

Judicial Factors (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

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Jurisdiction of the sheriff court

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Time limits

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Caution

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Court disposal options where objection to judicial factor's scheme for distribution of estate

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Appointment of a judicial factor for the purpose of bringing the factory to an end

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Criteria for appointment of the Accountant and depute Accountant

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Reports of misconduct where judicial factor is member of a professional body

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Amendments in debating order

Intimation

Siobhian Brown

1 In section 1, page 1, line 20, at end insert—

<(3A) Where the court is minded to appoint a judicial factor under subsection (3)(a)(i), the clerk of court must, before the appointment is made, intimate that fact without delay to every person who the court considers has an interest in the estate.

(3B) Where a motion is made for the appointment of a judicial factor under subsection (3)(a)(ii), the party making the motion must intimate the motion without delay to every person who—

(a) so far as the party is able to ascertain after reasonable enquiry, has an interest in the estate, and

(b) has not been notified of the motion by virtue of any applicable rules of court.>

Siobhian Brown

2 In section 1, page 1, line 20, at end insert—

<() The court may dispense with the requirement to intimate a matter, in whole or in part—

(a) under subsection (2) or (3B) on cause shown,

(b) under subsection (3A) where the court considers such dispensation to be appropriate.>

Siobhian Brown

4 After section 1, insert—

<Appointment of judicial factor: charities

(1) Where an application is made under section 1(1) for the appointment of a judicial factor on the estate of a charity, the applicant must without delay—

(a) intimate the application to the Office of the Scottish Charity Regulator (“OSCR”) (unless the applicant is OSCR), and

(b) give notice that an application has been made to the general public by way of advertisement.

(2) Where the court is minded under section 1(3)(a)(i) to appoint a judicial factor on the estate of a charity, the clerk of court must, before the appointment is made and without delay—

(a) intimate that fact to OSCR, and

(b) give notice of that fact to the general public by way of advertisement.

(3) Where a motion is made under section 1(3)(a)(ii) for the appointment of a judicial factor on the estate of a charity, the party making the motion must without delay—

(a) intimate the motion to OSCR (unless that party is OSCR), and

(b) give notice that a motion has been made to the general public by way of advertisement.

(4) The court may dispense with the requirement to give notice—

(a) under subsection (1)(b) or (3)(b) on cause shown,

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- (b) under subsection (2)(b) where the court considers such dispensation to be appropriate.>

Siobhian Brown

- 18 In section 26, page 12, line 37, after <(2)(b)> insert <(in so far as is, in the opinion of the Accountant, reasonably practicable)>

Siobhian Brown

- 19 In section 27, page 13, line 36, after <scheme> insert <—
(i) where the factory estate is that of a charity, to OSCR, and
(ii)>

Siobhian Brown

- 20 In section 27, page 14, line 3, at end insert—
<(4A) Where the factory estate is that of a charity, the judicial factor must without delay give notice to the general public, by way of advertisement, that a scheme for the distribution of the factory estate has been approved.>

Siobhian Brown

- 21 In section 27, page 14, line 3, at end insert—
<() The Accountant may dispense with the requirement in subsections (4)(a)(ii) and (4A), in whole or in part, on cause shown.>

Siobhian Brown

- 23 In section 28, page 14, line 35, at end insert—
<() The court may dispense with the requirement in subsection (2), in whole or in part, on cause shown.>

Siobhian Brown

- 28 In section 31, page 17, line 22, at end insert—
<() The court may dispense with the requirement in subsection (4), in whole or in part, on cause shown.>

Jurisdiction of the sheriff court

Siobhian Brown

- 3 In section 1, page 2, line 7, after <which> insert <the person's registered office is situated or in which>

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- 39 In schedule 2, page 30, line 33, at end insert—

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<Courts Reform (Scotland) Act 2014

In section 39 of the Courts Reform (Scotland) Act 2014 (exclusive competence), after subsection (3) insert—

“() This section does not apply to proceedings to appoint a judicial factor.”>

Time limits

Siobhian Brown

5 In section 6, page 3, line 24, leave out from <, and> to <date> in line 25

Siobhian Brown

24 In section 29, page 16, line 8, leave out from <(and> to <subsection (4))> in line 9

Caution

Siobhian Brown

6 In section 6, page 3, line 27, at beginning insert <subject to subsection (1A),>

Siobhian Brown

7 In section 6, page 3, line 27, at end insert—

<(1A) Where the court has imposed a requirement to find caution, the clerk of court must not apply to register notice under subsection (1)(b) unless the Accountant has confirmed that the requirement has been satisfied.>

Siobhian Brown

9 In section 7, page 4, line 4, after <factor)> insert <—
()>

Siobhian Brown

10 In section 7, page 4, line 5, after <date”> insert <, or

() where the court has imposed a requirement to find caution, on the date on which the Accountant confirms to the court and the judicial factor in writing that the requirement has been satisfied>

Siobhian Brown

13 In section 10, page 5, line 37, leave out subsection (6) and insert—

<(6) The standard powers vest in the judicial factor—

(a) on the appointment date, or

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- (b) where the court has imposed a requirement to find caution, on the date on which the Accountant confirms to the court and the judicial factor in writing that the requirement has been satisfied.>

Register of Inhibitions

Siobhian Brown

8 After section 6, insert—

<Review of appropriateness of registration in the Register of Inhibitions

- (1) The Scottish Ministers—
 - (a) must from time to time review the continuing appropriateness of registration of notices of appointment of judicial factors in the Register of Inhibitions, and
 - (b) may by regulations specify that such notices are to be registered instead in—
 - (i) an existing register,
 - (ii) a register of judicial factories.
- (2) Where regulations under subsection (1) specify that notices are to be registered in an existing register, the regulations must make such provision as is necessary to allow the register to be used for the registration of notices of appointment of judicial factors.
- (3) Where regulations under subsection (1) specify that notices are to be registered in a register of judicial factories, the regulations—
 - (a) must establish a register of judicial factories,
 - (b) may confer the duty of maintaining the register on a person,
 - (c) may specify—
 - (i) the manner in which the register is to be kept,
 - (ii) the information which the register is to contain,
 - (d) may make provision about—
 - (i) the extent to which the information in the register is to be made available to the public,
 - (ii) the circumstances in which certain information contained in the register can be withheld from the public,
 - (iii) any fees payable in relation to the register,
 - (iv) such other matters as the Scottish Ministers consider appropriate.
- (4) Regulations under subsection (1)—
 - (a) may make incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) may modify any enactment (including this Act),
 - (c) are subject to the affirmative procedure.>

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Remuneration of judicial factor

Siobhian Brown

- 11 In section 9, page 5, line 3, leave out <interim>

Guidance in relation to missing persons

Siobhian Brown

- 12 After section 9, insert—

<Guidance about the appointment of judicial factors on the estates of missing persons

Guidance about the appointment of judicial factors on the estates of missing persons

- (1) The Scottish Ministers must issue guidance about the appointment of judicial factors on the estates of missing persons under section 1.
- (2) The Scottish Ministers may review and revise guidance issued under subsection (1).
- (3) The Scottish Ministers must, as soon as practicable after issuing—
 - (a) guidance under subsection (1),
 - (b) revised guidance under subsection (2),

publish the guidance in such manner as they consider appropriate (which may include the guidance being published as part of another document).>

Minor and technical

Siobhian Brown

- 14 In section 10, page 6, line 1, leave out <and in section 11>

Siobhian Brown

- 15 In section 10, page 6, line 8, at end insert—

<() In this section and in section 11—>

Siobhian Brown

- 17 In section 13, page 8, line 1, leave out subsection (4)

Siobhian Brown

- 30 In section 33, page 18, line 26, leave out <and> and insert <or>

Siobhian Brown

- 31 In section 34, page 19, line 10, leave out <if and to the extent that> and insert <to any acts or omissions in relation to which>

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Siobhian Brown

37 In section 43, page 23, line 38, at end insert—

- <() the inventory,
- () the balance sheet,>

Siobhian Brown

38 In section 45, page 24, line 20, leave out first <section>

Siobhian Brown

40 In schedule 2, page 30, line 35, at end insert—

- <() In section 25 (effect of sequestration on diligence: estate of deceased debtor), in each of subsections (1)(b) and (4)(b), for “section 11A of the Judicial Factors (Scotland) Act 1889” substitute “the Judicial Factors (Scotland) Act 2024”.>

Siobhian Brown

41 In schedule 2, page 31, line 3, at end insert—

- <() In section 98 (gratuitous alienations)—
 - (a) in subsection (1)(b)(iv), for “section 11A of the 1889 Act (see section 107)” substitute “the Judicial Factors (Scotland) Act 2024”,
 - (b) in subsection (11), for “section 11A of the 1889 Act” substitute “the Judicial Factors (Scotland) Act 2024 to administer the insolvent estate of a deceased person”.
- () In section 99 (unfair preferences)—
 - (a) in subsection (1)(c)(ii), for “section 11A of the 1889 Act” substitute “the Judicial Factors (Scotland) Act 2024”,
 - (b) in subsection (8), for “section 11A of the 1889 Act” substitute “the Judicial Factors (Scotland) Act 2024 to administer the insolvent estate of a deceased person”.
- () In section 100(1)(c)(iv) (recall of order for payment of capital sum on divorce or on dissolution of civil partnership), for “section 11A of the Judicial Factors (Scotland) Act 1889” substitute “the Judicial Factors (Scotland) Act 2024”.
- () In section 107 (references in Part 7 to “the 1889 Act” and to “the 1999 Act”), the words “to “the 1889 Act” are to the Judicial Factors (Scotland) Act 1889, and” are repealed.>

Siobhian Brown

42 In schedule 2, page 31, line 13, at end insert—

- <() In schedule 8, paragraph 1 is repealed.>

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Data protection

Siobhian Brown

- 16 In section 12, page 7, line 26, after <legislation> insert <(but in determining whether a disclosure would do so, the provision made in this Act enabling or requiring the disclosure of information is to be taken into account)>

Siobhian Brown

- 36 In section 39, page 22, line 2, after <legislation> insert <(but in determining whether a disclosure would do so, the provision made in this Act enabling or requiring the disclosure of information is to be taken into account)>

Court disposal options where objection to judicial factor's scheme for distribution of estate

Siobhian Brown

- 22 In section 27, page 14, line 24, at end insert <, or
() make such other order as the court considers appropriate.>

Appointment of a judicial factor for the purpose of bringing the factory to an end

Siobhian Brown

- 25 In section 30, page 16, line 31, at end insert—
<(3A) Where either subsection (2) or (3) applies, if the Accountant is of the opinion that—
(a) the purpose for which the original judicial factor was appointed no longer exists,
and
(b) some actings are required to bring the judicial factory to an end,
the Accountant must apply to the court under section 1(1) for a judicial factor to be appointed in place of the original judicial factor to carry out those actings.>

Siobhian Brown

- 26 In section 30, page 16, line 32, leave out <or (3)> and insert <, (3) or (3A)>

Siobhian Brown

- 27 In section 30, page 17, line 1, leave out <or (3) and insert <, (3) or (3A)>

Siobhian Brown

- 29 In section 32, page 18, line 13, leave out <or (3)(b)> and insert <, (3)(b) or (3A)>

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Criteria for appointment of the Accountant and depute Accountant

Siobhian Brown

32 In section 35, page 19, line 19, at end insert—

<(1A) The Scottish Ministers—

- (a) must from time to time review the criteria to be taken into account by the SCTS in appointing a person to the office of Accountant of Court under subsection (1),
- (b) may, by regulations, change the criteria if the Scottish Ministers consider it appropriate to do so.

(1B) Regulations under subsection (1A)—

- (a) may modify any enactment (including this Act),
- (b) are subject to the affirmative procedure.>

Siobhian Brown

33 In section 36, page 20, line 6, at end insert—

<(2A) The Scottish Ministers—

- (a) must from time to time review the criteria to be taken into account by the SCTS in appointing a person to the office of Depute Accountant under subsection (1),
- (b) may, by regulations, change the criteria if the Scottish Ministers consider it appropriate to do so.

(2B) Regulations under subsection (2A)—

- (a) may modify any enactment (including this Act),
- (b) are subject to the affirmative procedure.>

Reports of misconduct where judicial factor is member of a professional body

Siobhian Brown

34 In section 38, page 21, line 3, after first <body> insert <—

()>

Siobhian Brown

35 In section 38, page 21, line 3, at end insert <, or

- () where another person deals with complaints made in relation to members of that professional body (whether by virtue of enactment or administrative arrangements to that effect), to that person.>

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