

# Judicial Factors (Scotland) Bill

[AS PASSED]

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# Judicial Factors (Scotland) Bill

## [AS PASSED]

An Act of the Scottish Parliament to make provision about judicial factors; the appointment and functions of the Accountant of Court; and for connected purposes.

### PART 1

#### APPOINTMENT OF JUDICIAL FACTOR

##### *Appointment of judicial factor*

#### **1 Appointment of judicial factor**

- 5
- (1) The court may, on the application of an interested person (“the applicant”), appoint a judicial factor on an estate if the court considers that the conditions for appointment set out in section 3 are satisfied.
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- (2) Where an application is made for the appointment of a judicial factor under subsection (1), the applicant must intimate the application without delay to every person who, so far as the applicant is able to ascertain after reasonable enquiry, has an interest in the estate.
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- (3) The court may appoint a judicial factor on an estate in the course of proceedings connected to that estate—
- (a) either—
- (i) at its own instance, or
- (ii) on the motion of a party who is an interested person, and
- 20
- (b) if the court considers that the conditions for appointment set out in section 3 are satisfied.
- (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.
- 25
- (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.

(3C) 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.

(4) In this section and in section 2, “interested person” means any person who the court is satisfied has an interest in the appointing of a judicial factor on the estate to which the application relates.

(5) In this Act, “the court” means—

(a) the Court of Session,

(b) the sheriff—

(i) of a sheriffdom in which a part comprising at least one fifth of the value of the estate is situated,

(ii) of a sheriffdom in which the applicant, or any person with an interest in the estate, is habitually resident,

(iii) where the application relates to the estate of a person other than an individual, of a sheriffdom in which the person’s registered office is situated or in which the person has a place of business,

(iv) where none of sub-paragraph (i) to (iii) applies, of the sheriffdom of Lothian and Borders sitting at Edinburgh.

### **1A 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,

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

*Interim judicial factor*

**2 Interim judicial factor**

- 5 (1) The court may appoint an interim judicial factor on an estate if it considers it necessary or expedient to do so, pending the determination of—
- (a) an application for appointment under section 1(1), at its own instance or on the motion of the applicant,
- 10 (b) a motion for appointment under section 1(3)(a)(ii), at its own instance or on the motion of a party who is an interested person.
- (2) The provisions of this Act apply in relation to an interim judicial factor appointed under subsection (1) as they apply to a judicial factor, except and to the extent that—
- (a) the context requires otherwise,
- (b) the court, when appointing the interim judicial factor, specifies otherwise.
- 15 (3) The Accountant must keep under review the progress of any interim judicial factory.

*Conditions and qualification for appointment*

**3 Conditions for appointment of judicial factor**

- (1) The conditions for appointment of a judicial factor are—
- (a) there is an estate which—
- 20 (i) requires to be managed, or
- (ii) in relation to which actings are required, and
- (b) at least one of the following applies—
- (i) it is not possible, practicable or sensible for that management or those actings to be carried out by the person who would ordinarily be responsible for carrying them out,
- 25 (ii) it would be to the advantage of the estate for a judicial factor to be appointed to carry out that management or those actings.
- (2) In this section, “actings” includes such actions as may be required to hold, administer, or protect an estate for the benefit of persons with an interest in it.

**4 Qualification for appointment as judicial factor**

- 30 (1) A person may be appointed as a judicial factor only if the person is—
- (a) an individual,
- (b) of full legal capacity, and
- (c) in the opinion of the court to which it falls to make the appointment, a suitable person to hold the office.
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- (2) A person domiciled outside of Scotland, who is appointed as a judicial factor under this Act, prorogates the jurisdiction of the Scottish courts by accepting the appointment.

*Caution*

**5 Finding of caution**

- 5 (1) The court, when appointing a person as a judicial factor, may require the person to find caution for the performance of that person’s functions as judicial factor.
- (2) The court may impose a requirement under subsection (1) only where it considers that exceptional circumstances make it reasonable to do so.
- (3) The Accountant—
- 10 (a) must specify the amount of caution to be found, and
- (b) may at any time while the judicial factory subsists—
- (i) require the person to find new, or additional, caution, or
- (ii) authorise a reduction in the amount of caution to be found.

*Intimation and recording of notice of appointment*

**6 Intimation and recording of notice of appointment**

- 15 (1) Where a judicial factor is appointed, the clerk of court must, as soon as reasonably practicable after the date on which the interlocutor containing the order for the appointment of the judicial factor (“the appointing interlocutor”) is pronounced—
- (a) intimate the appointment to the Accountant, and
- 20 (b) subject to subsection (1A), send the notice of appointment to the Keeper of the Register of Inhibitions (“the Keeper”) for recording in that register.
- (1A) Where the court has imposed a requirement to find caution, the clerk of court must not send the notice to the Keeper under subsection (1)(b) unless the Accountant has confirmed that the requirement has been satisfied.
- 25 (2) Notice under subsection (1)(b) must specify an address at which service of documents may be effected on the judicial factor.
- (3) The judicial factor must, without delay—
- (a) re-send the notice of appointment to the Keeper for re-recording in the Register of Inhibitions at the expiry of the period of 5 years after the date on which the notice of appointment was recorded, and at the expiry of each subsequent period of 5 years, until such time as the appointment has been recalled, and
- 30 (b) notify the Accountant on each occasion that such re-recording is effected.
- (4) Any fee payable by virtue of subsection (1)(b) or (3)(a) is to be met from the factory estate.



**6A Review of appropriateness of recording in the Register of Inhibitions**

(1) The Scottish Ministers—

(a) must from time to time review the continuing appropriateness of recording of notices of appointment of judicial factors in the Register of Inhibitions, and

(b) may by regulations specify that such notices are to be recorded or 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 recorded or registered in an existing register, the regulations must make such provision as is necessary to allow the register to be used for the recording or registration of notices of appointment of judicial factors.

(3) Where regulations under subsection (1) specify that notices are to be recorded or 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.

*Vesting of estate in judicial factor*

**7 Vesting of estate in judicial factor**

(1) The whole estate on which a judicial factor is appointed vests in the judicial factor (in that person's capacity as judicial factor)—

(a) on the date on which the appointing interlocutor is pronounced ("the appointment date"), or

(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.

(2) Subsection (3) applies where a judicial factor is appointed on the estate of a solicitor under section 41 of the Solicitors (Scotland) Act 1980.

(3) Unless the court specifies otherwise when appointing the judicial factor, the estate vesting under subsection (1) includes all property held by the solicitor in a fiduciary capacity, including—

(a) sums at the credit of any client account, or

(b) property held other than in the solicitor's professional capacity.

#### *Warrant to intromit with estate*

### **8 Warrant to intromit with estate**

(1) The clerk of court must issue to the judicial factor a certified copy of the appointing interlocutor without delay following the appointment date.

(2) The certified copy is the judicial factor's warrant to intromit with the estate to which the appointment relates.

(3) Where the court has imposed a requirement to find caution, the clerk of court must not issue a certified copy under subsection (1) unless the Accountant has confirmed that the requirement has been satisfied.

#### *Remuneration and reimbursement of judicial factor*

### **9 Remuneration and reimbursement of judicial factor**

(1) A judicial factor may be remunerated from the factory estate for carrying out the functions of judicial factor.

(2) The Accountant must—

(a) after such consultation as appears to the Accountant to be appropriate, fix rates for the remuneration of judicial factors,

(b) after consultation with each judicial factor, determine the frequency with which that judicial factor is to be remunerated.

(3) Different rates may be fixed—

(a) for different kinds of work,

(b) for different circumstances,

(c) in relation to interim judicial factors.

(4) The Accountant must review the rates fixed under subsection (2)(a)—

(a) before the expiry of the period of 1 year beginning with the date on which they are fixed, and

(b) thereafter, from time to time (but in each case no later than the expiry of the period of 1 year beginning with the date of the previous review).

- (5) The Accountant may fix a rate of remuneration for a particular judicial factor other than by virtue of subsections (2) to (4).
- (6) A judicial factor may appeal to the court which appointed the judicial factor in respect of—
- 5           (a) the amount of the remuneration paid to the judicial factor,  
             (b) a determination of the Accountant under subsection (2)(b).
- (7) The decision of the court in an appeal to it under subsection (6) is final and is conclusive against both the Accountant and the judicial factor.
- (8) A judicial factor may be reimbursed for any outlays reasonably incurred in the carrying out of the functions of judicial factor—
- 10           (a) from the factory estate,  
             (b) as and when those outlays are incurred.

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

**9A      Guidance about the appointment of judicial factors on the estates of missing persons**

- 15           (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),
- 20           (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).

**PART 2**

FUNCTIONS OF JUDICIAL FACTOR

*Functions of judicial factor*

**10      Functions of judicial factor**

- (1) It is the general function of a judicial factor to hold, manage, administer and protect the factory estate for the benefit of persons with an interest in the estate.
- (2) The general function is subject to—
- 30           (a) any variation—
- (i) set out in the appointing interlocutor by virtue of section 11(1),
- (ii) made by the court by virtue of section 11(2),
- (b) any provision in any other enactment by virtue of which functions are imposed on or withheld from the judicial factor.

- (3) In exercising the general function and the factory functions a judicial factor must—
- (a) exercise care, prudence and diligence,
  - (b) take professional advice when appropriate.
- (4) In complying with subsection (3)(b), the judicial factor may consult the Accountant as to whether it is appropriate to take professional advice in a particular case.
- (5) The judicial factor must not delegate the general function or any factory function except and to the extent—
- (a) authorised by the Accountant,
  - (b) specified in the appointing interlocutor,
  - (c) permitted under this Act or any other enactment.
- (6) The standard powers vest in the judicial factor—
- (a) on the appointment date, or
  - (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.
- (7) In this section, “the factory functions” means—
- (a) subject to any variation made by the court by virtue of section 11(1)(a) or (2)(a), or any provision in any other enactment by virtue of which functions are imposed on or withheld from the judicial factor—
    - (i) the standard powers,
    - (ii) the functions set out in sections 12 to 19,
  - (b) any function conferred by the court by virtue of section 11(1)(b) or (2)(b).
- (8) In this section and in section 11, “the standard powers” means—
- (a) all of the powers of a natural person beneficially entitled to the estate,
  - (b) includes, in particular, the power to take any or all of the measures listed in schedule 1.

*Power of court to specify functions of judicial factor*

**11 Power of court to specify functions of judicial factor**

- (1) In appointing a judicial factor the court may specify in the appointing interlocutor—
- (a) that there is not conferred on the judicial factor any, or any part, of—
    - (i) the general function,
    - (ii) the standard powers,
    - (iii) the functions set out in sections 12 to 19,
  - (b) any additional function which is conferred on the judicial factor.

- (2) The court may, on the application of the judicial factor at any time after the appointment date—
- (a) relieve the judicial factor of any function conferred on the judicial factor by the appointing interlocutor,
  - (b) confer an additional function on the judicial factor.
- (3) The judicial factor must intimate to the Accountant any application—
- (a) to be relieved of a function under subsection (2)(a),
  - (b) for an additional function to be conferred under subsection (2)(b).
- (4) On receiving intimation under subsection (3) the Accountant must—
- (a) make such inquiry as the Accountant considers appropriate, and
  - (b) submit to the court a report indicating whether, in the opinion of the Accountant, it would be expedient to grant the application.

*Power of judicial factor to require information*

**12 Power of judicial factor to require information**

- (1) A judicial factor may serve written notice on any person requesting that the person supply such information specified in the notice as the judicial factor reasonably considers relevant to the judicial factor's functions.
- (2) A notice sent under subsection (1) must be accompanied by a certified copy of the appointing interlocutor.
- (3) A person who receives notice under subsection (1), other than a person mentioned in subsection (4), must comply with the notice without delay.
- (4) That person is—
- (a) a body to which paragraph 3 (reserved bodies) of Part III of schedule 5 of the Scotland Act 1998 applies,
  - (b) a Minister of the Crown,
  - (c) a department of the Government of the United Kingdom, or
  - (d) a public body operating wholly in relation to a reserved matter within the meaning of the Scotland Act 1998.
- (5) A person who, having received notice under subsection (1), directs the judicial factor without delay to means by which the information can be obtained (either or both)—
- (a) under any other enactment,
  - (b) free of charge,
- is to be treated as having complied with the notice.
- (6) A person complying with notice under subsection (1) may charge the judicial factor a fee for supplying the information if that person is entitled under any other enactment to charge a fee for supplying the relevant information.
- (7) Nothing in this section authorises the making of a disclosure that contravenes the data protection legislation (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).

- (8) In this section, “data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

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### *Ingathering*

## **13 Ingathering**

- (1) A judicial factor must ingather the factory estate.
- (2) The judicial factor may take such action as is necessary to complete title to property vested in the judicial factor by virtue of section 7.
- (3) The judicial factor must—
- (a) on becoming aware that a person is a creditor or debtor of the factory estate, inform that person of the judicial factor’s appointment,
  - (b) ensure that financial assets forming part of the factory estate can be readily identified as being held by the judicial factor in the capacity of judicial factor.

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### *Inventory and management plan*

## **14 Inventory of estate**

- (1) A judicial factor must, no later than 6 months after the appointment date, send to the Accountant—
- (a) an inventory of the factory estate,
  - (b) any accompanying documents required by rules of court.
- (2) As soon as reasonably practicable following receipt of an inventory, the Accountant must notify the judicial factor that the inventory is approved—
- (a) without modification, or
  - (b) subject to such modifications as the Accountant may require.
- (3) Before determining whether to require modifications to an inventory, the Accountant may request such further information as the Accountant considers appropriate.
- (4) The judicial factor and the Accountant must each sign a copy of the inventory, as approved by the Accountant, as constituting (subject to subsection (5)) a definitive statement of the factory estate as at the appointment date.
- (5) The judicial factor and the Accountant may, at any time and in such manner as the Accountant may determine, take account of information discovered after the inventory is signed under subsection (4).

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## **15 Management plan**

- (1) A judicial factor must, no later than 6 months after the appointment date, send to the Accountant—
- (a) a plan as to how the judicial factor intends to hold, manage, administer and protect the estate (a “management plan”), and

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- (b) any accompanying documents required by rules of court.
- (2) As soon as reasonably practicable following receipt of a management plan, the Accountant must notify the judicial factor that the plan is approved—
  - (a) without modification,
  - 5 (b) subject to such modifications as the Accountant may require.
- (3) Before determining whether to require modifications to a management plan, the Accountant may request such further information as the Accountant considers appropriate.
- (4) Where the Accountant requires modifications to a management plan, the Accountant must direct the judicial factor to resubmit the plan, by a date specified in the direction, with—
  - 10 (a) the modifications specified in the direction,
  - (b) any further modifications which the judicial factor considers appropriate.
- (5) Subsections (2) and (3) apply to a management plan resubmitted under subsection (4) as they apply to the management plan submitted under subsection (1).
- 15 (6) Where a management plan has been approved by the Accountant, the judicial factor—
  - (a) must review the management plan—
    - (i) from time to time (and at least annually), and
    - (ii) whenever required to do so by the Accountant,
  - (b) may modify the management plan at any time—
    - 20 (i) with the prior approval of the Accountant, and
    - (ii) with the addition of any further modification required by the Accountant.
- (7) The judicial factor must hold, manage, administer and protect the estate in accordance with the management plan, if a management plan has been approved under subsection (2)(a).
- 25 (8) The judicial factor must hold, manage, administer and protect the estate in accordance with the directions of the Accountant, if—
  - (a) no management plan has been approved without modification, or
  - (b) the Accountant has required a modification to the plan under subsection (6)(b)(ii) and that modification has not been effected by the judicial factor.
- 30 (9) The judicial factor must report to the Accountant, at such intervals as the Accountant may determine, on the holding, management, administration and protection of the factory estate.
- (10) In this section, references to holding, managing, administering and protecting the estate are to be construed in accordance with the terms of the appointing interlocutor and any variation made to the functions of the judicial factor made by the court under section 35 11(2).

*Submission of accounts, etc.*

**16 Submission of accounts, etc.**

- 5 (1) A judicial factor must, as soon reasonably practicable following the end of each reporting period, submit to the Accountant a report setting out the judicial factor's intromissions with the factory estate during the relevant reporting period.
- (2) Reports submitted under subsection (1) must—
- (a) include accounts, and
- (b) be in such form and submitted in such way—
- (i) as may be agreed between the judicial factor and the Accountant,
- (ii) in the absence of such agreement, as directed by the Accountant.
- 10 (3) In this section, “reporting period” means—
- (a) the period beginning on the appointment date and ending on the date specified by the Accountant, and
- (b) each subsequent period of the same duration.
- 15 (4) The period specified under subsection (3)(a) must be—
- (a) not less than one year, unless the Accountant considers that there are exceptional circumstances which justify a shorter period, and
- (b) not more than 2 years.
- 20 (5) The Accountant may, on cause shown, grant an extension of a particular reporting period provided that the reporting period as extended is not more than 2 years.

*Investment*

**17 Investment**

A judicial factor must—

- 25 (a) consider whether, and if so how, it would be appropriate to invest some or all of the funds of the factory estate, and
- (b) if the judicial factor considers that it would be appropriate, to invest the funds accordingly.

*Claims*

**18 Enforcing or defending claims**

- 30 (1) A judicial factor must enforce or defend any claim in relation to the factory estate provided that the judicial factor is satisfied that to do so would be reasonable and prudent in all the circumstances.
- (2) The judicial factor may consult the Accountant as to whether it would be reasonable and prudent to enforce or defend the claim in a particular case.



*Duty where estate object of dispute*

**19 Duty where estate object of dispute**

- (1) This section applies where—
- (a) the factory estate was, immediately before the appointment of the judicial factor, not being managed adequately because persons who required to agree among themselves on how to manage it could not reach such agreement, and
  - (b) the appointment was made wholly or mainly for that reason.
- (2) The judicial factor must, by whatever method the judicial factor considers appropriate in the circumstances, promote agreement between the relevant parties as to how to manage the estate.
- (3) Where the judicial factor considers that the appropriate method of promoting agreement under subsection (2) is mediation or arbitration, the judicial factor may—
- (a) act as mediator or arbitrator, as the case may be, or
  - (b) appoint a suitably qualified person to act as mediator or arbitrator.
- (4) If agreement under subsection (2) is not reached, or does not appear to the judicial factor to be able to be reached, the judicial factor must formulate a scheme, which the judicial factor considers equitable, for the management or distribution of the estate.
- (5) A scheme under subsection (4) may comprise, in particular, the division and sale of all or part of the factory estate.

**PART 3**

DEALINGS ETC. WITH THIRD PARTIES AND VALIDITY OF CERTAIN TRANSACTIONS

**20 Protection of person acquiring title**

Where a person has, in good faith and for value, acquired title from—

- (a) a judicial factor, the title acquired is not challengeable on the ground that, subsequent to the acquisition, the judicial factor's appointment was recalled,
- (b) a person who derived title from a judicial factor, the title acquired is not challengeable on the ground that the title should not have been transferred to that person.

**21 Entitlements and liabilities of judicial factor**

A judicial factor stands in place of the factory estate in any dealings with a third party and accordingly the judicial factor, in the judicial factor's capacity as such—

- (a) is liable for any debt or obligation of the estate to the third party,
- (b) is entitled to—
  - (i) receive any amount due to the estate by the third party,
  - (ii) enforce any obligation due to the estate by the third party.

**22 Contracts entered into by judicial factor**

(1) Subsection (2) applies where a judicial factor, in the capacity of judicial factor, enters into a contract with a person who is or ought to be aware that the judicial factor is entering into the contract in that capacity.

5 (2) Subject to section 24—

(a) any rights which that person or any third party has under or by virtue of the contract are enforceable against the factory estate only, and

(b) if the contract gives rise to legal proceedings, the action is to be raised by, or, as the case may be, directed against, the judicial factor in the judicial factor's capacity as such.

**23 Expenses of legal proceedings on behalf of factory estate**

Subject to section 24, where a judicial factor engages in legal proceedings on behalf of the factory estate, any expenses of the proceedings awarded against the judicial factor fall to be met from the factory estate.

**24 Claims arising from acts or omissions of judicial factor**

15 (1) This section applies where a claim for damages arises as a result of the acts or omissions of—

(a) a judicial factor, in the capacity of judicial factor,

(b) an agent appointed, or person employed, by the judicial factor to carry out the business of the judicial factory.

20 (2) Any action to enforce a claim must be brought against the judicial factor in that capacity.

(3) Any damages awarded in respect of, or liability (including the expenses of the proceedings) arising from, the claim fall to be met out of the factory estate unless the court—

25 (a) finds that the liability arose by virtue of a breach of duty on the part of the judicial factor, and

(b) considers it appropriate that the judicial factor be found personally liable for all, or some part of, the liability.

**25 Prescription of obligations**

30 (1) Subject to subsection (2), obligations due to or by a factory estate prescribe as if there had been no appointment of a judicial factor on the estate.

(2) The period during which a person is appointed as judicial factor on an estate does not form part of the prescriptive period in respect of any obligation due by that person to the estate.

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

- (1) This section applies where a judicial factor is appointed on a trust estate and in relation to the trust estate, or any part of it, the judicial factor—
- 5 (a) wishes to exercise a function which the judicial factor holds by virtue of this Act or any other enactment and would otherwise be entitled to exercise, and
- (b) considers that the exercise of the function might be at variance with the terms or purposes of the trust.
- (2) Before exercising the function, the judicial factor must—
- 10 (a) apply to the Accountant for consent to exercise the function, and
- (b) notify each person or class of person specified in rules of court of the judicial factor's intention to exercise the function.
- (3) On an application under subsection (2)(a) being made, the Accountant may grant consent to the exercise of the function if the Accountant is satisfied that—
- 15 (a) the exercise is in the best interest of every person who has an interest in the trust estate,
- (b) the judicial factor has complied with—
- (i) subsection (2)(b) (in so far as is, in the opinion of the Accountant, reasonably practicable), and
- (ii) any applicable rules of court, and
- 20 (c) either—
- (i) no objection has been made under subsection (5)(c), or
- (ii) any such objection is not sufficient cause for rejecting the application.
- (4) In granting consent to the exercise of the function, the Accountant may specify that consent is given subject to such conditions as the Accountant considers appropriate.
- 25 (5) Notification under subsection (2)(b) must—
- (a) be given in the manner specified in rules of court,
- (b) set out what the exercise of the function would involve,
- (c) set out the manner and time frame in which the person receiving the notification may object to the application (as such manner and time frame may be specified
- 30 in rules of court).
- (6) The judicial factor must not exercise the function unless consent is granted under subsection (3).
- (7) Where a judicial factor exercises a function in accordance with consent granted under subsection (3), the exercise is to be treated as not being at variance with the terms or
- 35 purposes of the trust.

**PART 4**

DISTRIBUTION OF FACTORY ESTATE, TERMINATION, RECALL AND DISCHARGE OF JUDICIAL FACTOR

*Distribution of factory estate*

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

- 5 (1) This section applies where a judicial factor has formulated a scheme—
- (a) for the distribution of the factory estate, on the basis that it appears to the judicial factor—
    - (i) that the purpose for which the judicial factor was appointed is fulfilled or no longer exists,
    - 10 (ii) that there are not, or may not be, sufficient funds in the factory estate to meet the continuing expenses of the judicial factory, or
  - (b) which comprises a distribution of the factory estate by virtue of section 19(4).
- (2) The judicial factor must send to the Accountant—
- (a) a current inventory of the factory estate, and
  - 15 (b) a copy of the proposed scheme.
- (3) The Accountant may—
- (a) approve the scheme (with or without modifications), or
  - (b) reject the scheme.
- (4) If the Accountant approves the scheme, the judicial factor must without delay—
- 20 (a) intimate the approved scheme—
    - (i) where the factory estate is that of a charity, to OSCR, and
    - (ii) to each person who, so far as is known to the judicial factor after reasonable enquiry, has an interest in the estate, and
  - (b) send to each such person—
    - 25 (i) a copy of the current inventory of the factory estate, and
    - (ii) a copy of the approved scheme.
- (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.
- 30 (4B) The Accountant may dispense with the requirement in subsections (4)(a)(ii) and (4A), in whole or in part, on cause shown.
- (5) A person who receives intimation under subsection (4)(a) may, within the period of 21 days beginning on the day the person receives the intimation, lodge with the Accountant an objection to there being a distribution in accordance with the approved scheme.
- 35 (6) If no objection is lodged under subsection (5) (or an objection is lodged but subsequently withdrawn), the judicial factor must distribute the estate in accordance with the approved scheme.

- (7) If an objection is lodged under subsection (5) (and is not subsequently withdrawn), the Accountant must—
- (a) refer the objection to the court which appointed the judicial factor, and
  - (b) give notice of that referral to—
    - (i) the judicial factor, and
    - (ii) each person to whom intimation was given under subsection (4)(a).
- (8) The court must require the objector to find caution for the expenses of the court proceedings unless it considers that, in all the circumstances, it would not be in the interests of justice to impose such a requirement.
- (9) The court may, after hearing the objector, the judicial factor and any other person who it is satisfied has an interest in the matter—
- (a) reject the objection and direct the judicial factor to distribute the estate in accordance with the approved scheme,
  - (b) instruct the judicial factor to distribute the estate in such manner as the court orders, or
  - (c) make such other order as the court considers appropriate.
- (10) This section and sections 28 and 29 apply in relation to any formulation, scheme, approval, application or recording in relation to a part only of a factory estate as they apply in relation to a factory estate.

## **28 Application for distribution of factory estate**

- (1) A person with an interest in the distribution of the factory estate (“the applicant”) may apply to the court for distribution in such manner as the court considers appropriate.
- (2) Where an application is made under subsection (1), the applicant must intimate the application without delay to—
- (a) the judicial factor (if the judicial factor is not the applicant),
  - (b) the Accountant, and
  - (c) any other person to whom the court directs that intimation should be made.
- (2A) The court may dispense with the requirement in subsection (2), in whole or in part, on cause shown.
- (3) On an application being made under subsection (1), the court must give the opportunity to make representations in relation to the application to—
- (a) the applicant,
  - (b) the judicial factor (if the judicial factor is not the applicant),
  - (c) the Accountant, and
  - (d) any other person who the court is satisfied has an interest in the application.
- (4) After hearing any representations, the court may—
- (a) instruct the judicial factor to distribute the estate in such manner as the court orders, or

(b) refuse the application.

(5) If the applicant is not the judicial factor, the court may not instruct the distribution of the factory estate unless—

(a) it is satisfied that—

(i) reasonable steps have been taken by the applicant to persuade the judicial factor to formulate and submit a scheme for the distribution of the factory estate to the Accountant for approval, and

(ii) the judicial factor has not formulated and submitted such a scheme and does not intend to do so, or

(b) it is satisfied that the judicial factor has previously submitted a scheme for the distribution of the factory estate to the Accountant for approval but that scheme has been rejected by the Accountant.

(6) If the applicant is the judicial factor, the court may not instruct the distribution of the factory estate unless it is satisfied that the judicial factor has previously submitted a scheme for the distribution of the factory estate to the Accountant for approval but that scheme has been rejected by the Accountant.

(7) The court must require the applicant to find caution for the expenses of the court proceedings unless—

(a) the applicant is the judicial factor, or

(b) where the applicant is not the judicial factor, it considers that, in all the circumstances, it would not be in the interests of justice to impose such a requirement.

#### *Termination, recall and discharge after distribution*

### **29 Termination, recall and discharge after distribution of factory estate**

(1) This section applies where a judicial factor has distributed the factory estate by virtue of section 27(6) or (9) or section 28(4)(a).

(2) The judicial factor must apply to the Accountant—

(a) for the judicial factory to be terminated,

(b) for the judicial factor's appointment to be recalled, and

(c) for the judicial factor to be discharged.

(3) An application under subsection (2) must be accompanied by a copy of the judicial factor's final accounts for the factory estate.

(4) The Accountant must audit the final accounts and, except where subsection (5) applies, grant the judicial factor a certificate—

(a) terminating the judicial factory,

(b) recalling the judicial factor's appointment, and

(c) discharging the judicial factor.

(5) If, after auditing the final accounts, the Accountant considers or suspects there has been misconduct or failure on the part of the judicial factor, section 38 applies.

- (6) As soon as reasonably practicable the Accountant must send the certificate to the Keeper for recording in the Register of Inhibitions.
- (7) Any fee payable by virtue of subsection (6) is to be met from the factory estate.

*Appointment of replacement judicial factor*

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

- (1) Where a judicial factor (“the original judicial factor”)—
  - (a) dies, and no application is lodged by any person for a judicial factor to be appointed in place of the original judicial factor, subsection (2) applies,
  - (b) ceases for whatever reason to perform the duties of a judicial factor and no application is lodged by any person for a judicial factor to be appointed in place of the original judicial factor, subsection (3) applies.
- (2) Where this subsection applies, if the Accountant is of the opinion that the purpose for which the original judicial factor was appointed still exists, the Accountant must apply to the court for the appointment of a judicial factor under section 1(1), in place of the original judicial factor.
- (3) Where this subsection applies, if the Accountant is of the opinion that the purpose for which the original judicial factor was appointed still exists, the Accountant must apply to the court—
  - (a) for the recall of the original judicial factor’s appointment, and
  - (b) under section 1(1), for a judicial factor to be appointed in place of the original judicial factor.
- (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.
- (4) A judicial factor appointed by virtue of subsection (2), (3) or (3A) (“the replacement judicial factor”) must—
  - (a) bring the accounts relating to the factory estate up to date,
  - (b) close those accounts as at the date on which the appointing interlocutor for the replacement judicial factor is pronounced, and
  - (c) on its appearing to the replacement judicial factor to be appropriate to do so, apply to the Accountant for discharge of the original judicial factor.
- (5) The Accountant may grant an application made under paragraph (c) of subsection (4) if satisfied that it is appropriate to do so.
- (6) The expenses of any application lodged under subsection (2), (3) or (3A) are, unless the court determines otherwise, to be met from the factory estate.

*Other applications for recall and discharge*

**31 Resignation and applications for recall and discharge in other circumstances**

- (1) Where a judicial factor wishes to resign other than in the circumstances mentioned in section 27(1)(a) or (b), the court may, on application by the judicial factor—
- 5           (a) recall the judicial factor’s appointment, and  
              (b) discharge the judicial factor.
- (2) Where a person (the “applicant”) other than the judicial factor applies to have the judicial factor’s appointment recalled other than in the circumstances mentioned in section 27(1)(a) or (b), the court may recall the judicial factor’s appointment.
- 10       (3) An application for recall and discharge under subsection (1), or for recall under subsection (2), must include an application for appointment of a judicial factor (a “replacement judicial factor”) on the factory estate in place of the judicial factor whose appointment is to be recalled.
- (3A) The court must not grant recall under subsection (1) or (2) unless, at the same time, it
- 15           appoints a replacement judicial factor.
- (4) A judicial factor who makes an application under subsection (1), or an applicant under subsection (2), must intimate the application without delay to—
- (a) the Accountant,  
              (b) the judicial factor (if the judicial factor is not the applicant), and  
              (c) any other person to whom the court directs that intimation should be made.
- 20       (4A) The court may dispense with the requirement in subsection (4), in whole or in part, on cause shown.
- (5) When the court grants recall under subsection (1) or (2), the judicial factor must send a copy of the accounts for the factory estate to the Accountant.
- 25       (6) When an application for recall under subsection (2) is made—
- (a) the judicial factor may apply by motion for the court, if it grants the application, also to grant the judicial factor’s discharge,  
              (b) the court—
- (i) may grant the application only if satisfied that the applicant has an interest in the factory estate, and  
                  (ii) must require the applicant to find caution for the expenses of the court proceedings unless it considers that, in all the circumstances, it would not be in the interests of justice to impose such a requirement.
- 30       (7) On receiving a copy of the judicial factor’s accounts by virtue of subsection (5), the Accountant must audit those accounts and present to the court a report—
- 35           (a) with regard to the audit, and  
              (b) as to whether, in the Accountant’s view, where the judicial factor applied to be discharged under subsection (1) or (6)(a), the discharge ought to be granted.
- (8) The court must not grant—
- 40           (a) discharge under subsection (1), or



(b) discharge under subsection (6)(a),

until the court has received and considered a report under subsection (7), and made such further inquiry (if any) as it considers necessary.

*Inventory and balance sheet*

5 **32 Inventory and balance sheet where replacement judicial factor appointed**

- (1) Where a replacement judicial factor is appointed by virtue of—
- (a) section 30(2), (3)(b) or (3A),
  - (b) section 31(3A), and the judicial factor whose appointment has been recalled (“the original judicial factor”) has not been discharged,

10 the replacement judicial factor and the Accountant must agree the inventory and balance sheet for the factory estate as at the appointment date of the replacement judicial factor.

- (2) Where a replacement judicial factor is appointed by virtue of section 31(3A) and the original judicial factor has been discharged, the final inventory and balance sheet of the original judicial factor constitute the opening inventory and balance sheet of the replacement judicial factor.

15

*Termination of judicial factory where insufficient funds*

**33 Termination of judicial factory where insufficient funds**

- (1) This section applies where the Accountant is satisfied that there are not sufficient funds in the factory estate to meet the expenses of, or arising in connection with—

- 20 (a) any formulation by the judicial factor of a scheme under section 27(1),
- (b) the seeking of approval of such a scheme, or
- (c) distribution of the factory estate in accordance with such a scheme.

- (2) The Accountant must, except where subsection (5) applies—

- 25 (a) direct the judicial factor to distribute the funds in the factory estate in any way the Accountant considers appropriate,
- (b) terminate the judicial factory,
- (c) recall the judicial factor’s appointment, and
- (d) discharge the judicial factor.

- 30 (3) As soon as reasonably practicable after terminating a judicial factory under subsection (2)(b) the Accountant must send the certificate of termination, recall and discharge to the Keeper for recording in the Register of Inhibitions.

- (4) Any fee payable by virtue of subsection (3) is to be met from the factory estate.

- (5) If the Accountant considers or suspects there has been misconduct or failure on the part of the judicial factor, section 38 applies.

*Ending of judicial factor's accountability on discharge***34 Ending of judicial factor's accountability on discharge**

- (1) A judicial factor's accountability for acts and omissions in the capacity of judicial factor in relation to the factory estate or, as the case may be, part of the estate, ends when—
- 5 (a) an interlocutor containing an order for discharge of the judicial factor is issued by the clerk of court, or
- (b) the judicial factor is discharged by the Accountant.
- (2) Subsection (1) does not apply to any acts or omissions in relation to which the judicial factor has incurred criminal liability in the course of holding, managing, administering or protecting the estate.
- 10

**PART 5**

## ACCOUNTANT OF COURT

*Accountant of Court and Depute Accountant***35 Accountant of Court: appointment, remuneration and fees**

- 15 (1) The Scottish Courts and Tribunals Service (“the SCTS”) may appoint a person to the office of Accountant of Court only if the person is, in the opinion of the SCTS, appropriately qualified or experienced in law and accounting.
- (1A) The Scottish Ministers—
- 20 (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)—
- 25 (a) may modify any enactment (including this Act),
- (b) are subject to the affirmative procedure.
- (2) Except as provided by any other enactment, the Accountant may not hold any other office.
- (3) The SCTS may pay the Accountant such remuneration as the SCTS determines for carrying out the role of Accountant, and the Accountant is not entitled to receive any other remuneration in relation to the carrying out of that role.
- 30 (4) The Accountant must charge a fee for anything done by the Accountant in connection with the Accountant's functions under this Act.
- (5) Fees charged under subsection (4) must—
- 35 (a) be sufficient to cover any outlays reasonably incurred by the Accountant in connection with the Accountant's functions under this Act,
- (b) other than fees charged under section 43(2), be met from the factory estate.

(6) Any sum received by the Accountant other than as remuneration, including any sum received by virtue of subsection (4), is to be accounted for in such manner as the SCTS may direct.

(7) The Accountant may waive the right to recover a particular fee charged by virtue of subsection (4) if satisfied that it is unlikely to be recovered.

### **36 Depute Accountant**

(1) The SCTS may appoint a Depute Accountant to carry out the functions of the Accountant during any period when the Accountant is unable to do so, on such terms and conditions as the SCTS may determine.

(2) A person may be appointed to the office of Depute Accountant only if the person is, in the opinion of the SCTS, appropriately qualified or experienced in law and accounting.

(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.

(3) During the period mentioned in subsection (1)—

(a) the functions of the Accountant are to be carried out instead by the Depute Accountant,

(b) anything that falls to be done in relation to the Accountant falls instead to be done in relation to the Depute Accountant.

### *General function of Accountant of Court*

### **37 General function of Accountant of Court**

(1) The Accountant must—

(a) supervise the performance by judicial factors of the functions conferred on them by—

(i) this Act,

(ii) any other enactment,

(iii) any rule of law,

(b) seek to ensure that judicial factors observe such legal requirements and guidance as affect that performance.

(2) The Accountant may instruct a judicial factor as to the manner in which that person is to carry out the functions of judicial factor.

*Misconduct or failure of judicial factor***38 Misconduct or failure of judicial factor**

- (1) Subsection (2) applies where the Accountant has reason to believe that a judicial factor—
- (a) has engaged, or is engaging, in misconduct,
  - (b) has failed, or is failing, to discharge a duty, or
  - (c) has failed, or is failing, to comply with an instruction given under section 37(2).
- (2) The Accountant must—
- (a) make such inquiries into the matter as the Accountant considers appropriate,
  - (b) give the judicial factor an opportunity to make representations in relation to the matter.
- (3) Subsection (4) applies where, having made inquiries under subsection (2), the Accountant is satisfied that there is, or has been, serious misconduct or material failure on the part of the judicial factor.
- (4) The Accountant must report the misconduct or failure—
- (a) to the court which appointed the judicial factor, and
  - (b) if the judicial factor is a member of a professional body—
    - (i) to that body, or
    - (ii) 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.
- (5) A court which receives a report under subsection (4)—
- (a) must give the judicial factor an opportunity to make representations before it disposes of the matter,
  - (b) may dispose of the matter in whatever manner it considers appropriate.
- (6) A disposal by the court under subsection (5)(b)—
- (a) is final and is conclusive against both the Accountant and the judicial factor,
  - (b) does not affect any right which any other person may have in respect of loss consequent upon the judicial factor's—
    - (i) misconduct,
    - (ii) failure to discharge a duty, or
    - (iii) failure to comply with an instruction under section 37(2).

*Power of Accountant to require information***39 Power of Accountant to require information**

- (1) The Accountant may serve written notice on the judicial factor or any other person requesting that the judicial factor or other person, as the case may be, provide such information specified in the notice as the Accountant reasonably considers relevant to the Accountant's functions under this Act.

- (2) A person who receives notice under subsection (1), other than a person mentioned in subsection (3), must comply with the notice without delay.
- (3) That person is—
- (a) a body to which paragraph 3 (reserved bodies) of Part III of schedule 5 of the Scotland Act 1998 applies,
  - (b) a Minister of the Crown,
  - (c) a department of the Government of the United Kingdom, or
  - (d) a public body operating wholly in relation to a reserved matter within the meaning of the Scotland Act 1998.
- (4) A person who, having received notice under subsection (1), directs the Accountant without delay to means by which the information can be obtained (either or both)—
- (a) under any other enactment,
  - (b) free of charge,
- is to be treated as having complied with the notice.
- (5) A person complying with notice under subsection (1) may charge the Accountant a fee for supplying the information if that person is entitled under any other enactment to charge a fee for supplying the relevant information.
- (6) Nothing in this section authorises the making of a disclosure that contravenes the data protection legislation (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).
- (7) In this section, “data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

*Audit by Accountant*

**40 Audit by Accountant**

- (1) Where the Accountant receives accounts prepared by a judicial factor by virtue of this Act the Accountant must audit the accounts in accordance with this section.
- (2) In auditing accounts prepared by a judicial factor the Accountant may—
- (a) examine such further information in relation to the accounts as the Accountant considers appropriate,
  - (b) if the Accountant considers it necessary or expedient to do, remit the accounts for auditing to such duly qualified persons as the Accountant may select.
- (3) Where the Accountant remits the accounts for auditing, the Accountant—
- (a) must supervise the audit,
  - (b) retains responsibility for the accuracy of the audit.
- (4) When an audit is complete, the Accountant must set out the results in a report and send a copy of the report to the judicial factor.

- (5) If in the course of the audit the Accountant or the person to whom the accounts have been remitted (as the case may be)—
- (a) comes to the view that some aspect of the accounts requires to be explained, then the judicial factor must be given an opportunity to provide the explanation before the audit is completed, or
  - (b) makes any correction to the accounts, then the Accountant (or the person), on being required to do so by the judicial factor, must explain the correction and the reason for making it.
- (6) Any costs incurred in remitting the accounts to a person under subsection (2)(b) are to be met from the factory estate.

#### **41 Audit by Accountant: objection and appeal**

- (1) Subject to subsections (2) to (5)—
- (a) an audit completed in accordance with section 40,
  - (b) the accounts to which the audit relates, and
  - (c) the report on the results of the audit,
- are conclusive.
- (2) The judicial factor to whom the report relates may lodge a written objection to the report with the Accountant within the period of 21 days beginning on the day on which the judicial factor receives of the report.
- (3) The Accountant must consider any objection lodged under subsection (2) and, following that consideration, may—
- (a) amend the results and report of the audit in order to take account of matters raised in the objection, or
  - (b) dismiss the objection.
- (4) Where the Accountant dismisses an objection under subsection (3)(b) the judicial factor may require the Accountant to refer the objection for determination by the court which appointed the judicial factor.
- (5) The determination of the court in relation to an objection referred under subsection (4) is final and is conclusive against both the Accountant and the judicial factor.

#### *Annual review*

#### **42 Annual review**

- (1) As soon as reasonably practicable following the expiry of each reporting year, the Accountant must publish a review of the Accountant's activities in relation to the relevant judicial factories in the relevant reporting year.
- (2) The Scottish Ministers must, by regulations, prescribe—
- (a) the manner in which the review is to be published,
  - (b) information which must be contained in the review, and
  - (c) the definition of “reporting year” for the purposes of subsection (1).

- 5
- (3) The review may contain such other information as the Accountant considers appropriate.
  - (4) Regulations under subsection (2) are subject to the negative procedure.
  - (5) In this section, “relevant judicial factories” means each judicial factory which subsists at any time during the reporting year, irrespective of whether they came into being before or after the coming into force of this section.

*Inspection of records held by Accountant*

**43 Inspection of records held by Accountant**

- 10
- (1) When a person with an interest in a factory estate so requests, the Accountant must, on cause shown—
    - (a) make any documents mentioned in subsection (4) available for inspection by that person,
    - (b) provide that person with certified copies of any documents mentioned in subsection (4).
  - (2) The Accountant must charge a fee for the making available of documents or the provision of copies under subsection (1).
  - (3) Copies provided under subsection (1)(b) have the same evidential status as the original documents.
  - (4) The documents are, in relation to a factory estate—
    - (a) the management plan,
    - 20 (aa) the inventory,
    - (ab) the balance sheet,
    - (b) the annual accounts,
    - (c) the audit report.

*Inconsistency in judgement or practice*

25 **44 Inconsistency in judgement or practice**

- 30
- (1) This section applies where it appears to the Accountant that—
    - (a) there is inconsistency in judgement or practice in relation to judicial factors in proceedings in the sheriff courts, and
    - (b) it is important to put an end to that inconsistency.
  - (2) The Accountant must submit a report to the Lord President of the Court of Session—
    - (a) setting out the details of the inconsistency and the matter to which it relates,
    - (b) proposing a rule of practice in relation to that matter.
  - (3) The Lord President must consider the report and take such action as the Lord President thinks appropriate.

*Right of judicial factor to require determination as regards decision of Accountant*

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

- (1) A judicial factor may apply to the court which appointed the judicial factor for a determination as regards any decision of the Accountant which relates to the judicial factory.
- (2) But subsection (1) does not apply in relation to—
- (a) a decision under section 41(3)(b) to dismiss an objection lodged in relation to an audit by the Accountant, or
  - (b) a decision by virtue of which an appeal is competent under section 9(6).
- (3) The determination of the court in relation to a decision referred to it under subsection (1) is final and is conclusive against both the Accountant and the judicial factor.

**PART 6**

MISCELLANEOUS AND GENERAL

*Miscellaneous*

**46 Competence of appointing curator bonis**

In any proceedings begun after the coming into force of this section it is not competent to appoint a curator bonis to any person.

**47 Application of this Act**

The provisions of this Act apply (as they apply in relation to a judicial factor (or interim judicial factor) appointed under this Act) in relation to a judicial factor (or interim judicial factor) appointed under—

- (a) the power of the Court of Session to appoint a judicial factor (or interim judicial factor) by virtue of the nobile officium, or
- (b) any power of the Court of Session or of the sheriff to appoint a judicial factor under or by virtue of any other enactment.

*General*

**48 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory, or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
- (a) make different provision for different purposes,
  - (b) modify any enactment (including this Act).
- (3) Regulations under this section—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and



(b) are otherwise subject to the negative procedure.

**49 Modification of enactments and repeals and revocations**

- (1) Schedule 2 makes provision for the modification of enactments.
- (2) Schedule 3 contains repeals and revocations.

5 **50 Interpretation**

In this Act—

“the Accountant” means the Accountant of Court,

“appointing interlocutor” has the meaning given in section 6(1),

“appointment date” has the meaning given in section 7(1),

10 “the court” is to be construed in accordance with section 1(5),

“estate” includes heritable and moveable property,

“factory estate” means the estate on which a judicial factor is appointed,

“interest in the estate” means an interest in the factory estate after payment of any debts, and

15 “judicial factor” means a person appointed as such by a court, whether under an enactment or a rule of law, to hold, manage, administer and protect an estate,

“Keeper” has the meaning given in section 6(1)(b),

“OSCR” has the meaning given by section 1A(1)(a).

**51 Commencement**

- 20
- (1) This section and sections 48 and 52 come into force on the day after Royal Assent.
  - (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
  - (3) Regulations under this section may—
    - 25 (a) include transitional, transitory, or saving provision,
    - (b) make different provision for different purposes.

**52 Short title**

The short title of this Act is the Judicial Factors (Scotland) Act 2024.

SCHEDULE 1  
*(introduced by section 10(7))*

STANDARD POWERS

- 1 To take possession of, collect and ingather the property of the factory estate.
- 5 2 On behalf of the factory estate—
- (a) to bring or defend any action,
  - (b) to make any application to the court, or
  - (c) to engage in any other legal proceedings.
- 3 To carry out works.
- 10 4 To grant any deed necessary for carrying into effect a function vested in the judicial factor.
- 5 To carry on—
- (a) the business (if any) of the factory estate, or
  - (b) any part of that business.
- 15 6 To enter into, or take over, a contract.
- 7 To pay a debt due by the estate without requiring the creditor to constitute the debt, provided that the judicial factor is satisfied that the debt is a proper debt of the factory estate.
- 8 To employ, or dismiss from employment, any person.
- 20 9 To appoint an agent to carry out business which the judicial factor does not have the competence to carry out.
- 10 To remunerate any person appointed under paragraph 9.
- 11 To sell the factory estate, or any part of the factory estate.
- 12 To grant, vary, or accept the surrender of a lease or tenancy of any duration of the heritable factory estate or of any part of the heritable factory estate.
- 25 13 To remove a tenant.
- 14 To take a lease or tenancy of any duration of any property if it is a lease or tenancy required for the business of the factory estate.
- 15 To make any kind of investment of the factory estate, including an investment in heritable property.
- 30 16 To appoint a person as the judicial factor's nominee, to exercise the judicial factor's function of investment under paragraph 15.
- 17 To authorise an agent to exercise any of the judicial factor's investment management functions at the agent's discretion.
- 35 18 To exchange any part of the heritable factory estate for heritable estate of a like, or greater, value.
- 19 To acquire property (whether heritable or moveable).

- 20 To borrow money on the security of the factory estate or of any part of the factory estate.
- 21 On behalf of the factory estate, to draw, accept, make or endorse any bill of exchange or promissory note.
- 5 22 To refer to arbitration a question affecting the factory estate.
- 23 To formulate and propose a scheme for division of the factory estate.
- 24 To apply to the court for—
- (a) authority to act at variance with the purposes of the judicial factory,
  - (b) a variation of the judicial factor's functions.
- 10 25 In respect of any securities of a company which are comprised in the factory estate, to concur, as if the judicial factor was entitled to the securities beneficially, in any scheme or arrangement for—
- (a) the reconstruction of the company,
  - 15 (b) the sale of the property and undertaking of the company, or any part of that property and undertaking, to another company,
  - (c) the acquisition of the securities of the company, or of control of those securities, by another company,
  - (d) the amalgamation of the company with another company, or
  - 20 (e) the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of the securities.
- 26 To accept any securities of the reconstructed, purchasing or new company in lieu of, or in exchange for, all or any of the original securities.
- 27 To retain any such securities for any period which the judicial factor could properly have retained the original securities.
- 25 28 To such extent as the judicial factor considers appropriate—
- (a) to exercise any conditional or preferential right to subscribe for any securities in a company,
  - (b) to apply capital of the factory estate in payment of the consideration for such subscription,
  - 30 (c) to retain the securities for any period for which the judicial factor has power to retain the holding in respect of which the right to subscribe was offered (but subject to any conditions subject to which the judicial factor has that power),
  - (d) to renounce any such conditional or preferential right, or
  - 35 (e) to assign to any person (including any person with an interest in the factory estate), for the best consideration that reasonably can be obtained the benefit of, or title to, any such conditional or preferential right.

SCHEDULE 2  
*(introduced by section 49(1))*

MODIFICATION OF ENACTMENTS

*Trusts (Scotland) Act 1921*

- 5 1 (1) The Trusts (Scotland) Act 1921 is amended as follows.
- (2) In section 2 (definitions)—
- (a) in the definition of “Trust”, paragraph (b) and the word “and” immediately preceding that paragraph are repealed,
- 10 (b) in the definition of “Trust deed”, paragraph (b) and the word “and” immediately preceding that paragraph are repealed, and
- (c) in the definition of “Trustee”, for the words “, executor nominate, and judicial factor” there is substituted “or executor nominate”.
- (3) In section 3 (what trusts shall be held to include), in the proviso, paragraph (3) and the word “and” immediately preceding that paragraph are repealed.
- 15 (4) In section 8(2)(b) (conveyances to non-existing or unidentifiable persons)—
- (a) the words “or judicial factor”, in the second place where they occur, are repealed, and
- (b) the words from “, or a warrant” to “as the case may be” are repealed.
- 20 (5) In each of sections 22 (appointment of new trustees by the court) and 24 (completion of title by the beneficiary of a lapsed trust), the words from “in like manner” to “1874” are repealed.
- (6) Section 25 (completion of title of judicial factors) is repealed.

*Conveyancing (Scotland) Act 1924*

- 2 In section 5(3)(b) of the Conveyancing (Scotland) Act 1924 (deduction of title)—
- 25 (a) for the words from the beginning to “are” there is substituted “Section 44 of the Conveyancing (Scotland) Act 1874 is”,
- (b) for the words “section forty four of the said Act of 1874, as hereby amended,” there is substituted “that section”, and
- 30 (c) the words “shall be applicable to all judicial factors within the meaning of section three of the said Act of 1868, and both of such sections hereby amended” are repealed.

*Companies Act 1989*

- 3 In section 182(3)(b) of the Companies Act 1989 (powers of court in relation to certain proceedings begun before the commencement of that section)—
- 35 (a) the words “by a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889” are repealed, and
- (b) after the word “person” there is inserted “by a judicial factor appointed under the Judicial Factors (Scotland) Act 2024”.

*Pension Schemes Act 1993*

- 4 (1) The Pension Schemes Act 1993 is amended as follows.
- 5 (2) In section 123(2)(b) (interpretation of Chapter 2), for “section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section” substitute “the Judicial Factors (Scotland) Act 2024 is required by virtue of section 129ZA of the Bankruptcy (Scotland) Act 2016”.
- (3) In section 127(2)(b) (transfer to Secretary of State of rights and remedies), for “11A of the Judicial Factors (Scotland) Act 1889” substitute “129ZA of that Act”.

*Employment Rights Act 1996*

- 10 5 (1) The Employment Rights Act 1996 is amended as follows.
- (2) In each of sections 166(6)(b)(ii) (applications for payments) and 183(2)(b)(ii) (insolvency), for “section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent” substitute “the Judicial Factors (Scotland) Act 2024 on his insolvent estate is required by virtue of section 129ZA of the Bankruptcy (Scotland) Act 2016 to divide the”.
- 15 (3) In section 189(2)(b) (transfer to Secretary of State of rights and remedies), for “11A of the Judicial Factors (Scotland) Act 1889” substitute “129ZA of that Act”.

*Pensions Act 2004*

- 20 6 In section 121(2)(e)(ii) of the Pensions Act 2004 (insolvency event, insolvency date and insolvency practitioner), for “section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) is required by that section to divide the individual’s” substitute “the Judicial Factors (Scotland) Act 2024 on the individual’s insolvent estate is required by virtue of section 129ZA of the Bankruptcy (Scotland) Act 2016 to divide the”.

*Bankruptcy and Diligence etc. (Scotland) Act 2007*

- 25 7 In section 168(2)(a) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (inhibition effective against judicial factor), for “under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) (application for judicial factor on deceased person’s estate)” substitute “, under the Judicial Factors (Scotland) Act 2024, on the insolvent estate of a deceased person”.

*Third Parties (Rights against Insurers) Act 2010*

- 30 8 In section 5(2)(c) of the Third Parties (Rights against Insurers) Act 2010 (individuals who die insolvent), for “section 11A of the Judicial Factors (Scotland) Act 1889 in respect of” substitute “the Judicial Factors (Scotland) Act 2024 on”.

*Courts Reform (Scotland) Act 2014*

- 35 8A In section 39 of the Courts Reform (Scotland) Act 2014 (exclusive competence), after subsection (3) insert—
- “(3A) This section does not apply to proceedings to appoint a judicial factor.”.

*Bankruptcy (Scotland) Act 2016*

9 (1) The Bankruptcy (Scotland) Act 2016 is amended as follows.

(1A) 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”.

(2) In section 88(1) (limitation on vesting)—

(a) in paragraph (b)(ii) the word “and” is repealed,

(b) after paragraph (c), there is inserted “, and

(d) property held by the debtor in the debtor’s capacity as a judicial factor.”

(2A) 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”.

(2B) 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”.

(2C) 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”.

(2D) 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.

(3) After section 129 (priority in distribution) insert—

**“129ZA Modification of section 129 and schedule 2 where judicial factor appointed**

(1) This section applies where a judicial factor is appointed under the Judicial Factors (Scotland) Act 2024 on the estate of a deceased person and that estate is absolutely insolvent.

(2) Section 129 and schedule 2 have effect as if—

(a) for “the trustee” and “the interim trustee”, in each place they appear, there were substituted “the judicial factor”,

(b) for “the date of sequestration”, in each place it appears, there were substituted “the date of the judicial factor’s appointment”.

(4) In schedule 8, paragraph 1 is repealed.

SCHEDULE 3  
*(introduced by section 49(2))*

REPEALS AND REVOCATIONS

**PART 1**

REPEALS

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Judicial Factors Act 1849	The whole Act.
Titles to Land Consolidation (Scotland) Act 1868	Section 24.
Conveyancing (Scotland) Act 1874	In section 44, the words “or judicial factor” in both places they occur.
Judicial Factors (Scotland) Act 1880	The whole Act.
Judicial Factors (Scotland) Act 1889	The whole Act.
Administration of Justice (Scotland) Act 1933	In section 25, the words “and Accountant of Court”.
Conveyancing Amendment (Scotland) Act 1938	Section 1, in so far as relating to judicial factors.
Trusts (Scotland) Act 1961	Section 2. Section 3.
Conveyancing and Feudal Reform (Scotland) Act 1970	In schedule 3, in paragraph 9(2)(b), the words “under section 11A of the Judicial Factors (Scotland) Act 1889”.
Superannuation Act 1972	In schedule 6, paragraph 2.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1989	Section 7. Section 14.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1990	Section 67 In schedule 8, paragraph 21.
Children (Scotland) Act 1995	In schedule 4, paragraphs 2 and 4.
Adults with Incapacity (Scotland) Act 2000	In schedule 5, paragraphs 3 and 6.
Abolition of Feudal Tenure etc. (Scotland) Act 2000	In schedule 12, paragraph 8(8).
Bankruptcy and Diligence etc. (Scotland) Act 2007	In schedule 5, paragraph 5.

**PART 2**

REVOCATIONS

	<i>Title and date</i>	<i>Extent of revocation</i>
5	Act of Sederunt (Aliments and Factors being Liable for Annual Rent) July 31st 1690	The whole Act of Sederunt
	Act of Sederunt (Factors upon and Tacksmen of Sequestrate Estates) December 25th 1708	The whole Act of Sederunt
10	Act of Sederunt (More Speedy Discussing of Compts and Reckonings) November 22nd 1711	The whole Act of Sederunt
	Act of Sederunt (Dispatch of Business) July 31st 1717	The whole Act of Sederunt
15	Act of Sederunt (Factors Appointed by the Lords on the Estates of Pupils not having Tutors and Others) February 13th 1730	The whole Act of Sederunt





# **Judicial Factors (Scotland) Bill**

[AS PASSED]

An Act of the Scottish Parliament to make provision about judicial factors; the appointment and functions of the Accountant of Court; and for connected purposes.

Introduced by: Angela Constance  
On: 5 December 2023  
Bill type: Government Bill

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