



# 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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**Changes to legislation:** Bankruptcy (Scotland) Act 2016, Cross Heading: Private and public 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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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](#)

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