

BANKRUPTCY LAW – NORTHERN IRELAND

This factsheet applies in Northern Ireland only. Please ensure you read the correct fact sheet.

1. Introduction

Bankruptcy is a serious matter. If a party either declares themselves bankrupt, or is declared bankrupt at the instigation of a creditor (a party to whom they owe money) they will have to give up (with a few exemptions) any possessions of value, including any interest or value they may have in their own home.

Bankruptcy can be a way of dealing with mounting debts that a party (known as a debtor) is incapable of paying.

The effect of the bankruptcy on an individual will be to free them from their overwhelming debts to enable them to make a fresh start, albeit with certain restrictions in place, once they have made certain payments to their creditors following realisation of their assets.

All petitions for bankruptcy in Northern Ireland must be presented at the Bankruptcy and Companies Office of the High Court.

2. Debtor's Petition

A debtor can petition the High Court to have themselves made bankrupt. In Northern Ireland there is no minimum amount which an individual must be in debt in order to apply to be made bankrupt. However, considering the significant implications that bankruptcy entails, of course it should be considered as a last resort and one would not generally wish to do if the indebtedness is not significant

If it is decided that bankruptcy is the most applicable option, in order to commence the proceedings, under the [Insolvency Rules \(NI\) 1991](#) two forms will need to be completed, and sent to the High Court, along with the applicable fee. These are:

Bankruptcy petition (Form 6.30)

The Prescribed Form can be found [here](#).

This form is the formal request to the court to make the debtor bankrupt, it includes a declaration that the debtor is unable to pay their debts, and reasons for the individual's request to be made bankrupt.

Statement of affairs (Form 6.31)

The Prescribed Form can be found [here](#).

Guidance on how to complete this form can be found [here](#).

The purpose of this form is to list, in detail, all of the debtor's assets, as well as to set out all of the debts which they owe, including details of to whom each debt is owed. This form contains an affidavit which must be witnessed by a solicitor in order to verify its accuracy and completeness.

The Department for the Economy have published useful guidance to detail the process in a step by step format, which can be found [here](#) and [here](#).

3. The cost of a Debtor's Petition

There are three fees the debtor must pay when they take their petition and statement of affairs to the court:

- A. a deposit of £525.00 to administer the bankruptcy. This is payable to the Official Receiver, who will be appointed as the officer of the court who will manage the bankruptcy.
- B. a court fee of £151.00. The courts may waive or reduce this fee if the applicant is on income support or has other pertinent circumstances, and will be able to advise if this is the case.
- C. the solicitor who witnesses you swear the contents of the statement of affairs will usually charge around £7.00.

Please note that the above fees are subject to change.

4. Creditor's Petition

In addition to the debtor applying to make themselves bankrupt, it is also open to 3rd party creditors (those to whom the debtor owes money) to apply to court to make a debtor bankrupt. This is known as a creditor's petition.

However, this can only be done if two criteria are met:

1. The debt owed to the creditor must be of a liquidated (that is to say fixed) sum of **not less than £5,000**. Sums of less than this cannot proceed to the bankruptcy petition stage; and
2. A creditor's petition can only be based on non-compliance with a statutory demand (and where that demand has **not** been set aside).

Further guidance on this is available [here](#).

5. What is a Statutory Demand?

This is a document prepared by a creditor requiring the debtor to pay the outstanding amount, which must exceed £5,000.

Although the court is not involved initially, there is a special type of form that must be used, called a "prescribed form".

You can get a statutory demand form from the Bankruptcy and Chancery Office at the High Court or by accessing the below links online. The necessary forms for the statutory demand are:

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

This is an important part of the process to get right, and if the creditor is in doubt, they should obtain legal advice on their next steps. Once the form has been completed the creditor must then bring the statutory demand to the debtor's attention. To do this, personal service of the demand is recommended.

Please note that statutory demands generally can't be used if the debt is over 6 years old.

If the debtor fails to comply with the statutory demand, by either paying the amount in full within 21 days, or by having it set aside (see below) then he/she is deemed to be unable to pay the debt and liable to be made bankrupt. The day when the demand was served is ignored for the purpose of calculating this time period.

Further guidance and details regarding Statutory demands can be found by accessing the link [here](#):

6. Setting Aside a Statutory Demand

A debtor can be made bankrupt if they ignore a statutory demand.

However, in certain circumstances, an application can be made to the court to set aside the statutory demand.

The application should be made using **[Form 6.04](#)**.

No fee is payable provided the application is made on time.

The written evidence in support of the application to set aside the statutory demand should include a copy of the demand itself, and state the date on which it came into the applicant's hands. It should also state the grounds on which it should be set aside as per Rule 6.005, of the [Insolvency Rules \(Northern Ireland\) 1991](#).

The debtor must apply to the Bankruptcy and Companies Office of the High Court to set aside the statutory demand.

The application must be made within 18 days after service of the demand. If the application is made after this date, the debtor will need to supply the court with reasons for the delay, and it is not guaranteed that the court will accept these and allow the application to continue.

Common grounds used to set aside the statutory demand are as follows:

- The debtor has a separate claim against the creditor which is equal to or more than the debt being pursued in the statutory demand.
- The debt the creditor is pursuing is already secured against a property that is worth the same or more than the debt.
- The total unsecured debt in the statutory demand totals below £5,000.
- The debt is disputed, and there are reasonable grounds for dispute.
- The debtor can apply to the court for a time order if the debt is regulated by the Consumer Credit Act 1974, giving them more time to repay the debt.
- The court is satisfied on some other grounds that the demand ought to be set aside.

What happens next?

The debtor will usually hear back from the court within 10 working days of applying.

If the court does not agree with the application to set aside, it can and likely will give the creditor permission to issue a bankruptcy petition.

If the court agrees with the application, a hearing will be arranged.

What happens at the hearing?

Once the hearing has been listed, both parties will present their case to a registrar or judge. They will either make a decision then, or the parties may be asked to give more evidence at another hearing. The parties will usually get a decision at the end of the final hearing.

If the debtor wins their case, they will get an order from the court setting aside the statutory demand. The deadline for paying the debt will be suspended.

If the demand is set aside, costs can be awarded against either party.

However, If the debtor loses, they'll have to pay back the debt within the 21 day time limit.

In addition, the creditor can apply to bankrupt the debtor if the monies are not paid in time and the debt is £5,000 or more.

7. Bankruptcy Petition

If the debt hasn't been satisfied within the time limit required, and/or the statutory demand has not been successfully set aside or responded to, then the creditor can make a formal petition to court to have the debtor made bankrupt, and a Bankruptcy Order imposed.

The forms required to be used to petition for the bankruptcy of a debtor are listed below:

Form 6.07 'Creditor's bankruptcy petition on failure to comply with a statutory demand for a liquidated sum payable immediately'. This form should be used if you have issued a statutory demand but the debtor has not complied with it.

Form 6.08 'Creditor's Bankruptcy Petition on Failure to comply with statutory demand for a liquidated sum payable a future date'. This form should be used 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.

Form 6.09 'Creditor's bankruptcy petition on Certificate of Unenforceability of a Judgement'. This form should be used if the Enforcement of Judgements Office has been unable to seize enough assets to clear the debt.

The debtor must also complete an affidavit (**Form 6.15**) verifying the matters giving rise to the petition. If a statutory demand has been issued, they must complete a further affidavit verifying that the statutory demand has been served (form **6.13** or **6.14**)

The forms can be found [here](#), or hard copies can be requested from the Bankruptcy and Chancery Office at the High Court.

The petition is then filed (handed in) at court and three copies made for the following purposes:

- one to be served on the debtor;
- one to be attached to the affidavit (form 6.15) verifying the matters that led to the petition;
- one to be served on any supervisor of an individual voluntary arrangement of the debtor (if applicable).

8. The Costs of a Creditor's Petition

The fees the creditor will have to pay when petitioning for bankruptcy of a debtor are as follows:

- A deposit of £700.00 towards the costs of administration of the bankruptcy paid to the Department for the Economy This is a one-off payment towards the costs of the bankruptcy, and if the bankruptcy has enough assets, this deposit will be refunded to the creditor. The deposit is payable in all cases.
- court fee of £186.00.
- 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, should the creditor wish to appoint a solicitor to assist with the processes involved.

Further details regarding the fees payable are available in to review in the below links:

<https://www.economy-ni.gov.uk/articles/making-someone-bankrupt>

<https://www.economy-ni.gov.uk/services/pay-your-deposit-online>

9. The bankruptcy hearing

The bankruptcy hearing will usually take place before a district judge.

The debtor will be given notice of the hearing no less than 14 days of the petition being served upon them and all parties should attend, taking any appropriate evidence with them, whether they are pursuing or opposing the bankruptcy order.

This is a very serious hearing and ideally legal representation should be obtained.

At the hearing, following review from both the petitioner and the respondent the judge may do one of the following:

Dismiss the petition for example, if the debt has already been paid in full or if the creditor is out of time for taking court action for the debt. The judge also has discretion to dismiss the petition if they believe the creditor has unreasonably refused offers of payment, such as payment by instalments or an offer to secure the debt.

Suspend the proceedings for example if more evidence is needed or to give the debtor some time to raise money to pay the creditor.

Make a bankruptcy order

10. The Trustee in Bankruptcy

After a bankruptcy order is made, the court will subsequently appoint the Official Receiver to manage the bankrupt parties affairs and act as the de facto Trustee in Bankruptcy.

They will be responsible for an assortment of roles, in a bid to seek to manage the Bankruptcy process correctly, whilst acting in the interests of creditors to attempt to recover their monies.

11. The effects of bankruptcy

Assets

Once a debtor is made legally bankrupt the Official Receiver or appointed trustee can seek to sell their assets to pay their creditors. Certain goods aren't treated as assets, and are exempt, including the following:

- equipment needed for the debtor's work, such as tools or vehicles; and
- household items needed by the debtor and their family, such as clothing, bedding and furniture

If they own their home, it may be necessary to sell the property to repay creditors. However, the situation will largely depend on issues such as who owns the property, its total value, and whether it's worth more than the outstanding mortgage.

Earnings

The Official Receiver can also consider the debtor's income (taking into account expenses such as their mortgage, rent and household bills) and decide if payments should be deducted from income and made to creditors to satisfy the outstanding debts.

If the debtor refuses to agree to this, they might be asked to sign an 'income payments agreement' to pay fixed monthly instalments from their income for three years.

However, please note that if either the payments are not made, or an agreement reached voluntarily, the Official Receiver has the ability to apply for an income payments order from the court to order the debtor to pay. This will run for at least three years from the date of the bankruptcy order.

In the event that circumstances change, the debtor can engage with the Official receiver, so they will be able to review the arrangements in place.

Ongoing commitments

The debtor will still be required to meet existing commitments such as payment of rent on property and/ or management of new debts after they become bankrupt.

Restrictions

There are some additional restrictions during bankruptcy that a debtor is subject to. For instance, prior to discharge of bankruptcy, a debtor:

- (i) may not hold certain public offices;
- (ii) may not act as a trustee of a charity or pension fund.

In the event that these restrictions are broken then the debtor may be subjected to prosecution and/or the date that their bankruptcy ends may be delayed as a result of their breach of restrictions.

12. Other applications

The Official Receiver can make other applications to the Court following a Bankruptcy Order. A selection of these particular applications are listed below:

Public examinations

During this process, the debtor is subjected to questions in open court-they are legally required to answer all questions about them;

Applications to suspend automatic discharge

These applications can extend delay the automatic discharge date of the bankruptcy.

Applications for permission to act as director

In the event that the bankrupt debtor is a director of an existing business, the Official Receiver may apply to court act to act in their stead during the course of the bankruptcy as the director of that company.

Private examinations

During this process, the debtor is subjected to questions in court with limited access to parties-as per approach with public examinations, the debtor is also legally required to answer all questions levied about them.

13. The Debtor's obligations when bankrupt

When a bankruptcy order has been made against a debtor, they have a number of obligation they are required to meet, including the following:

- to provide information about their financial affairs to the Official Receiver. This will usually be done via telephone or at an interview at the Official Receiver's Office.

- collect and hand over their assets to the Official Receiver, with all their account books, records, bank statements, insurance policies and other papers relating to their assets and debts.
- notify the trustee or the Official Receiver about any assets and increases in income they receive during their bankruptcy.
- stop using their bank and building society accounts, credit cards and similar accounts straight away. Failure to do this is a criminal offence.
- obtain credit of £500 or more from any party without notifying them about the bankruptcy.
- in the event that the bankrupt party does not co-operate with the appointed trustee in bankruptcy during the process, they may be arrested and charged with a criminal offence in accordance with [Chapter VI of the Insolvency \(Northern Ireland\) Order 1989](#).

Even after the bankruptcy period, the debtor may find it difficult to get credit.

Details of the bankruptcy are also kept on the Insolvency Register which is maintained by the Bankruptcy and Chancery Office at the High Court and contains records of all insolvencies in Northern Ireland for the last ten years.

Further guidance about the effects of bankruptcy is available for review [here](#).

14. Ending the bankruptcy - Discharge

Duration of bankruptcy

If the debtor complies with the terms of the bankruptcy, they will be automatically freed from bankruptcy (known as discharged) after a maximum of a 12 month period from the date of the commencement bankruptcy order.

Following this, all restrictions in connection with the bankruptcy will be removed.

However, the debtor will still have a duty to assist the trustee in bankruptcy after this period if required.

Proof of discharge

Discharge of bankruptcy is usually automatic after expiry of 12 month period, and Debtors are not informed by correspondence as to the discharge generally.

In order to get proof of discharge, the Debtor can;

- ask the trustee or Official Receiver for a confirmation letter; or
- ask the Court for a Certificate of Discharge (please note that in this instance a fee applies)

Ending bankruptcy early

There is also the ability to end the bankruptcy early.

The Court may cancel the bankruptcy order and discharge the debtor at any time if:

- all debts, fees and expenses relating to the bankruptcy have been paid in full and/or
- The High Court decides the bankruptcy order should not have been made.

Credit rating

Credit rating agencies will not be notified of the discharge. The debtor should send them a copy of an official document detailing their discharge.

Debts after bankruptcy

Bankruptcy deals with your debts on the date when the bankruptcy order is made. If you incur new debts this could result in:

- a further bankruptcy order.
- prosecution if, when you incurred the debts, you did not disclose that you were bankrupt.

Further information about discharge of bankruptcy is available [here](#).

15. Ending the bankruptcy – Cancellation/Annulment

There are a number of ways in which the bankruptcy order can also be cancelled or annulled, with the main options set out below:

If the bankruptcy order should not have been made

The debtor can challenge the bankruptcy order by applying to court under Article 256(1)(a) of the Insolvency (Northern Ireland) Order 1989, and following these steps:

- get an application form from the High Court;
- make an affidavit (a written statement of the relevant facts that is sworn on oath or affirmed, usually before a solicitor) saying why the bankruptcy order should not have been made;
- send or take to the court the completed form and affidavit - the court will then set a date to hear the application, and they should attend the hearing;
- before the hearing, they must notify the Official Receiver, the person who petitioned for their bankruptcy and the trustee (if an insolvency practitioner has been appointed as trustee in place of the Official Receiver) of the date, time and place of the hearing - they should do this in enough time for them to attend the hearing - at the same time, they should send each of them copies of their application form and affidavit;
- soon after the hearing, the fees and expenses of bankruptcy will have to be paid - the court will decide who should pay them when it considers the application.

If all the bankruptcy debts and fees and expenses have been paid, or security has been given

In the event that all debts and fees have been met, or sufficient security provided, a debtor can apply under Article 256(1)(b) of the Insolvency (Northern Ireland) Order 1989, and the necessary steps are as follows:

- get an application form from the High Court
- make an affidavit setting out details of their assets and debts at the date of the bankruptcy order and details of the payments they have made or how they have secured payment of the debts
- send or take the form and affidavit to the court - the court will then set a date to hear the application, which they should attend
- notify the official receiver and the trustee of the date, time and place of the hearing - they should do this at least 28 days before the hearing - they should also send copies of your application form and affidavit to the Official Receiver and the trustee.
- the Official Receiver or the trustee will send a report to the court to confirm that the debts have been paid or secured - the report may also comment on their conduct in the bankruptcy

If the creditors have agreed to an individual voluntary arrangement

In the event that an individual voluntary arrangement has been agreed with creditors, then a debtor can apply under Article 235 of the Insolvency (Northern Ireland) Order 1989, and the steps are as follows:

- the insolvency practitioner nominated to deal with your case will call a meeting of the debtor's creditors;
- if the creditors agree to the debtor's offer to pay them, the debtor can apply to the High Court for an annulment. This application can be made 28 days after the chairman of the meeting of creditors has reported the results of the meeting to the court;
- the application should be made using the same procedure as applications where the bankruptcy order should not have been made - the only difference is that your affidavit accompanying the application form should state that the creditors have approved a voluntary arrangement as the grounds on which the application is being made.

Further information about cancelling or annulling bankruptcy orders are available [here](#).

16. Alternatives to bankruptcy

There are a number of other options to consider to avoid bankruptcy:

Debt Relief Orders

A Debt Relief Order (DRO) provides relief from debt (subject to certain exceptions), and can be applied for from the insolvency service.

A DRO lasts for 12 months, during which time creditors named within the order are unable to take any legal action to recover their money without permission from the court.

At the end of the 12 months the debtor will, provided their circumstances have not changed, be freed from all debts included in their DRO.

DROs do not involve the courts. They are made under a partnership between the Insolvency Service and skilled debt advisers, called approved intermediaries, who will help the debtor apply to the Insolvency Service for a DRO.

Further guidance on Debt Relief orders is available [here](#).

An informal arrangement

A further solution may be for the debtor to approach creditors informally to arrange repayment terms for the debts, including a timetable for repayments and etc

The disadvantage with this approach is that it is not legally binding so the creditors could disregard the requests and pursue the full sums owing in full via court through either a bankruptcy petition or a county court judgment .

Individual voluntary arrangements (IVA)

This is a formalised legally binding version of the arrangement described above. An individual voluntary arrangement begins with a formal proposal to the creditors to pay part or all of the debtor's debts.

There is a legal requirement for an insolvency practitioners' report to the High Court so will require the assistance and engagement of an insolvency practitioner. Any agreement reached with creditors will be binding on them.

Administration orders

If one or more creditors obtains a court judgment against a debtor, the Enforcement of Judgements Office (EJO) may make an administration order.

Under this order, the debtor will be required to make regular payments to the EJO to pay towards what is owed to creditors.

In order to utilise an administration order, the total debts must not exceed £5,000 and the debtor will need to be earning enough regular income to make weekly or monthly repayments as per the terms of such an order.

The debtor does not have to pay a fee for an administration order but the EJO will take a small percentage from the money paid by the debtor towards its administration costs.

However, if the payments are not maintained, the order could be cancelled and the debtor may become subject to the same restrictions as someone who is bankrupt.

If the debtor's circumstances change and they are unable to pay as ordered, an application can be made to the EJO in a bid to alter the contents of the order.

Further information on this procedure can be obtained from the Enforcement of Judgements Office directly :

Enforcement of Judgements Office
Laganside House, 23 - 27 Oxford Street
Belfast
BT1 3LA
United Kingdom

Phone: [0300 200 7812](tel:03002007812)

<https://www.justice-ni.gov.uk/articles/enforcement-judgments-office>

Further guidance on alternative processes to bankruptcy are available [here](#).

17. Where to get help and advice

If you're thinking about declaring yourself bankrupt or you're being threatened with bankruptcy, it's important to get independent advice.

You can get free advice from:

[Step Change Debt Charity](#)

<https://www.stepchange.org/how-we-help/debt-advice.aspx>

[Advice NI](#)

<https://www.adviceni.net/money-debt/debt>

18. Useful links

<https://www.nidirect.gov.uk/articles/bankruptcy>

<https://www.economy-ni.gov.uk/articles/effect-bankruptcy>

<https://www.economy-ni.gov.uk/articles/creditors-bankrupt>

<https://www.economy-ni.gov.uk/topics/insolvency-and-bankruptcy/bankruptcy-northern-ireland>

<https://www.economy-ni.gov.uk/sites/default/files/publications/deti/How-to-petition-for-own-bankruptcy.pdf>

<https://www.economy-ni.gov.uk/topics/insolvency-service>

<https://www.economy-ni.gov.uk/sites/default/files/publications/deti/A-guide-to-bankruptcy.pdf>

<https://www.nibusinessinfo.co.uk/content/bankruptcy>

<https://www.legislation.gov.uk/nisi/1989/2405/contents>

[The Insolvency \(Northern Ireland\) Order 1989](#)

<https://www.legislation.gov.uk/nisr/1991/364/contents/made>

[Insolvency Rules \(Northern Ireland\) 1991](#)

<https://www.legislation.gov.uk/nisr/1991/364/made>

https://www.adviceni.net/sites/default/files/2021-05/Bankruptcy_0.pdf

<https://www.economy-ni.gov.uk/articles/making-someone-bankrupt>

<https://www.nidirect.gov.uk/articles/bankruptcy>

<https://www.nibusinessinfo.co.uk/content/bankruptcy-process>

<https://www.economy-ni.gov.uk/articles/bankruptcy-restrictions>

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