

This leaflet covers the questions you are most likely to ask about your pension if you are made bankrupt.

What type of pension do I have?

There are basically 4 types of pension that you may have already or could be entitled to receive in the future:

- State pension – this will include any payment from the State Second Pension (S2P) (formerly known as the State Earnings Related Pension Scheme or SERPS).
- Occupational pension – this is a scheme set up by an employer to provide members with retirement and death benefits. Contributions may have been made by your employer, you as an employee, or both.
- Personal pension plan – this is a personal pension policy you have taken out with an insurance company to pay you benefits in later life. (Retirement annuity contracts are similar to personal pension plans. If you have a retirement annuity contract, it will be treated in your bankruptcy in a similar way to a personal pension plan.)
- Group personal pension – this is a personal pension policy taken out with a pension provider, often on favourable rates and terms negotiated by your employer or trade association. After a bankruptcy order is made, a group personal pension is dealt with in the same way as other personal pension plans.

You may have more than one type of pension and you may have several pensions of the same type. For example, you may have occupational pensions from your present and

previous employers.

What information will the official receiver and my trustee need?

You have a duty to co-operate with, and to provide all the information required by, the official receiver and your trustee (who will be either the official receiver or an insolvency practitioner). They will need the following details about all the pensions you are receiving, or will be entitled to receive in the future:

- the name of any occupational pension scheme which you, and/or your present or former employer acting on your behalf, have contributed to
- evidence of how much benefit you get or will get under your occupational pension scheme(s) and how much has been contributed to them, particularly in the last 2 years
- the policy details for all personal pensions plans you have started
- if you are receiving a pension, the amount of your regular benefits; also the date you received any lump sum and the amount of that payment.

How will bankruptcy affect my pension?

If a bankruptcy order is made on a bankruptcy petition presented on or after 29 May 2000, all pension schemes that have been approved by HM Revenue and Customs remain outside a bankrupt's estate. This means they cannot be claimed by the trustee in bankruptcy. This follows the introduction of the Welfare Reform and Pensions Act 1999.

What are approved pension schemes?

Approved pension schemes are mainly:

- pension schemes registered under section 153 of the Finance Act 2004 (mainly schemes registered by HM Revenue and Customs, plus annuity contracts that are used to secure benefits under a registered pension scheme but do not immediately pay benefits)
- retirement annuity contracts
- personal pension schemes approved by HM Revenue and Customs for tax purposes, and
- stakeholder pensions.

These are the most common approved pension arrangements, but yours may be different. If the official receiver is in any doubt as to whether your pension scheme has been approved by HM Revenue and Customs, they will write to your pension provider for confirmation.

Once the official receiver is satisfied that your pension is an approved pension arrangement, they will write to you and your pension provider confirming that the pension does not form part of the bankruptcy estate.

What if my pension scheme is an unapproved scheme?

If your pension scheme is unapproved, you may still be able to exclude it from your bankruptcy estate by applying to court for an exclusion order or by making a qualifying agreement with your trustee. This is something to discuss with your trustee.

If a pension policy does form part of your bankruptcy estate, the official receiver or insolvency practitioner trustee can claim the

lump sum and the regular payments even after your discharge from bankruptcy. It may be possible for you to 'buy back' your interest in the pension policy from the trustee in bankruptcy and you should speak to your trustee about this.

What if I receive pension payments while I'm bankrupt?

Even if the trustee cannot claim your pension or any part of it, if you receive payments from a pension before your discharge from bankruptcy, then the payments can be included in any calculation for an income-payments order or income-payments agreement. (This is where you agree, or the court orders you, to pay part of your wages, salary or other income to the trustee.)

What about my state pension?

Your state pension or any payments from the State Second Pension (S2P) (formerly known as SERPS) do not form part of the bankruptcy estate.

Should I continue making pension contributions after the bankruptcy order is made?

Pension contributions can continue under your existing pension arrangements or under new pension arrangements made after the bankruptcy order. If your trustee claims all or part of your pension benefits, then it may not be in your interest to continue to make payments, particularly into a personal pension scheme, as you may not receive the full benefit of them. If you have any concerns about continuing to make payments, you should seek advice from your pension provider or an independent financial adviser.

What happens to my pension scheme death benefits if I die before my discharge from bankruptcy?

An individual may die between the making of the bankruptcy order and the date of their discharge from bankruptcy. If the pension scheme does not nominate a beneficiary (or class of beneficiary) to receive the death benefit, the trustee can claim the death benefit.

What if I was made bankrupt on a bankruptcy petition presented before 29 May 2000?

If you were made bankrupt on a bankruptcy petition presented before 29 May 2000, your trustee in bankruptcy may claim part or all of your pension, whether you are receiving it now or it is due in the future.

If you have a personal pension plan:

From the date of the bankruptcy order all rights and benefits (except rights arising where the policy was used to contract out of SERPS) vest in (transfer to) the bankruptcy estate. This means that your trustee in bankruptcy has the same rights under the policy as you did before becoming bankrupt. So the trustee in bankruptcy cannot claim the pension benefits until you reach the earliest retirement age allowed by the policy (for example, your 50th birthday).

If you are a member of an occupational pension scheme:

Some occupational pensions have 'forfeiture clauses'. These mean that if you are made bankrupt, you automatically lose your pension rights. If the trustees of the pension scheme apply the forfeiture clause, the trustee in

bankruptcy cannot claim the benefits as an asset. Your trustee in bankruptcy will inspect the rules of your pension scheme to see whether it has a valid forfeiture clause. If there is no valid forfeiture clause, then your trustee in bankruptcy will claim your pension rights for the benefit of the bankruptcy estate. If your trustee can claim your pension benefits under a personal pension or an occupational pension, this will include any lump sum as well as the regular payments.

If you are under 60, you may be able to 'buy back' the benefits under the scheme from the official receiver. In most cases you will need to pay the official receiver 45% of the current fund value. More information is available in the information sheet "The pension buy-back option". For a copy write to:

National Pensions Unit
The Insolvency Service
PO Box 282
Whitstable
Kent
CT5 3XL

If your trustee claims any part of your pension, they will collect it when you reach the earliest retirement age under your pension arrangements, even if this is after your discharge from bankruptcy.

The trustee cannot claim:

- your state pension or any payments from the State Second Pension (S2P)(formerly known as SERPS)
- any protected rights – these rights arise in any pension you may have where you or your employer have contracted out of SERPS. They represent the equivalent of the SERPS benefits within your pension. In

an occupational pension scheme, the protected rights may be known as 'a guaranteed minimum pension' or 'benefits under the reference scheme test'.

How can I find out more?

This leaflet is for general guidance only. If you have further questions about your pension and your bankruptcy, you should ask your professional adviser, the trustee handling your bankruptcy or your pension provider.

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

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What will happen to my pension

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