

## **Consultation on Judicial Factors**

### **Response from the Scottish Charity Regulator**

#### **1. Background**

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Office forming part of the Scottish Administration. We are independent of Scottish Government and report directly to the Scottish Parliament every year.

We are the independent regulator and registrar for over 24,000 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. Our work as Regulator ultimately supports public trust and confidence in charities.

Scottish charities come in all shapes and sizes. The work they do is extremely varied and has a huge impact on Scottish society.

#### **2. Consultation response**

There is specific reference on page 81 of the consultation document to OSCR's appointment of Judicial Factors:

Appointments relating to Charities Applications for the appointment of a Judicial Factor over a charity are normally made by The Office of the Scottish Charity Regulator (OSCR). These applications normally arise where there are concerns that a charitable organisation is not being run for the benefit of the charity or where the trustees are otherwise acting inappropriately. A Factor will normally be appointed to investigate the position and take steps to safeguard the assets of the charity. In some cases where the charity is insolvent then it may be necessary for the Factor to apply to have the charity sequestrated.

So far, OSCR has appointed Judicial Factors three times, allowing significant levels of charitable assets to be protected. Section 34 of the 2005 Act sets out the powers of the Court of Session, which includes the power to:

'appoint a judicial factor to manage the charity's affairs'.

In terms of the Draft Bill, we agree that it is helpful that the Bill addresses the issue of uncertainty in respect of Judicial Factors powers by providing that on appointment 'all the powers of a natural person beneficially entitled to the estate' shall vest in the judicial factor and by providing a list of powers which are expressly included. It is helpful that in addition, where necessary, at the time of appointment or at a later date the Court can grant additional powers to the Judicial Factor.

We are aware of an instance where a Judicial Factor has found it difficult to obtain information required in order to manage the estate. To this end it is useful that in the Bill Judicial Factors have been given the power to require by notice information relevant to their functions from third parties (public bodies, other body corporate, unincorporated associations and individuals).

We agree that the process to appoint an interim factor should remain and this is how OSCR generally approaches the cases that we have where a Judicial Factor is appropriate. Having an interim factor allows the appointment to be made swiftly and ensures that charitable assets can be secured promptly where we have concerns.

Finally in terms of Scottish Governments proposal that, in the future, applications to appoint Judicial Factors be heard in the Sheriff Court, this would require an amendment to the 2005 Act. Currently in terms of the 2005 Act OSCR has the power to seek various protective and enforcement orders from the Court of Session including the appointment of a judicial factor. We share a number of the concerns raised by the Law Society of Scotland, as set out at 4.8 of the Consultation document. For these reasons, OSCR would prefer to continue to seek the appointment of Judicial Factors in the Court of Session, which would negate the need for any change to the 2005 Act.

### **3. Conclusion**

OSCR has welcomed the opportunity to respond to this consultation and looks forward to the development of the legislation.

We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

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