

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 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.

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

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.