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Stuart McMillan
Convener,
Delegated Powers and Law Reform Committee

By email: DPLR.Committee@parliament.scot

26 September 2023

Dear Convener

Trusts and Succession (Scotland) Bill

I would like to thank the Committee for its comprehensive and constructive Stage One Report on the Trusts and Succession (Scotland) Bill. I am pleased to note the Committee's recommendation that the general principles of the Bill be agreed to and the positive nature of the report.

The Committee have made a number of recommendations which require action and I thought it would be helpful, ahead of the Stage One debate to confirm that I will carefully consider the views of the Committee in these areas. I have set out in the Annex to this letter more detail on my response to the Committee's recommendations.

I hope that the information contained is of assistance to the Committee.

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Annex

Trusts and Succession (Scotland) Bill

The Scottish Government's response to the Delegated Powers and Law Reform Committee's stage 1 report

1. What follows is the Scottish Government's response to the specific points or recommendations made by the Delegated Powers and Law Reform Committee ("DPLRC") in their Stage 1 Report.

2. For ease of reference, the Committee's points or recommendations are numbered in line with that report. The Scottish Government's response is given in rhe right-hand column.

Committee Recommendations	Scottish Government Response
49. The Committee notes that the Court of Session remains the main court for trusts under the Bill, but is sympathetic to calls for the Bill to make provision for a greater choice between the Court of Session or sheriff courts for trust cases. 50. The Committee asks the Scottish Government to consider building greater flexibility into the Bill should this become desirable in the future. For example, by including a power to vary the balance of court powers through the use of regulations. 51. The Committee asks the Scottish Government to:	The Scottish Government recognises the Committee's view regarding flexibility to be built into the legal system to vary the types of applications capable of being considered at different judicial levels and will consider this further ahead of Stage 2. Most trust litigation is conducted in the Court of Session, while only a few types of application may be heard in the sheriff court, such as an application to appoint trustees. Figures provided by the Scottish Courts and Tribunals Service show that between 2016 and 2019 there was a yearly average of 3 applications involving trust law lodged with the Court of Session compared to 1.5 applications made in the sheriff court. There is a designated trust judge at the Court of Session who deals with these applications which might be very difficult to replicate at the sheriff court level. The Scottish Law Commission (SLC) considered other legal systems and found that trust cases are dealt with by specialist judges with appropriate expertise. The Bill makes changes to the current position. More straightforward issues concerning trusts will be capable of being considered by a sheriff in the sheriff court. This includes

• provide comparative typical costs of running a case through the Court of Session and the sheriff courts (including court fees, legal fees, and other relevant expenses) before the deadline for Stage 2 amendments; and • to collect and publish data on an ongoing basis.	applications for the appointment and removal of trustees. These are all relatively frequent and routine applications that involve administrative affairs. More complex issues involving significant judicial discretion will be considered in the Court of Session. Overall, the Scottish Government's view is that the Bill takes a balanced approach, conferring jurisdiction on the sheriff court where practical, but ensuring complex matters are dealt with by a single court with sufficient expertise to ensure consistency in decision making. On legal costs, the Scottish Government notes the evidence of some witnesses that overall the costs of an application to the sheriff court will not vary greatly from an application to the Court of Session. Given the specialist nature of trust law, trust applications which are heard in the sheriff court may be presented by advocates rather than solicitors, which would make the costs broadly more similar. The legal costs of one application can vary significantly from the legal costs of another, similar type of application. Ultimately, this will depend on the individual circumstances of each case, and may include, but is not limited to, whether or not an application is defended, the procedural history of the case, the complexity of the case and any terms of settlement. The Scottish Government will write to stakeholders with relevant experience to ask for information on comparative costs of running cases through the sheriff court and the Court of Session, and will consider further the recommendation to publish data on an ongoing basis. I will update the Committee on this issue ahead of Stage 2.
62. The Committee notes the evidence that there is a route for a trustee to challenge removal on the basis of incapacity through the courts. However, it is concerned that this route might not be clear or obvious to a trustee in that situation. The Committee recommends that the Bill is amended to include explicit reference to the right of a	The Scottish Government is grateful to the Committee for the work it has done in this area and will consider this matter further ahead of Stage 2. Section 7 of the Bill sets out a non-judicial procedure for removal of a trustee and lays out four circumstances in which trustees may remove one of their number. As stakeholders have acknowledged, it will be helpful for the administration of smaller trusts

trustee, deemed incapable by fellow trustees, to go to court to challenge their co-trustees' decision. 63. The Committee recommends that the Scottish Government carefully considers whether additional safeguards may be necessary to mitigate the risk of abuse. 64. The Committee asks the Scottish Government for its view, ahead of the Stage 1 debate, on how supporting evidence of incapacity should be used by trustees under section 7 of the Bill.	to have such a mechanism to remove trustees that does not involve an application to court. Section 7, however, does not require trustees to remove one of their own. Exercising this power may be appropriate in the most straightforward cases, but for more difficult cases where there is any doubt over a trustee's capacity, the trustees may apply to the court for the removal of a trustee. This point was also made by the SLC in its report. There are a number of safeguards against abuse of the section 7 power by trustees. A majority of trustees must agree before a co-trustee can be removed from office. The power could not be exercised by a minority of trustees or a single trustee acting without support of the majority. As the Committee recognises, if a trustee abuses the power, that can be challenged in court. Trustees who wrongfully remove a co-trustee may be in breach of their fiduciary duty and may themselves be removed. Furthermore, if they have acted negligently or in bad faith, they could be personally liable for court expenses. The Committee points out that stakeholders believe more can be done, including a provision to allow an incapable trustee's guardian or attorney to sign a minute of resignation on behalf of an incapable trustee.
91. The Committee is sympathetic to calls from stakeholders for the definition of 'incapacity' in the Bill to be easily updated. The Committee recognises that there are a number of different approaches by which this might be achieved and welcomes that the Scottish Government is considering how the Bill can reflect future modernisations to the law on capacity. It calls on the Scottish Government to consider the best approach and seek to amend the Bill accordingly.	As the Committee rightly points out, the Scottish mental health law review recently recommended significant changes to capacity law which could result in significant changes to Scottish incapacity legislation. It is desirable that trust law, like other areas of Scots law, adopts a modern law on capacity which reflects current understanding of the issue. When the Minister spoke to the Committee in June 2023 the possibility of adopting the definition of "incapable" in the Adults with Incapacity (Scotland) Act 2000 and conferring a regulation-making power on Scottish Ministers was discussed as one possible approach. Officials have been consulting with the SLC about its recommendation and have been considering how best we might future-proof the Bill.

	The Scottish Government will therefore consider the best approach with a view to bringing forward an amendment at Stage 2.
102. The Committee asks the Scottish Government to ensure the Bill is made clearer in relation to the interaction between the Bill and charities legislation. In particular, the interaction between the court powers in this Bill to appoint and remove trustees and OSCR's power to appoint interim trustees to charities. 103. The Committee requests an update from the Scottish Government on how the provisions of the Charities (Regulation and Administration) (Scotland) Act 2023 interact with those of the Bill.	We note the stakeholders and the Committee's views so will provide more information about the interaction between trust law and charity law in the Explanatory Notes to the Bill in order to aid those who might be in doubt. We note that charity law and trust law are two distinct and well-established areas of Scots law. 12% of charities registered in Scotland take trust as their legal form and only these charities are subject to both charity law and trust law. For the remaining 88% of charities resistered in Scotland, trust law isnot relevant. Equally, the majority of trusts in Scotland are not charities, and so charity law is not relevant to these trustees. The Office of the Scottish Charity Regulator (OSCR) has a power to appoint acting charity trustees at the request of a charity where the charity has insufficient trustees to form a quorum to appoint additional charity trustees and the governing document does not provide a mechanism for appointing charity trustees in such circumstances. The Charities (Regulation and Administration) (Scotland) Act 2023 will allow OSCR to appoint interim charity trustees (for a maximum of 12 months, unless the appointment is extended) on its own initiative where there are no or an insufficient number of charity trustees, or where the existing charity trustees cannot be found or will not act. The Scottish Government welcomes the views of OSCR who have written to the Committee welcoming the Bill. OSCR publishes guidance for charity trustees and will also be providing engagement and information on the Charities (Regulation and Administration) (Scotland) Act. As pointed out to the Committee by Lord Drummond Young, the power conferred on the court by section 1 of the Trusts and Succession Bill is a general power which means it would be available for cases where there is no other particular means of appointing a trustee. The power in charities legislation is a particular power that is available for a charity.
110. The Committee asks the Scottish Government to set out its views ahead of	The Scottish Government's view is that section 41 should remain in the Bill and that excluding charitable trusts from the provision of section 41 is appropriate.

the Stage 1 debate on whether, reflecting on the evidence heard: • section 41 should remain in the Bill; and • section 41 should also apply to charitable trusts.	This maintains a consistent approach for charities operating anywhere in the UK. In England and Wales, for instance, provision in the Perpetuities and Accumulations Act 2009 restricts accumulation for charitable trusts. Trusters who set up public or charitable trusts almost invariably want the benefits to be provided immediately. Changing the position in the Bill as suggested by some could lead to a truster directing long term accumulations for the fulfilment of future charitable purposes which would not materialise for many years. Furthermore, long-term accumulations could also fall foul of the charity test set out in sections 7 and 8 of the Charities and Trustee Investment (Scotland) Act 2005 and the definition of charitable purposes, which is applicable for UK tax purposes, as provided for by the Charities Act 2006. If there were no statutory limit to accumulation, OSCR would be left to consider every direction or power to accumulate on its own merits under the 2005 Act charity test, and HMRC would be required do the same under UK tax legislation. This could therefore have a profound effect on the establishment of charities under Scots law. Accumulation involves the addition of income to capital, thus increasing trust property in favour of those entitled to capital and against the interests of those entitled to income. Statute sets out that accumulations can only be lawfully directed for one of six periods, after which trust property cannot be accumulated. The law in this area is complex, uncertain and inconsistent. The SLC considered a number of arguments when consulting on this matter, including the argument put forward by Professor Paisley, before making its recommendations.
127. The Committee considers that the power may already exist for trustees to choose to invest in a way which allows them to consider objectives beyond maximising financial returns (subject to the terms of the trust deed).	The investment powers included in the Bill is largely a restatement of trustees' current statutory investment powers as introduced by the Charities and Trustee Investment (Scotland) Act 2005. The general scheme is to confer very wide powers of investment on trustees, but these are tightly constrained by the trustees' duties (duty of care, duty to give effect to the trust purposes and fiduciary duty). There are general safeguards stipulated in section 17. For instance, it specifies the particular duty of care which applies when exercising powers of investment.

128. Nonetheless, for the avoidance of doubt on this point, the Committee recommends the Bill is amended to explicitly allow trustees (subject to the terms of the trust deed) to choose to invest in environmental, social and governance investments, particularly when these might underperform compared to other investments.	The Committee heard from a number of stakeholders that trustees are required to consider the suitability of a proposed investment for the trust. This is not an instruction to maximise financial return at all costs. For example, trustees of trusts whose purposes are the eradication of poverty may not consider it suitable to invest in tobacco, alcohol or gambling. Ultimately the investment policy that the trustees should adopt must reflect the purposes of the trust, as set out by the truster in the trust deed. Stakeholders have been clear that an express provision would be helpful to make clear that when assessing the suitability of an investment for a trust, financial returns are not the only consideration that may be taken into account, and particular emphasis has been placed on environmental and social impacts. The Scottish Government has been exploring this matter with the SLC with a view to bringing forward an amendment at Stage 2 which would aim to make the current position, which the Committee sets out, clearer on the face of the legislation.
141. The Committee asks the Scottish Government to consider whether the concern raised by CMS Cameron McKenna Nabarro Olswang LLP is an issue, and report back its findings in this area to the Committee ahead of the Stage 1 debate.	The Scottish Government has consulted with the SLC on this matter and have discussed whether there is an issue under the current law and the Bill, and possible solutions. We have also been in contact with CMS and will discuss the matter with them, including any potential solutions. We will keep the Committee updated as this develops.
157. The Committee supports the important principle of ensuring that beneficiaries have access to the information that they require, in particular when it may be necessary to enable them to hold trustees to account. 158. The Committee notes that stakeholders, nonetheless, considered that there were grounds for the duties in relation to potential beneficiaries to be more limited. The Committee asks the Scottish Government	The Scottish Government welcomes the Committee's recognition of the important principle underlying these provisions. As the Committee helpfully points out, the Scottish Legal Complaints Commission has said that, "many complaints are made because beneficiaries are not clear on what they have a right to expect (and what they don't.)" When it comes to information, there is a balance to be had between the interests of trustees and of beneficiaries. Many of the concerns being raised about the burden placed on trustees were also raised when the SLC was consulting on the issue and it considered the competing views at some length when making its recommendations.

to review the evidence that the Committee received on this area of the Bill in relation to potential beneficiaries and consider whether the Bill should be amended.	The information duties in the Bill attempt a compromise but the Scottish Government recognises the contrasting views of a number of stakeholders on how that balance should be struck. Over the summer, officials have discussed this issue with STEP and the SLC. The Scottish Government is considering the helpful views shared during these discussions and is considering what more can be done to minimise the burdens on trustees while still empowering beneficiaries to hold trustees to account.
185. The Committee asks the Scottish Government to clarify: • its drafting of the provision in section 49(3)(a) in relation to the scope of the power for a protector to determine the domicile of a trust; • whether, reflecting on the evidence heard, it considers the provision should remain in the Bill; and • the standard of care applicable to protectors and supervisors.	A protector's function is to ensure that the trustee of a trust is appropriately discharging their duties. This allows the truster to exercise a degree of control or influence over the trustees, and may give them assurance that the trust was being properly administered. The power laid out in section 49(3)(a) would allow a protector to determine (but not thereafter change) which jurisdiction's laws shall be used to determine what the governing law of the trust is. It would not allow a protector to amend the domicile of the trust. The Scottish Government understands the concerns raised by stakeholders about including the provision in the Bill and will consider the possible impact of removing this section from the Bill at Stage 2. Section 27 of the Bill sets out two different standards of care for trustees. Ordinary lay-persons who act as trustees and are generally unpaid are required to exercise only the care and diligence of any person of ordinary prudence in managing the affairs of another person. A person who is providing professional trustee services in the course of business, for which they are paid, is required to exercise such skill care and diligence as can reasonably be expected from a member of that profession. Supervisors and protectors are not in a position similar to a trustee. They cannot interfere in the normal management and administration of the trust. The rights and duties of a supervisor are closer to the rights and duties of a beneficiary in a private trust, while the rights and duties of a protector are determined by the trust deed and may vary significantly from one trust to another.

	The SLC considered the duty of care for protectors in its Report on Trust Law, at paragraph 15.11. It concluded that the duties of care will develop by analogy with the corresponding duty of trustees. Section 49(5) clearly sets out that a protector's duties are fiduciary in nature and that they have a duty of care. Section 45(2) makes clear the same considerations apply to a protector. Altogether, the Scottish Government's agrees with the view of the SLC. The Scottish courts will have the flexibility to develop the law in this area to cater for the way that supervisors and protectors will be used in the individual circumstances of each case.
206. The Committee notes the range of views expressed by stakeholders in relation to the length of time that should be required to pass before an application to alter the purposes of the trust could be made under section 61 of the Bill. The Committee considers, however, that, on balance, the 25-year period in the Bill is appropriate. Nonetheless, it asks the Scottish Government to amend the Bill to add a caveat which would allow the courts to permit alteration of the 25-year period in exceptional circumstances. This would enable the law to capture those circumstances, for example, which were not reasonably foreseeable at the time the trust was created, and which are detrimental to the operation of the trust.	Section 61 of the Bill would allow the trust purposes of a private trust that has been in existence for 25 years and where the truster has passed away to be altered upon application to the Court of Session. A material change of circumstances must be demonstrated and would at least extend to changes in the personal or financial circumstances of one or more members of the truster's family or changes in the nature or amount of the trust property. The 25 year limit could not be extended but it could be shortened or done away with altogether by the trust deed. In recommending this power the SLC opted for a lengthy time limit as the policy is aimed at long term trusts and the problems that can arise in relation to them. The SLC considered that 25 years provided an easily workable default rule which represented a "short" generation. A default time limit also helps avoid the risk of family members who are unhappy with a trust mounting an early application to have its terms altered before any material change of circumstances has occurred. The Scottish Government has consulted further with the Law Society of Scotland, STEP and the SLC on this matter, in particular whether there is a need for a time limit when the court can safeguard against misuse of the provision. While stakeholders may not have settled on the appropriate conditions for making an application, all appear to view this as a valuable provision. The Scottish Government welcomes the Committee's recommendation and will consider with a view to bringing forward an amendment at Stage 2 regarding the circumstances in which an application can be made to court.

220. The Committee is sympathetic to the evidence received suggesting that section 65 in the Bill should provide that, where there are insufficient trust assets to meet legal expenses, the starting point should be no personal liability on the part of trustees for expenses. The Committee asks the Scottish Government to reflect on the evidence and consider whether such an amendment is required. 221. In addition, the Committee asks the Scottish Government to clarify why section 65 does not appear to extend to the sheriff courts.	Awards relating to litigation expenses are at the discretion of the court. Currently, where an award is made against trustees, normally the trustees will be personally liable but will have a right of relief against the trust estate provided that the expenses are necessarily, properly and reasonably incurred. Section 65 will change this. Trustees will no longer be personally liable for the expenses of civil litigation to which the trust is a party. The court, however, would have discretion to impose personal liability on trustees for expenses in certain circumstances, including where the trust property is insufficient to meet the expenses or the trustee has brought about the litigation by breach of duty. When the SLC consulted on this matter there was a concern among some stakeholders that trustees of under-funded trusts were at an unfair advantage because where there is insufficient trust property to meet litigation expenses, a successful litigant would be forced to meet expenses themselves. The Scottish Government recognises the strong views expressed to the Committee, and its recommendation and has discussed with the Law Society and the SLC. We are considering whether an amendment to section 65 is required so that the default position is that trustees are not personally liable for litigation expenses which exceed the value of the trust property. On whether section 65 should apply to the Sheriff Court, the Scottish Government is grateful to the Sheriff's and Summary Sheriff's Association for bringing this to our attention. The Bill's policy regarding allocation of trust cases is that routine and administrative applications may be heard either by the Sheriff Court and the Court of Session, while applications which require the exercise of a considerable degree of discretion require to be heard by a single court with specialist expertise (that court being the Court of Session). Given the Sheriff Court's co-jurisdiction with the Court of Session in relation to certain applications, it would be useful for section 65 to apply in respect of applications made to the Sheriff Court, as well as those made to the Court of Session. Therefore after

	discussing this matter with the SLC, we are considering amendments to make this change.
225. The Committee asks the Scottish Government to reflect on evidence heard, and confirm ahead of the Stage 1 debate, whether it supports amending the Bill to add a general power to the court to enable to give directions to trustees.	The Scottish Government has listened to the views of stakeholders on this matter, including the Senators of the College of Justice, and will bring forward a Stage 2 amendment to address the concerns raised.
231. The Committee considers that the Bill, as drafted, is an important step towards improving the accessibility of legislation in this area. 232. Nonetheless, the stakeholders made a number of suggestions for improving understanding of terms used in the Bill. The Committee asks the Scottish Government to set out its view ahead of the Stage 1 debate on making the drafting changes proposed in the table in Annexe A to improve accessibility of the Bill for those without a legal background. 233. If the Bill is passed, the Committee calls on the Scottish Government to: • produce accompanying guidance on the Bill;	On guidance, styles and publicity, the Scottish Government notes the Committee's recommendations and will consider whether further material can be added to the Explanatory Notes. There are limits, however, to what can be done in this area, and the Government does not consider this to be an efficient use of resources. As the Committee is aware, we are focused on considering a number of SLC Reports with a view to legislation and to undertake further guidance and style documents on this Bill, would affect the delivery of those Bills. In addition, it would be difficult for government to produce appropriate style documents that would be relied upon in an area where professional advisers have expertise. The Committee has helpfully noted a number of drafting suggestions in its Annex. Amending definitions in the Bill will have a substantive effect on the law. Given constraints of time and the technical and/ or substantial nature of these drafting suggestions, the Scottish Government will consider these in more detail and respond to the Committee ahead of Stage 2.

• produce non-statutory style documents to accompany the Bill; and • undertake targeted publicity to legal stakeholders and trustees on the effect of the Bill.	
237. The Committee accepts that a full codification of trust law would not be appropriate in this Bill. However, in light of the importance of ensuring the law is accessible to lay trustees and beneficiaries, the Committee recommends the Scottish Government considers other options for taking forward work outside of this Bill, to further codify this area of the law, including defining different types of trusts.	The Bill represents a fundamental reform of trust law and time will be needed to implement the provisions contained within it and ensure they are fully embedded. The Scottish Government will keep the law under review and notes the Committee's recommendation to take forward further codification.
250. The Committee recommends that the Scottish and UK Governments pursue the timely implementation of a section 104 Order, as a priority, to ensure commencement of the Bill is not delayed, and that there is no need for an 'undesirable' dual operation of the 1921 and 2023 laws. 251. The Committee requests further information from the Scottish and UK Governments on how decisions in relation to section 104 Orders are made, and asks	The Scottish Government recognises the vital role that pension trusts play in a modern society and in the Scottish financial sector in particular. Due to their critical importance the Scottish Government's preferred approach is to achieve maximum certainty by working with the UK Government to bring forward an Order under section 104 of the Scotland Act which will apply the Bill to pension trusts. The policy intention of the Scottish Government is exactly the same as that recommended by the Scottish Law Commission. It is only the means of achieving that policy which differs. Inter-governmental arrangements are in place to manage the delivery of orders that require to be made under section 104 of the Scotland Act 1998. The delivery of such orders depends on the agreement of both the UK and Scottish Government's and is

what could be done to speed up the length of time taken for some section 104 Orders.	influenced by a wide range of factors. For example, subject matter, complexity of drafting and securing UK parliamentary time are all material considerations. Scottish Government officials will always seek to identify the need for any such orders as early as possible in the Bill process, as has happened with this Bill. Both Governments work on the basis of any order requiring, by default, around 12 to 18 months from inception to being made. The Scottish Government continues to have positive engagement with officials at the Scotland Office and the Department for Work and Pensions, and work is currently being undertaken to take forward a section 104 Order.
262. The Committee has heard concerns from stakeholders of the challenges of trusts having sole trustees. The Committee considers it not desirable for trusts to have a sole trustee and therefore asks the Scottish Government to respond, ahead of the Stage 1 debate, on what safeguards it considers the Bill should provide in relation to trusts with sole trustees.	Trusts are used in a wide variety of circumstances and it is important that the general law on trusts does not hinder the flexibility of trusts to provide a solution to a wide range of problems. Ultimately, whether a sole trustee is appointed is a matter for the truster who determines how a trust is to be administered. There may be valid reasons for the choice of appointing a sole trustee and the person best placed to decide this would be the truster. While appointment of a sole trustee carries potential future difficulties for the administration of a trust this is a matter best left to an informed truster. The Bill already includes a number of safeguards that will allow a trust to continue to be managed in circumstances where a sole trustee becomes incapacitated, untraceable or dies. For instance, section 1 confers on the court a wide general power to appoint trustees including where no capable trustee exists or is traceable. An application can be made by anyone with an interest in the trust property. Section 2 of the Bill is a default provision that can be read into all existing trusts allowing a truster to appoint a new trustee, except where the trust deed provides otherwise.

	Where the trust deed allows for the assumption of an additional trustee but does not provide a means for doing so, section 3 of the Bill allows trustees to assume an additional trustee. Section 54 of the Bill allows courts, upon application, to vary the powers of trustees to manage or administer trust property. Where a trust deed appoints a sole trustee and this causes administrative difficulties then an application can be made by a number of different parties for a variation. The Scottish Government does not intend to restrict use of sole trustees, however we will consider this issue further and what, if any, further safeguards could be provided in circumstances where there is a sole trustee of a trust, and update the Committee ahead of Stage 2.
272. The Committee asks the Scottish Government to respond to concerns raised in relation to the effect of section 72 where people were separated at the time of death and set out ahead of the Stage 1 debate: • If it intends to suggest section 72 is amended so that a distinction is drawn between spouses and civil partners who had separated (but not divorced or had the partnership dissolved) at the time of death, and those who had not, and • If no change is intended, why not.	The Scottish Government recognises that some stakeholders would like to see the law deal with the issue identified by the Committee. However we believe that the current legal framework already provides for a straightforward and effective solution whereby separated spouses can prepare a new will, update an old one, or prepare a separation agreement. Any attempt to make a legal distinction between such persons risks disinheriting spouses who are only living apart because they are prevented from living together. This might include couples where one of the spouses is in long-term care or in prison. Therefore the Scottish Government does not intend to draw a distinction between spouses and civil partners who are separated but not divorced (or had their partnership dissolved) at the time of death and those who had not.
289. The Committee recommends the Bill is amended to clarify that the law does not	The Scottish Government is committed to bringing forward reforms that would prevent a person convicted of murder from being an executor to their victim's estate. The existing law in this area is not clear and the Committee has heard differing views.

permit an unlawful killer to be an executor of their victim's estate. 290. The Committee considers that, notwithstanding the presumption of innocence, it would appear to be inappropriate for a person charged with murder or culpable homicide to act as executor during the course of the prosecution. 291. The Committee requests that the Scottish Government sets out its plans for addressing this issue ahead of the Stage 1 debate.	Officials have consulted with a number of stakeholders over the summer to test two legislative models that might resolve this issue, and it is important that whatever is taken forward is capable of working in practice. More distress would be caused to a family that found themselves in these circumstances to then also find themselves in a situation where the deceased's estate cannot be administered, or its administration is called into question. The Scottish Government copied the Committee into the correspondence issued to stakeholders and will continue to keep it up-to-date as this matter develops ahead of Stage 2.
303. The Committee recommends that the Bill is amended to extend the current six-month period for cohabitants' claims to a deceased person's estate under the 2006 Act to 12 months.	The Scottish Government considers that further work needs to be undertaken to ensure that cohabitants are protected financially when their loved one dies. While the Committee heard from some stakeholders that extending the time limit would offer sufficient protection, others pointed out that such protection could be easily circumvented. The SLC recently published its report on financial provision on breakdown of a cohabiting relationship, otherwise than by death. The Scottish Government responded to that report stating that it will give consideration to consulting on the SLC's recommendations[1] and on 06 September 2023 I wrote to the SLC setting out that detailed work on the report has begun. The Scottish Government's view is that the potential consultation on the SLC's report on financial provision on breakdown of a cohabiting relationship would be a good

[1] The response by the Scottish Government to SLC report 261 on cohabitation is at https://www.scotlawcom.gov.uk/files/9716/7567/7521/Correspondence_from_the_Minister_for_Community_Safety_-_Cohabitation-__Response_to_Scottish_Law_Commission_on_their_report-_3_February_2023.pdf

	opportunity to also consult on extending the time limit for a cohabitant to make a claim to a deceased person's estate.
309. The Committee recognises the scope of this Bill and its status as an SLC Bill limits the changes which can be made within the Bill to the law of succession. 310. Nevertheless, the Committee has heard strong and differing views in relation to succession law and requests the Scottish Government sets out its thinking, and anticipated timescales on the next steps in relation to this area of law, at the same time as it publishes its recently completed research into the views of the wider general public on intestate succession. The Committee asks this is provided by the end of October 2023. 311. The Committee further recommends that succession law be given priority for future reform.	While the law of succession affects everyone, it can also divide opinion, as the Committee has found. While everyone agrees that the law needs reform there is no consensus on what those reforms should be. The Scottish Government has commissioned independent research from the Scottish Civil Justice Hub, led by the Glasgow University's School of Law in collaboration with the Scottish Government's Civil Law and Legal System Division, to explore the views of the public regarding intestate succession. When those research findings are published we will bring it to the attention of the Committee, and we will consider its findings carefully before taking any next steps on succession law reform. The Scottish Government has no plans at this time to progress any further primary legislation on reform of fundamental aspects of succession law during the course of this Parliamentary session.