

Section 2 - Insolvency Act 2006



What you need to know

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An overview of the Insolvency Act 2006

The Insolvency Act 2006 is likely to come into force at the end of 2007 or beginning of 2008 and contains some new arrangements as well as a significant reform of the previous legislation. The Insolvency Act of 1967 created personal bankruptcy laws that focused on an individual trader going bankrupt. The legislation reflected a social background of nearly full employment and relatively restricted consumer access to credit.

Some 40 years later, our economic life has changed radically. People have far greater access to easy credit, credit cards and other ways of accumulating debt. Personal bankruptcy now tends to be consumer debt driven and the Insolvency Act 2006 recognises this.

Online services

In the interests of speed, efficiency and transparency, the Insolvency Act 2006 also moves the administration of insolvency and bankruptcy proceedings away from the Courts to the Insolvency and Trustee Service.

Much of the work will now be completed, administered or supervised online and publicly searchable electronic registers will be available, such as registers of Summary Instalment Orders and the new No Asset Procedures.

The Summary Instalment Order

In a nutshell

If the Official Assignee decides that you do not meet the criteria for the No Asset Procedure, (for example, you have some assets or income to pay off some of your debts) you have another alternative to bankruptcy. This is the Summary Instalment Order, essentially a formal arrangement with your creditors that allows you to pay back all, or an agreed part, of your debt by instalments.

A Summary Instalment Order is designed to allow you the opportunity to pay off your debt by instalments and then be in a position to manage your finances well in the future.

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Changes under the Insolvency Act 2006

Under the Insolvency Act 2006 Summary Instalment Orders will be administered by the Official Assignee rather than the District Court.

The maximum level of debt has been increased from \$12,000 to \$40,000, and the maximum period of an order can be extended in special circumstances, from three years to five years.

Fines and student loans are excluded from Summary Instalment Orders.

Who may apply for an order?

You or any of your creditors (with your consent) can apply for a Summary Instalment Order.

You may be granted a Summary Instalment Order if the Official Assignee is satisfied that:

- Your total unsecured debts (excluding any student loan balance) are more than \$1,000 but not more than \$4,000.
- You are unable to pay those debts immediately.

However, before making the order, the Official Assignee must allow the debtor or a creditor to make representations, if the debtor or creditor wants to do so.

How to apply for a Summary Instalment Order

Get help if necessary from a Budget Advisor or Community Law Centre to complete the prescribed application form, as some of the terms may not be familiar to you. The form can be downloaded from the www.insolvency.govt.nz website. Note that both you and your creditors are allowed to make representations before the Official Assignee makes a Summary Instalment Order.

Your application must include all of the following:

A statement that you propose to pay your creditors in full; or

A statement revealing what percentage of the debt you propose to pay (for example, repay 80 cents for every dollar of debt). If you have reached agreement with your creditors on this amount, then mention this. The total amount of the weekly or other instalments that you propose to pay. The name and address of your proposed Supervisor; or

Your written reasoning explaining why you consider that a Supervisor is not necessary.

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Details and possessions

Your application must include:

Your full name and address.

Details of the goods that you own.

The names and addresses of each creditor.

The amount and nature of each of the creditors' debts.

Whether any of the debts are secured and the value of the charge.

Whether any of the debts are guaranteed by any person.

The amount of your earnings and expenditure.

The name and address of your employer(s), if any.

How much must I pay back?

The Official Assignee will assess your application and order that you pay back your debts by instalments (or otherwise) according to your circumstances. You may also have come to some agreement with your creditors about the amount to be repaid, and this will be taken into consideration.

Additional orders

In addition to an order for the payment of the debts in instalments, the Official Assignee may make orders covering:

Your future earnings or income.

The sale of goods that you own or possess (some of these may be sold to help repay your debts).

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Who supervises my Summary Instalment Order?

The Official Assignee will appoint an approved Supervisor to administer your Summary Instalment Order. The Official Assignee may require a bond from new Supervisors (such as a Supervisor you propose) to ensure they perform their duties satisfactorily.

In certain cases the Official Assignee may decide a Supervisor is not necessary.

What does the Supervisor do?

The Supervisor has the authority to:

- Supervise your compliance with the terms of your Summary Instalment Order and any other order made by the Official Assignee.
- Direct your employer to pay all or part of your earnings to the Supervisor.
- Charge you a fixed or prescribed amount for carrying out these duties.

Other duties of the Supervisor

The Supervisor must send a notice of the Summary Instalment Order to every known creditor.

The Official Assignee may require the Supervisor (or a past Supervisor) to provide any documentation relating to your property, conduct, or dealings.

If the Supervisor has failed to supervise your compliance adequately the Official Assignee can appoint a replacement Supervisor.

Avoid getting into more debt!

It is important to be aware that:

- When you are working through your Summary Instalment Order it is an offence to raise credit or take out a Hire Purchase (HP) over \$100 without first disclosing that you are currently going through a Summary Instalment Order.

The penalty for committing a penalty offence of this kind can lead to a jail term of one year or a fine not exceeding \$5,000 or both. [Top](#)

How long does a Summary Instalment Order last?

Your Summary Instalment Order will normally run for three years, but can in special circumstances be extended to five years.

Variation or discharge of order

If circumstances change, you (the debtor) or any creditor or the Supervisor may at any time apply to the Official Assignee to vary or discharge a Summary Instalment Order. The Official Assignee has the authority to make an appropriate decision.

Is the information made public?

Yes. There will be a new publicly available electronic register of current Summary Instalment Orders.

What happens when the Summary Instalment Order is made?

After the Official Assignee has made a Summary Instalment Order:

- A creditor cannot begin or continue a proceeding against you unless you have failed to meet your obligations under the order.
- Any proceedings still in Court must be halted at the time of the order, unless the Official Assignee gives permission for the case to proceed.

Resolving disputes with creditors

Creditors who have 'proved' their debts (supplied satisfactory documented evidence such as invoices and signed agreements showing you owe them money) have certain rights. They can:

- Object to the Supervisor's acceptance or rejection of any creditor's claims.
- Apply to the Official Assignee to resolve disputes with claims.
- Apply to be included as a creditor in the administration of your estate under the Summary Instalment Order for the amount of the debt.

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Distribution of the money you pay

Your Supervisor must distribute the money paid you under the Summary Instalment Order in the following order:

Pay administration costs (including the supervisor's remuneration) in accordance with the prescribed scale.

Pay the Official Assignee's costs and fees.

Pay the debts in accordance with the order.

Pay any surplus to you (the debtor).

You will be discharged from all unsecured debts when you have paid them in full.

If you fail to keep up your payments

Your Supervisor must notify the Official Assignee as soon as practicable if you fail (default) to make a payment in accordance with your Summary Instalment Order.

In such a case the Summary Instalment Order can be terminated and your creditors can then start legal proceedings to pursue you for outstanding debt. The result may be that your only option is to go into bankruptcy.

The No Asset Procedure

Who is the No Asset Procedure designed for?

If you find yourself insolvent (unable to pay your bills as they fall due) the No Asset Procedure can offer you an alternative to the three-year form of bankruptcy. It is designed for people who have accumulated consumer debt and for whatever reason find their financial affairs have become unmanageable.

In a nutshell

Provided you qualify, the No Asset Procedure provides an alternative and more flexible way to resolve your financial situations than going into bankruptcy. It aims to get you back on your feet sooner so you can contribute to the economy.

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Some benefits:

The No Assets Procedure lasts for only 12 months, compared to the usual three-year period of a bankruptcy.

You do not have to go to court.

Once you have been admitted to the No Asset Procedure, your creditors cannot begin or continue any step to recover or enforce a debt (unless your circumstances have changed or you have made false statements to gain admittance to the No Asset Procedure).

Termination and discharge

You are automatically discharged from the No Asset Procedure after 12 months (as compared to three years for most bankruptcies).

On discharge, your debts (excluding the debts listed below) are cancelled, and you are not liable to repay any part of them, including any penalties and interest that may have accrued.

What debts must I still pay?

Certain obligations are excluded from the No Asset Procedure. You must continue to pay any or all of these that apply to you:

- Maintenance orders made under the Family Proceedings Act 1980

- Child support amounts made under Child Support Act 1991
- Your student loan balance
- Court fines and reparation

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A once-in-a-lifetime chance

It is important to realise that the No Asset Procedure offers those who qualify a one-off opportunity to sort out their financial affairs and get back on their feet.

If you are accepted into the No Asset Procedure it is important that you use this opportunity wisely to regain control of your financial affairs because you cannot apply for this procedure a second time. This is a compelling reason for you to get help from the Budget Advisors, Citizens Advice Bureau or Community Law Centres.

If you get into uncontrollable debt again, you may have to apply for a Summary Instalment Order or become bankrupt.

How do I apply for the No Asset Procedure?

You have to apply to the Official Assignee for entry to the No Asset Procedure scheme. You will be encouraged to seek early assistance from the Insolvency and Trustee Service, Budget Advisors and your Creditors.

You must complete the prescribed Application Form and a Statement of Affairs Form. If either form is incorrect or incomplete the Official Assignee may reject it.

The Official Assignee may decide to accept you into the No Asset Procedure if:

You have no realisable (sellable) assets to pay your creditors.

You have not previously been admitted to the No Asset Procedure. (It is a once-only opportunity for a fresh start.)

You have not previously been declared bankrupt.

Your total debts (excluding any student loan balance) are not less than \$1,000 and not more than \$40,000.

You can satisfy the Official Assignee through the prescribed means test that you cannot repay any amount towards your debts.

There is no evidence that creditors have faced enforcement issues and you are not using a trust or any other method of concealing your property (assets).

There are no creditors' petitions pending against you.

You have completed a satisfactory Statement of Affairs before you apply for admission to the No Asset Procedure.

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What happens if I am rejected?

If you are rejected from the No Asset Procedure your options may be either a Summary Instalment Order or Bankruptcy. Get further advice from the Insolvency and Trustee Service, a Budget Advisor or the Citizens Advice Bureau.

Getting admitted

You are admitted to the No Asset Procedure when the Official Assignee sends you a written notice. The Official Assignee will then notify all your creditors and advertise that you have been admitted.

Your name will appear in a publicly searchable electronic register of people admitted to the No Asset Procedure.

What are my responsibilities under the No Asset Procedure?

You must:

- Supply the Official Assignee with any reasonable request, to provide assistance, documents, and information necessary for applying the no asset procedure to the debtor.
- Notify the Official Assignee as soon as practicable of any change in your circumstances that would allow you to repay an amount towards your debts.

Important: avoid getting into further debt

Once you have applied for entry to the No Asset Procedure, you must not obtain credit (including hire purchase credit), either alone or jointly with another person, of more than \$100 without first informing the credit provider that you have applied for entry to the No Asset Procedure.

Note that this restriction starts once you have applied for entry, not once you have been accepted. You need to make this commitment at the application stage.

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Can my creditors apply to stop me being admitted?

Once you have been accepted by the Official Assignee for entry to the No Asset Procedure, the Official Assignee will send a summary of the your assets and liabilities to each of your known creditors.

If a creditor (a person you owe money to) objects to you being admitted to the No Asset Procedure they are able to apply to the Official Assignee to have the No Asset Procedure terminated.

A creditor can also object at any time during the 12-month course of the No Asset Procedure if your circumstances change. For example, you may have a windfall that allows you to pay off your debts.

Can my entry into the No Asset Procedure be terminated?

Yes, your entry can be terminated if the Official Assignee discovers that:

You have concealed assets with the intention of defrauding your creditors (for example, by transferring property to a Trust, or asking any other person to conceal assets that you own). Note that in such a case the Official Assignee can apply for a Court order for your assets to be preserved (from sale or disposal) until your case has been judged.

You had incurred debt prior to applying for a No Asset Procedure, knowing that you are unable to repay it.

Your circumstances have changed, enabling you to repay an amount towards your debts.

If your entry into the No Asset Procedure is terminated, the Official Assignee will send you written notice and also advise all your known creditors of the termination.

Statement of Affairs

You will need to complete a Statement of Affairs form as part of your application for entry into the No Asset Procedure. This enables the Official Assignee to gain an understanding of your financial position. If necessary, you may be required to attend an interview.

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Information you need to gather

To complete the Statement of Affairs and prepare for a possible interview, you need all this information:

Details of any real estate either currently or previously owned by you either on your own or with any other person.

Copies of any relevant documentation and details of any mortgages on the property.

Details of any motor vehicles either currently or previously owned, copies of any registration papers and details of any money owing on the vehicles.

Details of any assets either currently or previously owned by you, including information about any hire purchase arrangements and copies of any relevant documentation.

Details of all your bank accounts, shares you own, other investment details, life insurance policies and other financial assets.

Details of any Trusts you are a trustee or a beneficiary of.

Details of any Superannuation Scheme you belong to or any Life Insurance Policy you are a beneficiary of.

Details of any money owed to you.

The names and addresses of all of your creditors and the amounts owing to them.

Details of your employment status.

Your IRD number and Passport details.

You must comply with any reasonable request of the Insolvency and Trustee Service to complete a form or attend an interview.

What assets can I retain?

You are allowed to retain the following assets:

Your necessary tools of trade (maximum value fixed at the Official Assignee's discretion).

Necessary household and furniture effects including clothing for yourself and dependants (maximum value fixed at Official Assignee's discretion).

Motor vehicle (Maximum value \$5 ,000).[Top](#)

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An overview of the Act.

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Understanding your responsibilities and what happens during your bankruptcy

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[Section 4 - After bankruptcy](#)

Steps you can take to rehabilitate yourself and prevent bankruptcy happening again

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[Section 5 - Helpful resources](#)

Organisations and web links that might be useful before, during, and after bankruptcy.

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