

Parliamentary Bureau – Designation of Bill at Stage 1

Judicial Factors (Scotland) Bill

Introduction

1. The Judicial Factors (Scotland) Bill was introduced in the Parliament on 5 December 2023 by the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP.
2. The Judicial Factors (Scotland) Bill is based on recommendations from the Scottish Law Commission's [Report on Judicial Factors](#). The Bill seeks to update and modernise the law in relation to judicial factors and their supervision by the Accountant of Court. A judicial factor is a person appointed by the court to gather, hold, safeguard and administer property which is not being properly managed.

Discussion

3. The Bill appears to engage the remits of the Delegated Powers and Law Reform Committee (DPLRC) and the Equalities, Human Rights and Civil Justice Committee.
4. The Bill is considered to meet the definition of a Scottish Law Commission (SLC) Bill set out in Rule 9.17A (further detail on this is provided in the Annex). As such, the Bill falls 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).
5. The remit of the Equalities, Human Rights and Civil Justice Committee is to consider and report on matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs. Any proceedings relating to the appointment of a judicial factor would be dealt with via the civil court process. The remit of this committee is also engaged.
6. 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.
7. 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

8. 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 Judicial Factors (Scotland) Bill at Stage 1.
9. A draft motion can be found below.

10. Draft Parliamentary Bureau motion on the Judicial Factors (Scotland) Bill:

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 Judicial Factors (Scotland) Bill at Stage 1.

Parliamentary Business Team
December 2023

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

The Bill will implement recommendations contained in the report entitled [Report on Judicial Factors \(Scot Law Com No 233\)](#) which was published in August 2013.

The Bill includes textual clarifications as well as some relatively minor policy adjustments, either in respect of the SLC recommendations or the text of the draft Bill appended to the SLC Report. The drafting of the Bill as introduced is somewhat different to the SLC’s draft Bill (“the draft SLC Bill”) but the Scottish Government’s view is that these changes do not alter the substance of the SLC’s recommendations.

Minor changes to the Bill include modifications to ensure consistency with existing legislation and a number of amendments to clarify the language and effect of the Bill.

Slight policy adjustments include strengthening the Accountant’s obligation to report serious misconduct by the judicial factor to the court (rather than this being discretionary) and a shift of responsibility for deciding the form and content of the Accountant’s annual review from rules of court to regulations made by the Scottish Ministers.

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 judicial factors. As set out in more detail in the SLC report and in the Policy

Memorandum accompanying the Bill, the current law in relation to judicial factors is considered out of date, with the principal Acts dating from 1849 to 1889. There has been no new law in this area since then. Some powers of judicial factors are also to be found in other legislation. There is a perception that this makes it difficult for third parties dealing with judicial factors, and even the judicial factors themselves, to know what they are or are not entitled to do.

The Bill seeks to bring clarity, accessibility, and efficiency to this area of the law. 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 provision made within the Bill is not expected to generate substantial controversy among stakeholders. The SLC first published a [Discussion Paper on Judicial Factors in 2010](#), followed by its Report on Judicial Factors in 2013. Consultations and engagement over the course of preparing its report on judicial factors showed a high degree of support for the proposals amongst stakeholders. More recent engagement by the Scottish Government in 2019 suggests ongoing support for reform.

Although the subject matter is not expected to generate substantial controversy among stakeholders, it is anticipated that there will be some interest in the provisions and the approach taken. There are some small modifications to the way that the SLC recommendations have been taken forward (outlined above) and the Policy Memorandum notes some areas where differing views were expressed within the SLC and SG consultations and where policy decisions have been made in relation to the Bill's provisions.

This requirement is nonetheless 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.

(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.