

## What is a Bankruptcy Restrictions Order (BRO)?

If the official receiver considers that a bankrupt has acted dishonestly, or is blameworthy in some other way, they will report the facts to court and ask it to make a BRO. The court will consider this report and any other evidence put before it, and will decide whether it should make a BRO. If it does, you will be subject to certain restrictions for the period stated in the order. This can be from 2 to 15 years.

## What are the restrictions?

The restrictions are wide ranging. They include the restrictions set out in insolvency law which you are subject to when you are made bankrupt and which are normally lifted when you are discharged from bankruptcy. These restrictions include the following:

- You must disclose your status as a person subject to bankruptcy restrictions to a credit provider if you wish to get credit of £500 or more.
- If you carry on business in a different name from the name in which you were made bankrupt, you must disclose to those you wish to do business with the name (or trading style) under which you were made bankrupt.
- You may not act as the director of a company or take part in its promotion, formation or management unless you apply to the court for permission to do so.
- You may not act as an insolvency practitioner, or as the receiver or manager of the property of a company on behalf of debenture holders.
- You may not be a Member of Parliament in England or Wales.

It would be a criminal offence not to comply with any of the first four restrictions above.

There are many other restrictions, which are not set out in insolvency law. For example, you would not be able to act as a local councillor. We have published a detailed list of restrictions, which is available on our website at: [www.insolvency.gov.uk](http://www.insolvency.gov.uk). The list covers all known restrictions as at the date of publication. To check whether a BRO stops you being elected to, or remaining in, a particular office or position, you should

read our list and also seek guidance from the appointing or authorising body or group. Alternatively, contact our Insolvency Enquiry Line on 0845 602 9848 (open between 8am and 5pm Monday to Friday) or email: [insolvency.enquiryline@insolvency.gsi.gov.uk](mailto:insolvency.enquiryline@insolvency.gsi.gov.uk). They may be able to check for you.

## What happens if I am subject to a BRO and break the restrictions?

You may be prosecuted and, if found guilty, get a criminal penalty such as a fine or imprisonment.

Also, if you take part in a company's management without the court's permission, you will be personally responsible for any of its debts that arise while you are managing it.

## When can the official receiver apply for a BRO?

The official receiver must apply to court for a BRO within 12 months of the bankruptcy order being made, although they can ask the court for permission to apply later.

If the discharge of your bankruptcy is suspended, the 12-month period for making the BRO application will stop running while the discharge is suspended. (Example: Mr A's bankruptcy order is dated 1 February 2010. The 12-month period during which the official receiver could apply for a BRO would end on 31 January 2011. But, if Mr A's automatic discharge from bankruptcy was suspended between 1 March 2010 and 1 July 2010, so extending his bankruptcy by 4 months, the official receiver would have an extra 4 months to apply for a BRO, i.e. up to 31 May 2011).

If the official receiver thinks it right to do so, they can apply to the court for an interim BRO, i.e. before the court hears the BRO application. If granted, its restrictions will apply from the date of the interim order until the court considers the application for a BRO. The court will grant an interim BRO if the BRO application is likely to succeed and it is in the public interest to make an interim BRO. An interim BRO has the same effect as a BRO.

## What sort of conduct could lead the official receiver to apply for a BRO against me?

When deciding whether to make a BRO, the court may take into account your conduct before and after the date of the bankruptcy order, so the official receiver will be looking closely at all your conduct.

Below you will find some examples of dishonest or blameworthy conduct that the official receiver could give as evidence in their report to court. This is not a complete list, but includes:

- incurring debts that you knew you had no reasonable chance of repaying;
- giving away assets or selling them at less than their value;
- deliberately paying off some creditors in preference to others;
- gambling or making rash speculations or being unreasonably extravagant;
- failing to keep or produce records that would explain a loss of money or property;
- fraud or fraudulent breach of trust;
- causing your debts to increase by neglecting your business affairs;
- failing to supply goods or services that have been paid for;
- carrying on a business when you knew or ought to have known you could not pay your debts.

The more blameworthy your conduct, in the court's opinion, the longer the BRO is likely to last.

## How will I know if the official receiver intends to apply for a BRO against me?

### a) **Notice of intention to apply for a BRO**

Generally, the official receiver will write to inform you that they intend to apply to the court for a BRO but have not yet done so, if:

- they have finalised their report to court in support of an intended application for a BRO; and
- **more than 6 weeks remain until 12 months have passed since the date of the bankruptcy order.**

They will send you a copy of the report and allow you 21 days to respond to the allegations outlined in it.

**If you accept the official receiver's allegations**, you may offer to enter into a bankruptcy restrictions undertaking (BRU). An undertaking is an agreement to do something, or not to do something. A BRU has exactly the same effect as a BRO but does not involve going to court. Because you do not dispute the unfit conduct, the period of the BRU is likely to be shorter than if the court made a BRO. You will be able to put your comments to the official receiver, which may further reduce the period if the official receiver decides this is right. By entering into a BRU, you will not have to attend a court hearing.

**If you do not respond within 21 days to the official receiver's letter of intention**, they will apply to court for a BRO and send you a letter saying they have done so. The letter will include copies of the application to court, the report, and supporting evidence giving details of the alleged misconduct. It will also tell you the hearing date and how long the official receiver suggests the BRO should last.

You will be asked to acknowledge receipt of the documents on a form that you should return to the court within 14 days.

#### **b) Service of the BRO application**

- **If an undertaking (BRU) cannot be agreed**, the official receiver will apply to the court for a BRO at least one day before the expiry of the 12-month period. The official receiver will write to tell you they have done so. You will receive this letter at least 6 weeks before the court hearing date. The letter will include copies of the application to court, the report, and supporting evidence giving details of the alleged misconduct. It will also tell you the hearing date and how long the official receiver suggests the BRO should last.

## What are my options after a BRO application has been made?

Your options will depend on whether you accept the allegations against you in the official receiver's report or whether you wish to challenge them.

If you accept the official receiver's allegations, you can still offer to enter into a BRU.

If you wish to challenge the official receiver's allegations, you have 28 days from receiving notice of the proceedings to file (send or hand in) your evidence in court. If you file evidence, the official receiver may file further evidence to support their application. The court will take all the evidence into account. You may also attend the hearing and take part in the proceedings.

If you change your mind about defending the proceedings, you may offer to enter into a BRU at any time before the hearing.

If you do nothing or simply ignore the proceedings, the court may still make a BRO if it decides the conduct reported by the official receiver makes this right.

## What happens after a BRO is made or BRU is entered into?

When a BRO is made, or you enter into a BRU, the restrictions described above apply to you immediately. Details will go into a public register and stay there until the order or undertaking ends. Details of the conduct relating to BROs and BRUs usually remain on the Insolvency Service's website for 6 months. In some cases the BRO or BRU may be reported in a press release that will identify you, describe the conduct that the court has found, or the conduct which is detailed in the BRU, and state the period of restrictions.

## What if my bankruptcy order is annulled?

If the bankruptcy order is annulled (wiped from the record) because it ought not to have been made, any

BRO or BRU that applies to you will also be automatically annulled. The details will be removed from the public register and you will no longer be subject to any of the restrictions.

**Note:** The BRO or BRU will not be annulled if the reason for annulment of the bankruptcy order is payment of debts or the approval of an individual voluntary arrangement or fast-track voluntary arrangement.

## How can I find out more?

This publication is for general guidance only. If you have further questions about the procedures involved in a BRO or BRU, please contact the official receiver's office dealing with your bankruptcy.

For more information about the official receiver, please see the Insolvency Service website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk).

You can request further copies of this publication by email from: [publications@bis.gsi.gov.uk](mailto:publications@bis.gsi.gov.uk).

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Publications are also available on our website [www.insolvency.gov.uk](http://www.insolvency.gov.uk).

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# Information about Bankruptcy Restrictions

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