

Forms of Personal Insolvency

There are several types of insolvency procedure available to individuals in England, Wales and Northern Ireland, depending upon their circumstances.

- Bankruptcy;
- Individual Voluntary Arrangement;
- Debt Relief Order.

Bankruptcy

Bankruptcy is the administration of the affairs of an insolvent individual by a trustee in the interests of his creditors generally. The trustee's function is to realise the assets and distribute them among the creditors in a prescribed order of priority.

Bankruptcy proceedings commence with the making of a Bankruptcy Order by the Court. Immediately on making the Order the Official Receiver becomes receiver and manager of the bankrupt's estate, pending the appointment of a trustee. Where there are significant assets, an insolvency practitioner will usually be appointed to act as trustee, either by a meeting of creditors or by the Secretary of State for BIS.

An application for a Bankruptcy Order may be made by any creditor owed more than 750 or by the individual himself. Subject to certain exemptions, once the Order is made, control of the bankrupt's assets pass to the Official Receiver and then to the trustee. The bankrupt loses any right to this property apart from any equipment needed by him for use in his business, and basic domestic equipment such as clothes, bedding and furniture, and certain pension rights.

There are special rules regarding the bankrupt's home. Generally speaking, if the bankrupt has equity in a house, it will need to be realised. The law though discourages a trustee from taking steps to force a sale through the Court during the first twelve months of the bankruptcy where the bankrupt is married or has young children living with him. Rules introduced in April 2004 give the trustee three years from the date of the Bankruptcy Order to sell the house or otherwise deal with the bankrupt's interest in it. If he does not do so within that time, the property will revert to the bankrupt. Also if the value of the equity is less than £1,000 the trustee will not be able to sell it at all.

There are certain restrictions of bankruptcy which usually last until the bankrupt is discharged (although his assets remain with the trustee).

If the bankrupt has an income above his needs and those of his dependants, he may be required to make contributions of this “surplus” to his creditors for up to three years. Until his discharge, the trustee may also claim any property acquired by the bankrupt after the Bankruptcy Order, such as assets left to him in a Will.

During the bankruptcy the bankrupt is subject to certain restrictions. These include being unable to obtain credit of more than £500 from anyone without telling that person that he is an undischarged bankrupt. The bankrupt must not carry out business under a name different from that under which he was declared bankrupt without disclosing the fact that he is an undischarged bankrupt, and he may not act as a company director without the Court’s consent.

The bankrupt will usually be discharged from bankruptcy automatically after one year, or potentially sooner if the Official Receiver decides to close his file early. Once discharged, the bankrupt is released from his bankruptcy debts, with some exceptions such as Court fines, matrimonial debts and certain student loans. After he has been discharged, the bankrupt does not have any right to take back from the trustee any property that was part of his estate in bankruptcy, and the trustee will remain in office for as long as is necessary to sell the property and distribute the proceeds to the creditors.

The restrictions on a bankrupt may remain if the Official Receiver applies to Court to impose a Bankruptcy Restrictions Order or the bankrupt agrees to sign a Bankruptcy Restrictions Undertaking. These can last for up to 15 years.

Individual Voluntary Arrangement (IVA)

The IVA is a less formal procedure open to insolvent individuals (including those already subject to bankruptcy proceedings). The procedure is flexible and its exact nature varies from case to case, depending on the terms of the proposal. By entering into an IVA with the agreement in excess of 75% by value of the creditors who vote on it at a creditors’ meeting, the debtor may be able to order his affairs in a way which benefits his creditors but would not be possible under a bankruptcy; for example by an orderly disposition of assets, introduction of third party funds, contributions from future earnings or debt rescheduling. The agreement is overseen by a supervisor and is binding on all creditors whether they voted for it or not.

Except where the debtor is bankrupt when he makes the proposal, only a licensed insolvency practitioner can act as supervisor of an IVA. If the debtor is bankrupt, the Official Receiver can act as supervisor, and a simplified procedure called a ‘fast tract’ can be used, which does not involve a creditors’ meeting. It still requires a 75% majority of creditors to approve the proposal.



An IVA cannot affect the rights of secured (eg mortgagees) or preferential creditors, except with their express agreement.

The IVA's benefits are its flexibility, its lack of publicity compared with bankruptcy, and the fact that it may be cheaper to administer for the creditors than a bankruptcy and so is likely to increase return to the creditors.

Debt Relief Order (DRO)

These came into force on 6 April 2009 and can be applied for by an individual who:

- Is unable to pay his/her debts;
- Has total unsecured liabilities not exceeding £15,000;
- Has total gross assets not exceeding £300 (cars worth less than £1,000 are excluded);
- Has disposable income, after allowing for normal household expenditure, of not exceeding £50 per month;
- Is domiciled in England or Wales or has been resident here or has carried on business here for the last three years.

Application is made on line, via an approved intermediary, to the Official Receiver, and if the criteria are met (and a £90 fee paid) the DRO is made (without any reference to Court).

The DRO will generally last for 12 months, during which time the individual cannot:

- Obtain credit exceeding £500 without disclosing the DRO;
- Promote, manage or form a company, or be a director, without the permission of the Court;
- Carry on business in a name other than that on the DRO;
- Obtain more than one DRO in any six year period.

The DRO will be registered on the Insolvency Register and the Official Receiver will notify all creditors, but no other notifications will be issued unless the DRO is revoked or extended. No dividend is paid to creditors, nor may they take any enforcement action against the individual. At the end of the period the individual is free from all the debts scheduled within the DRO.

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