



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NOT FOR PUBLICATION OR BROADCAST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 WEDNESDAY 22 DECEMBER 2010

JUDICIAL FACTOR – WHAT’S IN A NAME?

What does the name “judicial factor” mean to you? A judicial factor is someone appointed by the court to look after or to gather in and distribute property belonging to someone else. Anyone can be appointed as a judicial factor though the majority taking up the role tend to be accountants or solicitors. The appointment can be made in a variety of circumstances such as where it appears that there has been misconduct in the management of a charity, where the liabilities of a solicitor appear to exceed his or her assets, where someone dies without leaving a will and nobody is prepared to act as executor or where someone is missing and the court has granted decree to the effect that the person has died.

The Scottish Law Commission is reviewing this area of the law (which is contained mainly in 19th century legislation) and has today published a Discussion Paper inviting views on updating the way in which this function is carried out. Two options are put forward. 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. Costs would generally be recovered from the property being managed.

Patrick Layden QC, the lead Commissioner for this project, said:

“The office of judicial factor is a useful institution which needs to be brought up to date. If it were properly modernised, it could be very helpful in a wide range of situations, from looking after the property of people who cannot do it themselves to taking charge of assets confiscated under the Proceeds of Crime legislation. We would welcome comments on this Discussion Paper.”

The Discussion Paper is available on the Commission’s website at www.scotlawcom.gov.uk and comments on the proposals are welcome by 15 April 2011. The Commission would also be grateful for suggestions as to an appropriate alternative for the name “judicial factor”.

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 Lord Drummond Young, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Professor George L Gretton, Patrick Layden QC TD, and Professor Hector L MacQueen. The Chief Executive is Malcolm McMillan.

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

3. The paper (Discussion Paper No 146), in addition to being available on our website at www.scotlawcom.gov.uk, may also be purchased from TSO (www.tsoshop.co.uk).