



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 9

#### EXAMINATION OF DEBTOR

##### *Conduct of examination*

#### **121 Conduct of examination**

- (1) The examination, whether before the sheriff or an examining commissioner, must be taken on oath.
- (2) At the examination—
  - (a) the trustee in the sequestration (or a solicitor or counsel acting on behalf of the trustee) and, in the case of public examination, any creditor may question the debtor or a relevant person, and
  - (b) the debtor may question a relevant person,as to any matter relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs.
- (3) The debtor or a relevant person—
  - (a) is required to answer any question relating to the debtor's assets, the debtor's dealings with those assets or the debtor's conduct in relation to the debtor's business or financial affairs, and
  - (b) is not excused from answering any such question on the ground—
    - (i) that the answer may incriminate, or tend to incriminate, the person questioned, or
    - (ii) of confidentiality.
- (4) Except that—
  - (a) a statement made by the debtor or a relevant person in answer to any such question is not admissible in evidence in any subsequent criminal proceedings against the person making it (except where the proceedings are in respect of a charge of perjury relating to the statement), and

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*Changes to legislation: Bankruptcy (Scotland) Act 2016, Cross Heading: Conduct of examination is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (b) a person subject to examination is not required to disclose any information received from a person not called for examination if the information is confidential between the two persons.
- (5) The rules relating to the recording of evidence in ordinary causes specified in the first schedule of the Sheriff Courts (Scotland) Act 1907 apply in relation to the recording of evidence at the examination before the sheriff or examining commissioner.
- (6) The debtor's deposition at the examination must be subscribed by the debtor and by the sheriff (or, as the case may be, the examining commissioner).
- (7) The trustee must send a copy of the record of the examination to AiB.
- (8) A relevant person is entitled, as if the person were a witness in an ordinary civil cause in the sheriff court, to fees or allowances in respect of the person's attendance at the examination.
- (9) Except that the sheriff may disallow or restrict the entitlement to such fees or allowances if the sheriff thinks it appropriate to do so in all the circumstances.

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**Commencement Information**

**II** S. 121 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)