

Insolvency Service



# How to make someone bankrupt

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**This leaflet:**

- answers the questions you are most likely to ask about how to make someone who owes you money bankrupt;
- explains what happens after the bankruptcy order is made.

If you want to make yourself bankrupt, please read our publication 'How to petition for your own bankruptcy'. If a company or firm, rather than an individual, owes you money, please read our publication 'How to wind up a company that owes you money'.

This publication is only a guide, so you may also want to read the relevant legislation in the Insolvency (Northern Ireland) Order 1989 and the Insolvency Rules (Northern Ireland) 1991 as amended.

**What is bankruptcy?**

The High Court can make a bankruptcy order against an individual who fails to pay his/her debts. A bankruptcy order makes sure that the assets of the bankrupt are shared out fairly among the creditors and imposes certain restrictions on the bankrupt. Bankruptcy does not necessarily mean that the debts of the bankrupt will be paid.

**Where can I get specific advice about dealing with someone who owes me money?**

Before you take any action to put an individual into bankruptcy, you should get your own legal or financial advice about bankruptcy and the other options available to you.

The Insolvency Service and the Court cannot advise on specific insolvency problems, for example whether you should make someone bankrupt or whether you should look at alternatives. You can get advice from your local Citizens Advice Bureau, an authorised insolvency practitioner, a solicitor, a qualified accountant, or a reputable financial adviser. There is a list of authorised insolvency practitioners available on our website at [www.insolvencyservice.detini.gov.uk](http://www.insolvencyservice.detini.gov.uk). Our website also provides a link to the Citizens Advice Bureaux website.

**How is a bankruptcy order made?**

You apply to the High Court using a 'bankruptcy petition'. A bankruptcy petition is usually presented by a creditor on the grounds that the debtor cannot pay his/her debts. A bankruptcy petition can also be presented by either the debtor or, if the debtor has already made a voluntary arrangement to deal with the debt, by the supervisor of this arrangement.

## **How do I prove to the High Court that the debtor cannot pay his/her debts?**

The High Court will regard an individual as being unable to pay his/her debts if either of the following occurs:

- A creditor who is owed more than £750 serves a 'statutory demand' for the money due and it is not paid or secured (for example, by a guarantee to provide something else of the same value); or a settlement is not agreed, within 21 days, and the debtor has not applied for the statutory demand to be set aside.

You can get a statutory demand from the Bankruptcy and Chancery Office at the High Court or from our website at [www.insolvencyservice.detini.gov.uk](http://www.insolvencyservice.detini.gov.uk) in the forms section.

- Form 6.01 - to be used for a debt for a specific amount which is payable now;
- Form 6.02 - to be used for a debt of a specific amount which is payable now following a judgment or order of court;
- Form 6.03 - to be used for a debt that is payable in the future.

The completed form must usually be served on the individual in person. The creditor must have proof of service, so it is usual to employ a process server to carry out this function (these are listed in Yellow Pages under 'detective agencies'). The High Court is not involved in the issuing of statutory demands, so no court fee is payable.

- A creditor who is owed more than £750 obtains a court judgment against the individual it is lodged for enforcement with the Enforcement of Judgements Office (EJO), and a certificate of unenforceability is issued under Article 19 of the Judgements Enforcement (Northern Ireland) Order 1981 because the EJO is unable to seize enough assets to clear the debt. You can get the forms to issue an application for enforcement from the EJO. Further information on this procedure can be obtained from the Enforcement of Judgements Office, Bedford House, Bedford Street, Belfast.

## **In which court should I present a bankruptcy petition?**

Bankruptcy petitions are presented in the Northern Ireland High Court, Royal Courts of Justice, Chichester Street, Belfast.

## **How do I present a bankruptcy petition?**

You cannot just complete the petition and present it to the High Court. Insolvency law requires that:

- the petition be served on the debtor; and

- affidavits are lodged at court verifying the bankruptcy petition and that it has been served on the debtor.

You may have to make further affidavits if, for example, you wish to withdraw the petition. Therefore, to ensure that you meet all legal requirements, it is usual to ask a solicitor to issue a bankruptcy petition.

Here is a summary of the procedure (also see Annex A):

- You as a petitioner must pay a deposit to the Department of Enterprise, Trade and Investment (see below)
- As the petitioner, you must complete a bankruptcy petition. You should use either:
  - a. Form 6.07 - 'Creditor's bankruptcy petition on failure to comply with a statutory demand for a liquidated sum payable immediately'; or
  - b. Form 6.08 – 'Creditor's Bankruptcy Petition on Failure to comply with statutory demand for a liquidated sum payable a future date'; or
  - c. Form 6.09 - 'Creditor's bankruptcy petition on Certificate of Unenforceability of a Judgement'.
    - i. Use form 6.07 if you have issued a statutory demand but the debtor has not complied with it.
    - ii. Use 6.08 if you have issued a statutory demand requiring a debtor to establish to your satisfaction that there is a reasonable prospect of his being able to pay the debt when it falls due but the debtor has not complied with this.
    - ii. Use form 6.09 if the Enforcement of Judgements Office has been unable to seize enough assets to clear the debt.
- You must also complete an affidavit (form 6.15) verifying the matters giving rise to the petition. If a statutory demand has been issued, you must complete a further affidavit verifying that the statutory demand has been served (form 6.13 or 6.14).
- The petition is filed (handed in) at Court and 3 copies made for the following purposes:
  - one to be served on the debtor (see below);
  - one to be attached to the affidavit (form 6.15) verifying the matters that led to the petition; and
  - one to be served on any supervisor of an individual voluntary arrangement of the debtor.

A court fee is payable on presentation of the petition (see below).

- The Court then fixes the time and date when the petition will be heard. Normally there must be at least 14 calendar days between the petition being served on the debtor and it being heard in court.

- A copy of the petition must be served on the debtor in person. If this is not possible the Court can, on application, order that the petition be served on the debtor by alternative means, such as by post. This is known as 'substituted service'. A copy must also be sent to any supervisor of a voluntary arrangement. Immediately after service, the petitioner must file at Court an affidavit verifying service of the petition (forms 6.18/6.19).
- If the debtor wishes to oppose the petition, he/she must give the court a notice specifying the grounds on which he is objecting at least 7 calendar days before the hearing.
- On the day of the hearing, you must prepare a list of people intending to appear at the hearing for the court, using form 6.23.
- At the hearing, you (the petitioner), creditors (who have told you they intend to appear), the debtor and any supervisor of any voluntary arrangement all have the right to be heard. The court can then:
  - stay (delay or stop) the proceedings;
  - dismiss the petition;
  - adjourn (postpone) the hearing; or
  - make a bankruptcy order.

All the forms are in the Insolvency Rules (Northern Ireland) 1991 as amended, and you can get them from legal stationers - see Yellow Pages. Some of the forms are available on The Insolvency Service website at <http://www.insolvencyservice.detini.gov.uk/> where you can print them off for completion.

### **How much will it cost to make someone bankrupt?**

- Petition deposit of £370 towards the costs of administration of the bankruptcy - this is a one-off payment towards the costs of the bankruptcy, and if the bankruptcy has enough assets, the petition deposit will be refunded to you
- Court fee of £150.
- The cost for advertising the petition in the Belfast Gazette using a process server for the service of a statutory demand and the petition.
- Any costs for instructing a solicitor.

### **What happens after someone is bankrupt?**

After making a bankruptcy order, the Court usually appoints the Official Receiver (a civil servant in The Insolvency Service and an officer of the High Court) to be receiver and manager of the bankrupt's affairs. The Official Receiver has responsibility from the date of the bankruptcy for administering the bankruptcy and protecting the bankrupt's assets.

The Official Receiver will also act as trustee of the bankruptcy estate unless an insolvency practitioner is appointed. If this happens, the Official Receiver still has a duty to investigate the bankrupt's affairs. So 2 people may be involved in the bankruptcy:

- the trustee, who is responsible for selling the bankrupt's assets and distributing the money among the creditors; and
- the Official Receiver, who has a duty to investigate the bankrupt's affairs.

Certain restrictions and duties are imposed on a bankrupt - for further details, please read our publication 'Guide to Bankruptcy'.

### **Can anyone appeal against or stop the bankruptcy?**

- The court may 'annul' (cancel) a bankruptcy order. The bankrupt (and anyone else) can apply for an order to be annulled if:
  - a. the court did not have all the relevant facts when making the bankruptcy order and would not have made an order had it known those facts; or
  - b. the bankrupt can pay all the debts in full; or
  - c. the bankrupt enters into a voluntary arrangement with the creditors.
- An application to annul the bankruptcy order can be made at any time (even after the bankrupt's discharge).
- The bankrupt can apply for the 'rescission' (cancellation) of the bankruptcy order, if there has been a change in circumstances since the bankruptcy order was made. A rescission will usually only be granted in exceptional circumstances and normally requires the consent of the petitioning creditor.
- The bankrupt can 'appeal' against a bankruptcy order on a point of law. As a result of an appeal, the court can cancel the bankruptcy order or otherwise change its decision.
- The bankrupt should appeal within 4 weeks of the order being made.
- Bankruptcy proceedings can be 'stayed' (stopped). The bankruptcy proceedings are usually only stayed while waiting for an application for an annulment, an appeal or a rescission of the bankruptcy order, or while an individual voluntary arrangement is being proposed.

### **Where can I get more information?**

Our publications give more details of insolvency procedures. Please see 'Guide to Bankruptcy' and 'A Guide for Creditors'. To obtain further copies of this booklet please contact the Insolvency Service at:

Fermanagh House,  
Ormeau Avenue,  
Belfast, BT2 8NJ.

Tel: 028 9025 1441

Fax: 028 9054 8555

E-mail: [insolvency@detini.gov.uk](mailto:insolvency@detini.gov.uk)

You can also obtain further copies from our website:  
[www.insolvencyservice.detini.gov.uk](http://www.insolvencyservice.detini.gov.uk)

## **Bankruptcy terms - what do they mean?**

**Affidavit** - a statement in writing and on oath, which is sworn before an authorised person, e.g. an authorised solicitor or court official.

**Annulment of a bankruptcy order** - a court order that cancels the bankruptcy order.

**Bankruptcy order** - a court order that places an individual into bankruptcy.

**Bankruptcy petition** - a request to the court for an individual to be placed into bankruptcy, giving the reasons why.

**Creditor** - someone to whom the individual owes money.

**Debt** - the money the individual owes.

**Debtor** - the individual who owes money.

**Discharge** - freed from bankruptcy or freed from the restrictions of bankruptcy.

**Enforcement** - if a creditor has obtained judgment against the individual and has not been paid, the creditor can apply to the Enforcement of Judgements Office (EJO), which gives the EJO the power to seize the individual's goods to pay the debt.

**Individual Voluntary Arrangement (IVA)** - a formal arrangement by which a debtor pays his/her creditors, either in full or in part. The debtor would need to apply to the court with the help of an authorised insolvency practitioner, who would supervise the arrangement and pay the creditors in accordance with the accepted proposals.

**Insolvency practitioner** - an authorised person who specialises in insolvency, usually an accountant or solicitor. Insolvency practitioners are authorised by the Department of Enterprise, Trade and Investment or one of certain recognised professional bodies.

**Liabilities** - the money the individual owes.

**Trustee** - the trustee is either the Official Receiver or an insolvency practitioner who takes control of the bankrupt's assets. The trustee's main duties are to sell these assets and share the money out among the creditors.

**Rescission** - one of the ways in which the court can cancel the bankruptcy

order.

**Recognised professional body** - a professional body that the Department of Enterprise, Trade and Investment allows to authorise a person to act as an insolvency practitioner.

**Verify** - confirm that a document or statement is true.

***This leaflet provides general information only. Whilst every effort has been made to ensure that the information is accurate, it is not a full and authoritative statement of the law and you should not rely on it as such. The Insolvency Service cannot accept responsibility for any errors or omissions whether as a result of negligence or otherwise. The Insolvency Service cannot provide legal advice. You are advised to seek professional advice about the application of the law to yourself or your business.***

## Annex A - Petitioning for bankruptcy

To prove that you have grounds to petition, you must be owed at least £750 and:

Either

**Issue a statutory demand against the debtor** using forms 6.01, 6.02 or 6.03, which should be served on the debtor usually using a process server (no court fee is payable)

Or

**Have an 'certificate of unenforceability'** – where you obtain a court judgement and the Enforcement of Judgements Office is unable to seize enough of the debtor's goods to pay the debt (court fee is payable)

If the debtor does not or cannot clear the debt

Pay £370 deposit to the Insolvency Service

### Complete the petition for bankruptcy

You should use form 6.07, 6.08 or 6.09 and make 3 more copies as follows:

Copy 1 – to be personally served on the debtor

Copy 2 – to give to the person who supervises any voluntary agreement of the debtor

Copy 3 – to be attached to an affidavit verifying the petition (*form 6.15*) and, if applicable, an affidavit saying that a statutory demand has been served (*form 6.13 or 6.14*)

### File the petition at Court

The original petition and the 3 copies should be given to the Court with form 6.15 and 6.13/6.14 (if applicable), together with the money for the court fees.

### The Court fixes a time and date to hear the petition

These details will be written on the petition and the copies.

### Serve the petition on the debtor

The petition should usually be served on the debtor using a process server, and a copy must also be served on any supervisor of a voluntary arrangement of the debtor. You must then file at court an affidavit confirming that the petition has been served on the debtor (*form 6.18 / 6.19*).

### Day of the hearing

You must prepare a list of people intending to appear at the hearing (*form 6.23*). At the hearing, the court will decide whether to make a bankruptcy order.