

22 December 2010



Your ref:
Our ref: L/1/4/1A

Dear Consultee,

DISCUSSION PAPER ON JUDICIAL FACTORS (DISCUSSION PAPER NO 146)

We invite comment on the abovementioned Discussion Paper which has been published today. Please also see the related news release. We explain below how comments may be submitted. The Paper puts forward two possible options for modernising the office of judicial factor. The first is to keep the existing structure but to modernise it and make it more efficient by means such as updating the powers and duties of judicial factors as well as the procedure by which they are discharged. The second option proposes a new public official, the Official Judicial Factor, who would carry out all judicial factory work unless the court wished to appoint someone else. An existing public official would become the Official Judicial Factor so that the functions would be part of the functions of an existing public office.

The Commission's function is to recommend ways of simplifying, updating and improving Scots law. In order to ensure that our recommendations, if implemented, would result in law which is just, principled, responsive and easy to understand, it is critical for the Commission to engage in a thorough and open process of consultation. We therefore welcome the views of as many people as possible, whether from an academic perspective or based on a day-to-day practical experience of the area under review, in this case the law relating to judicial factors.

Our usual approach to consultation – and to a law reform project in general – involves the preparation of an initial discussion paper. This sets out the current law on the topic in question, describes and analyses any problems with it, details possible options for change and seeks to elicit views from consultees on the preliminary proposals made. Discussion papers are circulated to those identified as having an interest in the topic and are also published on our website (www.scotlawcom.gov.uk). News releases are also issued to draw attention to the consultation. Once the deadline for responding has passed, a careful analysis of all responses is carried out. The proposals in the discussion paper are measured against the public response and this can lead to a period of further thought and research before final decisions are made and the report published.

Accordingly, we invite your views on any or all of the proposals in this discussion paper. Even if you agree with our proposals but do not wish to make any further comments, a brief note to that effect would also be most helpful as an indication that our proposals are on the right lines. Where possible, we would prefer the electronic submission of comments. For example, you can use the downloadable electronic response form for this discussion paper on our website at <http://www.scotlawcom.gov.uk/publications/discussion-papers-and-consultative-memoranda/2010-present/>. The MS Word form has a questionnaire format

which allows you to comment – briefly or at length – on any of the paper's proposals which interest you. The form can be downloaded and emailed to us at info@scotlawcom.gsi.gov.uk, as can comments composed in other electronic formats. Alternatively, you may prefer to send your comments on the discussion paper by using the general comments form to be found on the website Contact page (<http://www.scotlawcom.gov.uk/contact-us>). Please note that the consultation process for this project will conclude on **15 April 2011**; accordingly, we would be grateful if comments were submitted by then.

We draw to your attention that, in accordance with our Publication Scheme, (i) responses to this paper will be made available to third parties on request in paper form once the responses have been considered at a Commission meeting unless a respondent has asked for a response to be treated as confidential or the Commission considers that a response should be treated as confidential; (ii) subject to the following, any summary of responses to this paper will be made available to third parties on request in paper form once it has been considered at a Commission meeting: any summary will not be made available in relation to projects where the subject matter is considered by Commissioners to be of a sensitive nature; any summary being made available will not include reference to any response where either the respondent has asked for the response to be treated as confidential or the Commission considers that the response should be treated as confidential. Any request for information which is not available under the Commission's Publication Scheme will be determined in accordance with the Freedom of Information (Scotland) Act 2002.

Also, please note that some or all responses to this paper and the names of those who submitted them may be referred to and/or quoted in the final report following from this consultation or in other Commission publications and the names of all respondents to this paper will be listed in the relative final report unless the respondent specifically asks that, or the Commission considers that, the response or name, or any part of the response, should be treated as confidential.

Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours sincerely,

MALCOLM McMILLAN

Chief Executive