



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 3

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

##### *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**

**II** [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).
- (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).

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- (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.

**Commencement Information**

**I2** 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.

**Commencement Information**

**I3** 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

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- (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.

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**Commencement Information**

**I4** [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,
  - (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

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- (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

**I5** 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.
- (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

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- (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.

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**Commencement Information**

**16** [S. 48](#) 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\(2\)\(b\)](#)