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Insolvency Service

Guidance

Alternatives to Bankruptcy

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Information on alternatives to bankruptcy

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This document is also available in an accessible format if required i.e. Braille, large print, audio cassette or in a minority ethnic language

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Introduction

Bankruptcy is a serious matter. If you are made bankrupt you will have to give up, with limited exceptions, any possessions of value and your interest in your home (the part of its value that you own). Bankruptcy will also impose certain restrictions on you and will almost certainly involve the closure of any business you run and dismissal of your employees - though you can start to trade again, subject to restrictions. For more information, see our leaflet 'A guide to bankruptcy'.

You do not have to become bankrupt just because you are in debt.

This leaflet tells you about alternatives to bankruptcy. If you have money troubles and can't pay your creditors (the people you owe money to), it may be better for you and your creditors to use one of these alternatives instead of you becoming bankrupt.

The Northern Ireland Business Website has an online diagnostic tool which may help you with deciding the best approach for dealing with your debts. Although the tool is primarily aimed at those who are self employed it can be used by anyone.

What are the alternatives to bankruptcy?

INFORMAL ARRANGEMENTS, also known as 'family arrangements' or a 'debt management plan/agreement'

If you know that you cannot pay all your debts when they are due, you could consider writing to each of your creditors to see if you can reach a compromise. Include a timetable of when you will repay them. The disadvantage with an informal arrangement is that it is not legally binding so your creditors could still ask you to pay in full at some later date. Your local Citizens Advice Bureau can advise on and help you make this kind of arrangement. You can find details of your local bureau on the website https://citizensadvice.org.uk/about-us/how-we-provide-advice/advice/search-for-your-local-citizens-advice/

There are other organizations that can help you make an informal arrangement, but some will charge a fee, so always check whether they charge when you contact them.

Informal arrangements are suitable if:

- you have very little money to repay your debts; or
- you are having debt problems but are likely to be able to make the normal repayments again in a few months; or you cannot afford the full monthly repayments but can afford a smaller regular amount each month.

The first step in an informal arrangement is to work out how much you can afford to pay your creditors each month after you have paid essential living costs. You should write to each creditor explaining the situation. Ask them to accept the lower payment until your situation improves and you can make the full repayments.

Advantages of an informal arrangement

- You, a Citizens Advice Bureau or other advice agency can set up an arrangement quickly and for free (always check first if they charge a fee).
- It offers an effective solution if your problem is short term.
- It offers an effective solution if your creditors are prepared to accept lower payments.

Disadvantages of an informal arrangement

- Your creditors don't have to accept your offer of reduced payments.
- If they do accept, they can change their minds at any time.
- They may accept it as a short-term measure only, unless they know from the outset that your situation is unlikely to change.

ADMINISTRATION ORDERS

If one or more of your creditors has obtained a judgment against you, the Enforcement of Judgments Office (EJO) may make an administration order. Under this Order you will make regular payments to the EJO towards the total sum you owe your creditors.

Your total debts must not be more than £5,000 and you will need enough regular income to make weekly or monthly repayments. You do not have to pay a fee for an administration order but the EJO will take a small percentage towards its costs from the money you pay. If you do not pay regularly, the order could be cancelled and your creditors will be able to take action against you separately to get back what you owe them.

If your circumstances change and you cannot pay as ordered, you can apply to the EJO to change the order. The EJO will tell you what to do. Further information on administration order procedure can be obtained from:
The Enforcement of Judgments Office,
Bedford House,
Bedford Street,
Belfast

How does an administration order work?

The first step in an administration order is to apply to the Enforcement of Judgments Office. For information on how to do this, you can contact your local Citizens Advice Bureau. You will need to show that you cannot pay your debts and that you have a court judgment against you.

The EJO will make an order based on what you can afford. It will state how much you are to pay each month and how long the arrangement will last. The order will either state that you must go on paying until your debts are cleared in full, or will ask you to repay only a percentage of your debt. The order may also state that the amount you repay each month must be reviewed from time to time.

You make monthly payments to the EJO and the EJO distributes the money to your creditors.

The EJO charges you for this service - the fee may be up to 10% of your total debt. The EJO takes a percentage of this fee every time it pays a share to the creditors.

Advantages of an administration order

- You only have to make one monthly payment to the EJO.
- The payment you make is based on what you can afford.
- Once the order is in place, your creditors cannot take any action against you without first asking the EJO.

Disadvantages of an administration order

- If you miss a payment, the arrangement may fail.
- You can apply for an order only if you owe less than £5,000 and have a court judgment against you.
- Having an administration order may make it difficult for you to get credit.

INDIVIDUAL VOLUNTARY ARRANGEMENTS (IVAS)

An IVA is a formal version of the informal/family arrangement described above. It is generally appropriate for people who cannot make their monthly repayments in full but who do have some money to give their creditors each month. If your creditors agree to an IVA, some of your debt may be written off. An IVA is legally binding on you and your creditors, and if you break the terms of the IVA you could be made bankrupt.

An IVA begins with a formal proposal to your creditors to pay part or all of your debts. You will need the help of a licensed insolvency practitioner (IP) to draft the proposal.

How does it work?

First, you will need to find an IP who is prepared to act for you in relation to an IVA. You can access the names of IPs in your area on our website.

For an IVA you will have to give the insolvency practitioner (also known as your nominee) details of your current financial situation), including assets such as any share you may own in a property. Based on the information you give, the IP calculates your essential living expenses and deducts them from your income; the rest is your disposable income. Most IVAs involve you making monthly payments to the IP out of your disposable income. However, the arrangement may draw on other assets such as the value of any share you may have in a property. You and your IP draft a proposal for your creditors, which will set out how much you intend to pay into the IVA, and what if any, other assets are included in the funds you can draw on.

- If your creditors are pressing for payment or threatening legal action, your IP can help you apply to the Court for an “interim order”. This prevents your creditors presenting or proceeding with a bankruptcy petition against you while the interim order is in force. It also prevents them taking other action against you during the same period without the Court’s permission. However it is possible to put a proposal to creditors for an IVA without applying for an interim order.

- Once your proposal is drawn up, the IP will have to decide whether it has a reasonable chance of being approved and implemented. If it has, the IP will arrange a meeting of creditors to consider it, and will write to everyone registered as a creditor giving the date of the meeting and details of the proposals. All of your creditors are bound by an approved IVA, so it is important that you have accurate records of all your creditors’ names and addresses so that they can be contacted. If a creditor is missed out (an unknown creditor) they are still bound by the arrangement. At the meeting, the creditors vote on whether to accept your proposals. If creditors holding more than 75% of your total debt vote in favour, your proposal is accepted. Once approved, the arrangement will bind all creditors, even those who did not receive notice of the meeting. However, once they become aware of the IVA, an unknown creditor may apply to the Court to challenge the approved IVA and the Court has the power to revoke (cancel) it.

The creditors' meeting should also approve the appointment of the IP as supervisor of the IVA. The IP then supervises the arrangement and pays the creditors in accordance with the accepted proposal.

What will an IVA cost?

You should ask several practitioners what they charge before you ask any of them to act for you. Most Insolvency Practitioners are accountants or solicitors and their fees are similar to those they would charge for other kinds of work. R3 requires an IP to give you a leaflet "Is a voluntary arrangement right for me?" You can also get this leaflet from the R3 website http://www.r3.org.uk/.

When can you make an IVA?

It is usually better and cheaper for you to set up an IVA before you become bankrupt but you can propose one afterwards.

If you are bankrupt, you could also ask the Official Receiver to help you prepare a Fast Track Voluntary Arrangement (FTVA). FTVAs are only available once you are bankrupt.

A separate leaflet called "Fast-track voluntary arrangements" is available on our website – www.economy-ni.gov.uk/topics/insolvency-service

Are there any restrictions when you enter an IVA?

Generally speaking no, but the Court cannot make an interim order if you have applied for one in the previous 12 months. There is no maximum or minimum level of debt and no maximum or minimum level of repayments, except what is acceptable to your creditors. An IVA may particularly suit you if:

- you have friends or relatives prepared to help pay or contribute towards paying your debts;
- you have enough disposable income to be able to pay regular sums to creditors.

What are the advantages of an IVA compared to going bankrupt?

Generally an IVA gives you more say in how your assets are dealt with and how payments are made to your creditors. You may be able to persuade your creditors to allow you to keep certain assets (such as your home), as long as you act responsibly and flexibly to reach agreement with them.

You also avoid the restrictions that apply to a bankrupt (for details of these, see our leaflet "A guide to bankruptcy").

Because you will not have to pay some of the fees and expenses which are charged in a bankruptcy, the overall costs are likely to be less.

Will the IVA be advertised in a local paper?
An IVA is not advertised in a local paper. However, details of your agreed IVA are entered on the Individual Voluntary Arrangement Register, an online register maintained by the Insolvency Service. This may affect your ability to get credit.

How long will the IVA last?
How long an IVA lasts will depend on your proposal; most IVAs are based on monthly contributions from your disposable income and generally last 5 years.

The IVA will end when it is successfully concluded; that is, when all the sums set out in the proposal are paid. If you cannot keep to the terms of the arrangement the IP will end it by giving notice to all your creditors that the arrangement has failed. The IP could then apply for a bankruptcy order against you.

Can a member of a partnership propose an IVA?
Yes. As a partner you can propose an IVA, which must take into account the claims that the creditors of the partnership have against you personally. It will not affect the rights of the partnership creditors to take action against the partnership itself or against any other partner.

Alternatively, you and your partner(s) may wish to propose an arrangement involving the partnership creditors and the personal creditors of each partner. You can do this in
2 ways:

- the partners may propose interlocking voluntary arrangements, with each partner making proposals for their own debts and the debts of the partnership; or

- the partnership may propose a partnership voluntary arrangement (usually accompanied by voluntary arrangements for each partner).

An IP must help you to make proposals to creditors. He or she will be able to advise you which procedure to follow.

Warning: If you enter an IVA but fail to give full details of your assets and debts, you could be committing a criminal offence.

For more information please see the following leaflets, which are available on the Insolvency Service website
www.economy-ni.gov.uk/topics/insolvency-service

- Fast Track Voluntary Arrangements

- Guide to Bankruptcy

On the R3 website (http://www.r3.org.uk/) you can find the following leaflet:
Is a voluntary arrangement right for me?

DEBT RELIEF ORDERS (DROS)

A DRO is a formal insolvency process that is aimed at people who cannot pay their debts and who have no assets, a low income, no other access to debt relief and no prospect of the situation improving. If people do have assets, or there is a possibility of an improvement in financial circumstances, a DRO is not an appropriate solution.

How does it work?

To apply for a DRO you must meet the following conditions:

- You must be unable to pay your debts.
- Your total debts must not be more than £20,000.
- Your total gross assets must not be more than £1,000.
- Your surplus income, after taking off normal living expenses, must not be more than £50 per month.
- You must be domiciled (living) in Northern Ireland, or at any time during the last 3 years, have been resident or carrying on business in Northern Ireland.
- You must not have previously been subject to a DRO within the last 6 years.
- You must not be involved in another formal insolvency procedure at the time of application for a DRO, such as:

  a) a current bankruptcy;

  b) a current individual voluntary arrangement;

  c) a current bankruptcy restrictions order or undertaking;

  d) a current debt relief restrictions order or undertaking;

  e) an interim order;

  f) where you are currently petitioning for bankruptcy (asking the Court to make you bankrupt) if the Court has not referred you to the DRO procedure as a more suitable method of debt relief;

  g) where a creditor is currently petitioning for your bankruptcy (asking the Court to make you bankrupt), if you have not got the creditor's permission before applying for a DRO.

How do you apply for DRO?
DROs are run by the Insolvency Service in partnership with skilled debt advisers, called approved intermediaries, who will help you to apply to the Insolvency Service for a DRO. You cannot apply for a DRO without the assistance of an approved intermediary.

You must first seek financial advice from a debt adviser. If you appear to be suitable for a DRO, an approved intermediary (who may not be the debt adviser who gave you advice at first) will be able to help you complete the online application, once it is considered that a DRO is appropriate for you.

An approved intermediary is someone who has been approved by one of the competent authorities.

Details of the competent authorities can be obtained by calling the Insolvency Enquiry Line on 028 9054 8531, or from the Insolvency Service website at,
www.economy-ni.gov.uk/topics/insolvency-service

What does a DRO cost?
The cost is currently £90, which must be paid in full in a single cash payment. This payment must be received by the Official Receiver before he will consider your application.

Your approved intermediary will tell you how to pay.

How long does the DRO period last?
The DRO will place a moratorium period upon the debts included in it. This means that creditors who are owed debts listed in the DRO cannot take any action for repayment of their debts during this moratorium without the permission of the Court. Once this period has ended (usually after 12 months) the debts listed in the DRO will be discharged and you will be free from those debts.

There are some debts that cannot be included in a DRO so you will still be responsible for paying these debts.

Are there any restrictions when you enter a DRO?
You will be subject to the same restrictions as a bankrupt during the DRO period.

For more information on these restrictions and the debts which cannot be included in a DRO see our leaflet "Guide to Debt Relief Orders".

Will the DRO be advertised?
DROs are not advertised in any newspaper or other publication. However, details of your DRO will be entered in a Register maintained by the Official Receiver, which is open for public inspection.

These details will be removed 3 months after your DRO has ended.

For more information on DROs, see our leaflet "Guide to Debt Relief Orders", you can obtain copies by calling the Insolvency Service on 028 9054 8531.
Alternatively, you can download the leaflet from our website:
www.economy-ni.gov.uk/topics/insolvency-service

You can obtain further copies of this booklet from:

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