



# Scottish Law Commission

*promoting law reform*

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST  
BEFORE 0001 HOURS Thursday 29 August 2013

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## **NEW REGIME FOR JUDICIAL FACTORIES IN SCOTLAND**

A factor is a person appointed to look after property belonging to another. A judicial factor is a person appointed by the court to gather, hold, safeguard and administer property which is not being properly managed. Judicial factors carry out their duties under the supervision of the court.

The existing legislation on judicial factors dates back to the 19<sup>th</sup> 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. There are approximately 115 judicial factories at present, with an average of 12 new appointments each year. There is therefore still a strong need for a regime in Scotland enabling the appointment of a responsible and accountable officer to administer and manage estates in the myriad circumstances in which there is no other suitable remedy. A common example today is a judicial factor appointed at the instance of the Law Society of Scotland to firms of solicitors where there has been a breach of professional practice and the firm's liabilities exceed, or appear likely to exceed, its assets. Other examples include those appointed where a partnership is in dispute or where those running a charity appear to have been managing it inappropriately.

The Scottish Law Commission have examined these issues in detail, and have consulted widely with interested parties. Their Report, published today, contains a set of recommendations which, if implemented, would put in place an updated and comprehensive regime that would be of benefit to all concerned. The new regime would bring clarity (for example, as to the powers and duties of a judicial factor and the appropriate processes to be followed), 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.

Patrick Layden, lead Commissioner, said: "The need for judicial factors continues into the 21<sup>st</sup> century, and our proposals will match the legal machinery to the modern world."

## NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lady Clark of Calton, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.

2. Further information can be obtained by contacting Gillian Swanson, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk)).

3. As from the date of publication, the paper may be viewed on our website at <http://www.scotlawcom.gov.uk> or purchased from TSO (<http://www.tsoshop.co.uk/>).