

PARLIAMENTARY BUREAU

REFERRAL OF A BILL AT STAGE 1: TRUSTS AND SUCCESSION (SCOTLAND) BILL

Introduction

1. The Trusts and Succession (Scotland) Bill was introduced in the Parliament on 22 November 2022 by the Cabinet Secretary for Justice, Keith Brown MSP.

Discussion

2. The Trusts and Succession (Scotland) Bill is based on two Scottish Law Commission reports (*Report on Trust Law (Scot Law Com No 239)* and *Report on Succession (Scot Law Com No 215)*). It also introduces a minor amendment to the Succession (Scotland) Act 2016 in relation to a section that was itself implementing a recommendation of a Scottish Law Commission report (*Report on Succession (Scot Law Com No 124)*). The Bill reforms the law in relation to the administration and management of trusts, in relation to the order of succession to an intestate estate, and on the effect of divorce, dissolution or annulment on a special destination.

3. The Bill falls within the remit of the following committees:

Delegated Powers and Law Reform Committee (DPLRC)

The Bill is considered to meet the definition of a Scottish Law Commission Bill set out in Rule 9.17A (further detail on this is provided in the Annex). As such, the Bills fall within the remit of the DPLRC, which is set out in Rule 6.11.1 of Standing orders (paragraph (g) of that Rule refers specifically to Scottish Law Commission (SLC) Bills).

Equalities, Human Rights and Civil Justice Committee

The remit of the Equalities, Human Rights and Civil Justice Committee is to consider and report on matters relating to civil justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans. A key purpose of the reforms in the Bill is to modernise the law in relation to trusts and succession. The remit of this committee is also engaged.

4. The Bill is considered to meet the criteria set out in Rule 9.17A and the Presiding Officer's determination under Rule 9.17A(b). Therefore, it is recommended that the DPLRC be designated as lead committee.

5. We are not aware of any interest on the part of the Equalities, Human Rights and Civil Justice Committee in being formally designated as a secondary committee. Lack of formal designation does not, of course, prevent any committee from considering the Bill if it subsequently decides to do so.

Recommendation

6. The Bureau is invited to consider recommending to the Parliament by motion that it agrees, under Rule 9.6.1, to designate the Delegated Powers and Law Reform Committee as the lead committee for consideration of the Trusts and Succession (Scotland) Bill at Stage 1.

**Parliamentary Business Team
November 2022**

DRAFT MOTION

Designation of Lead Committee: That the Parliament agrees that the Delegated Powers and Law Reform Committee be designated as the lead committee in consideration of the Trusts and Succession (Scotland) Bill at Stage 1.

Annex

ASSESSMENT OF THE BILL AGAINST STANDING ORDERS RULE 9.17A AND THE CRITERIA AS DETERMINED BY THE PRESIDING OFFICER FOR QUALIFICATION AS A “SCOTTISH LAW COMMISSION BILL”**(a) The Bill must implement all or part of a report of the Scottish Law Commission**

Part 1 of the Bill implements recommendations from the Scottish Law Commission (SLC) Report on Trust Law published in 2014. This report made 106 recommendations, and included a draft Bill (updated in 2018) which implemented 98 of those recommendations. The Bill takes forward the SLC recommendations in very similar terms to the SLC draft Bill.

Minor changes to the SLC recommendations include reserving to the court the ability to remove a trustee on the ground that they are untraceable, changes to how the views of beneficiaries under the age of 18 are to be taken into account, not specifying petition as the relevant court process for certain purposes (leaving it open to the court to determine appropriate procedure), and a number of amendments with the intention to clarify the effect of the Bill.

More significantly, the Bill has been amended from the SLC draft to completely exclude pension trusts from its application. Although trusts law generally is not reserved, the Scotland Act 1998 places certain restrictions on the ability of Acts of the Scottish Parliament to modify the obligations of trustees of pension schemes. In the interests of legal certainty and clarity, the Scottish Government has decided that it would be preferable to pursue a section 104 Order under the Scotland Act 1998 to apply the terms of the Bill to pension trusts.

Part 2 of the Bill contains two sections on succession.

Section 71 amends section 2(2) of the Succession (Scotland) Act 2016 with the intention of clarifying its effect. Section 2(2) of the Succession (Scotland) Act 2016 itself implemented a recommendation from an SLC report (*Report on Succession (Scot Law Com No 124)*).

Section 72 amends the order of intestate succession, as recommended by an SLC report (*Report on Succession (Scot Law Com No 215)*).

The Standing Orders require an SLC Bill to implement all or part of a report. As such, it is considered that this requirement is met.

(b) The Bill must comply with such criteria as are determined by the Presiding Officer

The current determination of the Presiding Officer was published in the Scottish Parliament's Business Bulletin on 24 March 2021. The key elements of this are addressed in turn below.

A Bill, the primary purpose of which is to (a) simplify, modernise or improve the law to—

(i) ensure it is fit for purpose, (ii) respond to developments, or address deficiencies, in the common law, or (iii) respond to other developments in the law

It is understood that the primary purpose of the Bill is to modernise the law in relation to the administration and management of trusts and a specific area of intestate succession. As set out in more detail in the SLC report and in the Policy Memorandum, the current law in relation to trusts is considered out of date, with the principal Act dating from 1921, and no longer reflecting modern practice. In addition, the 1921 Act has been amended multiple times, making it the law more complex and difficult to access. The amendment on special destinations aims to clarify the law, and the change to the order of intestate succession is intended to reflect changes to how society understands families and the different relationships within them.

As such, it is considered that this requirement is met.

A Bill, the primary purpose of which is to (b) make provision which is not likely to generate substantial controversy among stakeholders

The specific provision made within the Bill is unlikely to generate substantial controversy among stakeholders. The SLC's consultations and engagement over the course of preparing its report on trusts showed a high degree of support for the proposals amongst stakeholders. More recent engagement by the Scottish Government suggests ongoing support for reform. On succession, the substantive change made by the Bill was supported in a Scottish Government consultation in 2015, and the Scottish Government reiterated its commitment to legislating on this point in 2019. Although the provisions themselves are uncontroversial, there is the possibility that both of the policy areas of trusts and succession may generate interest and debate.

This requirement is considered to be met.

Wider legislative proposals within two years (or the end of the session if sooner) which relate closely to the same particular aspect of law as the Bill

The Scottish Government has confirmed that it is not expecting to bring forward any wider legislative proposals on this topic within the relevant time frame, other than the section 104 Order in relation to the Bill itself.

(c) The Bill must not be a Consolidation, Codification, Statute Law Repeals or Statute Law Revision Bill

The Bill is not any of the Bill types listed above.