



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 3

#### INITIAL STAGES OF SEQUESTRATION, STATUTORY MEETING AND TRUSTEE VOTE

##### *Initial stages*

#### **39 Interim preservation of estate**

- (1) An interim trustee may, in pursuance of the function conferred by section 53(1), give general or particular directions to the debtor relating to the management of the debtor's estate.
- (2) In exercising the function so conferred, an interim trustee may—
  - (a) require the debtor to deliver up to the interim trustee—
    - (i) any money or valuables, or
    - (ii) any document relating to the debtor's business or financial affairs, belonging to, or in the possession of, the debtor or under the debtor's control,
  - (b) place in safe custody anything mentioned in paragraph (a),
  - (c) require the debtor to deliver up to the interim trustee any perishable goods belonging to the debtor or under the debtor's control,
  - (d) arrange for the sale or disposal of such goods,
  - (e) make, or cause to be made, an inventory or valuation of any property belonging to the debtor,
  - (f) require the debtor to implement any transaction entered into by the debtor,
  - (g) effect or maintain insurance policies in respect of the business or property of the debtor, or
  - (h) carry on any business of the debtor or borrow money in so far as it is necessary for the interim trustee to do so to safeguard the debtor's estate.
- (3) Section 111 applies to an interim trustee as it applies to a trustee.
- (4) The sheriff, on the application of an interim trustee, may—
  - (a) on cause shown, grant a warrant authorising the interim trustee to enter the house where the debtor resides or the debtor's business premises and to search

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- for and take possession of anything mentioned in subsection (2)(a) or (c) (if need be, by opening shut and lock-fast places), or
- (b) make such other order to safeguard the debtor's estate as the sheriff thinks appropriate.
- (5) Where AiB is the interim trustee, the debtor may apply to AiB for a review of a direction under subsection (1) on the ground that the direction is unreasonable.
- (6) If an application under subsection (5) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
- (b) confirm, amend or revoke the direction (whether or not substituting a new direction) within 28 days beginning with that day.
- (7) The sheriff may, on an application made by the debtor made within 14 days beginning with the day on which AiB makes a decision under subsection (6)(b)—
- (a) set aside a direction under subsection (1) or (6)(b) if the sheriff considers the direction to be unreasonable, and
- (b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate.
- (8) The debtor must comply with a direction—
- (a) under subsection (1) pending a decision by AiB under subsection (6)(b), and
- (b) under subsection (6)(b) pending the final determination of any appeal (subject to any interim order of the sheriff).
- (9) Where AiB is not the interim trustee, the sheriff, on an application by the debtor on the grounds that a direction under subsection (1) is unreasonable, may—
- (a) set aside the direction if the sheriff considers it to be unreasonable, and
- (b) in any event, give such directions to the debtor regarding the management of the debtor's estate as the sheriff considers appropriate.
- (10) But, subject to any interim order of the sheriff, the debtor must comply with the direction appealed against pending the final determination of the appeal.

#### **Commencement Information**

**II** S. 39 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## **40 Offences in relation to interim preservation of estate**

- (1) If a debtor—
- (a) fails without reasonable excuse to comply with a direction under subsection (1), (6)(b), (7)(b) or (9)(b), or a requirement under subsection (2) (a), (c) or (f), of section 39, or
- (b) obstructs the interim trustee where the interim trustee is acting in pursuance of subsection (4)(a) of that section,
- then the debtor commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or—

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- (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.

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**Commencement Information**

**I2** S. 40 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**41 Statement of assets and liabilities etc.**

- (1) Where a debtor has made a debtor application then, within 7 days after the appointment of the trustee in the sequestration under section 51 (where the trustee is not AiB), the debtor must send to the trustee such statement of assets and liabilities as was sent to AiB in pursuance of section 8(3)(a).
- (2) Where a petitioner for sequestration is a creditor, or a trustee acting under a trust deed, then, within 7 days after having been notified by the trustee as mentioned in section 51(13) the debtor must send to the trustee a statement of assets and liabilities.
- (3) If the debtor—
  - (a) fails to disclose any material fact in a statement of assets and liabilities sent to the trustee in accordance with subsection (1) or (2), or
  - (b) makes a material misstatement in any such statement,then the debtor commits of an offence.
- (4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months (or both to such fine and to such imprisonment).
- (5) In any proceedings for an offence under subsection (3), it is a defence for the accused to show that the accused had a reasonable excuse for the failure to disclose or for the making of the misstatement.

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**Commencement Information**

**I3** S. 41 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**42 Duties on receipt of list of assets and liabilities**

- (1) As soon as practicable after a trustee has received a statement of assets and liabilities—

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- (a) the trustee must prepare a statement of the debtor's affairs so far as within the knowledge of the trustee, and
  - (b) if, in the trustee's opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in section 129(1) (e) to (i) the trustee is so to indicate in the statement prepared under paragraph (a).
- (2) Not later—
- (a) than 4 days before the date fixed for the statutory meeting, or
  - (b) where the trustee does not intend to hold such a meeting, than 60 days after the date on which the sequestration is awarded,
- the trustee must send to AiB the statement, copy statement and comments mentioned in subsection (3).
- (3) The statement, copy statement and comments are—
- (a) the statement of assets and liabilities (unless that statement has already been received by AiB by virtue of section 8(3)(a)),
  - (b) subject to subsection (4), a copy of the statement prepared under subsection (1) (a), and
  - (c) written comments by the trustee indicating what in the trustee's opinion are the causes of the insolvency and to what extent the conduct of the debtor may have contributed to the insolvency.
- (4) The trustee need not send the copy mentioned in subsection (3)(b) if the trustee has, in accordance with section 108(1)(c), sent a copy of the inventory and valuation to AiB.
- (5) The written comments made under subsection (3)(c) are absolutely privileged.
- (6) Subsections (2) and (5) do not apply in any case where AiB is the trustee.

**Commencement Information**

**I4** S. 42 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

*Statutory meeting*

**43 Statutory meeting**

A meeting of creditors called under section 44 is referred to in this Act as “the statutory meeting”.

**Commencement Information**

**I5** S. 43 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**44 Calling of statutory meeting**

- (1) The statutory meeting may be held at such time and place as the trustee in the sequestration may determine.
- (2) But subsection (1) is subject to subsections (6) and (7).

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- (3) Not later than—
- (a) 60 days after the date on which sequestration is awarded, or
  - (b) such greater number of days after that date as the sheriff may, on cause shown, allow,
- the trustee must give notice to every creditor known to the trustee of whether or not the trustee intends to call the statutory meeting.
- (4) A notice under subsection (3)—
- (a) must be accompanied by a copy of the trustee's statement of the debtor's affairs, and
  - (b) where the trustee is notifying an intention not to hold the statutory meeting, must inform creditors of the effect of subsections (5) and (6).
- (5) Within 7 days after the giving of notice under subsection (3), any creditor may request the trustee to call the statutory meeting.
- (6) Where a request under subsection (5) is made (or requests under that subsection are made) by not less than  $\frac{1}{4}$  in value of the debtor's creditors, the trustee must call the statutory meeting not later than—
- (a) 28 days after the date on which notice is given under subsection (3), or
  - (b) such greater number of days after that date as the sheriff may, on cause shown, allow.
- (7) Where the trustee gives notice under subsection (3) that the trustee intends to call the statutory meeting, that meeting must be called within 28 days after the date on which the notice is given.
- (8) No fewer than 7 days before the date fixed for the statutory meeting, the trustee—
- (a) must notify every creditor known to the trustee of the date, time and place of the meeting, and
  - (b) must in the notification—
    - (i) invite the submission of such claims as have not already been submitted, and
    - (ii) inform the creditors of the trustee's duties under section 48(4).
- (9) The creditors may continue the statutory meeting to a date not later than—
- (a) 7 days after the days mentioned in subsection (7) have expired, or
  - (b) such greater number of days after that expiry as the sheriff may, on cause shown, allow.

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**Commencement Information**

**I6** S. 44 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

#### **45 Procedure where no statutory meeting called**

- (1) Where the trustee in the sequestration does not call the statutory meeting and the 7 days mentioned in section 44(5) expire, the trustee must forthwith make a report to AiB on the circumstance of the sequestration.
- (2) But subsection (1) does not apply if AiB is the trustee.

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**Commencement Information**

**I7** S. 45 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**46 Submission of claims for voting purposes**

- (1) For the purposes of voting at the statutory meeting a creditor (in this section and in section 47 referred to as “C”) must, in accordance with this section, submit a claim to the trustee in the sequestration at or before the meeting.
- (2) C 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.
- (3) But the trustee may dispense with any requirement under subsection (2) in respect of any debt or of any class of debt.
- (4) Where 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.
- (5) If C has produced a statement of claim in accordance with subsection (2), C may at any time before the statutory meeting produce, in place of that statement of claim, another statement of claim specifying a different amount for C's claim.
- (6) C may, in such circumstances as may be prescribed, state the amount of C's claim in foreign currency.
- (7) The trustee must, on production of any document to the trustee under this section—
  - (a) initial the document,
  - (b) keep a record of it, stating the date on which it was produced to the trustee, and
  - (c) if requested by the person producing it, return it (if it is not a statement of claim) to that person.
- (8) The submission of a claim under this section bars the effect of any enactment or rule of law relating to the limitation of actions.
- (9) Schedule 2 has effect for determining the amount in respect of which C is entitled to claim.

**Commencement Information**

**I8** S. 46 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

**47 Offences in relation to submission of claims for voting purposes**

- (1) Subsections (2) and (3) apply where C produces under section 46—
  - (a) a statement of claim,

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- (b) account,
  - (c) voucher, or
  - (d) other evidence,
- which is false.
- (2) C commits an offence unless C shows that C 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 who commits 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, to a fine, to imprisonment for a term not exceeding 2 years or both to a fine and to such imprisonment.

#### Commencement Information

19 S. 47 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## 48 Proceedings before trustee vote

- (1) At the commencement of the statutory meeting the trustee in the sequestration must chair the meeting and, as the person chairing it, is—
- (a) for the purposes of subsection (3), to accept or reject in whole or in part the claim of each creditor (and if the amount of the claim is stated in foreign currency, to convert that 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),
  - (b) on that being done, to invite the creditors to elect one of their number to chair the meeting in place of the trustee,
  - (c) to preside over the election, and
  - (d) to arrange for a record to be made of the proceedings at the meeting.
- (2) But, if no person is elected in pursuance of subsection (1)(b), the trustee must chair the statutory meeting throughout.

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- (3) The acceptance of a claim in whole or in part under paragraph (a) of that subsection is, subject to section 49(6), to determine the entitlement of a creditor to vote at the statutory meeting.
- (4) On the conclusion of the proceedings under subsection (1)—
  - (a) the trustee must make available for inspection—
    - (i) the statement of assets and liabilities, and
    - (ii) the statement prepared under section 42(1),
  - (b) the trustee must answer to the best of the trustee's ability any questions,
  - (c) the trustee must consider any representations put to the trustee by the creditors which relate to the debtor's—
    - (i) assets and business or financial affairs, or
    - (ii) conduct in relation to such assets and affairs,
  - (d) after the trustee considers any such representations as are mentioned in paragraph (c) if, in the trustee's opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (i) of section 129(1), the trustee is so to indicate,
  - (e) the trustee must determine whether it is necessary to revise the trustee's statement of the debtor's affairs, and
  - (f) if the trustee does so determine, the trustee must revise the statement either at, or as soon as may be after, the statutory meeting.
- (5) Where the trustee does carry out such a revision, the trustee is as soon as possible after the statutory meeting to send a copy of the revised statement to every creditor known to the trustee.

**Commencement Information**

**I10** S. 48 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

*Trustee vote*

**49 Trustee vote**

- (1) At the statutory meeting the creditors are, at the conclusion of the proceedings under section 48(4), to proceed to a vote at which they are—
  - (a) to confirm the appointment of the trustee appointed under section 51 (referred to in this section and in Part 4 as the “original trustee”), or
  - (b) to elect another person as the trustee in the sequestration (referred to in this section and in that Part as the “replacement trustee”).
- (2) The vote is referred to in this Act as a “trustee vote”.
- (3) None of the persons listed in subsection (5) is eligible for election as replacement trustee.
- (4) No one who becomes a person so listed after being elected as replacement trustee is qualified to continue to act as trustee.
- (5) The persons are—



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- (a) the debtor,
  - (b) a person not qualified to act as an insolvency practitioner,
  - (c) a person who, though qualified to act as an insolvency practitioner, is not qualified to act as such in relation to the debtor,
  - (d) a person who holds an interest opposed to the general interests of the creditors,
  - (e) a person who has not given an undertaking, in writing, to act as trustee, and
  - (f) AiB.
- (6) None of the persons listed in subsection (7) is entitled to vote in the trustee vote.
- (7) The persons are—
- (a) anyone who, other than by succession, acquires after the date of sequestration a debt due by the debtor, and
  - (b) any creditor to the extent that the creditor's debt is a postponed debt.
- (8) Where AiB is the original trustee, if no creditor entitled to vote in the trustee vote attends the statutory meeting or no replacement trustee is elected, AiB must—
- (a) forthwith report the proceedings at the statutory meeting to the sheriff, and
  - (b) continue to act as the trustee.
- (9) Where AiB is not the original trustee, if no creditor entitled to vote in the trustee vote attends the statutory meeting or no replacement trustee is elected, the original trustee must—
- (a) forthwith—
    - (i) notify AiB accordingly, and
    - (ii) report the proceedings at the statutory meeting to the sheriff, and
  - (b) continue to act as the trustee in the sequestration.

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**Commencement Information**

**III** S. 49 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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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\(2\)\(b\)](#)