



The Insolvency  
Service

# Bankruptcy and Transgender

## Guidance for transgender bankrupts

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## About this publication

This publication is for transgender bankrupts in England and Wales. It gives general guidance only.

It focuses on the differences between bankruptcy for transgender people and everyone else, and explains:

- in what circumstances your previous gender may be disclosed in bankruptcy proceedings; and
- how the Gender Recognition Act (GRA) 2004 affects bankruptcy.

For more about bankruptcy generally, please refer to the guidance publications issued by The Insolvency Service (available at: <http://www.bis.gov.uk/insolvency/personal-insolvency>).

## Will the official receiver disclose my previous gender?

Official receivers understand why a person might not wish their gender history to be disclosed. They will consider two main questions before deciding whether or not to do so:

- Is disclosure in line with the insolvency legislation? For example, disclosure may be needed to help protect or recover assets or to enable creditors to identify debts due to them.
- Is the disclosure necessary? For example, there may be no need to disclose a change of gender to third parties if it happened after the bankruptcy order occurred or many years beforehand.

If a gender recognition certificate has been issued, the exemptions explained below cover official receivers if they disclose a change of gender.

## If I petition for my own bankruptcy, do I need to disclose my previous gender?

If you petition for your own bankruptcy, the petition (Form 6.27) and Statement of Affairs (Form 6.28) ask for details of any other names by which you have been known.

We know that debtors who have changed their gender may not want to disclose a name associated with their previous gender. However, you must include any name associated with your previous gender if you currently owe money in your previous name, own assets in your previous name, or currently have any other financial or business dealings in your previous name. Failing to do so could be an offence under insolvency legislation (see below).

Your petition must also include any name associated with your previous gender if, in the last 5 years, any of the following apply to you:

- You have incurred credit in your previous name, regardless of whether you still owe any of the money.
- You have owned assets in your previous name.
- You have had any other financial or business dealings in your previous name.

Even if you do not include your previous name in the bankruptcy petition, you should tell the official receiver about it after the bankruptcy order is made. You should also confirm that all your debts, assets and other financial or business dealings are in your new name. This enables the official receiver to deal with any questions that may arise in the future, for example about applications for loans you may have made in your previous gender identity.

## **If I disclose my previous name in my bankruptcy petition, what will happen?**

If a bankruptcy order is made and you include your previous name in your bankruptcy petition, this will appear on the bankruptcy order. This means it becomes part of your “bankruptcy description” and will be advertised in the London Gazette and appear on the Individual Insolvency Register. These adverts are required under insolvency law.

We are required by law to maintain the Individual Insolvency Register, which is a public register of bankruptcy and related information available online. For more about the Individual Insolvency Register, please see our publication “Individual Insolvency Register”.

In exceptional cases, the official receiver may locally advertise the bankruptcy order, which includes the bankruptcy description. However, if a bankrupt fully co-operates with the official receiver, a local advertisement is not usually needed.

## **Why does my bankruptcy description have to include my previous gender identity?**

In bankruptcy, official receivers often have to refer to a former name to enable third parties, such as creditors, to be sure who the bankruptcy relates to, especially if they may only know the bankrupt under a former name.

## **If I am made bankrupt by someone else’s petition and my previous gender identity is not included in the order, do I need to tell the official receiver that I have changed my gender?**

Yes. The official receiver will then decide whether any action is needed.

In bankruptcy, official receivers often have to refer to a former name to enable third parties, such as creditors, to be sure who the bankruptcy relates to, especially where they may only know the

bankrupt under a former name. In general, the official receiver would look at whether, in the last 5 years, any of the following apply to you:

- You have incurred credit in your previous name, regardless of whether you still owe any of the money.
- You have owned assets in your previous name.
- You have had any other financial or business dealings in your previous name.

If so, the official receiver will amend the bankruptcy description, which will then be advertised in the London Gazette and appear on the Individual Insolvency Register. The amended description is not usually advertised locally, unless for example, a bankrupt does not fully co-operate with the official receiver.

## **What happens if the bankruptcy order is made in my previous name?**

If you are now using your new gender identity in connection with your financial or business dealings, you must tell the official receiver. As above, the official receiver will amend the bankruptcy description, which will then be advertised in the London Gazette and appear on the Individual Insolvency Register. This is required by law so that the public know who is bankrupt.

## **What happens if I don't tell the official receiver about my previous gender identity?**

If you don't tell the official receiver about your previous gender identity, it may be a "material omission" and could be an offence under insolvency legislation. Whether it would be an offence would depend on the impact of the omission, for example if it created difficulty in identifying debts or assets. Therefore, to avoid doubt, we recommend you tell the official receiver about your previous gender identity.

## **I hold a full gender recognition certificate under the Gender Recognition Act (GRA). Is the official receiver covered by the parts of the GRA that prohibit the disclosure of a previous gender?**

No. There is a specific insolvency exemption under section 7 of the GRA. It says it is not an offence to disclose your previous gender if:

- (a) the disclosure is made by or to the official receiver or insolvency practitioner;
- (b) the disclosure is necessary for the official receiver to perform functions under legislation including the Insolvency Act 1986 and the Company Directors Disqualification Act 1986; and
- (c) the person making the disclosure knows or believes that a full gender recognition certificate has been issued to you, and the disclosure also contains that information.

This section of the GRA means that third parties who know about a gender change may commit an offence if they disclose it wrongfully to others.

## **I am in the process of changing my gender – do I need to tell the official receiver?**

This will depend on whether you have had any financial or business dealings in your new gender identity. If you have, you need to tell the official receiver, who will decide what action, if any, is needed.

## **What if I change my gender while I am an undischarged bankrupt?**

You should tell the official receiver immediately. The official receiver will amend the description on the Individual Insolvency Register only. This ensures that the register is up to date about people who are subject to a bankruptcy order.

The official receiver will also aim to ensure that future communications with you are addressed to your new name.

## **What if I change my gender after I have been discharged from bankruptcy?**

You do not need to tell the official receiver, unless you are subject to a bankruptcy restrictions order/undertaking – in which case the official receiver will amend the description on the Individual Insolvency Register only. This ensures that the register is up to date about people who are subject to a bankruptcy restrictions order/undertaking.

The official receiver will also aim to ensure that future communications with you are addressed to your new name.

For more about bankruptcy restrictions orders/undertakings, please read our publication “Bankruptcy Restrictions Orders”.

## **What if I think the official receiver has incorrectly disclosed my previous gender?**

If you believe things have gone wrong, we want you to tell us. We will seek to resolve your complaint, and also try to ensure it does not happen again. For details on how to make a complaint, please refer to our publication “Complaints procedure”.

## What happens to information about my gender identity held by the official receiver?

The official receiver keeps an individual case file for each bankruptcy. If a file does not come within a “public interest” category and there is no other reason to keep it (such as a complaint being raised), it will normally be destroyed 5 years from the date of the bankruptcy order, or within 2 years of the completion of the official receiver’s administration, whichever is later. The administration is generally treated as being completed on the date of the official receiver’s release or the appointment of an insolvency practitioner as trustee. For further information, please refer to our publication “Data Protection Act and The Insolvency Service”.

The official receiver knows that information about an individual’s gender reassignment and gender history is sensitive personal information under the Data Protection Act 1998. So the official receiver will not disclose it to third parties unless this is necessary to carry out his statutory duties.

## Where can I get further information?

If you have any specific questions about transgender issues in bankruptcy, please contact our Insolvency Enquiry Line during office hours (9am to 5pm Monday to Friday, except bank holidays) on 0845 602 9848 or email [Insolvency.Enquiryline@insolvency.gsi.gov.uk](mailto:Insolvency.Enquiryline@insolvency.gsi.gov.uk).

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*This publication is also available on our website at [www.bis.gov.uk/insolvency](http://www.bis.gov.uk/insolvency).*

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