

Scottish Courts and Tribunals Service



The Convenor
Delegated Powers and Law Reform
Committee

By email:

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Dear Convenor

Judicial Factors (Scotland) Bill – Stage 1 Report

Following our correspondence to the Committee dated 8 May 2024 and to the publication of the above report, the Scottish Courts and Tribunals Service (the SCTS) has set out its response to the points and recommendations (in the [Annex](#) to this letter) to the said report ahead of the Stage 1 debate.

The response is submitted by the SCTS in fulfilment of its function to provide efficient and effective administration to the courts. The response does not include the views of the Judiciary.

We hope the Committee finds our response helpful and if you require anything further please let us know.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Kubeczka', enclosed in a thin black rectangular box.

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Annex

The SCTS response to the Judicial Factors (Scotland) Bill – Stage 1 Report

- **Paras 70 and 75** – the SCTS would wish to clarify that from our operational experience the vast majority of summary applications in the sheriff court for the appointment of a judicial factor (JF) are prepared by solicitors. However, there is nothing, as far as we are aware that would prevent an individual from preparing and presenting an initial writ under summary application procedure in the sheriff courts for the appointment of a JF without legal representation.

In order to provide some procedural assistance to lay applicants appointed as a Judicial Factor, the Accountant of Court (AoC) and her staff would give consideration to matters such as making available a non-jargon, easy read version of the Inventory of Estate Form, the Management Plan Form and Annual Account Form, to assist such persons in their role as a JF.

- **Para 76** – where the Scottish Government (SG) develop and issue guidance in the context of JF's and missing persons, the SCTS considers it could signpost to any such guidance from the specific pages of the AoC website [here](#).

The AoC would also be willing to consider whether her staff would benefit from any specific training in relation to lay persons who are appointed as a JF and also what could be done in relation to the sharing of information/ promotion of the JF procedure. Going forward the AoC would be happy to engage, if considered appropriate, with the SG and the Law Society in this regard.

- **Para 97 – 98** – at the time of submitting this response, SG policy colleagues have recently contacted the SCTS for views on the proposals by the Charity Law Association. In general terms, the SCTS has no immediate concerns with what is proposed. However, the SCTS will continue to liaise with the Scottish Government as the policy and draft legislative proposals develop ahead of any Stage 2 amendments being tabled.
- **Para 107** – the SCTS launched its new website platform on 18 July 2024. It is envisaged that this new platform will improve the user experience and will present information in a clearer and more accessible format. To date, user feedback during the development process has been positive.

The SCTS [complaints procedure](#) applies equally to the AoC and her staff. However in the context of JF procedures, it is recognised clarity could be provided on the various “paths”/ options available to interested parties via the AoC website mentioned above.

- **Para 129** – the SCTS is of the view that any guidance providing clarity on the law/ interplay in the context of data protection would be a matter for SG. Should the SG issue any guidance, the AoC would be content to signpost to any available information from the AoC website mentioned above.
- **Paras 167 – 173** – subject to legislative provisions, the AoC will continue to consider/ explore with the SCTS’s I.T. colleagues, the possible creation of a register of JF appointments. As we indicated in our response of 8 May 2024 this would be subject to cost/ time impact on the development/ deployment of the new I.T. system already being developed for the Office of the Public Guardian Scotland/ AoC.
- **Paras 238 – 240** – the AoC have previously raised the wording of these provisions with SG colleagues. These were also subject to further discussion/ evidence at the previous evidence sessions.

The AoC would wish to take a further opportunity of raising its concerns with the provisions as currently drafted.

Clause 38(4) of the Bill uses the word “**must**” in the context of serious misconduct and intimation to a professional body. Given the potential ramifications for a professional following a referral by the AoC to their professional body, the AoC is of the view that clause 38 should perhaps be drafted to refer to an “**alleged**” misconduct/ failure, and “**may**” refer as an alternative to “**must**” given it will be for the court to determine whether serious misconduct has occurred or not. This change in wording would provide the AoC with a discretion as to whether intimation on the professional body should be made.

An alternative approach would be to leave the question of intimation on a professional body under clause 38(4) to the court to determine when issuing the first order for intimation etc. (whether on the face of the Bill or in possible rules of court) where the matter is referred to the court by the AoC?