

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

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

Investigation of judicial officers

Section 66 – Inspection of judicial officer

202. *Section 66* provides that the Commission can appoint a person to inspect the work or a particular aspect of the work of a judicial officer. The person must, if required by the Commission, inquire into any paid activities undertaken by the judicial officer. The person appointed is required to prepare a report on the inspection for the Commission and is entitled to charge the Commission a fee unless the person is a civil servant working in that capacity. Whether or not the person is a civil servant, the person is entitled to reimbursement by the Commission of expenses reasonably incurred in the inspection.

Section 67 – Investigation of alleged misconduct by judicial officer

203. This section governs when the Commission can investigate allegations of misconduct by judicial officers. Subsection (1) provides that this section applies where—

- a person appointed under section 66 to carry out an inspection submits a report to the Commission disclosing that a judicial officer may have been guilty of misconduct;
- a sheriff or judge, but not the Lord President (who carries out functions relating to misconduct by depriving judicial officers of office by virtue of section 57(6)), makes a report to the Commission alleging misconduct;
- the professional association sends on details of a complaint under section 64;
- any other person complains to the Commission alleging misconduct of an officer; or
- the Commission otherwise has reason to believe that an officer may have been guilty of misconduct.

204. Subsection (2) provides that the Commission may disregard a complaint if it is considered that the complaint is frivolous or vexatious (i.e. is made simply to harass the judicial officer).

205. Subsections (3) and (4) provide that the Commission, after giving the officer an opportunity to admit, deny or give an explanation of the matter, may appoint a person to investigate the matter. Where a person was appointed under section 66 to inspect the

work of the judicial officer, the Commission can appoint that person to carry out the investigation under this section (see subsection (8)). The Commission may not appoint a person if a judicial officer admits the misconduct in writing or gives a satisfactory explanation of the matter. An admission may be made by means of an electronic communication, as provided for in section 78(b).

206. Subsection (5) provides that the person appointed to investigate the alleged misconduct must provide a report to the Commission and may make a recommendation that the matter is referred to the disciplinary committee of the Commission where there is a probable case of misconduct with sufficient evidence to justify disciplinary proceedings.
207. Subsection (6) provides that the Commission must, where it receives such a recommendation, refer the matter to the disciplinary committee to be dealt with under section 71.
208. Subsection (7) provides that the Commission must pay the fees of the person conducting the investigation, except where the person is a civil servant acting in that capacity, and must pay the person's outlays (whether the person is a civil servant or not).
209. Subsection (9) defines "misconduct" as including bringing the office of judicial officer into disrepute, failure to provide information under section 51(4) and a failure to pay the annual fee to the Commission within 3 months of the due date. Failure to notify the Commission of public acts of bankruptcy and insolvent events as listed in section 62(2) is also misconduct which can be investigated by the Commission.

Section 68 – Suspension of judicial officer pending outcome of disciplinary or criminal proceedings

210. This section provides that the disciplinary committee may make an order suspending the officer from practice for a specific period where the Commission becomes aware of a complaint alleging misconduct on the part of a judicial officer, where the Commission becomes aware (under section 70) of a bankruptcy or related event involving the officer (or of other concerns surrounding such an event) or where a judicial officer has been charged with an offence.
211. The disciplinary committee may also extend the officer's suspension or revoke the order. Any decisions under this section are subject to appeal as set out in section 74(1).

Section 69 – Commission's duty in relation to offences or misconduct by judicial officer

212. Where the Commission becomes aware that a judicial officer has been convicted by a court of any offence or admits misconduct under section 67(4)(a), the Commission must refer the matter to the disciplinary committee to be dealt with under section 71.
213. Subsection (3) of section 69 specifies that "offence" means any offence which the judicial officer has been convicted of before or after being granted a commission as a judicial officer, other than any offence disclosed in his or her application for a commission. This is subject, however, to the Rehabilitation of Offenders Act 1974, so that a person applying for a commission as a judicial officer need not disclose spent convictions and a judicial officer cannot be suspended or deprived from office because of such spent convictions.

Section 70 – Commission's power in relation to judicial officer's bankruptcy etc.

214. **Section 70** allows the Commission to make a referral to the disciplinary committee (to be dealt with under section 71) when it becomes aware of the occurrence of a public act of bankruptcy or related event as listed in section 62(2). The Commission can make such a referral only if it considers that the circumstances of the event give rise to concerns about the officer that the disciplinary committee could not otherwise consider because

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

the circumstances and concerns do not constitute misconduct or a criminal offence. A public act of bankruptcy or a related event could be classified as misconduct if it entails conduct tending to bring the office of judicial officer into disrepute.