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No more early discharge from bankruptcy

The introduction of the 1986 Insolvency Act provided for an automatic discharge from bankruptcy three years after the making of the bankruptcy order.

In April 2004, Section 279 was introduced which reduced this period to one year although the ability to suspend the automatic discharge was always available where the bankrupt's conduct warranted such a course of action.

More significantly, the early discharge from bankruptcy regime ('Regime') also came into force which gave bankrupts the opportunity to be discharged from bankruptcy in less than twelve months.

The Regime required the Official Receiver or Trustee in Bankruptcy to file a notice at Court stating that investigation into the bankrupt's affairs was either unnecessary or concluded. The bankrupt would therefore be discharged from bankruptcy with effect from the date the notice was filed in Court.

However, to achieve an early discharge, there was a lengthy administrative process as creditors needed to be informed of the intention to file an early notice for discharge in order that objections could be raised.

The Regime was introduced to encourage bankrupts to cooperate with either the Official Receiver or Trustee in Bankruptcy and to reduce the stigma attached to bankruptcy. However, it has been discovered that the Regime did not have the desired effect and therefore with effect from 1st October 2013 has been repealed to reduce the financial burden on the Courts and the Insolvency Service.

As such, bankrupts will now remain in bankruptcy for twelve months, even if they have fully cooperated and it is believed that no further enquiries into their conduct are required.

In practical terms, the changes are unlikely to be overly significant from the bankrupt's point of view. Early discharge usually occurred six to nine months after the bankruptcy order and hence the requirement to remain in bankruptcy for a further few months will not seem to be that onerous.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedures please do not hesitate to contact us.

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