



Debtor's guide



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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 who 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 (AiB) website at **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 apply to 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 obtain 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, such as 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 which 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 (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.gov.uk. Details of your bankruptcy will remain on the RoI until at least two years after your trustee has completed their duties and obtained their discharge. The RoI lists details of Scottish bankruptcies (sequestrations), trust deeds and moratoriums only.

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. 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 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 criteria and also need to either have been in receipt of state benefits for at least six 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. 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 the amount of a contribution you will be required to pay during your bankruptcy. If you are awarded bankruptcy through MAP your DCO will fix your contribution amount as zero and you

will not be required to pay a contribution. A DCO generally lasts for 48 months or the equivalent weekly period. If your circumstances change before you are discharged from your bankruptcy a re-assessment of your income and expenditure will be completed. If this re-assessment confirms that you have a surplus income you will be required to pay a contribution each month for the remainder of the DCO period unless there is a further change to your circumstances.

In a bankruptcy awarded through MAP you will be discharged after six months (as long as you co-operate with your trustee). However, your trustee will remain in office for a further six months to finalise your bankruptcy. During this six 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;
- cannot engage in a business unless certain criteria are met.

If you do not comply with the above conditions, 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 means 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 a creditor and 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 15th 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 22nd 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 of 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 under the Debt Arrangement Scheme (DAS)

Apparent insolvency is constituted by a revoked Debt Arrangement Scheme debt payment programme (DPP). 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 for Sequestration.

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 have debts totalling at least £1,500, but no more than £17,000 for MAP. If your debts are over £17,000, or you 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 an established 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 five years
- you must pay the application fee.

You cannot apply for bankruptcy through MAP if you have been made bankrupt through MAP in the previous 10 years.

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.

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 tell 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 Rol. You then have six weeks, from the date the entry is made on the Rol, to decide if you want to proceed with your bankruptcy application. During this six week period your creditors cannot take any diligence (legal action) against you. **You may only submit a single moratorium application in any 12-month period whether you are considering a bankruptcy application, granting a trust deed or a entering a DAS debt payment programme.**

3.3.1 How much does it cost?

This depends on which route into bankruptcy you apply. It costs £90 to submit an application through the Minimal Asset Process (MAP) route or £200 for full administration.

If you apply through the MAP route but do not meet the relevant criteria, and if you still wish to proceed with your bankruptcy application you will be required to pay a further £110 and provide evidence which confirms you qualify under either the Apparent Insolvency or Certificate for Sequestration route.

There are no waivers or exemptions to the cost of an application and the fee 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 petition 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 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 petitions a sheriff for you to be made bankrupt, you will be notified by the person who has submitted the petition.

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 five working days of AiB receiving your application, if you meet the criteria. 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 criteria 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.

When someone 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 you can ask someone to represent you in court. At the hearing the sheriff will decide if you should be made bankrupt.

If you attend, or are represented, at the hearing you can provide information about your circumstances. The sheriff may decide to postpone their decision if they believe you can pay what you owe within six weeks or if you propose 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 through the MAP route The Accountant in Bankruptcy will be your trustee. If you apply for your own bankruptcy, you can decide your trustee. The Accountant in Bankruptcy through either the Apparent Insolvency, or Certificate for Sequestration route will be appointed as your trustee unless you have nominated an insolvency practitioner. An insolvency practitioner must agree to their appointment and give their consent 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 to be your trustee. If an insolvency practitioner is not nominated, The Accountant in Bankruptcy will be appointed as 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, their staff will administer your bankruptcy or your case may be passed to an insolvency practitioner who works on The Accountant in Bankruptcy's behalf. This will make no difference as 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, to whom you owe money, 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) - see section 4.8 below) which will last 48 months or the weekly equivalent (unless you have sufficient assets to be able to pay off your bankruptcy debts and costs in full). Every six 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 can 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 any elected commissioners.

You will be sent details of your 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 a sheriff about the costs, if you can show that you will financially benefit if the fees and costs are cut. The sheriff's decision will be 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:

- obtain 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; **or**
- 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 must complete a course of financial education to help enable you to manage your finances in future. This would only be the case if, in the opinion of your trustee, it would be appropriate, for example, if:

- you have been awarded bankruptcy within the five year period after last being made bankrupt.
- you were granted a protected trust deed within the five year period prior to being awarded bankruptcy.
- you participated in a debt management programme under the Debt Arrangement Scheme within the five year prior to being awarded bankruptcy.
- you are subject to, or under investigation with a view to, an application being made for a Bankruptcy Restrictions 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 have agreed 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 of value 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 owed 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 allowed to keep a vehicle reasonably required by you, if it has a value of no more than £3,000.

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

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

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 you live with family or friends.

What if I own my home?

If you own your home, or any other property, control of the property will transfer to your trustee along with your other assets. Your trustee will always carry out a search of the Land Registers to confirm the properties you own, or jointly own. Your trustee can sell your home or allow your spouse, partner, family member or friend to buy out your 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 while your trustee is administering your bankruptcy.**

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 (see Section 4.5.1). Your trustee will also ask you to explain what happened to any money you received for the property. If you have disposed of a property 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 or any other property 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 property.

Your trustee can agree to the joint owner(s) buying out their interest in the property. This can be in a lump sum payment, by instalments, or through a re-mortgage. 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 secured 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 enable you to also 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 due 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 while other policies such as 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 realise funds for 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 the action taken in respect of 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 if you do not keep up with the agreed payments.

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

Your trustee will want you to make a contribution from your income or pension to help towards the cost of your bankruptcy and your debts if you are considered to have 'surplus income' (ie more than you need to maintain a reasonable quality of life). They will not take a contribution from your social security benefits or tax credits.

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

The Accountant in Bankruptcy will make the Debtor Contribution Order (DCO) fixing your contribution amount. 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 six months. In this case the DCO end date will be extended 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 (conditions apply); 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 can request payment of your DCO direct from your employer. **Your trustee can 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 have 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 may only change if you gain employment or start receiving income other than benefits before you are discharged from bankruptcy.

Until your DCO ends, your trustee will send you a questionnaire every six months to review your financial circumstances. This form is called 'A Current State of Affairs'. You must complete and return this form. It is important to keep your trustee up to date with any changes such as change of address, new contact details, and variations to your income and expenditure. **If your trustee cannot get in touch with you they will deem that you are not co-operating and can request your discharge from bankruptcy is deferred indefinitely.**

If you are unhappy about your DCO you can request a review of how your contribution amount has been calculated. This review is carried out by AiB.

4.9 What happens to the money my trustee ingathers?

Your trustee will distribute the money ingathered and will invite claims from all your creditors. Your trustee will deduct their fees and costs and distribute any remaining funds to your creditors. The payments (known as dividends) made to your creditors may not pay off the full amount of your debts. Any remaining debts will be discharged and you will not have to pay them. However, there are some exceptions to this rule. 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 the funds ingathered from the sale of your assets and from contributions that you make from your income. These costs include the fees and costs of your trustee and these will be paid before any payments are made to your creditors.

When The Accountant in Bankruptcy is the trustee, costs that cannot be met from selling your assets or from contributions will be paid from the public purse. **However, the public purse will not make any payment toward the debts you owe 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 costs incurred in making the petition reimbursed. Their debt and the debts of other creditors are then considered equally after these costs have been settled.

When an insolvency practitioner is the trustee, costs that cannot be met by selling assets or from contributions will be met by the trustee. 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 you will be discharged from your bankruptcy one year after the date the bankruptcy was awarded. If you were awarded bankruptcy under the Minimal Asset Process (MAP), you will automatically be discharged after six 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 with your trustee. Your discharge can be deferred indefinitely if you do not co-operate with your trustee.

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

- you had liabilities over £17,000 at the date of your application for bankruptcy; or
- you have an income from which you can pay a contribution; or
- you had assets totalling over £2,000 or own any land or property at the date of your application for bankruptcy

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 six months after your award. If you have deliberately concealed assets or deliberately made a false declaration, then you may be made subject to a Bankruptcy Restrictions Order, and your discharge may be deferred indefinitely. See AiB's website for more details www.aib.gov.uk.

If your case is transferred from MAP to full administration as a result of you not providing accurate information you must pay the additional £110 balance of the AiB application fee. **You will not receive your discharge from bankruptcy until this additional fee is paid.**

Once you have been discharged, your bankruptcy will not be completed until your trustee is discharged from their duties. Your trustee will not be discharged until they have finished dealing with all of your assets and the administration of your case. **You must continue to 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 is one way which your bankruptcy can end sooner, this is called recall. Recall can be obtained by either, applying to the Accountant in Bankruptcy or to a sheriff. Your creditors can object to your bankruptcy being recalled.

4.12.1 Recall of bankruptcy by AiB

AiB can only grant a recall if you are able to pay all your debts and your trustee's fees and charges, in full. 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, you, or the persons previously mentioned, can appeal the decision to a sheriff.

4.12.2 Recall of bankruptcy by a sheriff

A sheriff will consider 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, as far as practicable, 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 for recall they will be liable for your trustee's fees and the relevant costs.

If recall is granted, it does not mean that your bankruptcy was not awarded and the details of your bankruptcy, with your recall date, will be registered in the public Register of Insolvencies for at least five years after your bankruptcy award date.

5. Bankruptcy Restrictions Order

If your trustee considers that your behaviour 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. A BRO imposes on a debtor the same restrictions that apply when they are bankrupt, for a further period after they have been discharged from bankruptcy. AiB can make a BRO for a minimum of two years and up to, but not including, five years. If AiB believe a longer BRO is appropriate then the Accountant will apply to a sheriff to make a BRO for between five and 15 years. **You will be committing a criminal offence if you fail to comply with the restrictions that are imposed by your BRO.**

Details of your BRO are recorded in the Register of Insolvencies. The following are examples of the behaviours that can be considered dishonest or blameworthy for which a BRO can be made:

- 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 behaviours for which a BRO can be made. 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 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 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 before 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 any pre-bankruptcy debts which remain unpaid after you have been discharged from your bankruptcy.

You are still responsible for paying any contributions agreed with your trustee.

A creditor can still take action against anyone else, such as your spouse, if they have joint liability for a debt.

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

You are also responsible for paying any debts which you have accrued after you were made bankrupt, such as any rent, council tax, gas, electricity or telephone bill arrears.

6.2 What happens to my assets after I am discharged?

Your bankruptcy does not end with your discharge. Your trustee will still have a duty to sell any of your assets with value, to ingather sufficient funds to pay your creditors. If, after they have been discharged, your trustee discovers that you had an asset of value during your bankruptcy which was not declared, they can apply to a sheriff to be reappointed as your trustee. If reappointed as trustee, they will be allowed 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 apply for their reappointment up to five years from the date of your bankruptcy should they become aware of any assets about which they did not previously know. You will be notified if your trustee applies to be reappointed and their reasons for this and you have the right to challenge their application in court.

If there are assets or money remaining at the end of your bankruptcy, after your trustee has recovered all of the costs of your bankruptcy and paid your creditors in full, plus interest, these 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. If your trustee formally abandons their interest, you will be entitled to sell the property if you so wish. Your trustee should make a decision about whether to sell your house within one year of your bankruptcy and must take action within three 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 your complaint with a member of their staff or the insolvency practitioner acting on their behalf, you should write to the Accountant in Bankruptcy detailing your complaint and you will receive a full written reply.

Insolvency Practitioners are regulated by an approved Recognised Professional Body (RPB). If your trustee is a private insolvency practitioner and you cannot resolve your complaint with them, you can report your complaint to their governing RPB. Details of their RPB may be found on your trustee's headed notepaper. If not, you should ask your trustee to give this information.

If you do not believe your trustee is acting in accordance with what the law allows them to do you can submit your complaint to The Accountant in Bankruptcy or, to the commissioner, if someone is appointed.

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

If you are dissatisfied with any action your trustee has taken, or is proposing, you can also ask a sheriff to look into the matter and direct your trustee on the action they must take.

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 Bureau 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 Bureau. 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 six 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. Contact information can be found at the back of this booklet or you can find a money adviser near you on the DAS website at: **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**.

Trust Deeds

A trust deed is a formal agreement 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 normally take court action against you for the debts you owed when the trust deed was granted 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 co-operate with them during the period of the trust deed.

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 rarely occurs.

Prior to entering a trust deed you can submit a moratorium application which will provide you with a six week period where your creditors cannot take any diligence (legal debt recovery action) against you. You can only submit one moratorium application within a 12 month period.

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 (for general help about the
bankruptcy process)

Website: 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

E-mail: info@moneyadvicescotland.org.uk

Citizens Advice Scotland

Telephone: 0808 800 9060

Website: www.adviceguide.org.uk/Scotland

National Debtline Scotland

Telephone: 0808 808 4000

Website: 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 Accountants of Scotland

CA House

21 Haymarket Yards

Edinburgh

EH12 5BH

Telephone: 0131 347 0100

Website: 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

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

E-mail: lawscot@lawscot.org.uk

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lub w wersji z powiększonym drukiem, prosimy o kontakt: **0300 200 2600**

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

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