

BRIEFING NOTE:**Bankruptcy Reforms Update**

Courtesy of the Accountant in Bankruptcy website: www.aib.gov.uk.

We believe this represents a good breakdown of all the main changes. Changes to bankruptcy law only affect people whose creditors petition for them to be made bankrupt or who apply for their own bankruptcy after 1 April 2008. The previous rules still apply to petitions lodged at court and to anyone made bankrupt before 1 April 2008.

Main Changes for Debtors and Creditors

- A debtor who wishes to make themselves bankrupt no longer has to go to court. All debtor applications must be sent to and decided by the Accountant in Bankruptcy.
- A debtor must owe a minimum of £1,500 before they can apply for their own bankruptcy. If a creditor wishes to make a debtor bankrupt they must show to the court that the debtor owes a minimum of £3,000.
- The Court of Session no longer awards or recalls bankruptcies. All creditor petitions and recalls must be submitted to sheriff courts.
- A sheriff will be allowed to delay their decision on a creditor's petition for bankruptcy to give a debtor time to agree a payment plan that will remove the need for them to be made bankrupt.
- A new route into bankruptcy has been introduced for people on low income who do not own property and have very little in savings or other assets. This is known as Low Income Low Assets (LILA).
- The period of a debtor's bankruptcy has been reduced from three years to one. However, this can be extended if someone does not co-operate with their trustee or misbehaves whilst bankrupt. The trustee, as under the previous rules, does not get their discharge until the administration of the case is complete.
- If a debtor does not co-operate with their trustee or misbehaves before and/or during their bankruptcy, they may be made subject to a Bankruptcy Restriction Order or a Bankruptcy Restriction Undertaking (BRO/BRUs). BRO/BRUs apply restrictions to a debtor's credit and work activities for between 2 and 15 years after the BRO/BRU is granted. Details of a debtor's BRO/BRU will be recorded on the Register of Insolvencies.
- The process for obtaining contributions from a debtor's income during their bankruptcy has been formalised with the introduction of new Income Payment Agreements and Orders (IPA/IPOs). Agreements and orders will normally last for three years from the signing of the IPA/IPO.
- Student loans will not be written off through bankruptcy.
- A debtor will only be allowed to appeal the amounts declared in the accounts of their trustee if they can demonstrate they will gain financially from the outcome of the appeal.
- There are also changes to the responsibilities of the interim trustee and trustee appointed to administer the debtors' financial affairs before and during bankruptcy.





Main Changes for trustees

- The trustee in a bankruptcy no longer has to be based in Scotland.
- In certain circumstances, a sheriff will appoint an interim trustee before the award of bankruptcy is made.
- A trustee is appointed on award of bankruptcy and has the powers of both the current interim and permanent trustees.
- Because the trustee is appointed on award, there is no longer a requirement to apply for an Act and Warrant.
- A trustee can still be replaced if there is a creditor's meeting and a new trustee is elected by the creditors.
- The period of the trustee's accounts has changed from six monthly to annually. However, after the first accounts, the trustee can still change their accounting periods if approved by the Accountant in Bankruptcy.
- A trustee must take action on a debtor's family home within three years of the award of bankruptcy or control of the home will automatically transfer back to the debtor. This action includes renewing the inhibition on the property.
- The trustee is required to report a debtor's misbehavior to the Accountant in Bankruptcy, who will decide if a BRO/BRU should be imposed on the debtor.
- A trustee must apply to the AIB for authority to resign from a case. This will be granted if they are unable to act under the provisions of the 1985 Act or if they are unfit to act.
- AIB can petition the Court of Session for the replacement of a trustee in multiple cases if the trustee is deceased or is unfit to act.

