



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 3

### ENFORCEMENT

#### *Miscellaneous*

#### **75 Judicial officer's actions void where officer has interest**

- (1) Anything done by a judicial officer in exercising or purporting to exercise a prescribed function in relation to a matter in which the officer has an interest is void.
- (2) A judicial officer 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 judicial officer;
  - (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 a judicial officer is to be construed as a reference to a co-director, partner, employer, employee, agent or principal of the officer;

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*Status: This is the original version (as it was originally enacted).*

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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 a judicial officer’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 judicial officer of the prescribed function in relation to the debt concerned.
- (7) In subsections (1) and (6) above, “prescribed function” means any function conferred on a judicial officer by virtue of this Act or any other enactment which the Scottish Ministers by regulations specify for the purposes of this section.

## **76 Measure of damages payable by judicial officer for negligence or other fault**

For the avoidance of doubt, nothing in this Part—

- (a) revives any rule of law whereby, if a messenger-at-arms or a sheriff officer has been found liable to a creditor for negligent delay or failure to execute diligence, or for other fault in the execution of diligence, the damages payable by the messenger or, as the case may be, officer are determined solely by reference to the amount of the debt; or
- (b) applies any such rule of law to a judicial officer.

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

- (1) A judicial officer 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 55 or 56 of this Act.
- (2) A failure on the part of a judicial officer 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
  - (b) the disciplinary committee holding a hearing under section 71 of this Act,
- to be relevant to any question arising in the proceedings, that provision of the code may be taken into account in determining that question.

## **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, admission or representation being in writing includes a reference to that notification, admission or representation being an electronic communication.