

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Schedule 2 – the Scottish Civil Enforcement Commission (Introduced by Section 50)

Regulation of judicial officers

Section 61 – Regulation of judicial officers

191. *Section 61(1)* provides that the Scottish Ministers may, by regulations, confer functions on, or remove or modify the functions of, judicial officers. Again, functions in this context include powers and duties of judicial officers. Regulations made under this section are subject to negative resolution procedure before the Scottish Parliament as provided for by section 224(3).
192. Subsection (2) gives the Scottish Ministers further powers to make regulations. Those regulations may deal with the types of business association that officers may form (for example limited liability partnerships), provision about the ownership, membership, management and control of those associations, and conditions to be satisfied by those associations. Regulations made under this power are also subject to negative resolution procedure under section 224(3).
193. Subsection (2)(d) provides that the Scottish Ministers may make provision regulating the fees and charges that may be levied by judicial officers.
194. Subsection (3) requires the Scottish Ministers to consult the Commission before making regulations under subsection (1) or (2).
195. Subsection (4) gives the Commission the power to make rules regulating the conduct of judicial officers and prohibiting extra-official activities which are incompatible with their functions. Rules may permit extra-official activities which are not incompatible with officers' functions but may impose conditions on the carrying out of such activities. This rule-making power could be used to prescribe the kinds of permitted and prohibited extra-official activities which sheriff officers and messengers-at-arms were permitted to carry out. Permitted activities might include informal debt collection and prohibited extra-official activities might include being a money lender or an auctioneer with his or her own auction room. The rules may include a requirement on judicial officers to keep and audit accounts, maintain records for inspection, provide a bond of caution and other matters that the Commission considers appropriate.
196. Subsections (5) to (7) provide that no judicial officers may undertake allowable extra-official activities for payment without the consent of the Commission and the Commission may attach conditions to its consent. Subsection (5) requires an officer

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

to obtain permission from the Commission to undertake remunerated activities which are not connected with the officer's functions. In practice, an officer will only be able to obtain permission for activities which are not already prohibited by rules made under section 61(4)(b) and will only need to obtain permission for activities which are not already permitted by rules made under section 61(4)(c). Permission to undertake extra-official activities for remuneration will be permitted only if the activity is not incompatible with judicial officer functions.

197. Subsection (7) provides that the Commission can attach conditions to any permission it grants and can also revoke permission it had previously granted if, for instance, it is considered that the activity has become incompatible with the officer's functions.