

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

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

Disciplinary proceedings

Section 71 – Referrals to the disciplinary committee

215. Subsections (1) and (2) of section 71 provide that in dealing with any matter referred to the disciplinary committee, the committee must consider any report made to the Commission under section 67(5)(a) (report of investigation into alleged misconduct) and any other relevant information held by the Commission and may hold a hearing if it is considered appropriate. Where a judicial officer requests a hearing relating to a matter under consideration, the disciplinary committee must hold a hearing.
216. Subsections (3) and (4) provide that the disciplinary committee must, when holding a hearing, allow the judicial officer, the person who carried out any investigation under section 67 and any other person the committee thinks appropriate, to make a statement orally or in writing and to lead or produce evidence.
217. Subsections (5) and (7) provide that the disciplinary committee may award expenses in any hearing in favour of or against the judicial officer to whom the hearing relates. Expenses awarded in favour of the judicial officer will be paid by the Commission while expenses awarded against the officer will be paid to the Commission by the officer.
218. The Commission may (under subsection (8)) make rules as to the procedures, including the procedures to be followed during a hearing, of the disciplinary committee.
219. Subsection (9) provides that any rules made under subsection (8) must be approved by the Scottish Ministers.

Section 72 – Disciplinary committee’s powers

220. *Section 72* covers the situation where, after dealing with a matter referred to it, the disciplinary committee is satisfied that it is appropriate to take further action.
221. Where the judicial officer is guilty of misconduct (as defined in section 67(9)), the disciplinary committee can suspend the officer or recommend that the Lord President deprive the officer of office, it can censure the officer, it can restrict the officer’s functions or activities or it can impose a fine. If the officer is guilty of charging excessive fees, the committee can also require the officer to pay back the excessive amounts (with interest).

222. Where the matter reported to the disciplinary committee is one to which section 70 applies (concerns about an officer, falling short of misconduct and not constituting an offence, which arise from a public act of bankruptcy or related event as set out in section 62(2)), the committee may make an order to either suspend the officer from practice or recommend that the Lord President deprive the officer of office or it may make an order restricting the functions or activities of the officer.
223. Where the judicial officer is convicted of an offence (including an offence related to a public act of bankruptcy or related event as set out in section 62(2)), the committee may make an order either suspending the officer or recommending that the Lord President deprive the officer of office, an order censuring the officer or an order restricting the officer's functions or activities.
224. Subsection (6) provides that where an officer fails to comply with an order imposing a fine, the disciplinary committee may suspend the officer from practice for a specified time or recommend that the Lord President deprive the officer of office.
225. Decisions under this section are subject to appeal as set out in section 74(1). A copy of any decision made by the disciplinary committee must be sent to the officer to whom it relates (see subsection (7)).

Section 73 – Orders under sections 68 and 72: supplementary provision

226. **Section 73** provides that an order imposing a fine is enforceable as if it were an extract decree arbitral bearing a warrant for execution issued by the sheriff. This means the Commission may recover any fine imposed by the order by means of diligence against the judicial officer. The Commission must also notify any order made by the disciplinary committee to the Court of Session, every sheriff principal and the professional association except for an order recommending that the Lord President deprives the officer of office.