



---

*Solicitors*

---

Foster Baxter Cooksey

## **BANKRUPTCY - A WELCOME RELIEF?**

Since the introduction of the new bankruptcy regime under the Enterprise Act 2002, which came into effect on 1<sup>st</sup> April 2004, a substantial increase has been seen in the number of enquiries from those wishing to explore the effect of becoming bankrupt. The increase in the general level of personal debt and a perception that the new bankruptcy regime will offer some form of relief are undoubtedly factors in this particular trend. However, most soon realise that bankruptcy often fails to provide the shelter sought.

Many will be aware that under the new regime, the period of bankruptcy has been reduced from three years to twelve months, although it should be noted that the obligation to make payments from surplus income into the bankruptcy estate remains at three years. The Enterprise Act does however make a distinction between "culpable" and "non-culpable" bankrupts. Culpability is determined by the individual's conduct up to the date of bankruptcy and their level of co-operation with the trustee in bankruptcy. Frivolous spending, gambling and rash or extravagant financial ventures are examples of the kind of behaviour which would render the bankrupt culpable.

For the non-culpable bankrupt who finds themselves in this unfortunate position, the new regime is almost certainly a welcome change as they will not be subject to the same level of investigation and may have matters dealt with by way of telephone interview. However, the culpable bankrupt may well be given a Bankruptcy Restriction Order which usually precludes the bankrupt from becoming a director of a company or obtaining personal credit for a period of between two and fifteen years.

Therefore, although the new regime will still suit some potential candidates, the important question appears to be the prospective bankrupt's motives. The nature of the debt and the preceding events must be considered, as bankruptcy is primarily a method of dealing with personal insolvency rather than a form of financial relief.