



Insolvency update

Bankruptcy reforms

We have recently reported on proposals for reform of the corporate insolvency procedures. If you did not receive these bulletins and require copies, then please contact [Senita Vohra](#). However, the Government is also in the process of consulting on changes to the bankruptcy regime as follows:-

- The introduction of a new administrative entry process, whereby individuals can apply for their own bankruptcy without having to go through the Courts
- Repeal of the early discharge provisions

Debtor application for bankruptcy

Since 2002, the number of bankruptcy orders, in particular those emanating from debtor petitions, has steadily risen in England & Wales. This increase has resulted in mounting pressure on Court resources, which in turn has led to some debtors experiencing significant delays when seeking the debt relief that is provided through bankruptcy. Research carried out has shown that in some parts of England & Wales, debtors face delays of up to 3 months between the time they first contact the Court to arrange an appointment to file their petition and the making of the bankruptcy order. This pressure on Court resources has also led to delays for other civil Court users.

It is therefore proposed to replace the Court based procedure for the granting of a bankruptcy order where the debtor is the petitioner with an administrative procedure. This will free up the Courts' time to deal with other aspects of the bankruptcy process – for example, bankruptcy petitions presented by creditors, income payments orders, suspension of discharge applications and public examinations.

Under the proposal, individual debtors will be able to make an application for bankruptcy to a suitably qualified decision maker (a “DM”). In order to ensure that applicants take time to consider fully the consequences of bankruptcy before they take that step, it is proposed that the application form will set out the consequences of bankruptcy and require applicants to confirm that they have read and understood them.

It is proposed that the bankruptcy application can be made electronically or on paper. The application will need to be accompanied by a Statement of Affairs and full payment of both the application fee and deposit will be required (the requirement for payment in full is intended to deter frivolous and spur-of-the-moment applications).

The application for bankruptcy will have to be considered and a decision made, within 2 working days of the application being made.

The DM will have power to make a bankruptcy order if he is satisfied on the balance of probabilities that the debtor applicant is insolvent, that the debtor's centre of main interests ("COMI") is in England & Wales and that there is no reason to reject or refuse to make an order.

The DM will have power to ask the debtor for more information and there will also be power to refuse to make an order in certain circumstances (for example, if the debtor has failed to provide the minimum information required to be contained in the Statement of Affairs or if the DM is not satisfied that the debtor's COMI is in England & Wales). If the DM refuses to make a bankruptcy order, he will be required to provide his reasons. If a debtor is not satisfied with the decision that has been made, he will have 14 days to ask the DM to review that decision and there will be an ultimate right of appeal to the Court.

Once the order is made, the present post-bankruptcy order procedures will continue to apply as now.

Early discharge

The Enterprise Act 2002 reduced to one year the standard period of bankruptcy from, in most cases, three years. In addition, scope was given to grant an even earlier discharge in less than one year in cases where all enquires are completed satisfactorily by the Official Receiver.

However, research has shown that the whilst the introduction of discharge from bankruptcy after one year is achieving real benefits, the ability to discharge a bankrupt earlier than one year has not had any significant effect on reducing the stigma of bankruptcy or encouraging early rehabilitation. Given that the process under which early discharge is granted carries administrative costs, it is therefore proposed to remove this discretionary ability to grant early discharge. This will mean that unless the discharge period is suspended by the Court, automatic discharge will occur on the first anniversary after bankruptcy, but not earlier.

The Government has invited comments on the above proposals and the consultation period closes on 8 February 2010. We will let you know the outcome of the consultation in due course.

Contact us

If you have any queries on the proposals please contact:

Carl Mifflin

DD 0845 310 7265

E carl.mifflin@berryman.co.uk

Sue Lowry

DD 0845 310 7215

E sue.lowry@berryman.co.uk

Berryman Park House Friar Lane Nottingham NG1 6DN

DX 10004 Nottm 1 **T** 0845 310 7200 **F** 0845 310 7210

W www.berryman.co.uk

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