



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 3

### ENFORCEMENT

#### *Scottish Civil Enforcement Commission*

#### **50 Scottish Civil Enforcement Commission**

- (1) There is established a body corporate to be known as the Scottish Civil Enforcement Commission (in this Act, the “Commission”) having the functions conferred on it by virtue of this Act and any other enactment.
- (2) The Commission must, in the exercise of its functions, act—
  - (a) in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements; and
  - (b) in accordance with any directions given to it by the Scottish Ministers.
- (3) In subsection (2)(a) above, “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).
- (4) The Scottish Ministers may, by regulations—
  - (a) confer functions on;
  - (b) remove functions from; or
  - (c) otherwise modify the functions of,the Commission.
- (5) Regulations made under subsection (4) above may—
  - (a) transfer a function to the Commission which is conferred on another person by virtue of any other enactment; and
  - (b) make such modifications to any other enactment which the Scottish Ministers consider necessary or expedient in consequence of transferring the function.

- (6) The Advisory Council on Messengers-at-Arms and Sheriff Officers is abolished.
- (7) Schedule 2 to this Act makes further provision about the Commission.

## **51 Information and annual report**

- (1) The Commission must provide the Scottish Ministers with information relating to the exercise of the Commission's functions as the Scottish Ministers consider appropriate.
- (2) The Commission must prepare a report on its activities during the whole of each financial year as soon as practicable after the end of the period to which the report relates.
- (3) A report prepared under subsection (2) above—
  - (a) must include a statement of accounts, prepared in accordance with paragraph 33 of schedule 2 to this Act, for the period to which the report relates; and
  - (b) may include a statistical analysis of the performance by judicial officers of their functions and the undertaking by officers of activities during the period to which the report relates or any other period specified by the Commission in the report.
- (4) The Commission may, in preparing the report under subsection (2) above, require a judicial officer to provide any information it considers necessary or proper for the purposes of preparing the report.
- (5) The Commission must—
  - (a) send a copy of each report prepared under subsection (2) above to the Scottish Ministers; and
  - (b) publish the report.
- (6) The Scottish Ministers must lay a copy of a report sent to them under subsection (5) (a) above before the Scottish Parliament.

## **52 Publication of guidance and other information**

- (1) The Commission may—
  - (a) prepare and publish information and other materials; and
  - (b) carry on any other activities,that it considers appropriate for the purposes of informing and educating the public about the matters mentioned in subsection (2) below.
- (2) Those matters are—
  - (a) the Commission's functions;
  - (b) the functions and, subject to section 56(1) of this Act, the activities of judicial officers; and
  - (c) the law of and procedures and practice relating to diligence.

## **53 Published information not to enable identification**

Information—

- (a) contained in a report prepared under section 51(2); or
- (b) published under section 52(1) or 56(1),

of this Act must not be in a form which identifies or enables the identification of judicial officers or persons against whom diligence has been executed.

#### **54 Register of judicial officers**

- (1) The Commission must keep a register of judicial officers, which is to be open to public inspection at reasonable times determined by the Commission.
- (2) The Commission may make rules—
  - (a) prescribing the particulars and other information to be recorded in the register;
  - (b) regulating the procedure by which a judicial officer must intimate such particulars and other information to the Commission;
  - (c) requiring the notification to the Commission of changes in the particulars and other information.

#### **55 Code of practice**

- (1) The Commission—
  - (a) must prepare and publish a code of practice in relation to the exercise of the functions of; and
  - (b) may, subject to section 56(2)(a) of this Act, prepare and publish such a code in relation to the undertaking of activities by, judicial officers.
- (2) The Commission may—
  - (a) revise the whole or any part of a code published under this section; and
  - (b) publish the revised code.
- (3) The Commission must send a copy of each code of practice published under this section to—
  - (a) the Scottish Ministers; and
  - (b) the association designated as the professional association for judicial officers under section 63(1) of this Act (in this Part, the “professional association”).
- (4) The Scottish Ministers must lay a copy of a code of practice sent to them under subsection (3)(a) above before the Scottish Parliament.

#### **56 Publication of information relating to informal debt collection**

- (1) The Commission may publish information and other materials for the purposes of—
  - (a) promoting good practice in; and
  - (b) informing the public about, informal debt collection.
- (2) Information published under subsection (1) above may take the form of—
  - (a) a code of practice for persons undertaking informal debt collection; or
  - (b) guidance for those persons.
- (3) Where the information published under subsection (1) above takes the form of a code of practice for persons undertaking informal debt collection, subsections (2), (3)(a)

and (4) of section 55 of this Act apply as they apply to a code of practice published under that section.

- (4) In this section, “informal debt collection” means the collection of debts (including debts which are not constituted by decrees or documents of debt) by methods other than diligence.
- (5) In subsection (4) above, “decrees” and “documents of debt” are to be construed in accordance with section 221 of this Act.

### *Judicial officers*

## **57 Judicial officers**

- (1) There is established an office to be known as judicial officer and any person who holds a commission as officer has the functions conferred by virtue of this Act and any other enactment.
- (2) A person may be granted a commission as a judicial officer by the Lord President of the Court of Session but only on the recommendation of the Commission under section 58(1) of this Act.
- (3) Where the Lord President grants a person a commission as a judicial officer, the Commission must intimate that decision to—
- (a) the person who applied for the commission; and
  - (b) the professional association.
- (4) A judicial officer who holds a commission granted under subsection (2) above may carry out that officer’s functions in the whole of Scotland.
- (5) Subject to section 60(2) of this Act, any person who wishes to be a judicial officer must apply to the Commission.
- (6) A judicial officer may be deprived of office by the Lord President but only where—
- (a) the disciplinary committee of the Commission (in this Part, the “disciplinary committee”) recommends under section 72(5)(a)(ii) or (6)(b) of this Act that the officer be deprived of office;
  - (b) any time limit within which the officer may appeal under section 74 of this Act has expired; and
  - (c) no such appeal has been made.
- (7) Where the Lord President deprives a judicial officer of office, the Commission must intimate that decision to—
- (a) the judicial officer;
  - (b) the Court of Session;
  - (c) every sheriff principal; and
  - (d) the professional association.

## **58 Appointment of judicial officer**

- (1) Where the Commission is satisfied—
- (a) that a person who applies to it is a fit and proper person to be appointed as a judicial officer; and

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

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- (b) having regard to—
  - (i) the number of persons already holding commission as officers; and
  - (ii) any other matters the Commission considers relevant,that the appointment is appropriate,  
the Commission must, subject to section 63(3) of this Act, recommend that the Lord President of the Court of Session grants that person a commission as an officer.
- (2) The Commission must send a copy of its decision on an application for a commission as a judicial officer to the person who applied for the commission.
- (3) Where the Lord President grants a person a commission as a judicial officer under section 57(2) of this Act, the Commission must issue an official identity card, in a form determined by the Commission, to the officer.
- (4) A judicial officer carrying out an officer's functions must, on being requested to do so, exhibit the official identity card issued under subsection (3) above.
- (5) The Commission may make rules about—
  - (a) the procedure for applications for a commission as a judicial officer;
  - (b) the qualifications that a person must have before that person may be granted a commission under section 57(2) of this Act;
  - (c) the examinations that a person may be required to undertake in pursuance of a qualification prescribed by rules made under paragraph (b) above;
  - (d) the training that a person must undertake before that person may be granted a commission; and
  - (e) any other matters in relation to applications as it considers appropriate.

## **59 Annual fee**

- (1) The Commission may make rules requiring every judicial officer holding a commission to pay an annual fee to the Commission.
- (2) Rules made under subsection (1) above may include provision—
  - (a) specifying the date by which the fee must be paid each year;
  - (b) specifying the manner in which it must be paid; and
  - (c) about any other matters in relation to the fee that the Commission considers appropriate.
- (3) Anything done by the Commission under this section must be approved by the Scottish Ministers.

### *Abolition of offices of messenger-at-arms and sheriff officer*

## **60 Abolition of offices of messenger-at-arms and sheriff officer**

- (1) The offices of messenger-at-arms and sheriff officer are abolished.
- (2) Any person who, immediately before the day on which this section comes into force, holds a commission as a messenger-at-arms or sheriff officer is deemed, from that day, to hold a commission as a judicial officer as if granted under section 57(2) of this Act.

- (3) Notwithstanding subsection (1) above and subject to subsection (4) below, a judicial officer may carry out any function which, under any rule of law, it was competent for a messenger-at-arms or sheriff officer to carry out.
- (4) Subsection (3) above applies only in so far as the function is not inconsistent with any provision of this Act or any other enactment.
- (5) References in any enactment (other than the references in the enactments mentioned in subsection (6) below) to—
- (a) a “messenger-at-arms”;
  - (b) a “sheriff officer”; and
  - (c) an “officer of court”,
- are to be construed as references to a judicial officer.
- (6) Those enactments are—
- (a) section 18 of the Confirmation of Executors (Scotland) Act 1858 (c. 56) (power to make Acts of Sederunt for the purposes of the Act);
  - (b) section 13 of the Heritable Securities (Scotland) Act 1894 (c. 44) (trustees or others to have powers conferred by the Act where debtor incapacitated);
  - (c) section 18(1) of the Company Directors Disqualification Act 1986 (c. 46) (Secretary of State’s power to require particulars of disqualification orders or undertakings); and
  - (d) section 127(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (Clerk of Justiciary to furnish forms etc. relating to appeals).

*Regulation of judicial officers*

**61 Regulation of judicial officers**

- (1) The Scottish Ministers may, by regulations—
- (a) confer functions on;
  - (b) remove functions from; or
  - (c) otherwise modify the functions of,
- judicial officers.
- (2) The Scottish Ministers may, by regulations—
- (a) prescribe the types of business association which judicial officers may form in order to carry out their functions;
  - (b) make provision about the ownership, membership, management and control of those business associations;
  - (c) prescribe conditions which must be satisfied by those business associations;
  - (d) make provision regulating the fees and charges which may be levied by an officer in the performance of the officer’s functions.
- (3) Before making regulations under subsection (1) or (2) above, the Scottish Ministers must consult the Commission.
- (4) The Commission may make rules—
- (a) regulating, without prejudice to sections 67 to 73 of this Act, the conduct of judicial officers;

- (b) prohibiting the undertaking by officers of activities which appear to the Commission to be incompatible with their functions;
  - (c) permitting, subject to any conditions the Commission provides for in the rules, the undertaking by officers for remuneration of activities, not appearing to the Commission to be incompatible with their functions;
  - (d) which make provision—
    - (i) about the accounts and finances of officers, including the keeping and auditing of officers' accounts;
    - (ii) for the keeping of records by officers and the inspection of those records; and
    - (iii) about the finding of caution by officers; and
  - (e) regulating other matters in relation to officers that the Commission considers appropriate.
- (5) A judicial officer must not undertake any activity which is not connected with the officer's functions for remuneration unless the officer obtains the permission of the Commission.
- (6) The Commission must not withhold permission under subsection (5) above unless it appears to the Commission that the undertaking by the judicial officer of the activity would be incompatible with the officer's functions.
- (7) The Commission may—
  - (a) attach conditions to; or
  - (b) revoke,any permission granted under subsection (5) above.

## **62 Duty to notify Commission of bankruptcy etc.**

- (1) Where, in relation to a judicial officer, any of the events mentioned in subsection (2) below occurs, the officer must, before the expiry of the period of 28 days beginning with the occurrence of the event, notify the Commission in writing of it.
- (2) The events referred to in subsection (1) above are—
  - (a) the sequestration of the judicial officer;
  - (b) the granting by the officer of a trust deed for creditors;
  - (c) the making of a bankruptcy restrictions order in respect of the officer;
  - (d) the acceptance by the Accountant in Bankruptcy of a bankruptcy restrictions undertaking made by the officer;
  - (e) the making, under the Company Directors Disqualification Act 1986 (c. 46), of a disqualification order against the officer;
  - (f) where the officer is a partner in a partnership the sole or main business of which is the provision of judicial officer services—
    - (i) the granting by the partnership of a trust deed for creditors; or
    - (ii) the sequestration of the partnership;
  - (g) where the officer is a member in a limited liability partnership the sole or main business of which is the provision of judicial officer services, the commencement of the winding up of that partnership on the ground of insolvency.

- (3) In subsection (2) above, “trust deed” has the meaning given by section 5(4A) of the 1985 Act.

*Judicial officers' professional association*

**63 Judicial officers' professional association**

- (1) The Scottish Ministers, by regulations—
- (a) must designate an association as the professional association for judicial officers; and
  - (b) may make provision in relation to the functions, constitution and procedures of the professional association.
- (2) The Scottish Ministers may not make regulations under subsection (1) above without first consulting—
- (a) the Commission;
  - (b) representatives of the professional association or, as the case may be, proposed professional association; and
  - (c) such other bodies or persons who appear to the Scottish Ministers to have an interest.
- (3) A person may not hold a commission as a judicial officer unless that person is a member of the professional association.

**64 Duty of professional association to forward complaints to Commission**

Where the professional association receives a complaint about a judicial officer or any services provided by the officer, the association must send details of the complaint and any material which accompanies it to the Commission.

**65 Information from professional association**

The Commission may require the professional association to provide any information the Commission considers necessary or proper for the purposes of—

- (a) any inspection under section 66 of this Act;
- (b) any investigation under section 67 of this Act; or
- (c) the consideration by the disciplinary committee of any matter under section 71 of this Act.

*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;
  - (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) 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.

### *Disciplinary proceedings*

## **71 Referrals to the disciplinary committee**

- (1) In dealing with any matter referred to the disciplinary committee under section 67(6), 69(2) or 70(2) of this Act, the committee—
  - (a) must consider—
    - (i) any report made to the Commission under section 67(5)(a) of this Act; and
    - (ii) any other relevant information held by the Commission; and
  - (b) may, if it considers it appropriate, hold a hearing.
- (2) Where the judicial officer to whom a referred matter relates requests a hearing before the disciplinary committee, the committee must hold one.
- (3) The disciplinary committee must, when holding a hearing, afford the persons mentioned in subsection (4) below the opportunity to—
  - (a) make representations (whether orally or in writing); and
  - (b) lead, or produce, evidence.
- (4) Those persons are—
  - (a) the judicial officer to whom the hearing relates;
  - (b) where there was an investigation under section 67 of this Act, the person who carried it out; and
  - (c) any other person the committee considers appropriate.
- (5) The disciplinary committee may award expenses in any hearing in favour of or against the judicial officer to whom the hearing relates.
- (6) The Commission's expenses in any hearing include any payments made under section 66(4) and 67(7) of this Act.
- (7) Where expenses are awarded under subsection (5) above—
  - (a) in favour of the judicial officer, the expenses are recoverable by the officer from the Commission; or

- (b) against the officer, the expenses are recoverable by the Commission from the officer.
- (8) The Commission may make rules in relation to the procedures, including the procedures to be followed during a hearing, of the disciplinary committee.
- (9) Any rules made under subsection (8) above must be approved by the Scottish Ministers.

## 72 **Disciplinary committee's powers**

- (1) This section applies where, after dealing with a matter referred to the disciplinary committee under section 67(6), 69(2) or 70(2) of this Act, the committee is satisfied that it is appropriate to take further action under this section.
- (2) Where the disciplinary committee is satisfied that—
  - (a) the judicial officer is guilty of misconduct; or
  - (b) the officer has admitted misconduct under section 67(4)(a) of this Act,
 the committee may make one or more of the orders mentioned in subsection (5) below.
- (3) Where the matter referred to the disciplinary committee is one to which section 70 of this Act applies, the committee may make an order under paragraph (a) or (c) of subsection (5) below.
- (4) Where the judicial officer has been convicted of an offence, the disciplinary committee may make an order under paragraph (a), (b) or (c) of subsection (5) below.
- (5) Those orders are—
  - (a) an order—
    - (i) suspending the judicial officer from practice for a period specified in the order; or
    - (ii) recommending that the Lord President of the Court of Session deprives the officer of office;
  - (b) an order censuring the officer;
  - (c) an order restricting—
    - (i) the functions which the officer may exercise; or
    - (ii) the activities which the officer may undertake,
 for such period as the committee considers appropriate;
  - (d) an order imposing a fine on the officer not exceeding level 4 on the standard scale;
  - (e) if the misconduct consists of or includes the charging of excessive fees or outlays, an order requiring the officer to repay so much of those fees or outlays as is excessive together with such interest as the disciplinary committee considers appropriate.
- (6) Where a judicial officer fails to comply with an order under subsection (5)(d) above the disciplinary committee may, if it has not already done so, make an order—
  - (a) suspending the officer from practice for a period specified in the order; or
  - (b) recommending that the Lord President of the Court of Session deprives the officer of office.

- (7) The disciplinary committee must send a copy of any decision it makes under this section to the judicial officer to whom that decision relates.

### **73 Orders under sections 68 and 72: supplementary provision**

- (1) An order mentioned in section 72(5)(d) of this Act is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (2) The Commission may recover any fine imposed by such an order.
- (3) The Commission must intimate any order made by the disciplinary committee under section 68(2) or (3) or 72 (other than an order under section 72(5)(a)(ii) or (6)(b)) of this Act to—
- (a) the Court of Session;
  - (b) every sheriff principal; and
  - (c) the professional association.

### *Appeals*

### **74 Appeals from decisions under sections 58, 68 and 72**

- (1) Where the Commission decides under section 58(1) of this Act not to recommend that the Lord President grants a person a commission as a judicial officer, the person who applied may appeal to the Inner House against that decision.
- (2) Where the disciplinary committee makes an order under—
- (a) section 68(2) or (3)(a); or
  - (b) section 72(2), (3), (4) or (6),
- of this Act, the judicial officer to whom the order relates may appeal to the Inner House against that order.
- (3) The decision of the Inner House on an appeal under subsection (1) or (2) above is final.
- (4) The Court of Session may, by Act of Sederunt, prescribe the procedure in relation to an appeal under subsection (1) or (2) above.

### *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;

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- (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;
  - (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.