

Judicial Factors (Scotland) Bill:

Equality Impact Assessment

December 2023

Judicial Factors (Scotland) Bill - Equality impact assessment record

Minister

Minister for Victims and Community Safety

Lead official

Michael Paparakis

Officials involved in the EQIA

Michael Paparakis, Private Law Unit

Directorate: Division: Team

Justice; Civil Law and Legal System; Private Law Unit

Is this new policy or revision to an existing policy?

New

Screening

Policy Aim

The Bill seeks to 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 Although there is a continuing need, the current law on judicial factors is now regarded by those who use it as outdated with a cumbersome procedure which is no longer fit for purpose.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 aim to 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 intromit 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 provision 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.

Who will it affect?

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. 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 Bill would impact upon the following:

- Those people or bodies in Scotland over whose property a judicial factor is appointed;
- Those who apply to the courts for the appointment of a judicial factor;
- Those appointed as a judicial factor (who tend to be accountants or solicitors); and,
- The Accountant of Court as supervisor of judicial factors.

For those over whose property a judicial factor is appointed and those who apply to the courts for such an appointment, the Bill would bring clarity as to the appropriate processes to be followed and as to the powers and duties of

judicial factors. The new regime would be more user-friendly, resulting in all those coming into contact with it having better understanding of it.

For those acting as judicial factors, the Bill would bring simplified processes with clear functions largely set out in one statute rather than being interspersed with legislation on trusts.

If implemented, the Bill will result in an efficient, clear, fit for purpose regime governing judicial factors.

What might prevent the desired outcomes being achieved?

The desired outcomes would not be achieved if the Scottish Parliament did not pass the Bill or if it was amended in a way that would not achieve the intended modernisation of the law.

Stage 1: Framing

Results of framing exercise

The Bill affects those people or bodies over whose property a judicial factor is appointed; those who apply to the courts for the appointment of a judicial factor and those who are appointed. The proposals in the Bill would apply equally to any person who falls within these categories of person.

There is no compulsion to use a judicial factor, and for those not wishing to do so there are other legal devices which may be considered and which remain unaffected by this Bill.

Accordingly, the Scottish Government has concluded that the Bill will not adversely impact upon any person by virtue of their particular religion, belief, age, sexual orientation, gender, race, or ethnicity.

Extent/Level of EQIA required

As the degree of impact on the protected characteristics is expected to be minimal, it is our opinion that the level of EQIA needed is low.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
Age	No evidence.	N/A	N/A
Disability	No evidence.	N/A	N/A
Sex	No evidence.	N/A	N/A
Pregnancy and maternity	No evidence.	N/A	N/A
Gender reassignment	No evidence.	N/A	N/A
Sexual orientation	No evidence.	N/A	N/A
Race	No evidence.	N/A	N/A
Religion or belief	No evidence.	N/A	N/A
Marriage and civil partnership (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	No evidence.	N/A	N/A

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	<p>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. It does not directly or indirectly address discrimination, harassment or victimisation.</p> <p>Currently, a judicial factor may be appointed to manage the estate of a young person and the new regime will apply to any such appointments. Under section 9(5)(a) of the Children (Scotland) Act 1995, for example, the Accountant may apply to the court for the appointment of a judicial factor to administer property owned by or due to a child. In 2022, there was one active judicial factory under the Children (Scotland) Act 1995.</p> <p>The court appointment of a judicial factor who is subject to the ongoing supervision of the Accountant provides a high degree of protection for persons who are vulnerable because of their age.</p>
Advancing equality of opportunity			X	<p>The policy intention of the Bill does not directly or indirectly impact on advancing equality of opportunity.</p>
Promoting good relations among and between different age groups			X	<p>The policy intention of the Bill does not directly or indirectly promote good relations within different age groups, however, judicial factors are sometimes appointed to hold and manage property for children. The Bill will bring clarity as to the appropriate processes to be followed and to which powers and duties the judicial factor has while being more user-friendly, resulting in all those coming into contact with it being better informed about it.</p>

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	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. It does not directly or indirectly address discrimination, harassment or victimisation of disabled people.
Advancing equality of opportunity			X	The Bill does not directly or indirectly impact on advancing equality of opportunity for disabled people.
Promoting good relations among and between disabled and non-disabled people			X	The policy intention of the Bill does not directly or indirectly promote good relations between disabled and non-disabled people.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	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. It does not directly or indirectly address this form of discrimination.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly impact on advancing equality of opportunity.
Promoting good relations between men and women			X	The policy intention of the Bill does not directly or indirectly address relations between men and women.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	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. It does not directly or indirectly address discrimination against women because of pregnancy and maternity.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly address equality of opportunity in terms of pregnancy and maternity.
Promoting good relations			X	There is no evidence that the Bill would directly or indirectly promote good relations.

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	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. It does not directly or indirectly address discrimination against transsexual people.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly address equality of opportunity for transsexual individuals.
Promoting good relations			X	The Bill does not have any direct or indirect impact on promoting good relations.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	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. It does not directly or indirectly address discrimination on grounds of sexual orientation.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly advance equality of opportunity in terms of sexual orientation.
Promoting good relations			X	The policy intention of the Bill does not directly or indirectly promote good relations.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	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. It does not have any direct or indirect impact on this protected characteristic.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly advance equality of opportunity in terms of race.
Promoting good race relations			X	The policy intention of the Bill does not directly or indirectly promote good race relations.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	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. There is no direct or indirect impact on this protected characteristic.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly address equality of opportunity in relation to religion or belief.
Promoting good relations			X	The policy intention of the Bill does not directly or indirectly impact on promoting good relations.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership²	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	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. The policy intention of the Bill does not directly or indirectly impact on marriage or civil partnership.

² In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	<p>Overall, the Bill introduces a statutory framework which sets out clearly the essential features of the office of judicial factor. This will be a positive impact for all individuals and bodes coming into contact with the office.</p> <p>In the case of children under the age of 16, where a judicial factor is appointed to hold and manage their property, the Bill will bring clarity as to the appropriate processes to be followed and as to the functions of judicial factors. It will also be more user-friendly, resulting in all those coming into contact with it having better understanding of it.</p>
Is the policy directly or indirectly discriminatory under the Equality Act 2010?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	Not applicable
If not justified, what mitigating action will be undertaken?	Not applicable

Describing how Equality Impact analysis has shaped the policy making process

The EQIA process has confirmed that the proposed Bill has no impact on any of the protected characteristics.

Given that some positive and no negative impacts have been identified, no direct changes have been made to the policy as a result of this EQIA.

There are no direct implications for finance as a result of this EQIA.

Monitoring and Review

If the Bill is passed by Parliament, the Scottish Government will monitor its impact in practice.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:
 - Yes

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:
 - Eliminating unlawful discrimination, harassment, victimisation;
 - Removing or minimising any barriers and/or disadvantages;
 - Taking steps which assist with promoting equality and meeting people's different needs;
 - Encouraging participation (e.g. in public life)
 - Fostering good relations, tackling prejudice and promoting understanding.

- Yes

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:
 - Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Judicial Factors (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Denise Swanson

Position: Deputy Director, Civil Law and Legal Systems

Authorisation date: 28 November 2023



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