Law Society of Scotland submission of 29 July 2023

PE1973/E: End the use of Sheriffs Discretion when ruling on civil cases and provide clear legal guidance on division of assets

Thank you for your letter seeking views on the above petition.

In terms of removing the discretion of Sheriffs in civil cases, we would not support this position. Every court decision involves an element of discretion, or judgement, on the part of a Sheriff. This is the nature of our adversarial court system.

In terms of the discretion provided to the court in the division of assets of cohabiting couples, this is an area that we have previously stated would merit reform¹. In particular, we considered that there should be discretion provided to the courts to accept applications beyond a one year period, which we believed unduly harsh. We also responded the consultation from the Scottish Law Commission's proposed reforms in this area. The changes proposed to the division of assets under section 28 of the Family (Scotland) Act 2006 are detailed in the report published by the Commission in November 2022². We are broadly supportive of these reforms.

In terms of guidance to our members, should legislation be brought forward, we would engage with this process and, on enactment, make appropriate training available to our members around the changes made.

We hope that this information is helpful and if we can assist further in consideration of this petition, we will be very happy to do so.

¹ rights-of-cohabitants-paper.pdf (lawscot.org.uk)

² Cohabitation Report and draft Bill - (Report No. 261) (scotlawcom.gov.uk)