



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 3

ENFORCEMENT

Investigation of judicial officers

66 Inspection of judicial officer

- (1) The Commission may appoint a person to inspect the work or particular aspects of the work of a judicial officer.
- (2) A person appointed under subsection (1) above must, if required to do so by the Commission, inquire into any activities undertaken for remuneration by the judicial officer.
- (3) A person appointed under subsection (1) above must submit a report of the inspection and of any inquiry under subsection (2) above to the Commission.
- (4) The Commission must pay a person appointed under subsection (1) above—
 - (a) a fee, unless the person is employed in the civil service and the person carries out the inspection in that person's capacity as a civil servant; and
 - (b) any outlays reasonably incurred by the person, in connection with an inspection, inquiry and report under this section.

67 Investigation of alleged misconduct by judicial officer

- (1) This section applies where—
 - (a) a person appointed under section 66(1) of this Act submits a report to the Commission disclosing that a judicial officer may have been guilty of misconduct;
 - (b) a sheriff or a Senator of the College of Justice (other than the Lord President) makes a report to the Commission alleging misconduct by an officer;

Status: This is the original version (as it was originally enacted).

- (c) the professional association sends, under section 64 of this Act, details of a complaint about an officer to the Commission;
 - (d) any other person complains to the Commission alleging misconduct by an officer; or
 - (e) the Commission otherwise has reason to believe that an officer may have been guilty of misconduct.
- (2) The Commission may disregard a report or complaint under subsection (1) above if the Commission considers it to be frivolous or vexatious.
- (3) The Commission, after giving the judicial officer an opportunity to admit or deny the misconduct or to give an explanation of the matter, may appoint a person to investigate the matter.
- (4) But the Commission may not appoint a person under subsection (3) above if the judicial officer—
- (a) admits the misconduct in writing; or
 - (b) gives a satisfactory explanation of the matter.
- (5) The person appointed under subsection (3) above, after carrying out the investigation—
- (a) must report to the Commission; and
 - (b) may, if of the opinion that there is—
 - (i) a probable case of misconduct; and
 - (ii) evidence sufficient to justify disciplinary proceedings,make a recommendation that the matter be referred to the disciplinary committee.
- (6) The Commission must, where it receives a recommendation under subsection (5)(b) above, refer the matter to the disciplinary committee to be dealt with under section 71 of this Act.
- (7) The Commission must pay the person appointed under subsection (3) above—
- (a) a fee, unless the person is employed in the civil service and the person carries out the investigation in that person's capacity as a civil servant; and
 - (b) any outlays reasonably incurred by the person,
- in connection with an investigation under this section and any hearing under section 71 of this Act.
- (8) In a case to which subsection (1)(a) above applies, the person appointed under subsection (3) above may be the same person as was appointed under section 66(1) of this Act.
- (9) In this Part, “misconduct” includes—
- (a) conduct tending to bring the office of judicial officer into disrepute;
 - (b) failure to comply with a requirement imposed under section 51(4) of this Act;
 - (c) where a fee is due by virtue of rules made under subsection (1) of section 59 of this Act and a date has been specified by rules made under subsection (2) (a) of that section, failure to pay the fee within 3 months of that date; and
 - (d) failure to notify the Commission under subsection (1) of section 62 of this Act of the occurrence of an event mentioned in subsection (2) of that section.

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

- (1) This section applies—
 - (a) in any of the circumstances mentioned in section 67(1) of this Act;
 - (b) where section 70 of this Act applies; or
 - (c) where a judicial officer has been charged with an offence.
- (2) The disciplinary committee may make an order suspending the judicial officer from practice for a period specified in the order.
- (3) The disciplinary committee may—
 - (a) extend the period specified in the order; or
 - (b) revoke the order.

69 Commission’s duty in relation to offences or misconduct by judicial officer

- (1) This section applies where—
 - (a) the Commission becomes aware that a judicial officer has been convicted by a court of any offence; or
 - (b) an officer admits misconduct under section 67(4)(a) of this Act.
- (2) The Commission must refer the matter to the disciplinary committee to be dealt with under section 71 of this Act.
- (3) Subsection (1)(a) above and section 72(4) of this Act are without prejudice to section 4(3)(b) of the Rehabilitation of Offenders Act 1974 (c. 53) (non-disclosure no grounds for dismissal etc.); and in those provisions “offence” means any offence of which the judicial officer has been convicted before or after that person was granted a commission as an officer, other than any offence disclosed in that person’s application for such a commission.

70 Commission’s power in relation to judicial officer’s bankruptcy etc.

- (1) This section applies where the Commission—
 - (a) becomes aware (whether by the judicial officer notifying it under section 62(1) of this Act or otherwise) that an event mentioned in subsection (2) of that section has occurred; and
 - (b) considers that the occurrence of that event or circumstances surrounding it, although falling short of misconduct and not involving the commission of an offence, give rise to concerns about—
 - (i) the officer;
 - (ii) the exercise by the officer of that officer’s functions; or
 - (iii) the undertaking by that officer of activities.
- (2) The Commission may refer the matter to the disciplinary committee to be dealt with under section 71 of this Act.