

Can my bankruptcy be cancelled?

Information on annulment of a
bankruptcy order



CUSTOMER SERVICE EXCELLENCE



INVESTOR IN PEOPLE

This leaflet covers the questions you are most likely to want answered on how the court may annul (cancel) your bankruptcy order:

What is the annulment of a bankruptcy order?

When can I apply for an annulment?

How do I apply for an annulment?

If I apply for an annulment, do I have to keep my appointment to see the official receiver?

Can I stop the bankruptcy order being advertised?

What is the effect of the annulment of a bankruptcy order?

What is “discharge from bankruptcy”?

How do I get more information?

What is the annulment of a bankruptcy order?

It is a procedure that cancels your bankruptcy order. An order of annulment can only be made by the court.

When can I apply for an annulment?

You can apply for an annulment at any time if:

- the bankruptcy order **should not have been made**, for example because the proper steps were not taken when obtaining the order; or

- all your bankruptcy debts and the fees and expenses of the bankruptcy proceedings have been either **paid in full or secured (guaranteed)** to the satisfaction of the court; or
- you have reached an agreement called an **“individual voluntary arrangement”** with your creditors to repay all or part of your debts. There is more information about voluntary arrangements in our leaflet "Alternatives to Bankruptcy".

How do I apply for an annulment?

If the bankruptcy order should not have been made (application under section 282(1)(a) of the Insolvency Act 1986), these are the steps:

- Get an ordinary application form, which is Form 7.2, either from The Insolvency Service website at www.insolvency.gov.uk or you may be able to get one from the court dealing with your bankruptcy.
- Make an affidavit (a written statement of the relevant facts that is sworn on oath or affirmed, usually before a solicitor) or a witness statement verified by a statement of truth saying why the bankruptcy order should not have been made.
- Send or take to the court the completed form and affidavit or the witness statement verified by a statement of truth. The court will then set a date to hear your application, and you should attend the hearing.

- **Before the hearing:** you must notify the official receiver, the person who petitioned for your 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. You should do this in enough time for them to attend the hearing. At the same time, you should send each of them copies of your application form and affidavit or the witness statement verified by a statement of truth.
- **Soon after the hearing:** the fees and expenses of the bankruptcy will have to be paid. The court will decide who should pay them when it considers your application.

If all the bankruptcy debts and fees and expenses have been paid, or security has been given (application under section 282(1)(b) of the Insolvency Act 1986), these are the steps:

- Get an ordinary application form, which is Form 7.2, either from The Insolvency Service website at www.insolvency.gov.uk or you may be able to get one from the court dealing with your bankruptcy.
- Make an affidavit or a witness statement verified by a statement of truth setting out details of your assets and debts at the date of the bankruptcy order and details of your payments made or how you have secured payment of the debts. You should note that you may not use your personal assets as they now belong to

your bankruptcy estate, so you must use third party funds to pay all debts in full. If you have already been discharged from your bankruptcy you can use any money that is yours.

- Send or take the form and affidavit or the witness statement verified by a statement of truth to the court. The court will then set a date to hear your application, which you should attend.
- You must notify the official receiver and the trustee of the date, time and place of the hearing. You should do this at least 28 days before the hearing. You should also send copies of your application form and affidavit or the witness statement verified by a statement of truth to the official receiver and the trustee.
- The official receiver or the trustee will send a report to the court to confirm that your debts have been paid or secured. The report may also comment on your conduct in the bankruptcy.

If your creditors have agreed to an individual voluntary arrangement (application under section 261 of the Insolvency Act 1986), these are the steps:

- The insolvency practitioner nominated to deal with your case will call a meeting of your creditors.
- If your creditors agree to your offer to pay them, you can apply to the 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 or the witness statement verified by a statement of truth accompanying the application form should state that your creditors have approved a voluntary arrangement as the grounds on which you are making your application.

If your creditors have agreed to a fast-track voluntary arrangement (application under section 263D of the Insolvency Act 1986), these are the steps:

- You must nominate the official receiver to deal with your proposal for a fast-track voluntary arrangement. Your creditors will be invited to consider your proposal if the official receiver believes it has a reasonable prospect of being approved and implemented.
- If your creditors agree to your proposal, the official receiver will report that decision to court and, 5-7 weeks later, will apply for the bankruptcy order to be annulled.

If I apply for an annulment, do I have to keep my appointment to see the official receiver?

Yes. You should go to the official receiver's office and provide any information you are asked for. The court might not annul the bankruptcy order until the official receiver confirms that you have done so.

Can I stop the bankruptcy order being advertised?

Yes, but you must act immediately. If you have applied, or you think you will be able to apply, for an annulment, you may be able to apply to the court for a “stay of advertisement”. But this should be done at once. You should telephone the court and state that you wish to apply for a stay of advertisement of the bankruptcy order. You should also inform the official receiver that you are making this application.

The official receiver must advertise the bankruptcy order in the ‘London Gazette’ (an official publication which contains legal notices). In addition, the official receiver has discretion to advertise the order in any other way, if he or she thinks it is appropriate to do so. These actions can only be stopped by a court order. Please see the information on pages 7-9 about public records and notifications of your bankruptcy.

What is the effect of the annulment of a bankruptcy order?

An annulment has the effect in law that the bankruptcy order was never made. You will revert to your pre-bankruptcy status. Disposals of your property by the official receiver and the trustee will remain valid and will not be reversed. Any other assets will be returned. You will be liable for any of your debts that have not been paid in the bankruptcy.

The following paragraphs explain what will happen to public records of your bankruptcy:

- **The Insolvency Service's Individual Insolvency Register** - The Individual Insolvency Register contains records of bankruptcy orders, individual voluntary arrangements and debt relief orders before in England and Wales. The register can be searched on-line at www.insolvency.gov.uk. If a bankruptcy order is annulled the record of the order will be removed from the register 5 days after the order is cancelled. For further information, a leaflet called "The Individual Insolvency Register" is available from your local official receiver's office or from The Insolvency Service website at www.insolvency.gov.uk or from the BERR Publication Orderline.
- **HM Land Registry** - bankruptcy petitions and orders are registered at the Land Charges Department of HM Land Registry. The order of annulment can say that any registration of the petition or order at the Land Charges Department should be cancelled - you should ask the court to include this in the order. The order will also say who should contact the Land Charges Department to ask for cancellation - this will usually be for you to do.

The contact point is:
The Superintendent
Land Charges Department
Plumer House, Tailyour Road
Crownhill, Plymouth PL6 5HY
DX No: 8249 Plymouth (3)
Tel: 01752 636666

If you own property that is registered in your sole name, a bankruptcy notice (to protect the rights of creditors) and a bankruptcy restriction notice (to prevent dealings with the property) may also have been registered against the title to the property. If the property is registered in joint names, a Form J restriction (to prevent dealings with the property) may have been registered against the title.

You can apply in writing to the Land Registry office that serves your area to have these entries removed - in the case of a Form J restriction, the Land Registry will have to serve notice on the official receiver or the trustee. Please enclose a copy of the order of annulment and, if possible, give the registered title number of the property.

If you do not know the address of the Land Registry serving your area, try your local phone book or contact HM Land Registry Headquarters, 32 Lincoln's Inn Fields, London WC2A 3PH, telephone 020 7917 8888.

- **Credit reference agencies** - the official receiver does not send any form of notice to credit reference agencies. The agencies pick up information from other

sources such as the Individual Insolvency Register, advertisements of bankruptcies in newspapers, 'The London Gazette' and the Register of County Court Judgments.

It is your responsibility to have details of the bankruptcy order removed from your credit file if your file is not updated.

For further information, a leaflet called 'Credit Explained' is produced by the Information Commissioner's Office. A copy of this leaflet is available from the Information Commissioner's Office website at www.ico.gov.uk or from their Publications Orderline (telephone 08453 091 091).

- **Notifications** - even if you have obtained a stay of advertisement, the official receiver may have needed to notify some of your creditors about the bankruptcy order. If the official receiver has informed anyone about the order he/she will also notify them of the annulment.

What is “discharge from bankruptcy”?

It is a process that frees you from the restrictions of bankruptcy and releases you from most of the debts you owed at the date the bankruptcy order was made against you. (There is a publication "When will my bankruptcy end?" about discharge from bankruptcy available from your local official receiver's office or from The Insolvency Service website at www.insolvency.gov.uk or from the BERR Publications Orderline.

This publication is for general guidance only. If you have further questions about the procedures involved in obtaining an annulment, you should ask your professional adviser or the trustee handling your bankruptcy.

Please note that The Insolvency Service and official receivers cannot provide legal or financial advice. You should seek this from a citizens' advice bureau, a solicitor, a qualified accountant, an authorised insolvency practitioner or a reputable financial adviser or advice centre.

How do I get more information?

You can get more information about bankruptcy in the following Insolvency Service publications:

- Guide To Bankruptcy
- When will my bankruptcy end?

You can obtain further copies of these publications from The Insolvency Service website: www.insolvency.gov.uk.

You may also, free of charge, order copies of our publications from the BERR Publications Orderline. To do this you will need the reference number (URN) of the forms required. This can be found on the back cover of the leaflets or on the website. By telephone: 0845 015 0010. By email: publications@berr.gsi.gov.uk By fax: 0845 015 0020. Minicom users should telephone 0845 015 0030.

You can order further copies of this booklet by email from: publications@berr.gsi.gov.uk

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Publications are also available on our website www.insolvency.gov.uk