

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 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?

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 to a credit provider if you wish to get credit of more than £500.
- 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 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 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.

Various other restrictions 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 from being elected

to or remaining in an office or position, you should seek guidance from the appointing or authorising body or group. Alternatively, contact our Insolvency Enquiry Line on 0845 602 9848 (open between 9am and 5pm Monday to Friday) or email: insolvency.enquiryline@insolvency.gsi.gov.uk 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, get 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 being made, although he can ask the court for permission to apply later.

If your discharge is suspended, the 12-month period for making the BRO application will cease to run while the discharge suspension is in operation. (Example: Mr A's bankruptcy order is dated 1 February 2005. The 12-month period during which the official receiver could apply for a BRO would end on 31 January 2006. But, if Mr A's automatic discharge from bankruptcy was suspended between 1 March 2005 and 1 July 2005, so extending his bankruptcy by 4 months, this would allow the official receiver an extra 4 months to apply for a BRO, i.e. up to 31 May 2006.)

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 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 here are some examples the official receiver could include in his report to court:

- 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 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?

a) Notice of intention to apply for a BRO

If within 9 months of the bankruptcy order the official receiver has finalised his report to court in support of an intended application for a BRO, he will write to inform you that he intends to apply to the court for a BRO but has not yet done so, allowing you 21 days to respond to the allegations outlined in his report.

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 are admitting the unfit conduct, the period of the BRU is likely to be shorter than if the court made a BRO. You will 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 having to attend a court hearing.

If you do not respond within 21 days to the official receiver's letter, he will apply to court for a BRO and send you a letter telling you that he has done so. The letter will include a copy of the application to court, the report, and supporting evidence giving details of the alleged misconduct. It 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.

b) Service of application for BRO

If the official receiver takes longer than 9 months from the date of the bankruptcy order to

finalise his report, he will apply to the court for a BRO and will write to tell you he has done so. You will receive this letter 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 the BRO should last.

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

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

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 can still offer to enter into a Bankruptcy Restrictions Undertaking (BRU).

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. 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 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 go into a public register and stay there until the order or undertaking expires. The BRO or BRU is also likely to be reported in a press release that will identify you, describe the conduct that brought about the application or intended 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 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 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

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

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Bankruptcy Restrictions Orders



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