

Bankruptcy Restrictions Orders



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What is a Bankruptcy Restrictions Order (BRO)?

If the Official Receiver considers that the conduct of a bankrupt has been dishonest, or blameworthy in some other way, he (or she) will report the facts to court and ask for a BRO to be made. The court will consider this report and any other evidence put before it, and 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?

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:

- You must disclose your status to a credit provider if you wish to get credit of more than £500.
- 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 get the court's permission to do so. (You can apply to the court for this.)
- You may not act as an insolvency practitioner, or as 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.

There are a variety of other restrictions which are not set out in insolvency law; these include not being able to act as a local councillor. If you wish to check whether a BRO restricts you being elected to or remaining in an office or position etc. you should seek guidance from the

appointing/authorising body or group.
Alternatively you may contact our Central Enquiry Line on 020 7291 6895 (open between 9am and 5pm Monday to Friday) and they may be able to check for you.

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

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

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

When can the Official Receiver apply for a BRO?

In most cases, the Official Receiver must apply to court for a BRO within 12 months of the bankruptcy order, although he can ask the court for permission to make a later application.

If your discharge is suspended, the 12-month period for making the BRO application will cease to run until the discharge suspension has been lifted. (Example: Mr A's bankruptcy order is dated 1 February 2004. The 12-month period during which the Official Receiver could apply for a BRO would end on 1 February 2005. But, if Mr A's automatic discharge from bankruptcy was suspended between 1 March 2004 and 1 July 2004, this would allow the Official Receiver an extra four months to make a BRO application, i.e. up to 1 June 2005.

If he considers it appropriate, the Official Receiver can apply to the court for an interim BRO. If granted, its restrictions will apply from the date of the interim order until the court considers the application for a BRO.

What sort of behaviour 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 behaviour both before and after the date of the bankruptcy order, so the Official Receiver will be looking closely at all your conduct.

We cannot list all the actions that could be considered dishonest or blameworthy in relation to your affairs, but the following are some examples the Official Receiver could include in his report to court:

- failing to keep or produce records that would explain a loss of money or property
- giving away assets or selling them at less than their value
- deliberately paying off some creditors in preference to others
- 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
- incurring debts that you knew you had no reasonable chance of repaying
- gambling or making rash speculations or being unreasonably extravagant
- causing your debts to increase by neglecting your business affairs
- fraud or fraudulent breach of trust
- not co-operating with the Official Receiver or your trustee
- being bankrupt twice within a 6-year period.

The more harm your behaviour causes your creditors, 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?

You will receive a letter from the Official Receiver at least 6 weeks before the court hearing date. The letter will include a copy of the application to court, the report and supporting evidence giving details of the alleged misconduct. This letter will inform you of the hearing date and of the period that the Official Receiver suggests would be appropriate for the BRO to run.

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

What are my options?

What you should do 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 may offer to enter into a Bankruptcy Restrictions Undertaking (BRU). This has exactly the same effect as a BRO but does not involve going to court. Because you will be admitting the unfit conduct, the period of the BRU is likely to be shorter than if the court made a BRO. You will also have the opportunity to put your comments to the Official Receiver, which may further reduce the period. By entering into a BRU, you will also avoid the time and inconvenience of attending a court hearing.

If you wish to challenge the Official Receiver's allegations, you have 28 days from receiving notice of the proceedings to file your evidence in court. If you file evidence, the Official Receiver may file further evidence to support his application. This evidence will be taken into account by the court. 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 considers that the conduct reported by the Official Receiver makes this appropriate.

What happens after a BRO or BRU is made?

When a BRO is made, or you enter into a BRU, the restrictions described above immediately apply to you. Details will be entered into a public register and will remain there until the order or undertaking has expired. The BRO or BRU is also likely to be the subject of a press release that will identify you, describe the conduct that brought about the application and state the period of the BRO or BRU.

What if my bankruptcy is annulled?

If the bankruptcy order is annulled 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.

(‘Annulled’ means wiped out from the record, as if it had never existed.)

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 leaflet 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

You can obtain further copies of this booklet from the following website:
<http://www.dti.gov.uk/publications>

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