



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 3

### [<sup>F1</sup>OFFICERS OF COURT]

#### *Miscellaneous*

#### 75 [<sup>F1</sup>Officer of court's] actions void where officer has interest

- (1) Anything done by [<sup>F2</sup>an officer of court] in exercising or purporting to exercise a prescribed function in relation to a matter in which the officer has an interest is void.
- (2) [<sup>F3</sup>An officer of court] has an interest in a matter where the matter—
  - (a) is one in which the officer has an interest as an individual; or
  - (b) consists of or includes a debt in relation to which any of the circumstances mentioned in subsection (3) below apply.
- (3) The circumstances referred to in subsection (2)(b) above are that the debt is due to or by—
  - (a) a business associate of the [<sup>F4</sup>officer of court];
  - (b) a member of the officer's family; or
  - (c) a company or firm, and the officer, a business associate of the officer or a member of the officer's family—
    - (i) is a director or partner of that company or firm;
    - (ii) holds, either alone or along with another person, a controlling interest in that company or firm; or
    - (iii) has a pecuniary interest in that company or firm and the sole or main business of the company or firm is the purchase of debts for enforcement.
- (4) Any reference in subsection (3) above to—
  - (a) a business associate of [<sup>F5</sup>an officer of court] is to be construed as a reference to a co-director, partner, employer, employee, agent or principal of the officer;

*Status: This version of this cross heading contains provisions that are prospective.*

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- (b) a controlling interest in a company is to be construed as a reference to an interest giving a person control of a company within the meaning of section 840 of the Income and Corporation Taxes Act 1988 (c. 1) (meaning of “control”).
- (5) Any reference in subsection (3) above to a member of [<sup>F6</sup>an officer of court's] family is to be construed as a reference to—
- (a) the spouse of the officer;
  - (b) a person living together with the officer as husband and wife;
  - (c) a civil partner of the officer;
  - (d) a person living with the officer in a relationship which has the characteristics of the relationship between a husband and wife except that the person and the officer are of the same sex;
  - (e) a parent of the officer;
  - (f) a brother or sister of the officer;
  - (g) a child of the officer, including—
    - (i) a stepchild; and
    - (ii) any child brought up or treated by the officer or any person mentioned in paragraph (b), (c) or (d) above as a child of the officer or, as the case may be, of that person;
  - (h) a grandchild of the officer,
- and any relationships of the half blood or by affinity are to be construed as relationships of the full blood.
- (6) In subsection (4)(a) above, “principal” does not include a principal in a contract for the carrying out by the [<sup>F7</sup>officer of court] of the prescribed function in relation to the debt concerned.
- (7) In subsections (1) and (6) above, “prescribed function” means any function conferred on [<sup>F8</sup>an officer of court] by virtue of this Act or any other enactment which the Scottish Ministers by regulations specify for the purposes of this section.

#### Textual Amendments

- F1** Words in s. 75 substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(2\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F2** Words in s. 75(1) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(1\)\(a\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F3** Words in s. 75(2) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(1\)\(b\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F4** Words in s. 75(3)(a) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(1\)\(c\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F5** Words in s. 75(4)(a) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(1\)\(a\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F6** Words in s. 75(5) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(1\)\(d\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F7** Words in s. 75(6) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(1\)\(c\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F8** Words in s. 75(7) substituted (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 21\(1\)\(a\)](#); S.S.I. 2011/30, art. 3(1)(3), Sch. 1

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#### Commencement Information

- I1** S. 75 not in force at Royal Assent see s. 227; s. 75(7) in force for certain purposes at 1.4.2008 by S.S.I. 2008/115, **art. 3(4)**, **Sch. 3** (with arts. 4-6, 10)
- I2** S. 75(1)-(6) in force at 31.1.2011 by S.S.I. 2011/31, **art. 3(f)**
- I3** S. 75(7) in force at 31.1.2011 in so far as not already in force by S.S.I. 2011/31, **art. 3(f)**

PROSPECTIVE

#### **F<sup>9</sup>76 Measure of damages payable by judicial officer for negligence or other fault**

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#### Textual Amendments

- F9** S. 76 repealed (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 Pt. 2**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### **77 Effect of code of practice**

- (1) [<sup>F10</sup>An officer of court] must, in exercising the officer's functions or undertaking any activities, have regard to the provisions (so far as they are applicable) of any code of practice published under section [<sup>F11</sup>63A] of this Act.
- (2) A failure on the part of [<sup>F12</sup>an officer of court] to comply with any provision of a code of practice does not of itself render the officer liable to any criminal or civil proceedings.
- (3) A code of practice is admissible in evidence in any criminal or civil proceedings.
- (4) If any provision of a code of practice appears to—
  - (a) the court or tribunal conducting any civil or criminal proceedings; or
  - [<sup>F13</sup>(b) a relevant court (within the meaning of subsection (8) of section 79 of the 1987 Act (investigation of alleged misconduct)) in disciplinary proceedings under that section;]

to be relevant to any question arising in the proceedings, that provision of the code may be taken into account in determining that question.

#### Textual Amendments

- F10** Words in s. 77(1) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 22(a)(i)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F11** Word in s. 77(1) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 22(a)(ii)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F12** Words in s. 77(2) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 22(b)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1
- F13** S. 77(4)(b) substituted (31.1.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 4 para. 22(c)**; S.S.I. 2011/30, art. 3(1)(3), Sch. 1

#### Commencement Information

- I4** S. 77 in force at 31.1.2011 by S.S.I. 2011/31, **art. 3(g)**

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## 78 Electronic publications and communications

In this Part—

- (a) references to “publishing” include publishing by electronic means and cognate expressions are to be construed accordingly; and
- (b) any reference to a notification,<sup>F14</sup>... being in writing includes a reference to that notification,<sup>F14</sup>... being an electronic communication.

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### Textual Amendments

- F14** Words in s. 78 repealed (31.1.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 4 para. 23](#); [S.S.I. 2011/30](#), art. 3(1)(3), Sch. 1

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### Commencement Information

- I5** S. 78 in force at 31.1.2011 by [S.S.I. 2011/31](#), [art. 3\(g\)](#)

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**Changes to legislation:**

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