



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 19 November 2024

Session 6



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

32nd Meeting 2024, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Daniel Johnson (Edinburgh Southern) (Lab)
Roz McCall (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Siobhian Brown (Minister for Victims and Community Safety)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 19 November 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the 32nd meeting in 2024 of the Delegated Powers and Law Reform Committee. We have received apologies from Roz McCall MSP. I remind everyone to switch off, or put to silent, mobile phones and other electronic devices, please.

The first item of business is to decide whether to take item 6 in private. Is the committee content to take that item in private?

Members *indicated agreement.*

Instrument subject to Affirmative Procedure

09:30

The Convener: Under agenda item 2, the committee is considering an instrument subject to the affirmative procedure, on which no points have been raised.

Regulated Roles (Prohibitions and Requirements) (Scotland) Regulations 2024 [Draft]

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Negative Procedure

09:30

The Convener: Under agenda item 3, the committee is considering instruments that are subject to the negative procedure. Issues have been raised on three of the instruments, all of which underpin the implementation of the Disclosure (Scotland) Act 2020, which reforms the disclosure regime in Scotland.

Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 (SSI 2024/313)

The Convener: The first instrument is Scottish statutory instrument 2024/313. This instrument prescribes the information that the chief constable must refer, if held, to the Scottish ministers in relation to an individual whom the chief constable considers is or has been carrying out a type of regulated role while not participating in the protecting vulnerable groups scheme in relation to that type of regulated role.

In correspondence with the Scottish Government, which is published alongside the papers for this meeting, the committee asked a question about paragraph 6 of the schedule, which states:

“Details of the person for whom the chief constable considers that the individual is, or has been, carrying out a regulated role during the relevant period.”

The committee queried whether the term “details” is sufficiently clear to identify what information must be passed on to ministers under that paragraph.

The committee notes that, during the passage of the legislation, it was suggested that that information would be similar to that already required for scheme members, which is limited to the gender and national insurance number of the individual. The committee also notes that “details” could include any number of pieces of information that are held by the chief constable about someone who is not the individual concerned and has no other limits or criteria applying to it.

What details and how much detail will be passed on is not obvious from the instrument itself, and the Scottish Government has noted that guidance will be issued in respect of the exercise of the power. Accordingly, although the Government considers it sufficiently clear, the committee considers that it could be clearer to set out what “details” will encompass.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (h), which is that the form or meaning could be clearer, as the meaning of the term “details” in paragraph 6 of the schedule could be clearer?

Members indicated agreement.

Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024 (SSI 2024/314)

Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024 (SSI 2024/315)

The Convener: I move on to the second and third instruments on which issues have been raised.

SSI 2024/314 makes detailed provision in relation to every “relevant matter” that might be used for listing purposes and in relation to vetting information that might be included on a scheme record in respect of scheme members under the Protection of Vulnerable Groups (Scotland) Act 2007.

SSI 2024/315 makes detailed provision about what information will be included in level 1 and level 2 disclosures when the new scheme under the Disclosure (Scotland) Act 2020 enters into force.

In correspondence with the Scottish Government, the committee queried whether the provisions in the instruments are intended to prescribe non-disclosable convictions and, in relation to SSI 2024/314, all spent cautions. The Government advised that that is not the intention, and that the legal effect is correct, given the definitions in the parent acts.

Although the committee appreciates that the instruments achieve the policy intention as a matter of law, it considers that it could have been made clear, for example in the accompanying documents, that not all convictions and cautions are prescribed.

Does the committee wish to draw the instruments to the attention of the Parliament on the general reporting ground, on the basis that it would have been helpful, in the interest of accessibility, if the accompanying documents made it clear that not all convictions—and, in relation to SSI 2024/314, cautions—are prescribed?

Members indicated agreement.

The Convener: Also under agenda item 3, we are considering eight instruments on which no points have been raised.

Town and Country Planning (Fees for Applications) (Scotland) Amendment Regulations 2024 (SSI 2024/292)

Firefighters' Pension Schemes (Scotland) Amendment (No 2) Order 2024 (SSI 2024/295)

Consideration of Suitability for Regulated Roles (Prescribed Purposes) (Scotland) Regulations 2024 (SSI 2024/316)

Disclosure and Use of Level 2 Disclosures (Prescribed Purpose and Circumstances) (Scotland) Regulations 2024 (SSI 2024/317)

Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) (No 2) Regulations 2024 (SSI 2024/324)

Food Safety (Sampling and Qualifications) (Scotland) Amendment Regulations 2024 (SSI 2024/326)

Building (Scotland) Amendment (No 2) Regulations 2024 (SSI 2024/327)

Feed Additives (Authorisations) and Uses of Feed Intended for Particular Nutritional Purposes (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/330)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: In relation to SSI 2024/295, does the committee wish to draw to the attention of the lead committee, the Criminal Justice Committee, the DPLR Committee's correspondence with the Scottish Government in relation to paragraph 1 of the instrument's schedule and welcome the fact that the instrument fulfils a commitment that was made by the Scottish Government to correct an error in a date that was inserted by SSI 2024/26?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

09:35

The Convener: Under agenda item 4, we are considering an instrument that is not subject to parliamentary procedure and on which no points have been raised.

Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules 2021 and Ordinary Cause Rules 1993 Amendment) (Taxation of Judicial Expenses) 2024 (SSI 2024/323)

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Judicial Factors (Scotland) Bill: Stage 2

09:36

The Convener: Under agenda item 5, we are considering the Judicial Factors (Scotland) Bill at stage 2. I ask members to refer to their copy of the bill, the marshalled list of amendments and the groupings of amendments.

We are joined by the Minister for Victims and Community Safety, Siobhian Brown, and three Scottish Government officials—welcome to the committee. I remind the minister's officials that they cannot participate in any stage 2 proceedings, but they can communicate with their minister directly.

We have 42 amendments to the bill to consider and dispose of. If votes are required, I will first call for members to vote yes, then for members to vote no and then for any abstentions. Members should do so by raising their hand; our clerks will collate the vote and pass it to me to read out and confirm the result. I will take stage 2 slowly so that we have time to manage the process properly.

Section 1—Appointment of judicial factor

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2, 4, 18 to 21, 23 and 28.

The Minister for Victims and Community Safety (Siobhian Brown): Good morning, convener and colleagues.

Section 1(2) of the bill requires the applicant to intimate an application under section 1(1) to

“every person who, so far as the applicant is able to ascertain after reasonable enquiry, has an interest in the estate.”

In its written evidence, the Faculty of Advocates queried why there was no such requirement in relation to the appointment of a judicial factor in the course of other proceedings under section 1(3). We took the view that such a requirement was not imposed in relation to section 1(3) appointments because the relevant persons would already be parties to proceedings. However, on reflection, it seems possible that that might not always be the case. Therefore, I consider that it is sensible that the requirement to intimate to persons with an interest applies to section 1(3) appointments, too, which is what amendment 1 provides for.

By amending sections 1, 28 and 31 of the bill, amendments 2, 23 and 28 will confer discretion on the court to dispense with intimation requirements, which is in line with the suggestion by the Faculty

of Advocates in its written evidence. The amendments recognise that it might not always be possible for intimation to be made to all relevant persons. For example, where the appointment of a judicial factor to the estate of a missing person is sought, the missing person will have an interest in the proceedings, but intimation to them will generally not be possible. The amendments will ensure that the court can dispense with intimation when the particular circumstances of the case warrant it.

At stage 1, there was a range of discussion that focused on circumstances in which the property to be managed by a judicial factor belongs to a charity. After consulting stakeholders and considering the evidence, I lodged a number of amendments that will ensure that the bill better caters to cases involving charity property.

Amendments 4, 19 and 20 in my name respond to the concerns that were raised by some stakeholders by recognising the difficulties that might arise where the bill requires the intimation of documents to every person with an interest in the estate while also recognising the wider public interest in charities. The amendments require that, where the estate is that of a charity, in addition to the standard requirement to intimate to persons with an interest in the estate, intimation is also to be given to OSCR, as the charity regulator, and notification is to be given to the general public by way of advertisement. Amendment 4 also confers a power on the court to dispense with notification requirements to the public where circumstances justify that.

Amendment 18, which would amend section 26 of the bill, provides that a judicial factor appointed on the trust's estate can apply to the Accountant of Court for authorisation to exercise a function that may be at odds with the terms or purposes of the trust. In addition to applying to the accountant, the judicial factor must also comply with certain notification requirements. In line with the approach that has been taken to other amendments, amendment 18 provides flexibility in circumstances where intimation cannot be reasonably made. That may include circumstances where there is a wide class of beneficiaries named in a trust deed or where some beneficiaries are not yet born.

Amendment 21 recognises the fact that it might not always be possible for a judicial factor to intimate a proposed scheme of distribution of the estate to all interested persons—for example, when an interested person's present whereabouts are unknown and cannot, with reasonable inquiry, be ascertained. The accountant may dispense with intimation if, in her view, there is a good reason to do so in the particular circumstances of the case.

I ask members to support my amendments in this group.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Siobhian Brown]—and agreed to.

The Convener: Amendment 3, in the name of the minister, is grouped with amendment 39.

Siobhian Brown: Section 1(5)(b) of the bill contains rules as to when a particular sheriff court has jurisdiction. Where an application relates to the estate of a person other than an individual, such as a company, the sheriff court of the sheriffdom in which the person has a place of business has jurisdiction.

In its written evidence, the centre for Scots law at the University of Aberdeen suggested that a non-natural person's registered office should be included as an additional category. I consider that to be a sensible suggestion, given that a registered office can generally be relied upon to establish jurisdiction in certain actions in relation to companies. Therefore, amendment 3 makes that change.

Amendment 39 makes it clear that the sheriff court and the Court of Session have concurrent jurisdiction to hear applications for the appointment of a judicial factor, irrespective of the value of the estate in question.

In its written evidence, the Faculty of Advocates highlighted the fact that the bill did not expressly address the question of jurisdiction of the sheriff court under section 39 of the Courts Reform (Scotland) Act 2014, and I agree that it would be helpful for the bill to make the position clear.

I move amendment 3.

Amendment 3 agreed to.

Section 1, as amended, agreed to.

After section 1

Amendment 4 moved—[Siobhian Brown]—and agreed to.

Sections 2 to 5 agreed to.

Section 6—Intimation and registration of notice of appointment

09:45

The Convener: Amendment 5, in the name of the minister, is grouped with amendment 24.

Siobhian Brown: In sections 6 and 29, specific timescales are imposed that require the clerk or the accountant to register a notice of appointment

or certificate of termination, recall and discharge within seven days. Those time limits were put in place to ensure that registration was carried out promptly, rather than to prevent registration outwith that seven-day window.

However, having considered the written evidence of the Sheriffs and Summary Sheriffs Association, I think that there is potential for doubt, which could lead to litigation. Given that these are procedurally important steps, it is important to ensure that the clerk of the court and the accountant are not prevented from registering the notices or certificates when that is done outwith the seven-day period.

Accordingly, amendments 5 and 24 remove those time limits from sections 6 and 29. Importantly, those sections still require the clerk of the court and the accountant to send the notices or certificates for registration as soon as is reasonably practical.

I move amendment 5.

Amendment 5 agreed to.

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 7, 9, 10 and 13.

Siobhian Brown: In its written evidence, the Faculty of Advocates suggested that, when the requirement to find caution is imposed by the court, the appointment of the judicial factor and the vesting of the estate and standard powers in the judicial factor should be postponed until after caution is found. I consider that it is sensible that registration of the appointment and vesting of the estate and standard powers do not take place until the accountant has confirmed that the requirement to find caution has been satisfied. That is what amendments 6, 7, 9, 10 and 13 provide for.

That ties in with section 8(3), which ensures that, when the court requires a caution to be found, the judicial factor does not receive a certified copy of the interlocutor and, thus, is not able to deal with the property until the accountant confirms that the requirement to find caution has been satisfied.

I ask members to support all my amendments in the group.

I move amendment 6.

Amendment 6 agreed to.

Amendment 7 moved—[Siobhian Brown]—and agreed to.

Section 6, as amended, agreed to.

After section 6

The Convener: Amendment 8, in the name of the minister, is in a group on its own.

Siobhian Brown: In its stage 1 report, the committee considered registration of notices of appointment of judicial factors in the register of inhibitions, under section 6, and the alternative of creating a stand-alone register of judicial factories.

Amendment 8 gives effect to the committee's recommendation that the bill should require the Scottish ministers to periodically review the continuing appropriateness of registration of appointments of judicial factors in the register of inhibitions, and it enables the Scottish ministers to give effect to any findings of such reviews. Any regulations under that provision would be subject to the affirmative procedure.

I move amendment 8.

The Convener: My colleagues and I are delighted that the amendment has been lodged, bearing in mind that it was a recommendation from the committee's stage 1 report.

Amendment 8 agreed to.

Section 7—Vesting of estate in judicial factor

Amendments 9 and 10 moved—[Siobhian Brown]—and agreed to.

Section 7, as amended, agreed to.

Section 8 agreed to.

Section 9—Remuneration and reimbursement of judicial factor

The Convener: Amendment 11, in the name of minister, is in a group on its own.

Siobhian Brown: Section 9(5) allows the Accountant of Court to fix a different rate of remuneration for

“a particular interim judicial factor”.

In its written evidence, the Faculty of Advocates queried why that discretion was restricted to interim judicial factors and did not apply to permanent judicial factors. The policy behind section 9 is to provide flexibility for the fixing of rates of remuneration to allow for variations in particular circumstances or when unusual duties are imposed on a particular judicial factor. Having considered the faculty's evidence, I agree that the discretion conferred by the bill in that respect should be extended to apply to permanent judicial factors. That is what amendment 11 provides for.

I move amendment 11.

Amendment 11 agreed to.

Section 9, as amended, agreed to.

After section 9

The Convener: Amendment 12, in the name of the minister, is in a group on its own.

Siobhian Brown: Earlier this year, when responding to the committee's stage 1 report, I set out my views on lodging an amendment to make it clear that it is competent to appoint a judicial factor over the estate of a missing person. During the stage 1 debate, it was clear that that was one of the issues about which many MSPs felt strongly. I have listened to those views and have considered whether more can be done to balance them with the wider policy regarding the circumstances in which the appointment of a judicial factor can be sought.

The committee's recommendation is clear that a reference to missing people could be added in such a way to make it clear that the bill may be used by people who seek to manage the estate of a missing person. The committee knows my concerns about amending section 3, but my amendment 12 implements the recommendation while ensuring that the wider policy in the bill is not undermined.

Amendment 12 imposes a requirement on the Scottish ministers to produce guidance about the appointment of a judicial factor, under section 1, for the estates of missing people. As such, it makes it clear that the families of missing persons can use the bill.

I move amendment 12.

The Convener: As you indicated, the committee felt strongly about the matter. I am sure that all committee members welcome amendment 12.

Amendment 12 agreed to.

Section 10—Functions of judicial factor

Amendment 13 moved—[Siobhian Brown]—and agreed to.

The Convener: Amendment 14, in the name of the minister, is grouped with amendments 15, 17, 30, 31, 37, 38 and 40 to 42.

Siobhian Brown: These are minor and technical amendments.

Amendments 14 and 15 are technical amendments that address a point that was raised by the centre for Scots law at the University of Aberdeen in its written evidence. Section 10(7) defines “factory functions” for the purposes of sections 10 and 11, but there is no reference to the “factory functions” as such in section 11. Rather, section 11 makes reference to “standard powers” and

“functions set out in sections 12 to 19”,

both of which fall within the definition of “factory functions”. Amendments 14 and 15 make minor adjustments to correct that.

The definition of “financial assets” in section 13(4) was raised as being an issue by the centre for Scots law and by the Law Society of Scotland. In particular, the Law Society was concerned about the practical effect of trying to decide whether a particular financial asset was of a similar nature to cash accounts or share certificates.

Given that the definition was found to be unhelpful, I have lodged amendment 17 to leave the term “financial assets” undefined. The effect of that is that those words will now be given their ordinary natural meaning.

Section 33 allows for termination of a judicial factory when there are insufficient funds

“to meet the expenses of ...

(a) any formulation by the judicial factor of a scheme”

for distribution of the estate

“(b) the seeking of approval of such a scheme, and

(c) distribution of the factory estate in accordance with such a scheme.”

In written evidence, it was queried whether section 33(1) should have “or” instead of “and” between paragraphs (b) and (c). The issue is whether section 33 should apply only when all three conditions are satisfied or whether it should also apply when only one or two conditions are met. It is considered that there may be circumstances when, for example, there are sufficient funds to formulate a scheme but insufficient funds to seek approval and to distribute the estate. As such, there is value in having greater flexibility, with section 33 covering a wider range of circumstances, and amendment 30 adjusts section 33 accordingly.

On amendment 31, the committee asked me to consider whether the relationship between section 34 and section 38 needs further clarification, and I have given that some thought. Although I do not think that anything should be added to the bill to clarify the relationship between the two provisions, I consider that section 34 can be usefully amended to make it clearer to users of the legislation that it is not only any criminal liability incurred by the judicial factor in the course of their acting as judicial factor that continues after discharge, but also any civil liability connected to the relevant acts or omissions. Amendment 31 makes that change.

Section 43 allows persons with an interest in the factory estate to inspect or obtain copies of certain documents relating to the factory. Those documents are listed in section 43(4). The Law

Society has highlighted that the inventory is not specified in section 43(4) and that that differs from the SLC drafting, which refers to the

“inventory, management plan, annual accounts and audit report”

as being open to inspection. The inventory was unintentionally omitted from the bill as introduced, and amendment 37 corrects that. It also adds to the list of documents available for inspection the balance sheet that must be prepared when a replacement judicial factor is appointed.

The word “section” is repeated in section 45(2)(a), and amendment 38 corrects that error.

Finally, amendments 40 to 42 make consequential amendments to the Bankruptcy (Scotland) Act 2016, following written evidence from the centre for Scots law.

I ask members to support the amendments in the group.

I move amendment 14.

Amendment 14 agreed to.

Amendment 15 moved—[Siobhian Brown]—and agreed to.

Section 10, as amended, agreed to.

Schedule 1 agreed to.

Section 11 agreed to.

Section 12—Power of judicial factor to require information

The Convener: Amendment 16, in the name of the minister, is grouped with amendment 36.

Siobhian Brown: Sections 12 and 39 of the bill confer powers on judicial factors and on the Accountant of Court to request information in relation to factory estates from persons and bodies. That might include, for example, requests being made to banks for financial information relating to an estate.

During stage 1, some stakeholders expressed concern regarding the provisions in sections 12(7) and 39(6), which set out that sections 12 and 39 do not authorise disclosures that contravene data protection legislation. The concerns were echoed by the committee, with the committee recommending that the Scottish Government consider clarifying the provisions further in the bill or removing them.

10:00

In the light of those concerns, I have given further consideration to the provisions and have lodged amendments 16 and 36, which adjust sections 12(7) and 39(6) to provide further

clarification on the interplay with data protection legislation. The amendments make clear that, where the holder of information is considering whether a disclosure would contravene data protection legislation, they must take into account the provisions in the bill that authorise or require disclosure.

I move amendment 16.

Amendment 16 agreed to.

Section 12, as amended, agreed to.

Section 13—Ingathering

Amendment 17 moved—[Siobhian Brown]—and agreed to.

Section 13, as amended, agreed to.

Sections 14 to 25 agreed to.

Section 26—Validity of certain transactions by judicial factor appointed on trust estate

Amendment 18 moved—[Siobhian Brown]—and agreed to.

Section 26, as amended, agreed to.

Section 27—Approval of judicial factor's scheme for distribution of factory estate

Amendments 19 to 21 moved—[Siobhian Brown]—and agreed to.

The Convener: Amendment 22, in the name of the minister, is in a group on its own.

Siobhian Brown: Section 27 makes provision in relation to formulation of a scheme for distribution of the factory estate by a judicial factor. Where a person with an interest lodges an objection to the scheme prepared by the judicial factor, the Accountant of Court is required to refer the objection to the court. Under section 27(9) the court's options are to either reject the objection and order distribution in line with the scheme prepared by the judicial factor, or to instruct the judicial factor to distribute the estate as the court thinks fit.

The Sheriffs and Summary Sheriffs Association suggested that a further option should be available to the court—namely, to make such other order as the court considers appropriate. Although it is anticipated that, in most cases, the court will order distribution of the estate, I consider that there might be circumstances where other orders, such as continuation of the judicial factory, may be appropriate. Amendment 22 adds further flexibility to section 27 by allowing the court to respond to the particular circumstances of a case.

I move amendment 22.

Amendment 22 agreed to.

Section 27, as amended, agreed to.

Section 28—Application for distribution of factory estate

Amendment 23 moved—[Siobhian Brown]—and agreed to.

Section 28, as amended, agreed to.

Section 29—Termination, recall and discharge after distribution of factory estate

Amendment 24 moved—[Siobhian Brown]—and agreed to.

Section 29, as amended, agreed to.

Section 30—Duty of Accountant to apply for appointment of replacement where judicial factor has died or ceased to perform duties

The Convener: Amendment 25, in the name of the minister, is grouped with amendments 26, 27 and 29.

Siobhian Brown: Section 30 requires the Accountant of Court to apply for the appointment of a replacement judicial factor where the original factor dies or ceases to perform duties, where the Accountant of Court considers that the purpose for which the original factor was appointed still exists and that no application for replacement has been lodged by anyone else.

I have considered the provision further, however, and the bill does not set out what should happen when the original factor dies or ceases to perform their duties and the purpose for which they were appointed no longer exists, but some actions are still required to bring the judicial factory to an end. I consider that, in such circumstances, the judicial factory should be formally terminated following the processes under the bill and, where appropriate, the original factor discharged. Although that is not likely to be a common occurrence, amendment 25 is a sensible precaution to ensure that judicial factories are brought to a proper end and to avoid any doubts that might arise in such cases.

Amendments 26, 27 and 29 are all consequential amendments to reflect the addition of the new section 30(3A).

I move amendment 25.

Amendment 25 agreed to.

Amendments 26 and 27 moved—[Siobhian Brown]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Resignation and applications for recall and discharge in other circumstances

Amendment 28 moved—[Siobhian Brown]—and agreed to.

Section 31, as amended, agreed to.

Section 32—Inventory and balance sheet where replacement judicial factor appointed

Amendment 29 moved—[Siobhian Brown]—and agreed to.

Section 32, as amended, agreed to.

Section 33—Termination of judicial factory where insufficient funds

Amendment 30 moved—[Siobhian Brown]—and agreed to.

Section 33, as amended, agreed to.

Section 34—Ending of judicial factor’s accountability on discharge

Amendment 31 moved—[Siobhian Brown]—and agreed to.

Section 34, as amended, agreed to.

Section 35—Accountant of Court: appointment, remuneration and fees

The Convener: Amendment 32, in the name of the minister, is grouped with amendment 33.

Siobhian Brown: The committee’s stage 1 report considered the criteria that a person must meet to be appointed as an Accountant of Court, and the committee concluded that what the bill provides for is sufficient. The committee did, however, recommend that Scottish ministers periodically review the Accountant of Court’s qualifications and that they should have the flexibility to amend the qualification requirements by way of secondary legislation. Amendment 32 makes the recommended changes and any regulations under the provision would be subject to the affirmative procedure.

Section 36(2) of the bill imposes the same criteria on the person who is appointed as a depute accountant as those that are imposed on the person who is appointed as the accountant under section 35(1). Amendment 33 therefore makes the same provision for reviewing the criteria for the depute accountant as amendment 32 does for the accountant. That ensures that both the accountant’s and the depute accountant’s qualifications are subject to review and can be amended if needed.

I move amendment 32.

Amendment 32 agreed to.

Section 35, as amended, agreed to.

Section 36—Depute Accountant

Amendment 33 moved—[Siobhian Brown]—and agreed to.

Section 36, as amended, agreed to.

Section 37 agreed to.

Section 38—Misconduct or failure of judicial factor

The Convener: Amendment 34, in the name of the minister, is grouped with amendment 35.

Siobhian Brown: Under section 38(4)(b), if the judicial factor is a member of any professional body, the Accountant of Court is required to report to that professional body any serious misconduct or material failure by the judicial factor. The committee considered that provision in its stage 1 report, and I indicated that I would bring forward an amendment so that the bill better reflects how complaints against members of certain professional bodies are currently handled.

Amendments 34 and 35 make clear that, if arrangements are in place for a body other than the professional body to deal with complaints, the accountant must report the serious misconduct or material failure to that other body. For example, if the judicial factor is a solicitor, the effect of the amendment is to require the accountant’s referral to be made to the Scottish Legal Complaints Commission rather than the Law Society of Scotland.

I move amendment 34.

The Convener: There are no questions. Minister, thank you once again for listening to a recommendation from the committee in its stage 1 report. Do you wish to wind up?

Siobhian Brown: I am happy to have moved my amendment.

Amendment 34 agreed to.

Amendment 35 moved—[Siobhian Brown]—and agreed to.

Section 38, as amended, agreed to.

Section 39—Power of Accountant to require information

Amendment 36 moved—[Siobhian Brown]—and agreed to.

Section 39, as amended, agreed to.

Sections 40 to 42 agreed to.

Section 43—Inspection of records held by Accountant

Amendment 37 moved—[Siobhian Brown]—and agreed to.

Section 43, as amended, agreed to.

Section 44 agreed to.

Section 45—Right of judicial factor to require determination as regards decision of Accountant

Amendment 38 moved—[Siobhian Brown]—and agreed to.

Section 45, as amended, agreed to.

Sections 46 to 49 agreed to.

Schedule 2—Modification of enactments

Amendments 39 to 42 moved—[Siobhian Brown]—and agreed to.

Schedule 2, as amended, agreed to.

Schedule 3 agreed to.

Sections 50 to 52 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister and her officials for their attendance. That also concludes the public part of the meeting, and I will allow the minister and her officials to leave the room before I move the committee into private session.

10:14

Meeting continued in private until 10:20.

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