



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Examination of debtor

44 Private examination.

- (1) The ^{F1} . . . trustee may request—
 - (a) the debtor to appear before him and to give information relating to his assets, his dealings with them or his conduct in relation to his business or financial affairs; or
 - (b) the debtor's spouse [^{F2} or civil partner] or any other person who the ^{F1} . . . trustee believes can give such information (in this Act such spouse [^{F3}, civil partner] or other person being referred to as a "relevant person"), to give that information, and, if he considers it necessary, the ^{F1} . . . trustee may apply to the sheriff for an order to be made under subsection (2) below.
- (2) Subject to section 46(2) of this Act, on application to him under subsection (1) above the sheriff may make an order requiring the debtor or a relevant person to attend for private examination before him on a date (being not earlier than 8 days nor later than 16 days after the date of the order) and at a time specified in the order.
- (3) A person who fails without reasonable excuse to comply with an order made under subsection (2) above shall be guilty of an offence and 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 to both.
- (4) Where the debtor is an entity whose estate may be sequestrated by virtue of section 6(1) of this Act, the references in this section and in sections 45 to 47 of this Act to the debtor shall be construed, unless the context otherwise requires, as references to a person representing the entity.

Status: Point in time view as at 01/04/2008.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Examination of debtor is up to date with all changes known to be in force on or before 15 June 2024.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)

Textual Amendments

- F1** Words in s. 44 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F2** Words in s. 44(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 38\(a\)](#); S.S.I. 2005/604 {art. 2(c)}
- F3** Words in s. 44(1)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263, [Sch. 28 para. 38\(b\)](#); S.S.I. 2005/604 {art. 2(c)}

Modifications etc. (not altering text)

- C1** S. 44(2)(3) applied (with modifications) (14.11.2011) by [The Investment Bank Special Administration \(Scotland\) Rules 2011 \(S. I. 2011/2262\)](#), [rule 127](#)

45 Public examination.

- (1) Not less than 8 weeks before the end of the first accounting period, the ^{F4} . . . trustee—
- (a) may; or
 - (b) if requested to do so by the Accountant in Bankruptcy or the commissioners (if any) or one quarter in value of the creditors, shall,
- 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, his dealings with them or his conduct in relation to his business or financial affairs:
- Provided that, on cause shown, such application may be made by the ^{F4} . . . trustee at any time.
- (2) Subject to section 46(2) of this Act, the sheriff, on an application under subsection (1) above, shall make an order requiring the debtor or relevant person to attend for examination before him in open court on a date (being not earlier than 8 days nor later than 16 days after the date of the order) and at a time specified in the order.
- (3) On the sheriff making an order under subsection (2) above, the ^{F4} . . . trustee shall—
- (a) publish in the Edinburgh Gazette a notice in such form and containing such particulars as may be prescribed; and
 - (b) send a copy of the said notice—
 - (i) to every creditor known to the ^{F4} . . . trustee; and
 - (ii) where the order is in respect of a relevant person, to the debtor, and inform the creditor and, where applicable, the debtor that he may participate in the examination.
- (4) A person who fails without reasonable excuse to comply with an order made under subsection (2) above shall be guilty of an offence and 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 to both.

Status: Point in time view as at 01/04/2008.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Examination of debtor is up to date with all changes known to be in force on or before 15 June 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)

Textual Amendments

- F4** Words in s. 45 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

46 Provisions ancillary to sections 44 and 45.

- (1) If the debtor or relevant person is residing—
- (a) in Scotland, the sheriff may, on the application of the ^{F5}. . . trustee, grant a warrant which may be executed by a messenger-at-arms or sheriff officer anywhere in Scotland [^{F6}to apprehend]; or
 - (b) in any other part of the United Kingdom, ^{F5}. . . the sheriff may, on the application of the ^{F5}. . . trustee, [^{F7}grant a warrant for the arrest of]
- ^{F8}. . . the debtor or relevant person and [^{F9}to] have him taken to the place of the examination:
- Provided that a warrant under [^{F10}this subsection shall not be granted] unless the [^{F11}sheriff] is satisfied that it is necessary to do so to secure the attendance of the debtor or relevant person at the examination.
- (2) If the debtor or a relevant person is for any good reason prevented from attending for examination, the sheriff may, without prejudice to subsection (3) below, grant a commission to take his examination (the commissioner being in this section and section 47 below referred to as an “examining commissioner”).
- (3) The sheriff or the examining commissioner may at any time adjourn the examination to such day as the sheriff or the examining commissioner may fix.
- (4) The sheriff or the examining commissioner may order the debtor or a relevant person to produce for inspection any document in his custody or control relating to the debtor’s assets, his dealings with them or his conduct in relation to his business or financial affairs, and to deliver the document or a copy thereof to the ^{F5}. . . trustee for further examination by him.

Textual Amendments

- F5** Words in s. 46(1)(a)(b)(4) repealed (S.) (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F6** Words in s. 46(1)(a) added (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 20\(2\)\(a\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)
- F7** Words in s. 46(1)(b) substituted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 20\(2\)\(b\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)
- F8** Words in s. 46(1) repealed (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 20\(2\)\(c\)\(i\)](#), [Sch.2](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)
- F9** Word "to" in s. 46(1) inserted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 20\(2\)\(c\)\(ii\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)
- F10** Words in the proviso to s. 46(1) substituted (1.4.1993, subject to savings in arts. 4, 5 of S.I. 1993/438) by 1993 c. 6, s. 11(3), [Sch. 1 para. 20\(3\)](#) (with s. 12(6)); S.I. 1993/438, [art.3](#)

Status: Point in time view as at 01/04/2008.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Examination of debtor is up to date with all changes known to be in force on or before 15 June 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)

F11 S. 46(1) proviso: word substituted (S.) (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 36, 227(3), [Sch. 1 para. 41\(b\)](#) (with s. 223); S.S.I. 2008/115, [art. 3\(1\)\(i\)](#) (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

47 Conduct of examination.

- (1) The examination, whether before the sheriff or an examining commissioner, shall be taken on oath.
- (2) At the examination—
 - (a) the ^{F12} . . . trustee or a solicitor or counsel acting on his behalf 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,
as to any matter relating to the debtor's assets, his dealings with them or his conduct in relation to his business or financial affairs.
- (3) The debtor or a relevant person shall be required to answer any question relating to the debtor's assets, his dealings with them or his conduct in relation to his business or financial affairs and shall not be excused from answering any such question on the ground that the answer may incriminate or tend to incriminate him or on the ground of confidentiality:

Provided that—

- (a) a statement made by the debtor or a relevant person in answer to such a question shall not be admissible in evidence in any subsequent criminal proceedings against the person making the statement, except where the proceedings are in respect of a charge of perjury relating to the statement;
 - (b) a person subject to examination shall not be required to disclose any information which he has received from a person who is not called for examination if the information is confidential between them.
- (4) [^{F13}The rules relating to the recording of evidence in ordinary causes specified in the First Schedule to the Sheriff Courts (Scotland) Act 1907] shall apply in relation to the recording of evidence at the examination before the sheriff or the examining commissioner.
 - (5) The debtor's deposition at the examination shall be subscribed by himself and by the sheriff (or, as the case may be, the examining commissioner) and shall be inserted in the sederunt book.
 - (6) The ^{F12} . . . trustee shall insert a copy of the record of the examination in the sederunt book and send a copy of the record to the Accountant in Bankruptcy.
 - (7) A relevant person shall be entitled to fees or allowances in respect of his attendance at the examination as if he were a witness in an ordinary civil cause in the sheriff court:

Provided that, if the sheriff thinks that it is appropriate in all the circumstances, he may disallow or restrict the entitlement to such fees or allowances.

Status: Point in time view as at 01/04/2008.

Changes to legislation: Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Examination of debtor is up to date with all changes known to be in force on or before 15 June 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)

Textual Amendments

- F12** Words in s. 47 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)\(3\)](#), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))
- F13** Words substituted by [S.I. 1986/517](#), [art. 5](#)

Modifications etc. (not altering text)

- C2** S. 47(1) applied (with modifications) (14.11.2011) by [The Investment Bank Special Administration \(Scotland\) Rules 2011 \(S. I. 2011/2262\)](#), rule {127}

Status:

Point in time view as at 01/04/2008.

Changes to legislation:

Bankruptcy (Scotland) Act 1985 (repealed), Cross Heading: Examination of debtor is up to date with all changes known to be in force on or before 15 June 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.