

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Contents

	page
1. Why should I read this booklet?	1
2. How can a money adviser help me?	2
3. Where can I get free help and advice?	3
4. What can I do about my debts?	4
Debt management plan	4
Debt Arrangement Scheme (DAS)	5
Trust deed	5
Bankruptcy	7
What are my choices?	9
5. What legal steps can creditors take against me?	10
6. What happens when my creditor takes me to court?	11
How do I know if I am being taken to court?	11
What can the sheriff be asked to do?	11
What can I do if I receive a summons or writ?	12
What are time to pay directions and time orders?	13
7. How does a creditor get their money after court action?	14
What is the Debt Advice and Information Package?	14
What is a charge for payment?	15
What is a time to pay order?	15

Contents

	page
8. What types of enforcement action can a creditor use?	16
Arrestment of earnings	16
Bank arrestment	17
Other arrestments	18
Arrestment on the dependence	18
Eviction due to rent or mortgage arrears	19
Attachment	20
Interim attachment	20
Exceptional attachment orders	21
Inhibition	21
9. How can my creditor make me bankrupt?	22
10. What if my creditor is a local authority or HM Revenue & Customs?	24
11. What can I do if I think my creditor or a sheriff officer has behaved incorrectly?	25
12. Further information	26
13. Household Income and Expenditure	29
14. Your debts	31

1. Why should I read this booklet?

Many people have problems with their debts. This booklet is designed to help you:

- find where to go for money advice;
- identify options for managing your debts;
- work out what you can do about your debts;
- understand what action your creditors (people you owe money to) can take to recover their money; and
- understand the consequences of not paying your debts.

Free help and advice is available to help you deal with your debt. A money adviser can talk through your debt problems and work with you to try to improve your situation.

This booklet directs you to possible solutions for your debt problems and gives you contact details of organisations that can help.

You can also consult a solicitor. The solicitor may charge a fee but, depending on your circumstances, you may be able to get legal aid. The solicitor may also give you an initial interview free of charge.

[Don't ignore your debts.](#)

With help and advice, you may be able to improve things.

2. How can a money adviser help me?

There are many ways to deal with debt and it is important to get advice as soon as possible.

You can get free and confidential advice from a trained money adviser, for example, through local authority money advice units or Citizens Advice Bureaux.

Many creditors are aware of the Money Advice Liaison Group's Mental Health Guidelines. Anyone with mental health issues who owes money should speak to a money adviser.

A money adviser can help you decide how to deal with your debts, how to maximise your income and how to deal with emergencies, for example, if your bank account is frozen, your wages arrested or your gas is cut off.

You may be able to make some payments to your creditors and a money adviser can help you decide how best to do this.

Your creditors may take you to court to try to get their money back.

Money advisers may be able to help with court representation.

There are tables on pages 31-34 which can be filled in and taken with you to the money advice office so that your money adviser has an accurate picture of your financial picture in order to help you.

3. Where can I get free help and advice?

You can get free, confidential, and impartial advice from:

Money Advice Scotland

0141 572 0237

www.moneyadvicescotland.org.uk

Citizens Advice Scotland

0845 450 0351

www.cas.org.uk

Scottish Debtline

0800 138 3328

www.scottishdebtline.co.uk

National Debtline

0808 808 4000

www.nationaldebtline.co.uk

If you would like to speak to someone locally check your telephone book or the websites above for information on how to find a money adviser or debt counsellor near to you.

Pages 27-30 contain additional contact details.

4. What can I do about my debts?

There are a number of things that you can do. A money adviser can help you decide what is best for you.

The following are some of the choices you may have in order to deal with your debt:

Debt management plan

A debt management plan is an informal arrangement with your creditors to pay your debts over an extended period of time. Interest and fees will still accrue on your debts (unless your creditors agree to freeze interest) and they will not be written off – although if you complete the plan you should be able to pay your debts in full. You will keep control of the things you own (your assets) including your house as long as formal action is not taken against you.

You can arrange a plan directly with your creditors. You can also set it up with the help of a money adviser.

A debt management programme is not legally binding on your creditors and they can still take action to pursue the money you owe them.

Debt Arrangement Scheme (DAS)

DAS is a scheme run by the Scottish Government that gives you more time to pay several creditors, without threat of court action. You must have surplus income from which payments can be made. You will make a single regular payment under a debt payment programme (DPP).

DAS freezes interest, fees and charges on your debt (except future mortgage payments) from the date your DPP is approved and these will be written off if you complete the programme. The scheme protects your assets, including your home (as long as you keep up your mortgage payments and your ongoing liabilities).

DAS is provided free of charge by money advisers at local authority money advice units or Citizens Advice Bureaux. Other approved money advisers may charge a fee and you should check with them. A list of approved advisers can be found on the DAS website at www.moneyscotland.gov.uk.

Trust deed

A trust deed is a formal arrangement between you and an insolvency practitioner who becomes your trustee. Your trustee is there for the benefit of your creditors and they will use contributions from your income or money from the sale of your assets to repay some of what you owe.

To enter into a trust deed, you must be able to make regular payments to your trustee from your income or have assets. The trust deed transfers your rights to the things that you own (this includes your home if you own it wholly or jointly) to your trustee who may sell them to pay the costs of managing your trust deed and to pay part of what is owed to your creditors.

Trust deeds normally last for 36 months, but this can vary. Interest will still accrue on your debts during the trust deed but most debts outstanding at the end of the trust deed will be written off if you have cooperated with your trustee. The costs of administering the trust deed will be met from the money the trustee gathers in. These costs will be met before any payment is made to your creditors.

A trust deed can become protected which means that your creditors cannot take court action against you for the debts that you owed when the trust deed was agreed. If your creditors do not agree, they may be able to prevent your trust deed from becoming protected. If your trust deed cannot be protected, your creditors can still take court action against you and you can apply to make yourself bankrupt.

Once the trust deed becomes protected your trustee may make you bankrupt if you do not co-operate with them.

Signing a trust deed has consequences for you.

You could lose your family home.

It will affect your credit rating and you could find it difficult to get credit in the future.

Bankruptcy

In Scotland, bankruptcy is sometimes called sequestration.

Being made bankrupt is a very serious matter. It can lead to loss of your family home and can have other consequences.

It may impact your job and your bank account could be frozen. Your credit rating will be affected and you could also find that access to future credit is not available or is only available at a very high rate of interest.

When you are declared bankrupt you have to hand over the things you own, including your home, **if owned wholly or jointly**, to a trustee who will administer your bankruptcy.

Subject to certain conditions, a creditor can apply to the court to make you bankrupt or you can apply to the Accountant in Bankruptcy to make yourself bankrupt. Bankruptcy starts when you are declared bankrupt by the sheriff or by the Accountant in Bankruptcy. A trustee will be appointed to administer your bankruptcy.

You will normally be discharged from bankruptcy after one year but your trustee still has a duty to sell the assets that transferred to them.

It is the duty of your trustee to sell your assets or property and to use the money to pay the costs of managing your bankruptcy and to pay your creditors as much as possible of what you owe them. You will be able to keep some things that are essential for everyday living such as beds, your cooker, your television, etc. You may also be required to make regular payments from your income to your trustee.

While you are bankrupt most of your creditors cannot take further action to pursue the money you owed them at the start of the bankruptcy. However, if you have a mortgage or other loan secured on your home, the lender can take action against you if you stop your payments to them.

Interest will still accrue on your debts during your bankruptcy but most outstanding debts will be written off at the end. You will still be responsible for any new debts run up after the date you became bankrupt.

A money adviser can discuss whether making yourself bankrupt is the right thing for you to do.

More information about bankruptcy can be found in the Debtors Guide available from the Accountant in Bankruptcy. Contact details for the Accountant in Bankruptcy are on page 28.

What are my choices?

	Debt Management Plan	DAS	Trust Deed	Bankruptcy
Cost	Usually no cost	Usually no cost	Fees apply, sometimes paid up front	£100 application fee. Other fees usually apply
What happens to the interest on my debts?	Still accrues	Normally frozen	Interest still accrues	Interest still accrues
What happens to my house if I own it?	Nothing, as long as you keep up your mortgage payments	Nothing, as long as you keep up your mortgage payments	Your trustee may sell it	Your trustee may sell it
What is the effect on my debts?	Your debts are not written off. They are usually paid in full	Your debts are not written off. They are usually paid in full	Most debts will be written off at the end of the trust deed	Most debts will be written off at the end of the bankruptcy
Can my creditors take action?	Yes	No, only if your debt payment programme is revoked	Not if your trust deed is protected as long as you stick to the terms of your trust deed	No

5. What legal steps can creditors take against me?

If you do not pay the money you owe to your creditors they can take legal action through the courts to enforce the payment of debts. This includes making you bankrupt.

A creditor will usually issue you with a final notice before taking legal action. This tells you in writing that you have failed to pay what you owe and gives you a last opportunity to do so.

If you do nothing, your creditor is likely to raise a court action against you and you will have to repay the debt with added interest and, usually, the creditor's expenses as well.

There are several legal actions that creditors can take to collect the money you owe them. The most usual actions are arrestment of your earnings or bank account, or attaching items you own. Less common methods used include placing an inhibition on your property or ejection from your home.

Secured creditors such as your mortgage provider can take steps to repossess your home.

Remember: unless you tell your creditors you are having difficulties, they won't know. You should seek advice at the very earliest opportunity to help you deal with your debt problems.

6. What happens when my creditor takes me to court?

If you have not paid your debt, your creditor can take you to court.

How do I know if I am being taken to court?

You will know that court action is being taken if you receive a summons or an initial writ. The summons or initial writ should tell you who is taking you to court and how much they think you owe them. It should also tell you which court the action is being taken in and what they want the sheriff to do.

A money adviser or solicitor will be able to explain the court process. Information is also available from your local sheriff court or at www.scotcourts.gov.uk.

You may have to go to court.

What can the sheriff be asked to do?

Usually, the creditor will ask the sheriff to order you to pay the amount you owe. If the money that you owe is for a car or other item that you have bought on credit or hire purchase, your creditor may also ask the sheriff to order you to return the goods. If the money that you owe is for rent or mortgage payments the sheriff may be asked to order you to leave your home.

What can I do if I receive a summons or writ?

The summons or initial writ will ask you to advise the court what you intend to do by a specified date. Do not ignore this date.

You can:

- Pay the money you owe.
- Tell the court you owe the money, and ask for a time to pay direction or a time order under the Consumer Credit Act 1974. You will get the application form for a time to pay direction with the summons or initial writ. If the direction or order is granted the court will issue a document called a decree detailing how much you must pay and how often.
- Tell the court you do owe the money but do not ask for time to pay. The court will issue a document called a decree which will order you to pay the debt as well as interest and court expenses.
- Tell the court you don't agree you owe the money. A hearing date will then be set for the court to listen to you and your creditor before making a decision.
- Do nothing. The court will presume you do owe the money and will issue a decree which will order you to pay the debt as well as interest and court expenses.

It is important to get help and advice if you are not sure what to do. A money adviser or solicitor (who may charge you) can help you decide what to do.

It is still not too late to speak to your creditor but don't delay.

What are time to pay directions and time orders?

Time to pay directions and time orders under the Consumer Credit Act 1974 are formal ways of paying your debt over a longer period of time. You can make an application to the court for a time to pay direction when you receive a summons or an initial writ.

You can get more information about the Consumer Credit Act 1974 from a money adviser or from the Office of Fair Trading or a trading standards office.

Your creditor can object to your application for time to pay. If this happens the sheriff will listen to you and your creditor at a hearing before deciding on your application. It is up to you to find out from the court if your offer has been accepted or objected to. If you are given formal time to pay, the creditor that took you to court can not take further action to recover what you owe unless you stop paying but your other creditors can.

7. How does a creditor get their money after the court action?

If you have not been granted time to pay, and the court has issued a decree, your creditor can take action against you. The action will depend on a number of things including, how much money you owe, what kind of debt it is and your personal circumstances.

In Scotland, the enforcement of debt following court action is called 'diligence'. There are a number of diligences including earnings arrestment, bank arrestment and attachment. Your creditor can also take steps to make you bankrupt.

Before they take any action they will normally ask a sheriff officer to serve you with a charge for payment and a Debt Advice and Information Package.

What is the Debt Advice and Information Package?

There are a number of occasions when a creditor is required by law to give you a leaflet called the Debt Advice and Information Package (DAIP).

It is required if they are taking steps to recover the money you owe them through diligence, or if they intend to make you bankrupt.

What is a charge for payment?

A charge for payment is a formal document warning you that unless you pay your debt, or apply for a time to pay order within 14 days, your creditor is entitled to enforce payment. The document is normally delivered to you by a sheriff officer.

Most debt enforcement actions require a charge for payment.

What is a time to pay order?

You can apply for a time to pay order after you have received a charge for payment or an arrestment has taken place. You apply to the court and must not owe the creditor more than £25,000. The order gives you time to pay what you owe to the creditor over a period of time. A time to pay order is similar to time to pay directions and time orders but is only relevant once a charge has been issued.

Once a time to pay order has been granted, as long as you keep to the agreed payments that creditor cannot take further action against you but other creditors may be able to.

8. What types of enforcement action can a creditor use?

Following the decree from the court your creditor can take a number of actions, including putting a freeze on your bank account or arresting your wages. They may be able to take more than one action at the same time.

Arrestment of earnings

If you are working, your employer may receive an arrestment schedule from your creditor instructing them to make regular deductions from your wages to repay the debt owed. Your creditor must have sent you a charge for payment and the Debt Advice and Information Package before they issue the arrestment schedule. The deductions are taken off your wages every pay day in the same way that tax is deducted and continue until all the debt is paid.

You could have more than one creditor arrest your wages at the same time. There is a maximum amount, based on your earnings level, which can be deducted on each pay day. This amount will be shared amongst your creditors if you have more than one arrestment.

Your employer sends the money to your creditor(s) and can charge you a small fee every time a deduction is made from your wages or salary. Your employer will give you a copy of the earnings arrestment schedule. They will also tell you when the first deduction will be made and how much it will be.

Bank arrestment

If you have money in a bank, building society or a credit union account, this includes your wages or benefits, your creditor can arrest the money to repay what you owe. To do this your creditor does not normally have to give you a charge for payment or a Debt Advice and Information Package.

Your creditor will ask a sheriff officer to serve an arrestment on your bank. The money in your accounts at that time will be frozen and removed. You cannot withdraw that money or use it to make other payments such as standing orders or direct debit payments. All the money in your accounts is frozen at the time of service, even if it is more than the total amount which you owe.

Your creditor doesn't get the money straight away. They have to ask the court to instruct your bank, building society or credit union to release the money that you actually owe, plus any costs of the court action. Only then will any surplus funds be released for your use.

If you give permission to your bank, building society or credit union to release the amount that you owe, the matter can be dealt with more quickly and you can avoid paying the additional costs of further court action.

Other arrestments

Bank arrestment is not the only form of arrestment. Creditors can arrest items in the hands of a third party, for example, goods held in storage or within a warehouse. They can also arrest other things such as your rights under life assurance policies.

Arrestment on the dependence

If your creditor is concerned that you might dispose of, damage or destroy funds or certain items you own before a decree has been issued or while court action is ongoing, they can ask the court for authority for arrestment pending the court's decision. No action can be taken to transfer money or the value of other items to your creditor until a decree has been granted.

Arrestment on the dependence can prevent you accessing funds in your bank, building society or credit union accounts. It can also prevent you dealing with other items you own, for example, goods in a warehouse, and things like life assurance policies.

It is only after a decree is granted that the funds or items can be disposed of to pay your debt.

Eviction due to rent or mortgage arrears

If you have fallen behind with your rent or mortgage payments, or payments for a loan which is 'secured' on your home, your landlord or your lender can take action against you. They can take action even if you are bankrupt.

They can ask the court for an order for you and your family to be evicted or for your home to be re-possessed. If the court agrees they will set a date by which you must leave the property. If you do not leave by that date, sheriff officers will come to your property to evict you.

If you are evicted, the sheriff officer will change the locks to prevent you from accessing your home. They will not, however, remove your possessions from the property and you must contact your landlord or lender to arrange to collect your possessions. If you do not make arrangements your possessions will be disposed of.

There are laws protecting tenants and homeowners. You should get advice from a money adviser, a [housing aid centre](#) or a solicitor if you think your creditor is taking action to evict you or repossess your home.

Attachment

Your creditor may instruct a sheriff officer to 'attach' items you own which are kept outside your home, for example, in your garage or driveway or in buildings used for business. Items kept in your home cannot normally be attached. Certain items are excluded from attachment, such as tools for your trade and cars valued at under £1,000 and mobile homes which are your main residence. Once attached, you cannot deal with these items. Items can be sold to pay your debts.

Your creditor must have sent you a charge for payment and the Debt Advice and Information Package before they take steps to attach items you own.

The sheriff officer will value the items and send a report of the attachment to the court. The items will then be removed by the sheriff officer and auctioned and the money will be sent to your creditor.

Only in exceptional circumstances can property which is inside a home be sold.

Interim attachment

If your creditor is concerned that you might dispose of, damage or destroy items you own before a decree has been issued, they can ask the court for an interim attachment order.

An interim attachment order prevents you from selling the items attached but allows you to continue to use them. The goods will be valued but not normally removed and no action can be taken to sell them until a decree is granted.

If the decree is granted the sheriff officer will revalue the items and send a report to the court. The items can then be removed by the sheriff officer and auctioned and the money will be sent to your creditor.

Exceptional attachment orders

In exceptional circumstances your creditor can apply to the court for an exceptional attachment order which allows the attachment of goods inside a home.

A hearing will be held and you can be represented, or can represent yourself, at court.

The sheriff will only grant an exceptional attachment order if they are satisfied that the creditor has tried other methods to recover what they are owed.

If granted, a sheriff officer will come into your home, value your possessions, and attach items apart from items you need for your day to day living, such as, clothes, furniture, televisions and children's toys.

The sheriff officer will normally remove any attached item from your home immediately. These items will be auctioned and monies sent to your creditor.

Inhibition

A creditor may ask the court for an inhibition against your home or other property, even if you own it jointly with someone else. This will stop you from selling or transferring ownership of the property or taking out any further loans against it. Inhibition does not allow your creditor to take possession of, or to sell, your property.

Your creditor will discharge or lift the inhibition if you pay them what is owed. The inhibition will lapse after 5 years unless your creditor renews it.

9. How can my creditor make me bankrupt?

Your creditor can petition the sheriff court to make you bankrupt.

They can do this if:

- you owe them at least £3,000 including any fees charges and interest added to the original debt; and
- they have sent you a copy of the Debt Advice and Information Package; and
- you are apparently insolvent. This means that you have not paid the debt after you have been served with either a charge for payment (see page 15) or a statutory demand (a statutory demand is a formal document issued by a creditor to demand payment of a debt within 21 days).

After the petition has been lodged with the court you will be sent a document called a warrant to cite which will tell you who is petitioning for your bankruptcy and the date on which a hearing to consider the petition will be held.

If you pay your creditor before the hearing date the petition will normally be dismissed.

Courts will not take payment at the hearing – you must pay before this date.

If you do not pay, you can attend court and can be represented, to say why the bankruptcy should not be awarded or to ask for time to settle the debt. The court can postpone the decision for a maximum of 6 weeks to allow you to pay or for longer if you intend to repay under the Debt Arrangement Scheme.

If you do nothing, the court will award the bankruptcy. A trustee will be appointed to administer your bankruptcy. Your trustee can sell your assets, including your home, and use the money to pay the costs of managing your bankruptcy and to pay your creditors as much as possible of what you owe them.

More detailed information is available from the accountant in bankruptcy who issues a range of publications. Contact details are at the back of this booklet.

10. What if my creditor is a local authority or HM Revenue & Customs?

This type of public creditor use a different route to pursue the money you owe them. Before taking any action they will serve you with a final notice. If you do nothing after receiving the final notice they can apply to the court for a summary warrant. A summary warrant is similar to a decree but there is no court hearing and you can not apply for a time to pay direction. A 10% surcharge is automatically added to the amount you owe when a summary warrant is granted.

Once a summary warrant has been issued, most public creditors will still allow you to negotiate to pay what you owe. If you do not pay, you may be served with a charge for payment (see page 15) and then debt enforcement actions can be taken against you or a petition may be presented to make you bankrupt page 23.

If you are served with a charge for payment to pay a local authority debt, you can apply to the court for a time to pay order.

Time to pay is not available for debts due to HM Revenue & Customs.

11. What can I do if I think my creditor or a sheriff officer has behaved incorrectly?

Your creditors and sheriff officers acting on the creditor's instructions must act within the law when trying to recover the money you owe.

There are laws governing situations where actions have been carried out without proper authority or where properly authorised action has been carried out in the wrong way.

If you believe that a sheriff officer has behaved wrongfully you can submit a complaint to the Advisory Council for Messengers-at-Arms and Sheriff Officers.

A money adviser or solicitor may be able to help you if you wish to complain.

You can also speak to Trading Standards Departments or the Office of Fair Trading.

Many creditors are aware of the Money Advice Liaison Group Mental Health Guidelines. Anyone with mental health issues who owes money should speak to a money adviser.

12. Further information

Useful contacts to help deal with your debt:

Money Advice Scotland
Telephone: 0141 572 0237
Website: www.moneyadvicescotland.org.uk
email: Info@moneyadvicescotland.org.uk

Citizens Advice Scotland
Telephone: 0845 450 0351
Website: www.cas.org.uk

Scottish Debtline
Telephone: 0800138 3328
Website: www.scottishdebtline.co.uk

Trading Standards Scotland
Website: www.scotss.org.uk

You can find local addresses and telephone numbers for these agencies in your phone book.

Other useful contacts

Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh
EH3 7YR

Telephone: 0845 113 0018
Website: www.lawscot.org.uk
email: cro@lawscot.org.uk

Shelter Scotland
Scotiabank House
6 South Charlotte Street
Edinburgh
EH2 4AW
Telephone: 0808 800 4444
Website: www.shelter.org.uk
email: info@shelter.org.uk

The Office of Fair Trading
23 Walker Street
Edinburgh
EH3 7HX
Telephone: 0131 220 5930
Website: www.oft.gov.uk
email: enquiries@oft.gov.uk

Institute of Chartered Accountants of Scotland
CA House
21 Haymarket Yards
Edinburgh
EH12 5BH
Telephone: 0131 347 0100
Website: www.icas.org.uk

The Society of Messengers-at-Arms and Sheriff Officers
11 Alva Street
Edinburgh
EH2 4PH

Telephone: 0131 225 9110
Fax: 0131 220 3468
e-mail: admin@smaso.ednet.co.uk
Website: www.smaso.org

To contact the Accountant in Bankruptcy:

The Accountant in Bankruptcy
1 Pennyburn Road
Kilwinning
Ayrshire
KA13 6SA

Telephone: 0845 612 6460

Fax: 0845 612 6470

Helpline: 0845 762 6171 (all calls charged at local rates)

email: helpline@aib.gsi.gov.uk (for general information about the bankruptcy process)

Website: www.aib.gov.uk

Publications available from the Accountant in Bankruptcy include:

Bankruptcy - Debtor's Guide

Bankruptcy - Creditor's Guide

Trust Deed Guide

Bankruptcy Restrictions Guide

You can use the following pages to record your income and expenditure and your debts. This will come in handy when you speak to a money adviser.

Household Income and Expenditure

Income	£	Expenditure	£
Wages – net – In your hand		Mortgage or Rent	
Partner's Wages		Endowment Policy	
Income Support		Secured Loan	
Jobseekers Allowance		Service charges	
Tax Credits		Home Insurance	
Child Benefit		Life Assurance	
DLA / Attendance Allowance		Gas	
Carer's Allowance		Electricity	
Other state benefits		Council Tax	
Pension		Children costs	
Maintenance paid to you		Prescriptions and health costs	
Other income		Travel	
Total Income		Total Expenditure	

Household Income and Expenditure

Income	£	Expenditure	£
		Fines	
		School meals	
		Work-related expenditure	
		Maintenance you pay to someone else	
		Telephone	
		TV licence	
		Hire purchase	
		Other loans and credit cards	
		Food and housekeeping	
		Clothes and shoes	
		Children's activities	
		Sport and leisure	
		Other expenditure	
Total Income		Total Expenditure	

This publication is available on request in community language versions and alternative formats. Please contact **0845 612 6460** for this to be arranged.

अनुसोध करने पर यह प्रकाशन सामुदायिक भाषा संस्करणों एवं वैकल्पिक स्वरूपों में उपलब्ध है। ऐसी व्यवस्था करने के लिए कृपया **0845 612 6460** पर संपर्क करें।

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