

# **BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary*

#### *Schedule 2 – the Scottish Civil Enforcement Commission (Introduced by Section 50)*

#### **Judicial Officers**

##### *Section 57 – Judicial Officers*

177. *Section 57(1)* creates the office of judicial officer and any person holding the office will have the functions (which include powers and duties) conferred on that office by the provisions of this Act (including any subordinate legislation made under powers contained in this Act) and by any other legislation.
178. A person may be granted a commission as a judicial officer by the Lord President only on the recommendation of the Commission provided the Commission is satisfied that the requirements set out in section 58(1) are met and that the person is a member of the professional association designated by the Scottish Ministers under section 63(1). The Commission must notify the applicant and the professional association where a commission is granted.
179. A judicial officer (unlike a sheriff officer) may carry out the functions of a judicial officer throughout Scotland (subsection (4)).
180. Subsection (5) provides that any person wishing to be a judicial officer must apply to the Commission unless the person is deemed to hold a commission as a judicial officer as a result of section 60(2). Under that section, messengers-at-arms and sheriff officers who hold a commission as such immediately before the day on which that section comes into force will automatically become judicial officers.
181. Subsection (6) provides for the process by which the Lord President may deprive an officer of his or her office. This will be done after the disciplinary committee of the Commission makes such a recommendation to the Lord President and once any time limit for appeal under section 74 has expired with no appeal having been made. The Lord President's decision is to be notified to the officer, the professional association, the Court of Session and every sheriff principal.

##### *Section 58 – Appointment of judicial officer*

182. *Section 58(1)* provides that the Commission must make a recommendation to the Lord President to grant an application for a commission as judicial officer where it is satisfied as to the suitability of the person. In taking a decision to make such a recommendation it must also take into account the overall number of judicial officers and any other matters

*These notes relate to the Bankruptcy and Diligence etc. (Scotland)  
Act 2007 (asp 3) which received Royal Assent on 15 January 2007*

it considers relevant. The person must be a member of the professional association (see section 63(3)). A copy of the decision on an application must be sent to the applicant (subsection (2)). Refusals to recommend the granting of a commission are subject to appeal as set out in section 74(1).

183. The Commission must, following the granting of a commission by the Lord President, issue an official identity card to the judicial officer (subsection (3)). The officer must, when requested, show the identity card when carrying out official duties (subsection (4)).
184. Subsection (5) provides that the Commission may make rules for the procedure for applications to become a judicial officer, the qualifications such a person must hold, the examinations and training to be undertaken before a commission may be granted and any other matters considered to be relevant to applications.

***Section 59 – Annual fee***

185. **Section 59(1)** provides that the Commission may make rules requiring every judicial officer to pay an annual fee to the Commission. These may include a specific date each year by which payment must be made, how the annual fee is to be paid and any other matters the Commission considers to be appropriate (subsection (2)).
186. Subsection (3) provides that rules under this section must be approved by the Scottish Ministers.