

# **Child Rights and Wellbeing Screening Sheet for the Judicial Factors (Scotland) Bill**

**December 2023**

# Child Rights and Wellbeing Screening Sheet for the Judicial Factors (Scotland) Bill

## 1. Brief Summary

The Bill will implement the Scottish Law Commission's recommendations in its Report on Judicial Factors, published in 2013.

A judicial factor is a person appointed by the court to gather, hold, safeguard and administer property which is not being properly managed. Although the volume of appointments of judicial factors is low they have an important role to play. As at 2022 there were 64 active judicial factories supervised by the Accountant, and there have been an annual average of 7 applications for appointment of a judicial factor for the years 2018 to 2022.

The office of judicial factor has a long history in Scots law and there is a continuing need for capable administrators to be appointed to manage the property of those who cannot, should not or will not manage it properly themselves. Although there is a continuing need, the current law on judicial factors is now regarded by those who use it as outdated with a cumbersome procedure which is no longer fit for purpose. This is principally due to the fact that since the Judicial Factors Acts of the 19th century there has been no new primary legislation pertaining specifically to the details of the procedure. Moreover, there seems to be a lack of clarity as to the extent of judicial factors' powers which often results in judicial factors being reluctant to take certain actions, despite them being deemed to be desirable, without applying to court for additional powers first. Some powers of judicial factors are also to be found in other legislation, which makes it difficult for third parties dealing with judicial factors, and even the judicial factors themselves, to know what they are or are not entitled to do.

The existing legislation on judicial factors dates back to the 19th century. It is archaic, complex, and no longer fit for purpose with the result that the usefulness, and potential, of the institution are being diminished by the outmoded way in which it has to operate. The Scottish Law Commission examined these issues in detail and made a number of recommendations in its 2013 Report. The provisions contained in this Bill will put in place an updated and comprehensive regime which will bring clarity, accessibility, and efficiency to this vital but outmoded area of the law. Furthermore, the flexibility introduced by the regime would mean that the solution of appointing a judicial factor could become more attractive in a wider range of circumstances. Overall, the Bill introduces a statutory framework which sets out clearly the essential features of the office of judicial factor, and the broad parameters within which it should operate and will be of benefit to all those involved, in any capacity, in judicial factories.

Part 1 of the Bill provides for appointments of a judicial factor, or interim judicial factor, to be sought by application to the Court of Session or sheriff court. It makes clear that it is open to the Court of Session or the sheriff court to appoint a judicial

factor in the course of other proceedings, sets out the grounds for appointing a judicial factor, and lays out the necessary qualifications for a judicial factor. It makes provision for the factory estate to vest in a judicial factor and for a judicial factor to intrude with the estate, and for the remuneration of judicial factors.

Part 2 of the Bill deals with the functions a judicial factor has by virtue of appointment. It confers a general function of holding, managing, administering and protecting the factory estate for the benefit of those with an interest in the estate. It provides that a judicial factor has all the powers of a natural person beneficially entitled to the estate, with an illustrative list of such powers provided in schedule 1. It includes provision enabling a judicial factor to request relevant information as to the affairs of the estate from bodies and individuals. The Bill preserves the existing duty to prepare an inventory of the estate and introduces a new duty to prepare a plan as to how the judicial factor proposes to hold, manage, administer and protect the estate which must be approved by the Accountant of Court. It requires the judicial factor to regularly report to the Accountant of Court, including by the submission of accounts, the factor's dealings with the factory estate.

Part 3 contains provisions in relation to dealings with third parties. This includes provision giving protection to third parties acquiring title from a judicial factor and provision making it clear that the judicial factor stands in place of the factory estate in any dealings with a third party.

Part 4 sets out simplified administrative processes for the distribution, termination, recall and discharge of a judicial factor. It provides for the approval by the Accountant of Court of a scheme for distribution of the factory estate, avoiding the need to refer the matter to the court where there is no dispute. Where there is an objection the Accountant must refer the matter to the court. It sets out processes for distribution of the factory estate on application by interested parties, the appointment of replacement judicial factors in the case of death or ceasing to perform duties, and for the resignation of judicial factors.

Part 5 updates the current provisions in relation to the requirements of the office of the Accountant of Court, particularly the function of supervising judicial factors. The Accountant of Court currently has the power to direct a judicial factor as to how the duties of the office should be performed and a power to require certain information from banks. These powers have been preserved and updated in the Bill, with the Accountant of Court being able to request any information relevant to their functions from any person or body, and the recipient of such a request, subject to certain exceptions, being under a duty to comply. The Bill also imposes a duty on the Accountant of Court to investigate any misconduct or failure by a judicial factor and report serious misconduct or material failure to the court.

The policy objectives of the Bill will contribute to the realisation of the Scottish Government's purpose by contributing to the National Outcome on fair work and business, by providing the necessary legislative framework to help make our economy more stable, productive and efficient. The recommendations relating to the Accountant of Court in the role of supervisor of judicial factors would contribute to National Outcome that we have high quality, affordable and accessible public services that positively enhance our lives.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

A judicial factor is an officer appointed by the court, and supervised by the Accountant of Court, for the purpose of holding, managing, administering and protecting the property of another wherever the need arises. A judicial factor can be appointed in many different situations. A common example today is those appointed at the instance of the Law Society of Scotland to firms of solicitors where there has been a breach of accounts rules and the firm's liabilities exceed, or appear likely to exceed, its assets.

The framework implemented by the Bill would impact upon, amongst others, those people or bodies in Scotland over whose property a judicial factor is appointed.

The Age of Legal Capacity (Scotland) Act 1991 makes provision in Scots law as to the legal capacity of two distinct groups of children: persons under the age of 16 years and those aged between 16 and 18 years. As a general rule, those under 16 cannot enter into any transactions (but there are exceptions). For those aged between 16 and 18 years of age, they are capable of entering into transactions but these may be set aside or ratified by the court. Therefore it is possible that children under the age of 18 may possess property that requires to be managed properly.

3. What likely impact – direct or indirect – will the policy/measure have on children and young people?

The framework introduced by the Bill has the potential to affect any child under the age of 18 who owns property that requires to be managed and it is not possible, practicable or sensible for the child to do so.

If implemented, the Bill will result in an efficient, clear, fit for purpose regime governing judicial factors. For those children over whose property a judicial factor is appointed, the Bill will bring clarity as to the appropriate processes to be followed and as to the functions of judicial factors. The new framework would also be more user-friendly, resulting in those coming into contact with it having a better understanding of it.

4. Which groups of children and young people will be affected?

The Bill will affect any child under the age of 18 whose property is held and managed by a judicial factor. While none of the Bill's provisions are specifically targeted at children, the overall impact of the Bill on those whose property is being managed will be to bring clarity to the law. The new framework implemented in the Bill would also be more user-friendly, resulting in all those coming into contact with it having a better understanding of it.

5. Is a Children's Rights and Wellbeing Impact Assessment required?

No. The policy brings no discernible reduction or progress in children's rights or their wellbeing and therefore a CRWIA is not, in our opinion, required.

## 6. Sign & Date

Policy Lead:

Michael Paparakis, Justice; Civil Law and Legal System, 28 November 2023

Deputy Director:

Denise Swanson, Justice; Civil Law and Legal System, 28 November 2023



© Crown copyright 2023



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-83521-762-7 (web only)

Published by The Scottish Government, December 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1395654 (12/23)

W W W . g o v . s c o t