



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 9

#### EXAMINATION OF DEBTOR

##### *Private and public examination*

#### **118 Private examination**

- (1) The trustee in the sequestration may request—
  - (a) the debtor to appear before the trustee and to give information relating to the debtor's assets, the debtor's dealings with them or the debtor's conduct in relation to the debtor's business or financial affairs, or
  - (b) the debtor's spouse or civil partner, or any other person who the trustee believes can give such information to give that information.
- (2) In this Act any such spouse, civil partner or other person is referred to as a “relevant person”.
- (3) The trustee may, if the trustee considers it necessary, apply to the sheriff for an order to be made under subsection (4).
- (4) On an application under subsection (3), the sheriff may make an order requiring the debtor or a relevant person to attend for private examination before the sheriff on a date and at a time specified in the order.
- (5) But subsection (4) is subject to section 120(3).
- (6) A date specified in an order under subsection (4) must be not earlier than 8 days nor later than 16 days after the date of the order.
- (7) A person who fails without reasonable excuse to comply with an order under subsection (4) commits an offence.
- (8) A person who commits an offence under subsection (7) is liable, on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale, or
  - (b) to imprisonment for a term not exceeding 3 months,

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or both to such fine and to such imprisonment.

- (9) Where the debtor is an entity whose estate may be sequestrated by virtue of section 6(1), the references, in this section and in sections 119 to 121, to the debtor are to be construed, unless the context otherwise requires, as references to a person representing the entity.

#### Commencement Information

**II** S. 118 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 119 Public examination

- (1) At least 8 weeks before the end of the first accounting period the trustee in the sequestration—
- (a) may, or
  - (b) if requested to do so by AiB or by the commissioners (if any) or by  $\frac{1}{4}$  in value of the creditors, must,
- apply to the sheriff for an order for the public examination before the sheriff of the debtor, or of a relevant person, 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.
- (2) Except that on cause shown such application may be made by the trustee at any time.
- (3) On an application under subsection (1), the sheriff must make an order requiring the debtor or the relevant person to attend for examination before the sheriff in open court on a date and at a time specified in the order.
- (4) But subsection (3) is subject to section 120(3).
- (5) A date specified in an order under subsection (3) must be not earlier than 8 days nor later than 16 days after the date of the order.
- (6) On the sheriff making an order under subsection (3), the trustee must—
- (a) send to AiB a notice in such form, and containing such particulars, as may be prescribed,
  - (b) send a copy of the notice—
    - (i) to every creditor known to the trustee, and
    - (ii) where the order is in respect of a relevant person, to the debtor, and
  - (c) inform each person sent a copy under paragraph (b) that the person may participate in the examination.
- (7) AiB must enter particulars of the notice sent under subsection (6)(a) in the register of insolvencies.
- (8) A person who fails without reasonable excuse to comply with an order under subsection (3) commits an offence.
- (9) A person who commits an offence under subsection (8) is liable, on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale, or
  - (b) to imprisonment for a term not exceeding 3 months,

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or both to such fine and to such imprisonment.

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**Commencement Information**

**I2** [S. 119](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

## **120 Provisions ancillary to sections 118 and 119**

- (1) If a debtor or relevant person is residing in Scotland, the sheriff may on the application of the trustee grant a warrant (which may be executed by a messenger-at-arms or sheriff officer anywhere in Scotland) to apprehend the debtor or relevant person and to have the apprehended person taken to the place of the examination.
- (2) But a warrant under subsection (1) must not be granted unless the sheriff is satisfied that it is necessary to grant it to secure the attendance of the debtor or relevant person at the examination.
- (3) If the debtor or relevant person is for any good reason prevented from attending for examination, the sheriff may grant a commission to take the examination of the debtor or relevant person (the commissioner being, in this section and in section 121, referred to as an “examining commissioner”).
- (4) Subsection (3) is without prejudice to subsection (5).
- (5) The sheriff or the examining commissioner may at any time adjourn the examination to such day as the sheriff or examining commissioner may fix.
- (6) The sheriff or examining commissioner may order the debtor or a relevant person to produce for inspection any document—
  - (a) in the custody or control of the person so ordered, and
  - (b) 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 to deliver the document or a copy of the document to the trustee in the sequestration for further examination by the trustee.

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**Commencement Information**

**I3** [S. 120](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

### *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,

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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
  - (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**

**I4** [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\(2\)\(b\)](#)