



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 10

CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

Submission and adjudication of claims

122 Submission of claims to trustee

- (1) A creditor must submit a claim in accordance with this section to the trustee in the sequestration in order to obtain an adjudication as to that person's entitlement—
 - (a) to vote at a meeting of creditors other than the statutory meeting, or
 - (b) (so far as funds are available) to a dividend out of the debtor's estate in respect of any accounting period.
- (2) Where the claim is by virtue of—
 - (a) paragraph (a) of subsection (1), it must be submitted at or before the meeting,
 - (b) paragraph (b) of that subsection, it must be submitted in accordance with subsection (4).
- (3) But subsection (1) is subject to subsections (4), (7) and (8) and to section 131(6) to (9).
- (4) A creditor must, in order to obtain an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate, submit a claim to the trustee not later than the relevant day.
- (5) The "relevant day", in relation to a creditor, means—
 - (a) where notice is given to the creditor under section 44(3), the day which is 120 days after the day on which that notice is given,
 - (b) where no such notice is given, the day which is 120 days after the day on which the trustee gives notice to the creditor inviting the submission of claims.
- (6) If a creditor submits a claim to the trustee after the relevant day, the trustee may, in respect of any accounting period, provide an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate if—
 - (a) the claim is submitted not later than 8 weeks before the end of the accounting period, and

Status: This is the original version (as it was originally enacted).

- (b) there were exceptional circumstances which prevented the claim from being submitted before the relevant day.
- (7) Subsection (8) applies as regards a claim submitted by a creditor—
 - (a) under section 46 and accepted in whole or in part by the trustee for the purpose of voting at the statutory meeting, or
 - (b) under this section and not rejected in whole.
- (8) The claim is deemed to have been re-submitted for the purpose of obtaining an adjudication as to the creditor's entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or as the case may be of any subsequent accounting period.
- (9) A creditor submits a claim under this section by producing to the trustee—
 - (a) a statement of claim in the prescribed form, and
 - (b) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt.
- (10) But the trustee, with the consent of the commissioners if any, may dispense with any requirement under subsection (9) in respect of any debt or of any class of debt.
- (11) Where a creditor (in this subsection referred to as "C") neither resides, nor has a place of business, in the United Kingdom, the trustee—
 - (a) must, if the trustee knows where C does reside or have a place of business and if no notification has been given to C under section 44(3), write to C informing C that C may submit a claim under this section, and
 - (b) may allow C to submit an informal claim in writing.
- (12) Where a creditor has submitted a claim under this section (or under section 46 a statement of claim which has been deemed re-submitted as mentioned in subsection (8)), the creditor may at any time submit a further claim under this section specifying a different amount for the creditor's claim.
- (13) But a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the trustee requires the secured creditor to discharge, or convey or assign, the security under paragraph 4(3) of schedule 2.

123 Evidence as to validity or amount of claim

- (1) The trustee in the sequestration, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under section 122, may require—
 - (a) the creditor to produce further evidence, or
 - (b) any other person who the trustee believes can produce relevant evidence to produce such evidence.
- (2) If the creditor (or as the case may be the other person) refuses or delays to do so, the trustee may apply to the sheriff for an order requiring the creditor (or the other person) to attend for private examination before the sheriff.
- (3) At any private examination under subsection (2)—
 - (a) a solicitor or counsel may act on behalf of the trustee, or
 - (b) the trustee may appear on the trustee's own behalf.

- (4) Sections 118(4) to (7) and 121(1) apply, subject to any necessary modifications, to the examination of the creditor (or the other person) as they apply to the examination of a relevant person.
- (5) References in subsections (1) and (4) to the creditor in a case where the creditor is an entity mentioned in section 6(1) are to be construed, unless the context otherwise requires, as references to a person representing the entity.

124 False claims etc.

- (1) Subsections (2) and (3) apply where a creditor produces under section 122 or 123—
 - (a) a statement of claim,
 - (b) account,
 - (c) voucher, or
 - (d) other evidence,which is false.
- (2) The creditor commits an offence unless it is shown that the creditor neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.
- (3) The debtor commits an offence if the debtor—
 - (a) knew, or became aware, that the statement of claim, account, voucher or other evidence was false, and
 - (b) failed, as soon as practicable after acquiring such knowledge, to report to the trustee that the statement of claim, account, voucher or other evidence was false.
- (4) A person convicted of an offence under subsection (2) or (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
 - (i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
 - (ii) in any other case, to imprisonment for a term not exceeding 3 months, or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in subparagraph (i) or (ii), or
 - (b) on conviction on indictment—
 - (i) to a fine, or
 - (ii) to imprisonment for a term not exceeding 2 years, or both to a fine and to such imprisonment.

125 Further provision as to claims

- (1) A creditor may, in such circumstances as may be prescribed, state the amount of the creditor's claim under section 122 in foreign currency.
- (2) The trustee in the sequestration must, on production of any document to the trustee for the purposes of any of sections 122 to 124—
 - (a) initial the document, and

Status: This is the original version (as it was originally enacted).

- (b) if requested by the person producing it, return it (if it is not a statement of claim) to that person.
- (3) The submission of a claim under section 122 bars the effect of any enactment or rule of law relating to the limitation of actions.
- (4) Schedule 2 has effect for determining the amount in respect of which the creditor is entitled to claim.

126 Adjudication of claims: general

- (1) At the commencement of every meeting of creditors (other than the statutory meeting) the trustee in the sequestration must, for the purposes of section 128 so far as it relates to voting at the meeting, accept or reject the claim of each creditor.
- (2) Subsection (3) applies where funds are available for payment of a dividend out of the debtor's estate in respect of an accounting period.
- (3) For the purpose of determining who is entitled to such a dividend, the trustee—
 - (a) must, not later than 4 weeks before the end of the period, accept or reject every claim submitted (or deemed to have been re-submitted) to the trustee under this Act, and
 - (b) must, at the same time, make a decision on any matter required to be specified under paragraph (a) or (b) of subsection (7).
- (4) The trustee must then, as soon as reasonably practicable, send a list of every claim so accepted or rejected (including its amount and whether it has been accepted or rejected) to the debtor and to every creditor known to the trustee.
- (5) If the amount of a claim is stated in foreign currency, the trustee in adjudicating under subsection (1) or (3) on the claim must convert the amount into sterling, in such manner as may be prescribed, at the rate of exchange prevailing at the close of business on the date of sequestration.
- (6) Where the trustee rejects a claim, the trustee must forthwith notify the claimant, giving reasons for the rejection.
- (7) Where the trustee accepts or rejects a claim, the trustee must record the trustee's decision on the claim, specifying—
 - (a) the amount of the claim accepted by the trustee,
 - (b) the category of debt, and the value of any security, as decided by the trustee, and
 - (c) if the trustee is rejecting the claim, the trustee's reasons for doing so.
- (8) Any reference in this section or in section 127 to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

127 Adjudication of claims: review and appeal

- (1) The debtor or any creditor may apply to AiB for a review of—
 - (a) the acceptance or rejection of any claim, or
 - (b) a decision in respect of any matter requiring to be specified under section 126(7)(a) or (b).

- (2) The debtor may make an application under subsection (1) only if the debtor satisfies AiB that the debtor has, or is likely to have, a pecuniary interest in the outcome of the review.
- (3) Any application under subsection (1) must be made, in the case of a review relating to an acceptance or rejection—
 - (a) under subsection (1) of section 126, within 14 days beginning with the day of the decision to accept or reject the claim, and
 - (b) under subsection (3) of that section, within 28 days beginning with that day.
- (4) If an application under subsection (1) is made, AiB must—
 - (a) take into account any representations made by an interested party within 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision within 28 days beginning with that day.
- (5) The debtor or any creditor may, within 14 days beginning with the day of a decision by AiB under subsection (4)(b), appeal to the sheriff against that decision.
- (6) The debtor may appeal under subsection (5) only if the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.