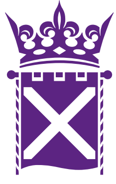

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Delegated Powers and Law Reform Committee

Stage 1 Report on the Trusts and Succession (Scotland) Bill

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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

dplr.committee@parliament.scot

Committee Membership

Convener
Stuart McMillan
Scottish National Party

Deputy Convener
Bill Kidd
Scottish National Party

Jeremy Balfour
Scottish Conservative and Unionist Party

Oliver Mundell
Scottish Conservative and Unionist Party

Mercedes Villalba
Scottish Labour

Introduction

1. The Trusts and Succession (Scotland) Bill ("the Bill") was introduced in the Scottish Parliament on 22 November 2022 by Keith Brown MSP, the former Cabinet Secretary for Justice and Veterans.

2. The Bill is based on two large-scale law reform projects by the Scottish Law Commission ("the SLC"), one on trust law, and one on succession law.

3. The Bill was determined as a 'Scottish Law Commission Bill' under Rule 9.17A of the Scottish Parliament's Standing Orders. The Delegated Powers and Law Reform Committee was subsequently designated as lead committee for Stage 1 consideration of the Bill.

4. In addition to carrying out the role of lead committee, under Rule 9.6.2 of Standing Orders the Committee is required to consider and report upon any provisions in the Bill that confer power to make subordinate legislation. The Committee considered the delegated powers in the Bill at its meeting on 17 January 2023; the Committee's report is covered later in the report.

5. The Finance and Public Administration Committee considered the Financial Memorandum to the Bill. Following a call for views, it received one response and passed the submission to the Delegated Powers and Law Reform Committee to take into account in its evidence sessions and also in its Stage 1 report.

6. As with all primary legislation, the Scottish Parliament Information Centre has published a full briefing on the Bill.

7. The Committee issued a wide call for views and received 28 responses.

8. The Committee held oral evidence sessions on 2, 9, 16, and 23 of May, and on 6 June. It heard from the Scottish Law Commission, legal academics, legal practitioners, users of trusts and the Minister for Victims and Community Safety, Siobhian Brown MSP. Full details of the Committee's meetings, and those who gave oral evidence, are listed at Annexes B and C.

9. The Committee is grateful to all those who helped inform its consideration of the Bill.

Background and overview of the Bill

What is a trust?

10. A trust is a legal device for managing assets. A person or entity (the truster) passes ownership of assets to the trustees. Frequently, this is for the benefit of individuals or entities known as beneficiaries.

What is succession law?

11. Succession law, sometimes called inheritance law, is the law which says who inherits when someone dies and in what order.

What does the Bill seek to do?

12. Trusts have been in use since at least the early 17th century in Scotland. The main existing legislation on trusts is the Trusts (Scotland) Act 1921 ("the 1921 Act"), which has been significantly amended making it complicated and difficult to understand.

13. The Scottish Government's Policy Memorandum indicates that the aim of the Bill is to reform the law of trusts and bring together various pieces of trust legislation, forming a single statute framed in clear and modern language.

14. The Bill also aims to clarify the law of succession relating to special destinations (a form of 'miniature will', discussed in more detail below), and to modernise the order in which people inherit when someone dies without leaving a will (known as 'intestate succession'). The statutory scheme for intestacy provides a default set of rules about what should happen to someone's estate when they die without a will.

15. The Policy Memorandum also indicates the Bill will amend the order of intestate succession to reflect the contemporary perception of a spouse or civil partner as a key member of the deceased's family.

16. The Bill is divided into three parts:

- **Part 1**, most of the Bill, would reform the law relating to trusts.
- **Part 2** contains two provisions on succession law.
- **Part 3** contains miscellaneous sections, including key definitions.

Does the Bill differ from the SLC's proposals?

17. The primary difference in the Bill to that proposed by the SLC in its draft Trust (Scotland) Bill, is that it does not include any pension scheme established under a trust in its definition of a trust.

18. The Scottish Government confirmed in writing to the SLC that it intends to ask the UK Government to grant an Order under section 104 of the Scotland Act 1998, to apply the changes proposed in the Bill to pension scheme trusts. [1]

19. The exclusion of pension trusts from the Bill is covered in more detail later in the

report.

Part 1 of the Bill: trusts

20. Part 1 of the Bill is divided into eight chapters relating to trusts, as follows:

- Chapter 1 sets out the processes by which trustees can take on their official role in a trust and the ways in which they can leave that role.
- Chapter 2 says how trustees can make decisions about the trust.
- Chapter 3 sets out the powers and duties that trustees have to enable them to run the trust. It also sets out the legal consequences of a trustee violating certain duties towards those who benefit from the trust.
- Chapter 4 looks at some of the legal relationships of trustees with organisations and individuals outside a trust.
- Chapter 5 suggests legal changes which would affect how long certain types of trust can last in practice.
- Chapter 6 covers a type of trust known as a private purpose trust. The chapter's provisions would confirm this type of trust is competent in Scots law. They also propose how such trusts should be supervised.
- Chapter 7 would introduce the role of 'protector' into Scottish trusts. Protectors are not trustees but have powers to oversee, manage and control trusts in certain circumstances.
- Chapter 8 gives the court an extensive set of powers of the court to address any situation that might arise with a trust, other than the court’s role in appointing and removing trustees (addressed separately in Chapter 1) and the need for the trustees to have extra powers (addressed separately in Chapter 3).

Part 2 of the Bill: succession law

21. Part 2 of the Bill contains two provisions on succession law. As outlined above, this is sometimes called inheritance law, as it is the law which says who inherits when someone dies (and in what order).

22. Section 71 of the Bill makes a minor clarification to existing law on succession and special destinations. A special destination is a condition that often applies when people (usually spouses/civil partners) buy property jointly.

23. Section 72, the main provision, would strengthen the position of the deceased person's spouse or civil partner (compared to their position under the current law) when someone dies without leaving a will.

Overall impact of the reforms proposed in the Bill

24. In general, stakeholders are in support of the reforms in the Bill. The Bill was welcomed as a necessary modernisation and partial codification of the existing law around trusts. It was widely agreed that the current law is out of date and can be unclear, and that the Bill represented a significant improvement. For example, Aberdeen City Council stated that:

> …as a local authority connected to numerous public trusts, [we are] in favour of the increased clarity which this proposed legislation will bring to the law of trusts – by, for example, consolidating older statutory provisions and common law rules. The provisions to modernise the law are also to be welcomed. The law on trusts will as a result be more accessible and easier to ascertain. [2]

25. Notwithstanding this general support, witnesses considered that there were a number of areas in the Bill that needed to be revisited. Concerns and suggestions for improvements were raised by stakeholders in some areas of Part 1 of the Bill. These concerns are examined in more detail later in the report.

26. In general, stakeholders welcomed Part 2 of the Bill. A minority of respondents commented on section 71 explicitly. The Scottish Law Agents Society, [3] Dr MacPherson and Professor Paisley, [4] and the Law Society of Scotland [5] were supportive.

27. Respondents were generally supportive of section 72. However, various respondents were concerned that section 72 was unfair in one respect, in how it applied to people who had separated before death, but had not divorced or had their civil partnership dissolved.

28. Suggestions were also made on issues which are not currently in the Bill, including in relation to unlawful killers acting as executors, and cohabitants claiming a share of the deceased's estate. These are also examined in more detail towards the end of the report.

29. **The Committee notes the widespread support for the Bill from stakeholders. It acknowledges in particular the importance of trusts in Scotland, and the need for the law to be modernised, and welcomes the reforms in the Bill.**

30. **However, the Committee believes there is still work outstanding on a number of areas in the Bill. It is sympathetic to concerns raised by stakeholders on areas in Parts 1 and 2 of the Bill, and these concerns are considered in more detail later in the report.**

The role of the Scottish Law Commission and its consultation on the Bill

31. The SLC has the statutory role of making recommendations to government to simplify, modernise and improve the law. It has a rolling programme of projects looking at reforms to the law in particular areas. The SLC can be requested to look into particular areas of law by the Scottish and UK governments. It can also identify priorities from consultation and feedback from stakeholders.

32. It is up to the Scottish or UK governments to decide whether to take proposals made by the SLC forward. They may carry out further consultation before deciding what to do.

33. The SLC has been considering the areas of trusts and succession for some time. In relation to trusts, it carried out a significant work programme, resulting in the publication of a total of eight discussion papers, two consultation papers, and two specific issue reports before it published its final Report on Trusts in 2014. In addition, the SLC published an updated version of its proposed Trusts Bill in 2018.

34. The SLC's overall approach in the 2014 Report was to strongly support the concept of a trust. It emphasised the importance of the trust in the commercial world.

35. In relation to succession, the SLC has published multiple reports on these issues, most recently in 2009. Part 2 of the Bill implements proposals from that report.

36. The Scottish Government announced its intention to bring forward a Bill on trusts in its Programme for Government 2021-22 and included a Trusts and Succession Bill in its Programme for Government 2022-23.

37. The Bill before the Scottish Parliament, is broadly the same as the Bill developed by the SLC in relation to trusts, with the addition of Part 2 which draws on the SLC's 2009 report on succession.

The Scottish Law Commission's consultation on the Bill

38. Bills introduced by the Scottish Government as 'SLC Bills' are preceded by a consultation exercise carried out by the SLC. One of the requirements for a Bill to be designated as an SLC Bill is that the primary purpose of it is to make provision which is not likely to generate substantial controversy among stakeholders.

39. In relation to Part 1 of the Bill, as mentioned above, the SLC consulted extensively over the course of its Trusts project, including through eight discussion papers and two consultation papers over the period 2003-2012, and an Advisory Group largely made up of representatives of the legal profession.

40. Most respondents to the SLC consultations were from the legal profession. Many questions had fewer than 10 responses. The Scottish Government has not held a public consultation on Part 1 of the Bill.

41. In relation to Part 2 of the Bill, the SLC published a discussion paper on succession in 2007, and prepared its 2009 report with the support of an Advisory Group consisting of practising and academic members of the legal profession.

42. The Scottish Government subsequently carried out three consultations related to the SLC's proposals. The first one in 2014 covered more technical issues including special destinations. The second consultation took place in 2015 which covered the issue of order of succession in intestate estates. In its 2018 response to this consultation, the Scottish Government committed to the proposal now in section 72 of the Bill (which improves the position of a spouse or civil partner in an intestate estate). Most recently, in 2019 the Scottish Government consulted on certain specific policy issues that had not found consensus in the 2015 consultation. The Scottish Government published its response to this consultation in 2020, repeating the commitment it had first made in 2018 relating to what is now section 72.

Committee consideration of Part 1 of the Bill - Trusts

The role of the courts in the Bill

43. The Bill makes provision for a wide range of court powers in relation to trusts. This includes some new powers for the sheriff courts in appointing and removing trustees. However, for most purposes, the Court of Session is retained in the Bill as the main court.

44. The Committee heard a range of evidence on whether the correct balance has been struck between allocating powers between the Court of Session and the sheriff courts. A number of advantages and disadvantages in respect of the different courts were acknowledged.

45. In particular, the Committee heard from witnesses including Lord Drummond Young, [6] Sandy Lamb from Lindsays, [7] and Mike Blair (a trustee and solicitor from Gillespie Macandrew), [8] that the Court of Session provides specialist technical trusts law expertise. On the other hand, Caroline Pringle from Anderson Strathern, [9] and Sarah-Jane Macdonald from STEP Scotland, [10] felt that the sheriff court had advantages in relation to speed and cost, and overall ease of access.

46. Judicial stakeholders such as the Sheriffs and Summary Sheriffs Association [11] and the Senators of the College of Justice [12] considered that the balance of powers between the Court of Session and the sheriff courts was correct in the Bill or generally supported the provisions on court powers.

47. John McArthur from Gillespie Macandrew and Sarah-Jane Macdonald from STEP Scotland [13] suggested, however, that it would be helpful to build in greater choice for parties between the Court of Session and the sheriff court for trust litigation. John McArthur commented that the trustees will understand the nature of their litigation, and that allowing them to choose which court to go to "will allow accessibility and let people know that they are going to a court that has the required knowledge to decide on the questions being asked". [14]

48. In relation to the relative costs of the Court of Session and the sheriff courts, the Committee received mixed evidence and has been unable to establish whether, as has traditionally been understood, the Court of Session is more expensive than sheriff courts. However, it appears clear that there is at least the perception in some areas that the Court of Session will be significantly more expensive.

49. **The Committee notes that the Court of Session remains the main court for trusts under the Bill, but is sympathetic to calls for the Bill to make provision for a greater choice between the Court of Session or sheriff courts for trust cases.**

50. **The Committee asks the Scottish Government to consider building greater flexibility into the Bill should this become desirable in the future. For example, by including a power to vary the balance of court powers through the use of regulations.**

51. **The Committee asks the Scottish Government to:**

    - **provide comparative typical costs of running a case through the Court of Session and the sheriff courts (including court fees, legal fees, and other relevant expenses) before the deadline for Stage 2 amendments; and**
    - **to collect and publish data on an ongoing basis.**

Removal of trustees deemed incapable

52. Section 7 of the Bill creates a new power for a majority of trustees to be able to remove a trustee on certain grounds, including where the trustee to be removed is incapable.

53. This provision received support in principle from many giving evidence to the Committee. It was considered by stakeholders, including the Law Society of Scotland, [15] the Scottish Churches Committee, [16] and STEP Scotland, [17] to be helpful to have a quick and easy route to remove incapable trustees without having to go through the courts. This was felt to be a useful provision in situations where incapacity was clear.

54. However, concerns were raised in relation to the potential for abuse, the subjective nature of assessing incapacity, and the burden of placing the assessment of capacity on trustees who may feel unqualified to take on that role. These concerns were raised by legal practitioners such as Gillespie Macandrew, [18] Lindsays, [19] and Turcan Connell [20] as well as organisations including the Law Society of Scotland [21] and STEP Scotland. [22]

55. In addition, Ken Swinton from the Scottish Law Agents Society [23] and Sarah-Jane Macdonald from STEP Scotland [24] both highlighted that the complex nature of capacity raised questions as to whether removal was always appropriate. For example, it was pointed out that a trustee may retain capacity in relation to certain decisions (potentially with some support), may only lose capacity temporarily, or may have fluctuating capacity that changes over time.

56. In relation to the potential for abuse, the ability of a majority of trustees to remove a co-trustee on the grounds of incapacity was highlighted as particularly relevant in a case where there are only two trustees. Gillespie Macandrew [25] and Chris Sheldon [26] pointed out that this ground could be used in contentious situations to allow a trustee to exclude a co-trustee and take sole control of the trust. The Law Society of

Scotland [27] felt that further clarification was required on this power in relation to trusts with only two trustees.

57. Potential safeguards were suggested by some witnesses; STEP Scotland [28] and Gillespie Macandrew [29] proposed including a requirement for intimation or a notice period. Turcan Connell [30] and Joan Fraser [31] suggested the need for supporting evidence of incapacity (such as a medical certificate).

58. However, witnesses were not agreed on whether requiring medical or other supporting evidence in every case would be useful. In particular, Sarah Jane Macdonald from STEP Scotland [32] had concerns around delay, and the practicalities of requiring a trustee to submit to an assessment were queried by Charlie Marshall from Wings for Warriors. [33] Although, witnesses did acknowledge that professional assessments could be valuable in assisting trustees to come to a decision on capacity.

59. A related suggestion made by STEP Scotland [34] and John McArthur from Gillespie Macandrew, [35] was for the Bill to include provision to allow an incapable trustee's guardian or person exercising a power of attorney to sign a minute of resignation on behalf of the trustee.

60. The Committee notes that the Bill retains the option for a trustee to be removed by the courts on grounds of incapacity. This means that if there is conflict or uncertainty around capacity, trustees are not required to take that decision themselves if they do not feel it is appropriate to do so.

61. Despite this evidence, neither the SLC nor the Minister shared the concerns of witnesses. The Minister told the Committee "My view is that the bill contains sufficient safeguards to ensure that trustees exercise the power appropriately". [36] In particular, Lord Drummond Young [37] and the Minister [38] noted that a trustee who had been removed, but disagreed with the assessment of their incapacity, could challenge their removal through the courts.

62. **The Committee notes the evidence that there is a route for a trustee to challenge removal on the basis of incapacity through the courts. However, it is concerned that this route might not be clear or obvious to a trustee in that situation. The Committee recommends that the Bill is amended to include explicit reference to the right of a trustee, deemed incapable by fellow trustees, to go to court to challenge their co-trustees' decision.**

63. **The Committee recommends that the Scottish Government carefully considers whether additional safeguards additional safeguards may be necessary to mitigate the risk of abuse.**

64. **The Committee asks the Scottish Government for its view, ahead of the Stage 1 debate, on how supporting evidence of incapacity should be used by trustees under section 7 of the Bill.**

Decision-making by trusts

65. The 1921 Act provides that no effective decision can be made unless it is agreed by a quorum, and that a quorum is constituted by a majority of the acting trustees who must be present at a meeting for it to be valid and able to transact business. The Policy Memorandum suggests the use of the word 'quorum' is misleading and therefore suggests "it would be clearer to replace the current statutory provision with one that did not use the concept of a quorum". [39] The new approach is contained in section 12 of the Bill.

66. Section 12 of the Bill sets out the basic rule that decisions must be made by a majority of trustees "for the time being able to make it". It goes on to specify that, subject to the trust deed, a trustee is not 'able to make' a decision if they:

- have or might have a personal interest in the decision (subject to some exceptions);
- are incapable or untraceable.

67. Witnesses commented on a number of different aspects of the decision-making process provided for by section 12.

Majority decision making

68. The principle that decisions about a trust can be made by a simple majority of trustees (i.e., more than 50%), attracted broad support in the Committee's consultation. However, Joan Fraser, responding as an individual, thought that: "more than a simple majority should be required for decisions which would have a significant impact on the trust. For example, the disposal of some or all of the assets of the trust or an alteration of the purposes." She pointed out that, for example, "charity law requires a two thirds majority for alteration of a constitution". [40] Some stakeholders thought that the way section 12 defined 'majority' could lead to confusion in practice. Gillespie Macandrew queried how section 12 might work in practice in relation to transactions involving heritable property. They said:

> It is not clear what would be required in terms of evidence in order to satisfy a third party that the deed has been validly signed, i.e. that the deed has been signed by a majority of the trustees that are both capable and traceable. [41]

69. Turcan Connell [42] thought that section 12 was intended to create a default rule, which could be overridden by the legal document creating the trust. However, it queried whether the current drafting in section 12(2) achieved this outcome in relation to the question of when a trustee may be disregarded when calculating a majority.

70. Turcan Connell suggested that inserting the following wording into section 12(1) would make this clearer:

> Except in so far as the trust deed, expressly or by implication, provides otherwise (or, in a case where there is no trust deed, the context requires or implies otherwise). [43]

Personal interest

71. Section 12 provides that personal interest can be disregarded, with the consent of the beneficiaries, to allow the trustee with a personal interest to participate in decision making. This is permitted in two cases. Firstly, if all beneficiaries know of the interest and consent to the trustee acting. Secondly, where the truster appointed the trustee knowing that such decisions may be required, and that the trustee's personal interest existed.

72. Alice Pringle thought the excluded category of those who have, or might have, a personal interest in the decision was "unworkable" in the case of family trusts. She said, "that section 12(3)(a) could mean the Trustees cannot fulfil their fiduciary duty if one of a large family blocks their decision making." [44]

73. Jones Whyte, [45] Turcan Connell [46] and the Faculty of Advocates [47] all suggested that the term 'personal interest' should be defined more clearly to avoid uncertainty and possible litigation on the meaning of the term and to make the legislation more accessible to the lay person.

Incapable trustees

74. As noted above, section 12 provides that a trustee is unable to participate in trust decisions where they are incapable. Gillespie Macandrew expressed concern to the Committee "that this provision could easily be open to abuse", [48] in the context of the incapable trustee.

75. Discussion on how 'incapable' is defined, and the implications of allowing co-trustees to determine incapacity, is covered in the sections on 'Removal of trustees deemed incapable' above, and 'Definition of 'incapable' below.

Definition of 'incapable'

76. Incapacity is an issue that can affect both trustees and beneficiaries and have an impact on the proper administration of the trust. The concept of incapacity is relevant for a range of provisions throughout the Bill, for example the removal of an incapable trustee, or provisions that require a beneficiary to give consent. As a result, the way the Bill defines 'incapable' is important.

77. In section 75 of the Bill, the term 'incapable' is defined similarly to the definition in the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act"). As with the 2000 Act, it includes someone with a mental disorder. In the context of trusts, trustees may become incapable (and co-trustees may wish to remove them), or trustees may be interacting with incapable beneficiaries.

78. The Scottish Government's Policy Memorandum explains the concept of capacity with regards to incapable trustees. It notes the Scottish Government:

> does not think it would be helpful to frame the explanation of incapability simply by listing the various orders under mental incapacity legislation in Scotland and their equivalents in the other United Kingdom jurisdictions. Such legislation would be complex and would have to be amended every time there was a change in mental incapacity legislation.

79. Concerns were raised by some stakeholders in relation to the Bill's definition of 'incapable'. In its written evidence, the Law Society of Scotland said the Bill “does not incorporate the principles set out in section 1 of the 2000 Act, which provide important safeguards of the rights of incapable persons.” [49]

80. The Law Society further noted that "there is no safeguard within the Bill providing that incapacity should be determined by an independent third party on an objective basis." [50]

81. The Law Society suggested that, in any event, the 2000 Act itself was out of date because it was "...now over 20 years old, and no-longer reflects the modern human rights environment, including UN CRPD." [51]

82. It went on to state that the recent Scottish Mental Health Review [52] recommended significant changes to capacity law in Scotland. This included removing the term 'mental disorder' (a term regarded as outdated by many) and moving from a capacity test to one of an ability to make an autonomous decision. It noted that it "is important that the present Bill is future-proofed to accommodate and keep step with possible future changes to the law in this area." [53]

83. Speaking to the Committee, Lord Drummond Young acknowledged the Law Society's concerns. However, he suggested that 'future proofing' was a tricky area as "it is so hard to make predictions about the future." [54]

84. Stakeholders made a number of suggestions for addressing this issue, including cross-referring to the definition in the 2000 Act or making provision for the definition in the Bill to be amended.

85. For example, Professor Gretton, with the support of Yvonne Evans and Professor Paisley, suggested that it would be better in terms of possible future proofing, if the Bill could cross-refer to the 2000 Act for its definition of 'incapable', rather than it having its own, very similar, definition of the term. [55] Alan Barr from the Law Society of Scotland agreed with this suggested approach. [56]

86. However, Sarah-Jane Macdonald from STEP Scotland highlighted that tying the definition of 'incapacity' to the 2000 Act could raise particular issues in relation to trustees outside of Scotland who would not normally be subject to assessment under that Act, potentially requiring reference to be made to the relevant legislation in different jurisdictions, not just Scotland. [57]

87. Lord Drummond Young thought that one solution may be to allow for easy amendment of the definition of 'incapable' in section 75 in the future. [58]

88. In her evidence to the Committee, the Minister acknowledged that it would be

"undesirable for the meaning of 'incapable' in trust law to differ from the usual widely understood definition". She indicated that she saw "merit" in making sure that the Bill did "not diverge from the general law on capacity and that it keeps pace with any changes in that area." [59]

89. However, the Minister also agreed with Lord Drummond Young that there were complications in linking the two definitions for the purposes of trusts law and suggested that there might be other ways to ensure that the definition stayed up to date. [60]

90. The Minister confirmed that she had asked officials to "look at possible solutions, whether that be adopting the definition of "incapable" used in the adults with incapacity legislation by conferring a regulation-making power on Scottish ministers to alter the definition of 'incapable' in this bill or by some other means." [61]

91. **The Committee is sympathetic to calls from stakeholders for the definition of 'incapacity' in the Bill to be easily updated. The Committee recognises that there are a number of different approaches by which this might be achieved and welcomes that the Scottish Government is considering how the Bill can reflect future modernisations to the law on capacity. It calls on the Scottish Government to consider the best approach and seek to amend the Bill accordingly.**

Charitable trusts and the Bill

92. Charitable trusts are affected by both legislation on trusts and legislation on charities. Two key pieces of charities legislation are the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") and what is now the Charities (Regulation and Administration) (Scotland) Act 2023 ("the 2023 Act"). The latest piece of charities legislation, the 2023 Act, was being considered by the Scottish Parliament as a Bill at the point the Committee was considering the Trusts and Succession (Scotland) Bill at Stage 1.

93. The Committee heard evidence from some stakeholders that, in relation to several parts of the Bill, there was a potential interaction between the Bill's provisions and charities legislation, i.e., the 2005 Act and what is now the 2023 Act. Furthermore, in some instances, it was unclear how these parts of the Bill and charities legislation should work together.

94. For example, section 8 of what is now the 2023 Act would expand the Scottish Charity Regulator's ("OSCR") existing administrative power to appoint an interim trustee to a charitable trust under section 70A of the 2005 Act. Stakeholders, including the Law Society of Scotland and [62] Yvonne Evans [63] noted that there was overlap between the Bill and charities legislation, and the Scottish Churches Committee [64] said it was unclear how section 70A of the 2005 Act (as amended by section 8 of the 2023 Act) would interact with Chapter 1 of the Bill. Chapter 1 includes a power for the court to appoint trustees (under section 1) and remove trustees (under section 6).

95. The Scottish Churches Committee suggested “it would be helpful for explicit reference to the relevant sections of the 2005 Act to appear within the corresponding sections of the Bill”. [65]

96. Another example of a potential interaction between the Bill and charities legislation would be if a protector is appointed to a charitable trust (under Chapter 7 of the Bill). The question would then be how the protector’s powers and duties interact with OSCR’s powers to regulate charitable trusts.

97. Madelaine Sproule [66] from the Church of Scotland Trust, and Joan Fraser, [67] a trustee of various trusts, felt that the crossover between trusts and charities legislation more generally was “not entirely clear” and that it could be better expressed in the Bill.

98. Yvonne Evans suggested that the inclusion of an explanation in the Bill that refers to what is now the 2023 Act could be helpful so that that interaction is understood. For example, "the trusts bill could say that ‘trustees’ includes interim trustees who have been appointed under the charities bill”. [68]

99. Professors Gretton and Paisley were more relaxed on the interaction between the two Bills. They suggested that the provisions could 'run in tandem'. [69] Professor Gretton suggested that "in addition to the general provisions in the trusts bill, there would be special provisions in the charities bill about interim trustees and OSCR.” [70]

100. In correspondence with the Committee, the SLC addressed the specific point about section 70A of the 2005 Act. It highlighted that section 70A of the 2005 Act, as amended by section 8 of what is now the 2023 Act, was a particular statutory power that would take priority over the general default power of the court in section 1 of the Bill. [71] However, nowhere in the Bill is that explicitly stated.

101. On the more general point relating to the interaction between the Bill and charities legislation, the Minister highlighted that trust law and charity law operate in parallel. She pointed out that this is also the case where charities take other legal forms, such as companies, where companies law and charities law both apply. She confirmed that officials would consider the interactions between both Bills to ensure the two pieces of legislation work together successfully. [72]

102. **The Committee asks the Scottish Government to ensure the Bill is made clearer in relation to the interaction between the Bill and charities legislation. In particular, the interaction between the court powers in this Bill to appoint and remove trustees and OSCR’s power to appoint interim trustees to charities.**

103. **The Committee requests an update from the Scottish Government on how the provisions of the Charities (Regulation and Administration) (Scotland) Act 2023 interact with those of the Bill.**

The duration of a trust

104. Section 41 of the Bill provides that a person should be able to create a trust of any duration they like. It would also abolish various technical rules which, in practice, affect how long trusts last.

105. Certain stakeholders supported these proposals. For example, the Scottish Law Agents Society "fully endorsed the provisions" [73] and Anderson Strathern welcomed "the abolition of restrictions on accumulations and on creation of future interests." [74]

106. However, in their joint response to the Committee's consultation, Dr MacPherson and Professor Paisley questioned the consequences of the proposed abolition of certain technical rules limiting the duration of trusts. [75] In his evidence to the Committee, Professor Paisley suggested that the longer a trust can last the more economic power it can acquire. He said:

> Once a trust is established and gains assets, it obtains a certain amount of economic power. It can become an entity. If it is perpetual, it can grow to a considerable size and have a considerable amount of influence, and what worries me is the lack of investigative powers from the point of view of the state to work out what is going on inside it. [76]

107. In their written evidence, the Law Society of Scotland, [77] Yvonne Evans [78] and Turcan Connell [79] suggested that section 41 should also apply to charitable trusts as it currently does not.

108. Turcan Connell also suggested that it was "particularly inconsistent" to exclude only charitable trusts when charitable trusts are subject to extra regulation under charities law. [80]

109. In response to the evidence heard from stakeholders that a change is needed to reconsider the exclusion of charitable trusts from the scope of section 41, the Minister stated that she did not think that "exclusion will create any practical difficulties" and she wasn't "convinced at the moment". [81]

110. **The Committee asks the Scottish Government to set out its views ahead of the Stage 1 debate on whether, reflecting on the evidence heard:**

- **section 41 should remain in the Bill; and**
- **section 41 should also apply to charitable trusts.**

Trustees' powers of investment

111. Sections 16 and 17 of the Bill would restructure and restate the current law relating to trustees' powers to invest the trust property.

112. Section 16 broadly gives trustees the same powers of investment over trust property as they would have over their own personal property (subject to certain restrictions, such as when another Act has restricted or excluded those powers, or in relation to specific types of trusts which have separate legislation on investment powers).

113. Section 17 sets out the duty of care required of trustees when exercising those powers. This would require trustees to have regard to the suitability to the trust of the proposed investment and the need for appropriate diversification. Trustees would also have to obtain and consider proper advice about investments when necessary and appropriate to do so.

114. The approach taken in the Bill was welcomed by the Scottish Law Agents Society, [82] the Law Society of Scotland, [83] and Yvonne Evans. [84]

115. A particular issue that was raised, initially in response to the Committee's call for views, and subsequently developed in evidence sessions, was the question of whether wording should be included in the Bill to expressly permit trustees (in the absence of any relevant provision in the trust deed) to choose environmental, social and governance (ESG) investments even if these might not lead to the maximum possible income for the trust. Yvonne Evans suggested that this would be an "attractive and modern" approach in support of Scotland's net zero goals. [85]

116. Mixed views were received on whether the Bill as currently drafted would already permit an ESG investment strategy. Lord Drummond Young told the Committee that he thought:

> It is possible, given the existing powers, to take environmental considerations properly into account as part of the general power of investment, which I do not think is to be construed as a power to maximise returns at all costs. [86]

117. Yvonne Evans noted that the courts in England have recently clarified that trustees can take into account ESG goals in their investment decisions. [87]

118. However, some legal practitioners including Caroline Pringle from Anderson, Strathern [88] Joseph Slane from Turcan Connell [89] and John MacArthur from Gillespie Macandrew, [90] considered that they would have concerns around advising trustees about pursuing an ESG investment strategy without it being expressly permitted in the trust deed.

119. John MacArthur said:

> If I were advising a trustee on the basis of section 16, I would tell them that there was a risk of them leaving themselves open to a claim by disappointed beneficiaries at some point in the future". [91]

120. He further noted that, "It would be easier to give advice if [section 16] specifically allowed investments in assets that might not perform in line with other asset classes that are invested in". [92]

121. Other witnesses, including Laura Dunlop from the Faculty of Advocates, [93] considered that the Bill as drafted contained adequate powers to allow trustees to

make ESG investment decisions, but also felt that there was no harm, or that there would be some benefit to the Bill being more express in its language.

122. Yvonne Evans made the following point:

> Fundamentally, such a provision would empower trustees. It would, if anything, be a reminder for them. It could be said that it is just messaging, but it is important to have a clear and defined starting point…A statement would put that beyond doubt…if we wrote this provision into the bill, there would be no need for a case to clarify the matter if someone objected…Trustees could be emboldened and empowered to use the law in that way and, as a result, prevented from being quite so cautious and concerned about someone questioning their decisions on investment. [94]

123. Other witnesses were less supportive of the proposal for express wording on ESG investments, for a range of reasons. Charlie Marshall from Wings for Warriors did not agree that trustees should be directed in their investments, and that trustees' focus should be on maximising returns. [95] Valerie Macniven from the Church of Scotland Trust commented that having "flexibility and breadth in the powers" was important, and "trying to tie it down could lead to difficulties". [96] Ken Swinton from the Scottish Law Agents Society was not convinced additional wording would be desirable given that the legislation would potentially remain in force for decades, and that policy may change over time. [97]

124. Laura Dunlop from the Faculty of Advocates was generally supportive of the proposal, but did highlight the risk that:

> If you have an apparently unlimited permission to do something, and you go on to say, and you can do the following things in particular, that necessarily creates uncertainty as to all the stuff that is not specified. There is no such thing as a free extra clause—you create ripples. [98]

125. Joan Fraser suggested that guidance on investments, similar to that produced by OSCR for charitable trusts, could be considered, and felt that with the current law trustees are able to "balance the objectives of the trust against the ethical dimension to investing". [99]

126. In her evidence to the Committee, the Minister stated:

> I have heard the views of a wide range of stakeholders that express provision would be helpful to make clear that, when assessing the suitability of an investment for a trust, financial returns are not the only consideration that may be taken into account. For example, the environmental and social impacts could also be relevant considerations. I will consider further what could be done on the issue, and look forward to working with the committee and the SLC on the matter as the bill continues its passage through Parliament. [100]

127. **The Committee considers that the power may already exist for trustees to choose to invest in a way which allows them to consider objectives beyond maximising financial returns (subject to the terms of the trust deed).**

128. **Nonetheless, for the avoidance of doubt on this point, the Committee recommends the Bill is amended to explicitly allow trustees (subject to the terms of the trust deed) to choose to invest in environmental, social and governance investments, particularly when these might underperform compared to other investments.**

Nominees

129. Section 19 of the Bill states that, unless the trust deed says otherwise, trustees could use a nominee in respect of any of the trustees' powers. A nominee is someone to whom a trustee transfers ownership of trust property, often for investment purposes.

130. A range of views were expressed on this provision. For example, the Scottish Law Agents Society welcomed section 19. [101]

131. However, in its response to the Committee's consultation, CMS Cameron McKenna Nabarro Olswang LLP ("CMS"), noted a key concern was that section 19, as currently drafted, may not go far enough in capturing the ways in which trusts are used in the financial services sector. Specifically, it said doubt would remain as to whether trustees can use (a) nominee custody structures, and (b) sub-custodians. [102]

132. CMS outlined that with a nominee custody structure, the trustees appoint a custodian to hold the trust assets. The custodian, in turn, appoints a nominee who acquires ownership of the trust assets. CMS also pointed out that it is also possible for a custodian to appoint a sub-custodian who are used by custodians to give them access to overseas legal systems, where the main custodian might not have a business base. [103]

133. CMS noted that these structures/arrangements were permitted under the Financial Conduct Authority’s Client Asset Rules and were “commonplace” in the financial services sector. However, it argued there were increased risks to trust assets if these structures/arrangements could not be used. [104]

134. In his written evidence to the Committee, Professor Gretton said that, although he didn't have the "expertise in the particular areas of asset management" CMS referred to, he thought that CMS raised a potentially important point about these more complex structures and the scope of section 19. [105]

135. In his evidence to the Committee, Ross Anderson from Jones Whyte said he “could not speak to CMS’s point”. However, he drew the Committee's attention to, “the English position under the Trustee Act 1925, which grants the trustees the ability to give greater powers to another person in respect of the management of the trust. I have found that provision to be helpful in the past when dealing with those types of trusts". [106]

136. Separately, in relation to section 19(1), stakeholders suggested the definition of 'person' needed to be clearer. John McArthur from Gillespie Macandrew and Sandy Lamb from Lindsays [107] said they were not clear the power to appoint a 'person' extended to nominees who were corporate entities and that this may be an issue, as corporate nominees were in regular use by firms doing financial services work. John McArthur suggested the definition needed to be "widened to address the concern" as it appears to "to refer to an individual rather than a corporate entity". [108] Sarah-Jane Macdonald from STEP Scotland said some form of definition would be useful because "although 'person' could potentially be taken to mean a corporate, I do not think that it could mean a trust." [109]

137. However, Alan Barr from the Law Society of Scotland stressed that if confirmation was necessary to define 'person' then he was concerned that by "listing the things that are, there is a danger of excluding the things that are not." [110]

138. In her evidence to the Committee, the Minister agreed with Professor Gretton that the issues raised by CMS are "potentially important". After listening to the evidence received by the Committee, she acknowledged that it would not be helpful if trustees who follow rules laid down by the Financial Conduct Authority for the protection of client assets were found to be liable for the breach of fiduciary duty, or otherwise criticised. [111]

139. She went on to add that these were “narrow and technical matters of general trust law that my officials and I need time to consider fully”. [112]

140. The Minister confirmed she would write to the Committee once she had time to consider the matter more fully. [113]

141. **The Committee asks the Scottish Government to consider whether the concern raised by CMS Cameron McKenna Nabarro Olswang LLP is an issue, and report back its findings in this area to the Committee ahead of the Stage 1 debate.**

Trustees’ duties to provide information

142. Sections 25 and 26 of the Bill set out the duties of trustees to provide certain information about the trust to beneficiaries and potential beneficiaries. Potential beneficiaries are those who may come to benefit from the trust under certain circumstances, for example the death of a beneficiary, or nomination by the truster.

143. The fact that these duties have been included in the Bill was welcomed by the Law Society of Scotland (though subject to concerns and suggestions around the drafting) [114] and Professor Gretton, who both noted that the current lack of specific provision is an issue. Professor Gretton stated that “the current law in this area is utterly unsatisfactory, and so the new provisions, even if tweaking is needed, represent a huge leap forward”. [115]

144. The Scottish Legal Complaints Commission welcomed the provisions, noting that "greater clarity about the duties of solicitors acting as trustees could help to avoid some of the common causes of complaints". [116] On the other hand, some felt that the risk of court actions was increased by the new provisions due to lack of clarity and the discretion being left to trustees. Caroline Pringle of Anderson Strathern stated:

> If trustees' obligations are left to trustees' discretion, there could be vast differences in practice and, ultimately, matters would have to go to the court for clarity. [117]

145. The Committee also heard concerns from a number of stakeholders around the drafting and content of these sections. Specifically, there was concern from stakeholders such as Anderson Strathern that the scope of the duties was uncertain and created potentially onerous duties on trustees. [118]

146. In particular, this was a concern for many stakeholders, including Gillespie Macandrew, [119] the Law Society of Scotland, [120] and Yvonne Evans, [121] in relation to potential beneficiaries (who may or may not receive any benefit from a trust, depending on a wide range of factors). Sandy Lamb from Lindsays acknowledged the drafting was "fairly woolly" [122] in terms of what was actually required of trustees, but suggested this was a sensible approach when considering the issue of discretionary trusts with high numbers of potential beneficiaries.

147. John McArthur from Gillespie Macandrew similarly felt that "woolliness is probably better than being more prescriptive" but suggested that the balance should probably be slightly in favour of the trustees. [123]

148. Ken Swinton from the Scottish Law Agents Society stated:

> I can see the duties being quite onerous and cascading quite quickly to a significant number of people. However, I do not know how one controls that. It is surely best practice to let potential beneficiaries know that they are potential beneficiaries, but how far do you go when there are long-stop beneficiaries who might never inherit? [124]

149. Separately to issues around potential beneficiaries, a other elements of the duty to provide information were felt to require additional clarification. Firstly, the Law Society of Scotland queried whether re-notification was required for beneficiaries who reach the age of 16 having initially been provided information through their parent or guardian. [125] Secondly, STEP Scotland [126] and Alan Barr from the Law Society of Scotland [127] questioned how the provisions applied to existing trusts, for example whether re-notification would be required in cases where trustees have previously provided such information. On a related point, it was suggested by stakeholders including Gillespie Macandrew [128] and STEP Scotland [129] that existing trusts should be given a grace period before section 25 was applied to them, in line with that provided under section 26.

150. In addition, the Committee noted there are no specific penalties to failing to comply with the duties under these sections. This was considered by the Law Society of Scotland [130] and the Faculty of Advocates [131] to be appropriate and helped to

counter-balance the potentially onerous duties, but it was also noted by the Law Society of Scotland that failure under these sections would be relevant in relation to other actions that may be taken against the trustees. [132]

151. Sandy Lamb from Lindsays thought that a failure to comply with these duties would be grounds for removal as a trustee, [133] and Turcan Connell suggested that "it would be helpful to clarify the extent to which the subjective parameters of these particular duties interact with the general duty of care, particularly on the basis that a trustee may be removed from office by the court on the basis of having "neglected" their duties (per subsection 6(1)(c))." [134]

152. In light of the significant nature of the duties, the Law Society of Scotland [135] and the Faculty of Advocates [136] both emphasised the need to publicise the new duties, especially to lay trustees, if the Bill is passed.

153. Finally, Joseph Slane from Turcan Connell and Sarah-Jane Macdonald from STEP Scotland suggested that further detail around the duty to account to beneficiaries could usefully be included in this part of the Bill. [137]

154. In evidence to the Committee, the Minister said she welcomed "the clear provisions on the duty of trustees to pass information to the beneficiary and on what the beneficiary is entitled to expect or request". She recognised that the provisions "could add a burden of work to trustees." However, she highlighted that "beneficiaries could have a fundamental role in a trust in holding the trustees accountable. They cannot do that if they are not properly informed". [138]

155. The Minister's view, therefore, was that "the bill strikes an appropriate balance between the ease of administration for the trustees and enabling beneficiaries to hold them to account." [139]

156. The Minister also confirmed that the Bill allowed for "some flexibility" in that:

> the information duties contained in it can be tailored for individual trusts. A truster is permitted to limit the duty to provide information requested by the beneficiaries subject to certain safeguards." [140]

157. **The Committee supports the important principle of ensuring that beneficiaries have access to the information that they require, in particular when it may be necessary to enable them to hold trustees to account.**

158. **The Committee notes that stakeholders, nonetheless, considered that there were grounds for the duties in relation to potential beneficiaries to be more limited. The Committee asks the Scottish Government to review the evidence that the Committee received on this area of the Bill in relation to potential beneficiaries and consider whether the Bill should be amended.**

Private purpose trusts

159. The Bill makes provision for private purpose trusts and, as such, confirms in law that it is legally competent to create such a trust. Section 42 of the Bill defines private purpose trusts as a trust for the furtherance of a specific purpose which is not a charitable or any other public purpose, and it is not for the benefit of the trustee alone.

160. In supplementary evidence to the Committee, Professor Gretton commented on the definition in the Bill. He highlighted that "although the expression 'purpose trusts' is commonly used, to distinguish such trusts from other types of trust, in Scots law *all* trusts are in fact trusts for purposes." [141]

161. As such, he commented that to define private purpose trusts as being for “the furtherance of a specific purpose (other than 'a charitable or other public purpose') was insufficient." [142]

Supervisors

162. One objection to private purpose trusts in other jurisdictions is that there is no identifiable beneficiary who can enforce the trust purposes. The solution favoured by those other jurisdictions that have adopted private purpose trusts is the supervisor, whose main task is to ensure the proper implementation of the trust purposes, from the standpoint of those who may benefit from the trust.

163. The Bill sets out some requirements as to how these trusts should operate, although these are less prescriptive than those on which the SLC originally consulted. It makes provision for the role of a supervisor. However, unlike some legal systems which have private purpose trusts, the person or entity creating the trust does not have to have a supervisor, this is optional.

Protectors

164. Sections 49 to 53 of the Bill make provision for a separate role of protector for a trust in Scots law. This role could be used by private and public trusts, including charitable trusts. Protectors are used already in various overseas legal systems, and their role is to ensure a trust is being run properly. Under the Bill, it would be possible to have both a protector and a supervisor for a private purpose trust.

165. Caroline Pringle from Anderson Strathern welcomed the role of protector. She suggested that this was something, "that is quite commonly seen with many offshore trusts." And that while "this will be the exception rather than the norm” the option was “helpful." [143]

166. Some questions were raised in relation to the practical exercise of protectors’ powers under section 49 of the Bill. For example, the Law Society of Scotland highlighted that a protector can instruct trustees under section 49(3)(c) to remove one of the trustees. It argued that protectors should be able to remove trustees directly instead. [144]

167. In addition, the SLC was asked how the protector's powers and duties would work in practice, alongside those of OSCR's powers in relation to charitable trusts. Lord Drummond Young responded that OSCR would be the primary regulator of a charitable trust in this situation. [145]

168. Separately, the Law Society of Scotland noted that in some circumstances, trustees can appoint a new protector, and he questioned whether this was appropriate given the 'watchdog' role of the protector. [146]

Domicile (section 49(3)(a))

169. The Recognition of Trusts Act 1987 ('the 1987 Act') makes provision about a trust's domicile, that is where the trust is legally based, which determines which country's trust law should apply to the trust. The 1987 Act provides that this can first be decided by the person setting up the trust (i.e. the truster).

170. If the truster doesn't make this choice, the 1987 Act sets out a list of factors which help determine where a trust's domicile is for trust law purposes. For example, relevant factors include where the "administrative centre" of the trust is, the location of trust assets and the permanent residence of the trustees. Depending on the circumstances, these factors give trustees an element of control over domicile for trust law purposes, in the absence of an explicit choice by the truster. Trust deeds can also give specific powers to trustees in relation to domicile for a particular trust.

171. Section 49(3)(a) of the Bill provides that one of the powers the protector could have, if the person setting up the trust wants the protector to have it, is to "determine the law of the domicile of the trust".

172. The Committee heard a range of different views on both what the scope of the protector's proposed power on domicile is and whether it was a good idea in policy terms to have any such power in the Bill. Some stakeholders suggested this aspect of the Bill needed to be reconsidered.

173. Professor Paisley, with the agreement of Professor Gretton and Yvonne Evans, suggested a protector should not be able to move the permanent residence of a trust outside Scotland. He suggested that there is a "dark edge to moving domicile that I really do not like at all…They should be locked into Scotland so that you can keep an eye on them". [147]

174. Professor Paisley went on to say that:

> Limited companies cannot change their domicile. Why on earth should those people be able to change their domicile? Why would they want to attempt to escape the scrutiny of the Scottish courts and the legislation in Scotland? [148]

175. Responding to the Committee's consultation, the Law Society of Scotland did not comment on the policy underpinning section 49. However, it did say, along with other stakeholders, that it thought the drafting of the domicile sub-section was unclear in terms of its scope. [149]

176. Alan Barr from the Law Society of Scotland took a different view. He noted that a trust deed often gives the trustees the power to determine the trust's domicile. He suggested that if trustees could do so, he saw no specific policy issue with

protectors also being able to do so, if that was what the person setting up the trust wanted. [150]

177. The Committee also heard from witnesses that the effect of the change of domicile under section 49 was not clear in relation to taxation. Caroline Pringle from Anderson Strathern thought the provision could not affect a trust's domicile for tax purposes, as "the UK Government decides whether there is UK domicile for tax purposes, so the question ultimately comes down to the domicile of the settlor and of the trustee." [151]

178. Ross Anderson from Jones Whyte said he thought the provision might be intended to let a trust take advantage of different tax regimes and, if that was the case, "it should be made clear". [152]

The standard of care applicable to supervisors and protectors

179. Section 27 of the Bill sets out the duty of care owed by trustees to beneficiaries in their management of the trust. It clarifies that professional trustees (i.e., those providing trustee services as part of a business) must meet a higher standard of care.

180. In their responses to the Committee's consultation, Yvonne Evans and the Law Society of Scotland [153] indicated that they were unclear what the standard of care was for a supervisor or a protector and whether it was the same as trustees. In her evidence to the Committee, Yvonne Evans suggested that protectors and supervisors would be providing professional services, and that "given how powerful they are", clarification on the applicable duty of care "would be useful". [154]

181. In her evidence to the Committee, the Minister highlighted that, under the Recognition of Trusts Act 1987, "a truster may determine which law governs a trust that they set up." She noted that:

> The proposed example power in the bill would make it clear that the truster may confer their power to determine the law that governs a trust on to a protector. That may be relevant when no applicable law has been chosen by the truster and would prevent the need to rely on the default statutory provisions that narrate how the law governing a trust is to be determined where there is no expense provision. [155]

182. In concluding, the Minister confirmed that, "the power would not allow a protector to amend the domicile of a trust, but would instead allow a protector to determine, but not thereafter to change, the jurisdiction whose laws shall be used to determine what the governing law of the trust is". [156]

183. The Minister further noted that:

> where a protector determines that the law of domicile of a trust is in Scotland, the domicile of that trust will be determined in accordance with Scots law. Under Scots law, it may be determined that the domicile of a trust is a jurisdiction other than Scotland. [157]

184. The Minister confirmed she would be happy to work with the Committee to improve

the drafting of this Chapter.

185. **The Committee asks the Scottish Government to clarify:**

- **its drafting of the provision in section 49(3)(a) in relation to the scope of the power for a protector to determine the domicile of a trust;**
- **whether, reflecting on the evidence heard, it considers the provision should remain in the Bill; and**
- **the standard of care applicable to protectors and supervisors.**

Alteration of trust purposes in family trusts

186. Section 61 of the Bill applies to private trusts, mainly those used by families. It gives a power to the beneficiaries (and others) to apply to the court to alter the trust purposes in specific situations. Section 61 sets out the (default) position for two different types of trust – an inter vivos trust (established during the truster's lifetime), and a testamentary trust (set up in a will, to take effect after the death of the person who made the will, known as the 'testator').

187. The court cannot change the purposes unless:

- there has been, or is reasonably expected to be, a material change in circumstances since the trust was made (for inter vivos trusts) or since the will was created (for testamentary trusts);
- the truster is dead; and
- at least 25 years has passed since the trust was set up (for inter vivos trusts) or since the death of the testator (for testamentary trusts).

188. However, a shorter minimum time period can be specified by the truster in the legal document creating a particular trust.

189. Some stakeholders, including Mike Blair from Gillespie Macandrew, were supportive of a default 25-year time period. He suggested making it the normal timeframe but suggested that, if there are special circumstances, someone should be able to go to court. [158] The Faculty of Advocates made a similar proposal in its response to the SLCs consultation. [159] Mike Blair said he thought, "the idea is that people cannot just constantly mess around with what was set up by the guy who set it up in the first place just because those people change their minds five, 10 or 12 years later." [160]

190. However, a number of stakeholders told the Committee that they thought 25 years was too long, including Madelaine Sproule from the Church of Scotland Trust, who thought 25 years "could be too long for certain groups of beneficiaries" [161] and Mhairi Maguire from the Enable Trustee Service, who said a 25-year restriction could be difficult to work with for family trusts. [162]

191. Caroline Pringle from Anderson Strathern also suggested 25 years was "a bit prescriptive" [163] and Yvonne Evans pointed out that a solicitor "would draft around that sort of provision”. [164]

192. Stakeholders suggested a range of alternative time-frames. A period of 10 years was suggested by various witnesses, including Professor Paisley, [165] Ken Swinton from the Scottish Law Agents Society [166] , and Yvonne Evans who said this would “make the power more useful, whilst still preventing premature variation of trusts”. [167]

193. Professor Gretton [168] suggested 20 years as did Joan Fraser who also thought it should be “… measured from the point at which the change of circumstances took place". [169]

194. Stakeholders, including including Yvonne Evans [170] and Anderson Strathern, [171] questioned why a time period had to be specified at all. Sandy Lamb from Lindsays queried that, "if something dramatic has happened, why should people have to wait 25 years?” [172]

195. Other stakeholders supported the need for flexibility in timings such as Anderson Strathern [173] and Alice Pringle who said, “if there are no longer existing beneficiaries and the class needs to be widened, then the length of time should be shorter to allow the new beneficiaries to benefit”. [174] John McArthur from Gillespie Macandrew suggested "the decision is best left to the discretion of the trustees". [175]

196. Yvonne Evans considered that the time period could be dependent on the person's reasons for setting up the trust and pointed out that they retain that flexibility at the point of setting up the trust. For example:

> Do they want maximum flexibility? In that case, they would want to have that power immediately. Do they want to retain control for a period of time? In that case, a longer duration would be workable. The bill does not override that possibility; they can choose a different period of time. [176]

197. While unsure about what a minimum period should be, in response to a past SLC consultation, STEP Scotland suggested having one might be helpful to prevent disgruntled family members (for example, those who did not benefit from the trust) moving quickly to court proceedings. [177]

198. STEP Scotland was also critical of a further requirement before the court power could be used – that the person who set up the trust must be dead. Sarah-Jane Macdonald from STEP Scotland told the Committee that, “If a truster sets up a trust when they are 25 and they live to be 100, the period is 75 years—which is much longer than 25—so that possibly needs to come out as well. [178]

199. The Faculty of Advocates [179] and Yvonne Evans [180] also considered that the application of the time period in relation to testamentary trusts was not clear.

200. Lord Drummond Young told the Committee that the SLC had "consulted in detail" on the time period before a court application could be made. It said that the period of

25 years, "reflected a fairly lengthy default provision. That can always be changed in a trust deed". [181]

201. He further noted that as trusts can last for a long time and things can change, the provision was designed for flexibility under the control of the court. He said, "the general theory, which is expressed in the commission's report, is the so-called dead-hand argument, which says that members of the present generation should not deprive succeeding generations of the power to do as they wish with trust property." [182]

202. In her evidence to the Committee, the Minister told the Committee that, "there should be a default time period that must elapse before the proposed jurisdiction can be exercised." She explained that the 25-year limit was chosen because that section of the Bill was intended to deal "predominantly with long-term trusts and the problems that can arise in relation to those". [183]

203. The Minister further explained that:

> The SLC considered that 25 years provided an easily workable default route that represented a short generation. A default time limit also helps to avoid the risk that family members who are unhappy with a trust might mount an early application to have the trust's terms altered before any material change of circumstance has occurred. The 25-year limit cannot be extended by a truster, but a truster can shorten that limit or do away with it altogether. [184]

204. When asked about the issue raised by STEP Scotland regarding the further requirement that the person who set up the trust must now be dead, Michael Paparakis, the Policy Manager of the Private Law Unit in the Scottish Government confirmed that:

> The idea is that there is balance between respecting the truster's wishes and the trust property beneficiaries. We think that the right balance is to wait until the truster has passed away or 25 years has passed, whichever is longer. [185]

205. The Minister therefore confirmed she will, "consider any recommendations that the committee makes in its stage 1 report, including any alternative recommended time limit." [186]

206. **The Committee notes the range of views expressed by stakeholders in relation to the length of time that should be required to pass before an application to alter the purposes of the trust could be made under section 61 of the Bill. The Committee considers, however, that, on balance, the 25-year period in the Bill is appropriate. Nonetheless, it asks the Scottish Government to amend the Bill to add a caveat which would allow the courts to permit alteration of the 25-year period in exceptional circumstances. This would enable the law to capture those circumstances, for example, which were not reasonably foreseeable at the time the trust was created, and which are detrimental to the operation of the trust.**

Expenses of litigation

207. While the court retains discretion in an individual case, sections 65 and 66 provide principles to determine how legal bills are to be paid in trust cases. Section 65 applies to cases in the Court of Session and makes provision about legal disputes between a trust and another party. While it provides that legal expenses will normally be paid out of trust property, there are specific circumstances where a trustee might be personally liable. However, the court can grant relief against personal liability for expenses, if it considers it would be unfair not to do so.

208. Section 66 of the Bill applies to cases in the sheriff courts as well as the Court of Session. It relates to the expenses of making an application under the Bill, for example to appoint a new or additional trustee under section 1, or to alter the purposes of a trust under section 61. It provides for the court to direct expenses relating to applications to be paid from the trust property, if it considers it to be reasonable to do so.

209. In its response to the Committee's call for views, the Law Society of Scotland expressed concerns around the provisions of section 65. It considered that:

> This is quite a radical provision. There are real issues with the default being that the trustees personally pick up the liability for expenses where the trust property is insufficient unless they can show that would be unfair. This may put people off accepting office and will more than likely be a disincentive for trustees to litigate (although that may be part of the point). [187]

210. It pointed out that "Non-recovery is a standard risk of litigation" and that it was unclear why the situation should be different in litigation involving a trust compared to, for example, a company. [188]

211. When giving evidence to the Committee, Alan Barr from the Law Society of Scotland emphasised the view that personal liability of trustees is not the right starting point. He said:

> The provision seems to me to go against the notion of the separate patrimony of a trustee's position. Therefore, it is not appropriate that the starting point in unsuccessful litigation where the trust fund has run out should be the different pocket of the trustee as an individual. If that does not stop people in certain circumstances becoming trustees or at least considering it very carefully, there is a gap in their understanding of what they might find themselves liable for. [189]

212. STEP Scotland and other legal stakeholders expressed similar concerns about section 65 putting people off becoming trustees, [190] with Sandy Lamb from Lindsays describing section 65 as "a little alarming". [191]

213. In addition to concerns around the provision discouraging people from acting as trustees, the Law Society of Scotland felt that the provisions could create "a severe danger of a conflict of interest" for trustees faced with litigation, impacting how they pursued or defended court actions. [192]

214. In contrast, Laura Dunlop from the Faculty of Advocates felt that section 65 "was very carefully drafted" and allowed significant discretion to the court on the question

of expenses. She also noted that allowing people to litigate with absolutely no risk of personal liability was not a desirable outcome. [193] Legal academics were also less concerned about the impact of this section, suggesting that the Law Society's concerns may be overstated. [194]

215. Mike Blair, a trustee and solicitor with Gillespie Macandrew, felt that personal liability may be appropriate in some situations, in particular where trustees were engaging in a dispute when they should not be. However, he had concerns around situations where trustees were responding to an action initiated by others suggesting that "it puts them in an invidious position of having to either roll over because they do not have the resources to defend the case or stick their neck out." [195]

216. Evidence was also heard by the Committee in relation to the role insurance might play in mitigating the risk of personal liability for trustees. There were mixed views on this issue from stakeholders, though many, including John McArthur from Gillespie Macandrew [196] and Madeline Sproule from the Scottish Churches Committee, [197] felt that this was not an easy solution, both due to the potential difficulties in obtaining such insurance, and the limits to what would be covered.

217. As a broader point in relation to these provisions, it was noted by the Sheriffs and Summary Sheriffs Association [198] and Laura Dunlop from the Faculty of Advocates [199] that section 65 applies to the Court of Session but not to the sheriff courts. It was not clear to them why this would be the case.

218. The SLC felt that the section was drafted "to strike a fair balance among the competing interests" and that "A trustee who takes proper legal advice and behaves in a responsible manner should not be under any difficulty from those provisions". [200]

219. When asked about witnesses' concerns about section 65 in relation to the potential personal liability of trustees for court expenses, the Minister told the committee that personal liability was "subject to the court's discretion, which is widely drawn. That ensures that trustees of underfunded trusts who unnecessarily litigate are not given an unfair advantage in litigation proceedings". [201]

220. **The Committee is sympathetic to the evidence received suggesting that section 65 in the Bill should provide that, where there are insufficient trust assets to meet legal expenses, the starting point should be no personal liability on the part of trustees for expenses. The Committee asks the Scottish Government to reflect on the evidence and consider whether such an amendment is required.**

221. **In addition, the Committee asks the Scottish Government to clarify why section 65 does not appear to extend to the sheriff courts.**

Directions to the court

222. Section 67 of the Bill makes provision for the court to authorise trustees to distribute trust property in a specific set of circumstances.

223. In written and oral evidence to the Committee, stakeholders including the Senators of the College of Justice [202] considered that the Bill should contain a much broader power for the court which would enable it not only to authorise trustees to distribute trust property, but also to give directions to trustees, as had originally been proposed in the SLC's report and draft Bill. All five witnesses in the legal practitioners' session, and all of the witnesses appearing for representative bodies of the legal profession, agreed that the power should be wider. [203] In addition, Chris Sheldon, a trustee and solicitor for Turcan Connell, suggested that the opportunity to ask questions and to seek direction from the court was a "useful mechanism that could be afforded to trustees". [204]

224. When asked about this omission from the Bill, the Minister explained that the SLC's original recommendations on this matter had related to sections of the Court of Session Act 1988, which have since been repealed and "replaced by a much wider and more general power for the court to determine its own procedure, which could include powers to give directions. That is why the relevant section was removed from the SLC's draft bill for introduction." She went on to confirm that, having listened to the evidence given to the Committee, she would consider the matter further. [205]

225. **The Committee asks the Scottish Government to reflect on evidence heard, and confirm ahead of the Stage 1 debate, whether it supports amending the Bill to add a general power to the court to enable to give directions to trustees.**

General issues relating to Part 1 of the Bill

Accessibility, guidance and publicity

226. A recurring theme in the evidence received by the Committee, both in responses to its call for views and in oral evidence, was the importance of legislation that is accessible to people without a legal background.

227. The Committee heard evidence that the Bill, as drafted, still poses challenges to lay people looking to understand the law in relation to trusts. In particular, there were concerns around the ability of lay trustees to easily understand their duties under the law. This was raised as an issue in relation to the current drafting of the Bill, and also in the need for supporting materials to accompany any new Act, such as guidance. Yvonne Evans [206] and Brian McKenzie [207] suggested producing statutory style documents, and Yvonne Evans and Alison Pringle [208] suggested producing guidance and publicising the new law once the Bill has passed.

228. In relation to specific drafting issues, a number of stakeholders had suggestions for improving the clarity of the Bill by further defining terms used in the Bill or improving existing definitions. These suggestions are detailed in Annexe A.

229. Lord Drummond Young noted that style documents can be helpful both for lawyers and laypeople, but suggested that they are best produced separately from the Bill. [209]

230. In her evidence to the Committee, the Minister advised that the Scottish Government did not currently intend to add any further definitions or to develop style documents. In particular, she stated that statutory styles could be difficult to keep up to date, and “might give the layperson a misplaced sense of confidence”. She further noted that producing guidance would be a significant undertaking given the wide range of scenarios where trusts are used in Scotland, and that guidance or a publicity campaign would not be a good use of public resources at this time. [210]

231. **The Committee considers that the Bill, as drafted, is an important step towards improving the accessibility of legislation in this area.**

232. **Nonetheless, the stakeholders made a number of suggestions for improving understanding of terms used in the Bill. The Committee asks the Scottish Government to set out its view ahead of the Stage 1 debate on making the drafting changes proposed in the table in Annexe A to improve accessibility of the Bill for those without a legal background.**

233. **If the Bill is passed, the Committee calls on the Scottish Government to:**

- **produce accompanying guidance on the Bill;**
- **produce non-statutory style documents to accompany the Bill; and**
- **undertake targeted publicity to legal stakeholders and trustees on the effect of the Bill.**

Codification of trust law

234. A related question that was raised in evidence received by the Committee was whether the Bill goes far enough in its codification of trusts law. Codification refers to the creation of written, statutory law in contrast to the common law developed through the courts. The Bill as introduced codifies elements of trusts law, but is not comprehensive.

235. The Scottish Law Agents Society felt that the Bill was a “missed opportunity” for further codification. [211] However, Professor Gretton suggested that “[a] full codification would have stretched the SLC’s resources and would have considerably delayed the completion of the project". He noted however that passing the existing Bill would not preclude the possibility of further measures at some point in the future. [212]

236. Lord Drummond Young noted that full codification is complicated, and not always suitable. In particular, he stated that certain areas of trusts law are still developing, and that the SLC "felt that it was simply a bit too early to put it all into a code; and, in fact, that there is not really any need to put it into a code". [213]

237. **The Committee accepts that a full codification of trust law would not be appropriate in this Bill. However, in light of the importance of ensuring the law is accessible to lay trustees and beneficiaries, the Committee recommends the Scottish Government considers other options for taking forward work outside of this Bill, to further codify this area of the law, including defining different types of trusts.**

Suggested proposals not currently in Part 1 of the Bill

Pension Scheme Trusts

238. Unlike the SLC's draft Trust(Scotland) Bill, the Bill, as introduced, does not include a pension trust in its definition of a trust.

239. Some stakeholders expressed concern at the Scottish Government's decision to exclude pension trusts from the Bill. The Association of Pension Lawyers ("the APL") said it was not aware "of any stated policy aims of the Bill in relation to pension schemes". [214]

240. In its response to the Committee's consultation, the APL explored the interaction between some parts of the Bill and pension scheme trusts. It argued that in the event of a section 104 Order applying the Bill to pension scheme trusts, certain provisions and chapters nevertheless should not be applied, namely sections 16, 17, 25, Chapters 6 and 7 and section 61. [215]

241. The SLC told the Committee that it thought it was very important that trust law reforms also apply to pension scheme trusts. Lord Drummond Young added that:

> Solicitors dealing in the area have repeatedly emphasised to me that it is essential that pension trusts should be brought within the scope of the bill. The reason is obvious: pension schemes are invariably organised using the medium of a trust. There is no reason whatsoever for using any regime other than the general system of trust law, otherwise you have wholly unnecessary complexity. [216]

242. He further noted that, "lawyers in the area tend to move backwards and forwards between different types of trust. Such a lawyer in his or her firm is a trust specialist; they will deal with pension trusts, other trusts such as environmental trusts or trusts in commercial agreements. They need to be able to move backwards and forwards with the minimum of effort, and using one scheme for all trusts is the way to achieve that." [217]

243. The Scottish Government subsequently confirmed in writing to the SLC that it intends to ask the UK Government to make a section 104 Order at Westminster, to apply the changes proposed in the Bill to pension scheme trusts. [218]

244. Various witnesses discussed the consequences if a section 104 Order was not forthcoming or there was a delay in the commencement of the order. The APL considered that, if the Bill was passed as drafted, the 1921 Act would continue to apply in relation to pension trusts, notwithstanding the fact that it is repealed by Schedule 2 of the Bill. [219] However, Professor Gretton took a different view, suggesting that, without a section 104 Order, there “would be a bit of a black hole for pension schemes covered by Scots law.” [220]

245. Sandy Lamb from Lindsays suggested that a gap between legislation coming into force for most trusts and then for pension scheme trusts, could lead to “a degree of confusion”. [221]

246. On the other hand, Professor Gretton and Yvonne Evans told the Committee that they thought it would be possible for the 1921 Act to remain in force for pension scheme trusts, while the new legislation applied to other trusts, while noting that this was less desirable than having one legislative regime for all trusts. [222]

247. In correspondence from the Scottish Government to the Committee, [223] and the Minister's subsequent evidence to the Committee, the Scottish Government emphasised its aim to bring the provisions of the Bill and any section 104 Order into force at the same time. The Minister emphasised this would "avoid fragmenting trust law by creating different regimes for pension trusts and other kinds of trusts". [224]

248. However, if a section 104 Order was not forthcoming in time to achieve this, the Minister confirmed that the Scottish Government would then consider several legislative options to ensure there was no ‘gap’ in terms of legislative provision for pension scheme trusts. She said that “sections 78 and 80 would allow provision to be made to keep the 1921 Act and any other parts of pre-reform legislation in force for pension trusts for as long as required.” [225]

249. The Minister acknowledged that this option would complicate the legislative landscape, and was not a desirable solution, but it demonstrated that it was possible. She also suggested that another option, although again not a desirable solution would be to "include delayed or partial implementation of the main trust legislation". She highlighted that this option demonstrated that a gap in the law would not be created. [226]

250. **The Committee recommends that the Scottish and UK Governments pursue the timely implementation of a section 104 Order, as a priority, to ensure commencement of the Bill is not delayed, and that there is no need for an ‘undesirable’ dual operation of the 1921 and 2023 laws.**

251. **The Committee requests further information from the Scottish and UK Governments on how decisions in relation to section 104 Orders are made, and asks what could be done to speed up the length of time taken for some**

section 104 Orders.

Safeguards for sole trustees

252. Under charity law, if something happens to a sole trustee (for example, loss of capacity), OSCR can step in to assist. Witnesses were concerned that equivalent support was not available to non-charity trusts to ensure that the trust could continue to function.

253. Ian Hood, a sole trustee for a trust with single beneficiary of an adult who has a learning disability, told the Committee that he manages a significant amount of money, in line with the beneficiary's wishes. He told the Committee that he was originally one of two trustees but had found it difficult to find a replacement trustee since the other trustee resigned last year. He queried, as the only trustee, what would happen if he became incapable of continuing to manage the trust. [227]

254. Ian Hood questioned whether the Bill would help resolve this issue and whether it might be possible for the court to appoint further trustees to help manage the trust in such situations. [228]

255. Madelaine Sproule from the Scottish Churches Committee agreed with Ian Hood's point around the difficulty in finding replacement trustees. She said that issue had come up in the Charities Bill, where OSCR is being given powers to appoint trustees to charitable trusts. [229]

256. Asked whether the Bill provides enough safeguards if something were to happen to a sole trustee, Michael Paparakis, the Policy Manager of the Private Law Unit in the Scottish Government told the Committee that if, "a sole trustee, who becomes incapacitated and is no longer able to look after the trust, there is a route for someone to apply to the court to add a trustee, who can then take over its running. That application can be made by the beneficiary, for example. There is an avenue for a trustee to be replaced and for the trust administration to continue." [230]

257. Michael Paparakis confirmed the position where a beneficiary might not be in a position to make such an application:

> There might be instances where the interest to raise an application goes wider than just the beneficiary. For instance, a guardian to the beneficiary may be able to raise legal proceedings on their behalf. [231]

258. The Committee also highlighted concerns around the situation if the sole trustee loses capacity and there is not a beneficiary with the capacity to apply to the court for a new trustee to be appointed.

259. Michael Paparakis advised that:

> If the adult becomes incapacitated, there could be family members who would be able to make an application for guardianship or an intervention order. Ultimately, the local authority is able to do that. Once that happens, applications to the court could be made as well. [232]

260. Michael Paparakis pointed out that the SLC did not consult on the issue of whether trusts should have more than one trustee during its consultation. It also confirmed that it was not something that was raised during the Scottish Government's consultation. [233]

261. The Minister acknowledged the concerns of the Committee. She committed to consider this issue and come back to the Committee. [234]

262. **The Committee has heard concerns from stakeholders of the challenges of trusts having sole trustees. The Committee considers it not desirable for trusts to have a sole trustee and therefore asks the Scottish Government to respond, ahead of the Stage 1 debate, on what safeguards it considers the Bill should provide in relation to trusts with sole trustees.**

Committee consideration of Part 2 of the Bill - Succession

The right of a spouse or civil partner to inherit

263. At present, where someone dies without leaving a will, certain beneficiaries have rights to claim from the deceased person's estate. In summary, the law creates three different types of right, known as prior rights (in favour of any spouse or civil partner); legal rights (in favour of any spouse, civil partner or children of the deceased); and rights to the free estate (where there is a list of relatives who may benefit). The current law favours the spouse or civil partner and the children but not exclusively so. Where the deceased person had no children, the spouse or civil partner may have to share part of the free estate with other relatives, for example, siblings or parents of the deceased person, in some circumstances.

264. Section 72 of the Bill would change the law so that where a deceased person left no will, and had no children or remoter descendants, the overall effect is that the spouse or civil partner would be top of the statutory list of those entitled to inherit the free estate.

265. This provision was broadly welcomed. The Scottish Churches Committee commented that the changes were "sensible and in line with public expectation". [235] Legal practitioners including Gillespie Macandrew [236] and Lindsays [237] confirmed that the change would reflect most clients' expectations.

266. However, one issue was raised with the proposal by stakeholders including the Law Society of Scotland, which was its application in situations where spouses or civil partners had separated, but not had a divorce or dissolution. In these cases, the surviving spouse or civil partner would still qualify to inherit the remaining estate under the section 72 of the Bill. Alan Barr from the Law Society of Scotland suggested that in such circumstances the Bill "will bring the result least on earth that the deceased person would have wanted". [238] The suggestion that section 72 should be amended to exclude spouses or civil partners who had separated at the time of death was supported by a number of stakeholders including Paul Brown [239] and Laura Dunbar from the Faculty of Advocates. [240]

267. There were a range of views on how such an exception could or should be defined. Professor Paisley highlighted the importance of ensuring that spouses or partners who were living apart for reasons other than breakdown of the relationship (for example, due to residence of one in a care home, or absence due to work) were not unintentionally captured in any such exception. [241]

268. Not all witnesses agreed that such an exclusion should apply. Ken Swinton from the Scottish Law Agents Society highlighted how this provision interacts with other elements of succession law and the current underlying policy of the law, and the ability to avoid the application of this provision by drafting a will, [242] while STEP Scotland pointed out the lack of consultation on the proposed change. [243]

269. On a separate point, Yvonne Evans noted that the proposed change may also impact the entitlement of an unmarried cohabitant under section 29 of the Family Law (Scotland) Act 2006. [244] [245] This provision caps the maximum amount that can be awarded to a surviving cohabitant at the amount they would have been entitled to as a spouse or civil partner, so changes to the entitlement of a spouse would also change the potential entitlement of a cohabitant.

270. Irrespective of any amendment to the proposal in section 72 of the Bill, witnesses commented on the need to publicise any change to this area of the law. The Law Society of Scotland and Yvonne Evans [246] suggested that public education around the changes and the importance of making a will would be important. The Law Society of Scotland further commented:

> Under section 80(2), section 72 comes into effect 3 months after the Act comes into force. We would query whether 3 months is sufficient time to allow for appropriate public education. [247]

271. In evidence to the Committee, the Minister noted that officials were considering the proposed drafting changes regarding separated spouses and civil partners. However, she noted that such a change would risk introducing uncertainty and may pose the risk of disinheriting some who were not genuinely separated from their spouse or civil partner. [248]

272. **The Committee asks the Scottish Government to respond to concerns raised in relation to the effect of section 72 where people were separated at the time of death and set out ahead of the Stage 1 debate:**

- **If it intends to suggest section 72 is amended so that a distinction is drawn between spouses and civil partners who had separated (but not divorced or had the partnership dissolved) at the time of death, and those who had not, and**
- **If no change is intended, why not.**

Suggested proposals not currently in Part 2 of the Bill

273. The Committee heard suggestions of various policy proposals which could be added to Part 2 of the Bill, namely:

- clarifying that the law does not permit an unlawful killer to be an executor of their victim's estate and
- amending the current strict six-month time limit which applies in the context of a cohabitant's power to apply to the court for a share of the deceased's estate.

Unlawful killers

274. Some stakeholders considered that the Bill should be amended to clarify that the law does not permit an unlawful killer to be an executor of their victim's estate.

275. While this was not an issue that the SLC considered in its consultation, in its 2019 Law of Succession consultation, [249] the Scottish Government looked at whether it should be possible for an unlawful killer, for example, someone convicted of murder, to be an executor of the victim's estate, given an executor is the person responsible for winding up the deceased person's estate.

276. If unlawful killers are appointed as executors, even if they cannot inherit under the existing law, their continued personal contact with the victim's family (under the guise of winding up the estate) could be considered distressing. The executor may also fail to perform their duties at all, leaving the estate lying dormant. Both scenarios would require court action to remove the executor, which can be expensive.

277. In its 2019 consultation on Law of Succession, the Scottish Government recognised that criminal convictions could take a long time to progress through the courts. Accordingly, the drafting of any legislative provisions would need to extend to those charged with murder or culpable homicide where a prosecution is ongoing.

278. The Scottish Government's consultation also suggests a temporary suspension or permanent disqualification as (alternative) policy options where someone has been charged and is being prosecuted, without reaching a view on which is best. The appointment of a judicial factor is also suggested as a temporary solution for managing the estate while the criminal process played out. Separately, significant reforms to the law of judicial factors were also recommended by the SLC in its report on judicial factors. [250]

279. The SLC told the Committee that while it had sympathy with the policy concerns surrounding this aspect of the law, the area had not "been discussed because it has not been part of any project". [251] However, Lord Drummond Young said:

> It is something that the courts would probably not have much difficulty with. There are very strong public policy arguments for restricting the rights of people who have been convicted of unlawful killing. For example, a beneficiary under a will could never benefit if they had unlawfully killed the testator.” [252]

280. In their joint written evidence, Dr MacPherson and Professor Paisley suggested that the Bill should clarify that it is not legally competent to appoint the unlawful killer of a deceased person as an executor. They stressed that:

> Convicted murderers should not be able to act as executor of their victim's estate.
>
> It might also be advisable to extend this rule to those convicted of culpable homicide, and possibly even to those who, on the balance of probabilities (i.e. the civil standard, rather than the criminal standard of beyond reasonable doubt), have caused the death of another party.
>
> This would reflect the existing position in relation to succession to bequests and benefits under a will or on intestacy. [253]

281. In his evidence to the Committee, Professor Paisley re-emphasised his view that the law in this area needed to be put on the face of the Bill. He suggested that section 6 (which provides for a court to remove a trustee that is unfit to carry out their duties) was not a solution to this issue. This was because his understanding of the case law was that an unlawful killer could never be an executor in the first place (hence section 6 could not apply). [254]

282. In contrast, Sarah-Jane Macdonald from STEP Scotland identified sections 6 and 7 as potentially helpful. She said her view was that the power to remove trustees under the Bill "would also apply to executors" and that a trustee convicted of unlawful killing "would be removed by co-trustees or by a beneficiary with a vested interest". [255]

283. Professor Gretton also agreed that there is a need for a provision on unlawful killers in the Bill. He suggested it would be "easy to do, would not have consequences and would not be controversial". [256]

284. This support was also echoed by various representatives of the legal profession, including the Law Society of Scotland, the Scottish Law Agents Society and the law firms, Gillespie Macandrew and Jones Whyte who spoke to the Committee. [257]

285. Ken Swinton from the Scottish Law Agents Society also raised the practical point of what happens when it is discovered at an advanced stage of winding up the estate that someone falls into the category of an unlawful killer, pointing out that "… the executory could be completed before any charges are brought." [258]

286. In her evidence to the Committee, the Minister confirmed she was "committed to introducing reform that would prevent a person who has been convicted of murder from being an executor of their victim's estate." [259]

287. The Minister acknowledged concerns raised by the Committee and stakeholders that "on questions of scope, the bill could be used to bring the needed clarity." She confirmed she would "explore what can be done in the context of the bill to ensure that that happens". [260]

288. The Scottish Government subsequently wrote to the Law Society, STEP Scotland, the Faculty of Advocates and the Scottish Courts and Tribunals Service seeking their views on two possible models that might address the issue of an unlawful killer who assumes the office of executor to their victim's estate.

289. **The Committee recommends the Bill is amended to clarify that the law does not permit an unlawful killer to be an executor of their victim's estate.**

290. **The Committee considers that, notwithstanding the presumption of innocence, it would appear to be inappropriate for a person charged with murder or culpable homicide to act as executor during the course of the prosecution.**

291. **The Committee requests that the Scottish Government sets out its plans for addressing this issue ahead of the Stage 1 debate.**

Cohabitants claiming a share of the deceased's estate

292. The Committee heard from various legal stakeholders that they are dissatisfied with the current strict six-month time limit which applies in the context of the cohabitant's power to apply to the court for a share of the deceased's estate under the Family Law (Scotland) Act 2006 ("the 2006 Act").

293. At present, where someone dies without leaving a will, a cohabitant has six months to apply to the court, in order that it might exercise its discretion and award the cohabitant a share of the deceased's estate (section 29 of the 2006 Act). The strict six-month time limit has been criticised by a number of stakeholders, including Yvonne Evans [261] , the Faculty of Advocates, the Law Society of Scotland, STEP Scotland and the Scottish Law Agents Society. [262]

294. In its response to the Committee's consultation, the Faculty of Advocates argued that a power for the court to extend the time limit in an individual case should have been included in the Bill. It said it did not think this would be controversial. It suggested that the six-month time limit currently imposed by the 2006 Act may be considered "harsh and restrictive". [263]

295. The Faculty of Advocates also stressed that extending the time-limit would help grieving cohabitants who may be struggling "within a family dynamic at a difficult and emotionally vulnerable time". [264]

296. Yvonne Evans also agreed that the time limit for a cohabitation claim should be extended to 12 months as six months was "too short a time for a grieving cohabitant to do that". [265]

297. All individual law firms and bodies representing the legal profession who gave evidence to the Committee confirmed their support for some type of change to the existing time limit. [266]

298. When considering the appropriate time limit, Alan Barr from the Law Society of Scotland pointed out that a 12-month time limit might still be an issue in practice when there is a delay to executors "getting themselves appointed". [267] On this point, Sarah-Jane Macdonald from STEP Scotland proposed that if, "it was six months from confirmation rather than six months from the date of death, that would

extend the time available a little bit. You would not then have executors delaying their actions necessarily, because that would simply delay the time limit.” [268]

299. Ken Swinton from the Scottish Law Agents Society also stressed that “section 29 of the 2006 Act is poorly drafted in a number of ways”. However, in relation to Sarah-Jane Macdonald’s point about confirmation, he pointed out that, for some smaller estates, confirmation might not actually be required so, "that proposal would not do anything with the time limit for those cases". [269]

300. In her evidence to the Committee the Minister highlighted that, "Any amendment to the relevant timescale would need to address the issue of scope and it would fragment the law in the area." [270]

301. She told the Committee that:

> The SLC has published a report on financial provision in the case of the breakdown of a cohabiting relationship in circumstances other than death. The Scottish Government will give consideration to a revised definition of cohabitants, which should extend to situations in which a cohabiting relationship ends by way of death, including the relevant timescale. [271]

302. The Minister was asked if, as grief affects everyone differently, she agreed with the Faculty of Advocates' recommendation that extending the period on an individual case-by-case basis could be a compromise in the Bill. She acknowledged the Committee “raised some valid points” and as such, she confirmed that the Scottish Government would be happy to consider extending the six-month period. [272]

303. **The Committee recommends that the Bill is amended to extend the current six-month period for cohabitants’ claims to a deceased person’s estate under the 2006 Act to 12 months.**

Further proposed law reforms

304. While witnesses were supportive of the provisions in Part 2 of the Bill, the Committee heard from a number of witnesses that significant further reforms were required to Scotland’s law of succession, in particular in relation to an area of law known as ‘legal rights’. Professor Paisley commented that “there has been report after report on succession for 25 or even 30 years. There have also been Scottish Law Commission consultations. Nothing has been taken forward.” [273]

305. Witnesses acknowledged that, although there is widespread agreement that reform is needed, this is a particularly challenging area for law reform. Professor Gretton said “Succession is notorious— you cannot get consensus…everyone will agree—that the current law is unsatisfactory…but you cannot get consensus on what should replace it”. [274]

306. The Committee notes that the Scottish Government continues to work on a wider succession law reform programme and accepts that the lack of consensus means

that this Bill would not be the appropriate place for such further reforms to be implemented.

307. The Committee also notes the Scottish Government commissioned research from the Scottish Civil Justice Hub, a venture led by the University of Glasgow's School of Law in collaboration with the Scottish Government's civil law and legal systems division.

308. The Scottish Government has since confirmed that that phase of research has finished, and it is awaiting the report on its findings, which will help inform the next steps. Once the research has been published, the Scottish Government confirmed it would write to the Committee with its views and thoughts.

309. **The Committee recognises the scope of this Bill and its status as an SLC Bill limits the changes which can be made within the Bill to the law of succession.**

310. **Nevertheless, the Committee has heard strong and differing views in relation to succession law and requests the Scottish Government sets out its thinking, and anticipated timescales on the next steps in relation to this area of law, at the same time as it publishes its recently completed research into the views of the wider general public on intestate succession. The Committee asks this is provided by the end of October 2023.**

311. **The Committee further recommends that succession law be given priority for future reform.**

Delegated Powers Memorandum

312. Under Rule 9.6.2 of Standing Orders the Committee is required to consider and report upon any provisions in the Bill that confer power to make subordinate legislation. The Committee considered the delegated powers in the Bill at its meeting on 17 January 2023.

313. The Bill confers two powers to make subordinate legislation on the Scottish Ministers. The Scottish Government has prepared a Delegated Powers Memorandum which sets out the reasoning for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.

314. The Committee was content with the delegated powers provisions in the Bill.

315. **The Committee is therefore content with the delegated powers contained in sections 78(1) and 80(3), and with the Parliamentary scrutiny procedures which are applied to these powers.**

Financial Memorandum

316. As noted earlier in this report, the Finance and Public Administration Committee issued a call for evidence on the Bill and received one response. It passed the submission to the Committee to take into account in its evidence sessions and also in its Stage 1 report. [275]

317. The Committee notes the response.

Conclusions on the general principles of the Bill

318. **The Committee recognises the benefits of the reforms proposed in the Bill and agrees that they will have a positive effect on the law relating to trusts. In addition, it supports the proposals relating to succession law, which reflect modern views and assumptions around who should inherit.**

319. **While this report calls on the Scottish Government to give further consideration to a number of issues ahead of Stage 2, in particular in relation to the issues relating to incapacity in Part 1 of the Bill and to the position of separated spouses or civil partners in intestate estates, the Committee recommends to the Parliament that the general principles of the Bill be agreed to.**

Annexe A: Stakeholders' suggestions on defining terms used in Bill

The table below provides details of stakeholders' suggestions for improving the clarity of the Bill by further defining terms used in the Bill or improving existing definitions.

Term	Organisation/individual	Commentary
Trustee (section 74)	Chris Sheldon (Turcan Connell); Mhairi Maguire (Enable Trust Service) Official Report 23 May	Not clear if it includes an interim trustee under charities legislation. Sine qua non trustees (lead trustees with a deciding power in decision-making) also not referred to explicitly.
Guardian (section 74)	Law Society	The Law Society said the Bill assumes that an adult with incapacity has a guardian, but this may not be the case.The Law Society also said the definition of guardian should be linked more explicitly to the 2000 Act and the range of interventions for incapable adults in it.
Public trust	The Scottish Churches Committee Madelaine Sproule (The Scottish Churches Trust), Offical Report, 23 May	This term, currently used in trust law, should be defined in the Bill.
Charitable trust	Law Society	The Law Society said this term, currently used in trust law, should be defined in the Bill.
Pension scheme	Professor Paisley (Official Report, 9 May)	This term, important to the scope of the Bill, should be defined in the Bill.
Private purpose trust (section 42(1))	Joan Fraser (Official Report, 23 May)	The witness was not clear whether her own trust was a private purpose trust and thought the definition here needed to be clearer.
Beneficiary (section 74)	Law Society	The Law Society said this definition is geared towards private trusts and is not particularly suited to public trusts.
Potential beneficiary (section 74)	Law Society	The Law Society said this term may be too broad for some purposes.

Annexe B: Extracts from minutes

34th Meeting, 2022, Tuesday, 20 December 2022

Trusts and Succession (Scotland) Bill (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

2nd Meeting, 2023, Tuesday, 17 January 2023

Trusts and Succession (Scotland) Bill (in private): The Committee considered the delegated powers provisions in this Bill at Stage 1.

11th Meeting, 2023, Tuesday, 28 March 2023

Trusts and Succession (Scotland) Bill (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

14th Meeting, 2023, Tuesday, 2 May 2023

Trusts and Succession (Scotland) Bill: The Committee took evidence from—

- Lady Ann Paton, Chair, Scottish Law Commission; and
- Lord Drummond Young, Lead Commissioner and Former Chair, Scottish Law Commission.

Trusts and Succession (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting and agreed to write to the Scottish Law Commission and to the Lord President's Private Office.

15th Meeting, 2023, Tuesday, 9 May 2023

Trusts and Succession (Scotland) Bill: The Committee took evidence from—

- Yvonne Evans, Senior Lecturer in Law, University of Dundee;
- Emeritus Professor George Gretton, Lord President Reid Professor of Law, University of Edinburgh; and
- Professor Roderick Paisley, Chair of Scots Law, University of Aberdeen.

Trusts and Succession (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.

16th Meeting, 2023, Tuesday, 16 May 2023

Trusts and Succession (Scotland) Bill: The Committee took evidence from—

- Ross Anderson, Partner, Jones Whyte;
- Sandy Lamb, Partner, Lindsays;

- John McArthur, Partner, Gillespie Macandrew;
- Caroline Pringle, Director, Anderson Strathern; and
- Joseph Slane, Associate, Turcan Connell;

and then from—

- Alan Barr, Convener of Trusts and Succession Law Sub-Committee, Law Society of Scotland;
- Laura Dunlop, KC, Convener of the Faculty's Law Reform Committee, Faculty of Advocates;
- Sarah-Jane Macdonald, Committee Member, STEP Scotland; and
- Ken Swinton, Council Member, Scottish Law Agents Society.

Trusts and Succession (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.

17th Meeting, 2023, Tuesday, 23 May 2023

Trusts and Succession (Scotland) Bill: The Committee took evidence from—

- Mike Blair, Solicitor and Trustee, Gillespie Macandrew LLP;
- Joan Fraser, Trustee;
- Ian Hood, Trustee, Private Trust;
- Mhairi Maguire, Executive Director, Enable Trustee Service;
- Charlie Marshall, General Manager, Wings for Warriors;
- Chris Sheldon, Trustee, Turcan Connell;
- Madelaine Sproule, Solicitor, Church of Scotland; and
- Valerie Macniven, Trustee, The Church of Scotland Trust.

Trusts and Succession (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.

19th Meeting, 2023, Tuesday, 6 June 2023

Trusts and Succession (Scotland) Bill: The Committee took evidence from—

- Siobhian Brown, Minister for Victims and Community Safety;
- Jamie Bowman, Legal Directorate; and
- Michael Paparakis, Policy Manager, Private Law Unit, Scottish Government.

Trusts and Succession (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.

21st Meeting, 2023, Tuesday, 20 June 2023

Trusts and Succession (Scotland) Bill (in private): The Committee considered the themes arising from evidence heard during its scrutiny of the Bill at Stage 1.

23rd Meeting, 2023, Tuesday, 5 September 2023

Trusts and Succession (Scotland) Bill (in private): The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft at its next meeting.

24th Meeting, 2023, Tuesday, 12 September 2023

The Committee considered a revised draft report, with various changes agreed. The Committee delegated responsibility to the Convener for finalising its publication.

Annexe C: Evidence

Oral Evidence

Meeting on Tuesday, 2 May 2023

- Lady Ann Paton, Chair, Scottish Law Commission; and
- Lord Drummond Young, Lead Commissioner and Former Chair, Scottish Law Commission.

Meeting on Tuesday, 9 May 2023

- Yvonne Evans, Senior Lecturer in Law, University of Dundee;
- Emeritus Professor George Gretton, Lord President Reid Professor of Law, University of Edinburgh; and
- Professor Roderick Paisley, Chair of Scots Law, University of Aberdeen.

Meeting on Tuesday, 16 May 2023

- Ross Anderson, Partner, Jones Whyte LLP;
- Sandy Lamb, Partner, Lindsays LLP;
- John McArthur, Partner, Gillespie Macandrew LLP;
- Caroline Pringle, Director, Anderson Strathern LLP;
- Joseph Slane, Associate, Turcan Connell;
- Alan Barr, Convener of Trusts and Succession Law Sub-Committee, Law Society of Scotland;
- Laura Dunlop, KC, Convener of the Faculty's Law Reform Committee, Faculty of Advocates;
- Sarah-Jane Macdonald, Committee Member, STEP Scotland; and
- Ken Swinton, Council Member, Scottish Law Agents Society.

Meeting on Tuesday, 23 May 2023

- Mike Blair, Solicitor and Trustee, Gillespie Macandrew LLP;
- Joan Fraser, Trustee;
- Ian Hood, Trustee, Private Trust;
- Mhairi Maguire, Executive Director, Enable Trustee Service;
- Charlie Marshall, General Manager, Wings for Warriors;

- Chris Sheldon, Trustee, Turcan Connell;
- Madelaine Sproule, Solicitor, Church of Scotland; and
- Valerie Macniven, Trustee, The Church of Scotland Trust.

Meeting on Tuesday, 6 June 2023

- Siobhian Brown, Minister for Victims and Community Safety;
- Jamie Bowman, Legal Directorate; and
- Michael Paparakis, Policy Manager, Private Law Unit, Scottish Government.

Written Evidence

- Aberdeen City Council
- Alice Pringle
- Anderson Strathern LLP
- Andres Knobel
- Association of Pension Lawyers (Legislative and Parliamentary Sub-committee)
- Brian McKenzie
- CMS Cameron McKenna Nabarro Olswang LLP
- Dr Alisdair MacPherson, University of Aberdeen

  Dr Alisdair MacPherson and Professor Roddy Paisley supplementary submission
- Faculty of Advocates
- Gillespie Macandrew LLP
- Joan Fraser
- Jones Whyte LLP
- Law Society of Scotland
- Lindsays LLP
- Office of the Scottish Charity Regulator
- Paul Brown
- Portfolio Counselling Services Limited
- Professor George Gretton
- Professor George Gretton supplementary submission
- Registers of Scotland

- STEP Scotland
- Scottish Land and Estates
- Scottish Law Agents Society
- Scottish Legal Complaints Commission
- Senators of the College of Justice
- The Scottish Churches Committee
- The Sheriffs and Summary Sheriffs Association
- Turcan Connell
- Yvonne Evans
- Yvonne Evans supplementary submission

Correspondence

- Letter from the Convener to the Auditor of Court for Edinburgh Sheriff Court, 8 September 2023
- Letter from the Convener to the Auditor of the Court of Session, 8 September 2023
- Minister for Victims and Community Safety to the Convener, 23 August 2023
- Alan Barr to the Convener, 28 July 2023
- Convener to the Minister for Victims and Community Safety, 7 July 2023
- Convener to Alan Barr, 29 June 2023
- Scottish Law Agents Society to the Convener, 26 May 2023
- Law Society of Scotland to the Convener, 26 May 2023
- Scottish Courts and Tribunals Service to the Convener, 25 May 2023
- Scottish Law Commission to the Convener, 24 May 2023
- Convener to the Scottish Law Agents Society, 17 May 2023
- Faculty of Advocates to the Convener, 17 May 2023
- Convener to the Law Society of Scotland, 17 May 2023
- Lord Pesidents Private Office to the Convener, 12 May 2023
- Yvonne Evans to the Convener, 12 May 2023
- Scottish Government to the Clerk, 10 May 2023
- Clerk to the Scottish Government, 10 May 2023

- Scottish Government to the Clerk, 10 May 2023
- Convener to Yvonne Evans, 10 May 2023
- Convener to Lady Ann Paton, 9 May 2023
- Convener to the Lord President's Private Office, 9 May 2023
- Scottish Government to the Convener, 28 March 2023

1 Correspondence from the Scottish Government to the Scottish Law Commission. 23 November 2022

2 Written evidence, Aberdeen City Council

3 Written evidence, Scottish Law Agents Society

4 Written evidence, Dr Alisdair MacPherson and Professor Roddy Paisley

5 Written evidence, Law Society of Scotland

6 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 11

7 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 7

8 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 14

9 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 6

10 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 33

11 Written evidence, Sheriffs and Summary Sheriffs Association

12 Written evidence, Senators of the College of Justice

13 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023.

14 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 7

15 Written evidence, Law Society of Scotland

16 Written evidence, Scottish Churches Committee

17 Written evidence, STEP Scotland

18 Written evidence, Gillespie Macandrew

19 Written evidence, Lindsays

20 Written evidence, Turcan Connell

21 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 34

22 Written evidence, STEP Scotland

23 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 38

24 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 38

25 Written evidence, Gillespie Macandrew

26 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 10

27 Written evidence, Law Society of Scotland

28 Written evidence, STEP Scotland

29 Written evidence, Gillespie Macandrew

30 Written evidence, Turcan Connell

31 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 12

32 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 38

33 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 11

34 Written evidence, STEP Scotland

35 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 8

36 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 6

37 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 15

38 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 6

39 Trusts and Succession (Scotland) Bill, Policy memorandum, Scottish Government

40 Written evidence, Joan Fraser

41 Written evidence, Gillespie Macandrew

42 Written evidence, Turcan Connell

43 Written evidence, Turcan Connell

44 Written evidence, Alice Pringle

45 Written evidence, Jones Whyte

46 Written evidence, Turcan Connell

47 Written evidence, Faculty of Advocates

48 Written evidence, Gillespie Macandrew

49 Written evidence, Law Society of Scotland

50 Written evidence, Law Society of Scotland

51 Written evidence, Law Society of Scotland

52 Scottish Mental Health Law Review

53 Written evidence, Law Society of Scotland

54 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 14

55 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 6

56 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 34

57 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 34

58 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 15

59 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 5

60 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 8

61 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 5

62 Written evidence, Law Society of Scotland

63 Written evidence, Yvonne Evans

64 Written evidence, Scottish Churches Committee

65 Written evidence, Scottish Churches Committee

66 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 28

67 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 27

68 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 7

69 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 7

70 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 7

71 Correspondence from the Scottish Law Commission. 24 May 2003

72 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 10

73 Written evidence, Scottish Law Agents Society

74 Written evidence, Anderson Strathern

75 Written evidence, Dr Alisdair MacPherson and Professor Paisley

76 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 16

77 Written evidence, Law Society of Scotland

78 Written evidence, Yvonne Evans

79 Written evidence, Turcan Connell

80 Written evidence, Turcan Connell

81 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 11

82 Written evidence, Scottish Law Agents Society

83 Written evidence, Law Society of Scotland

84 Written evidence, Yvonne Evans

85 Written evidence, Yvonne Evans

86 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 16

87 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 14

88 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 11

89 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 12

90 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 10

91 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 10

92 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 11

93 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 40

94 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 15

95 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 18

96 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 18

97 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 41

98 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 42

99 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 18

100 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 15

101 Written evidence, Scottish Law Agents Society

102 Written evidence, CMS Cameron McKenna Nabarro Olswang LLP

103 Written evidence, CMS Cameron McKenna Nabarro Olswang LLP

104 Written evidence, CMS Cameron McKenna Nabarro Olswang LLP

105 Written evidence, Professor Gretton

106 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 13

107 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 13

108 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 13

109 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 42

110 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 43

111 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 16

112 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 16

113 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 16

114 Written evidence, Law Society of Scotland

115 Written evidence, Professor Gretton

116 Written evidence, Scottish Legal Complaints Commission

117 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 15

118 Written evidence, Anderson Strathern

119 Written evidence, Gillespie Macandrew

120 Written evidence, Law Society of Scotland

121 Written evidence, Yvonne Evans

122 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 15

123 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 16

124 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 44

125 Written evidence, Law Society of Scotland

126 Written evidence, STEP Scotland

127 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 46

128 Written evidence, Gillespie Macandrew

129 Written evidence, STEP Scotland

130 Written evidence, Law Society of Scotland

131 Written evidence, Faculty of Advocates and Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 44

132 Written evidence, Law Society of Scotland

133 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 16

134 Written evidence, Turcan Connell

135 Written evidence, Law Society of Scotland

136 Written evidence, Faculty of Advocates

137 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 30 and 45

138 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 17

139 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 17

140 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 17

141 Supplementary written evidence, Professor Gretton

142 Supplementary written evidence, Professor Gretton

143 Written evidence, Anderson Strathern

144 Written evidence, Law Society of Scotland of Scotland

145 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 23

146 Written evidence, Law Society of Scotland of Scotland

147 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 22

148 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 18

149 Written evidence, Law Society of Scotland of Scotland

150 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 48

151 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 17

152 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 17

153 Written evidence, Law Society of Scotland of Scotland

154 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 20

155 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 18

156 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 18

157 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 18

158 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 21

159 Collated responses to Discussion Paper Number 142. Scottish Law Commission (2010)

160 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 21

161 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 21

162 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 21

163 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 19

164 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 21

165 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 21

166 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 47

167 Written evidence, Yvonne Evans

168 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 21

169 Written evidence, Joan Fraser

170 Written evidence, Yvonne Evans

171 Written evidence, Anderson Strathern

172 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 19

173 Written evidence, Anderson Strathern

174 Written evidence, Alice Pringle

175 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 18

176 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 21

177 Collated responses to Discussion Paper Number 142. Scottish Law Commission. (2010)

178 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 46

179 Collated responses to Discussion Paper Number 142. Scottish Law Commission. (2010)

180 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 21

181 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 26

182 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 25

183 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 18

184 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 19

185 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 19

186 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 20

187 Written evidence, Law Society of Scotland

188 Written evidence, Law Society of Scotland

189 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 50

190 Written evidence, STEP Scotland

191 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 20

192 Written evidence, Law Society of Scotland

193 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 50

194 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 22

195 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 24

196 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 20

197 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 24

198 Written evidence, Sheriffs and Summary Sheriffs Association

199 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 33

200 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Cols 27 and 29

201 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Cols 20 and 21

202 Written evidence, Senators of the College of Justice

203 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023

204 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 16

205 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 22

206 Written evidence, Yvonne Evans

207 Written evidence, Brian McKenzie

208 Written evidence, Alison Pringle

209 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 6

210 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 31

211 Written evidence, Scottish Law Agents Society

212 Written evidence, Professor Gretton

213 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 10

214 Written evidence, the Association of Pension Lawyers

215 Written evidence, the Association of Pension Lawyers

216 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 7

217 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 7

218 Correspondence from the Scottish Government to the Scottish Law Commission. 22 November 2022

219 Written evidence, the Association of Pension Lawyers

220 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 4

221 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 5

222 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 5

223 Correspondence with the Clerk of the Committee. 10 May 2023

224 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 4

225 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 4

226 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 4

227 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 5

228 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 7

229 Delegated Powers and Law Reform Committee. Official Report, 23 May 2023. Col 7

230 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 25

231 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 25

232 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 25

233 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 26

234 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 27

235 Written evidence, Scottish Churches Committee

236 Written evidence, Gillespie Macandrew

237 Written evidence, Lindsays

238 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 56

239 Written evidence, Paul Brown

240 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 54

241 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 24

242 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 53

243 Written evidence, STEP Scotland

244 Written evidence, Yvonne Evans

245 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 23

246 Written evidence, Yvonne Evans

247 Written evidence, Law Society of Scotland

248 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 27

249 The Scottish Government's Law of Succession consultation, 17 February 2019

250 Report on Judicial factors Scottish Law Commission, August 2013

251 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 32

252 Delegated Powers and Law Reform Committee. Official Report, 2 May 2023. Col 33

253 Written evidence, Dr Alisdair MacPherson and Professor Roddy Paisley

254 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 8

255 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 58

256 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 9

257 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023

258 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 58

259 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 28

260 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 28

261 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 29

262 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023.

263 Written evidence, Faculty of Advocates

264 Written evidence, Faculty of Advocates

265 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 29

266 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023.

267 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 57

268 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 58

269 Delegated Powers and Law Reform Committee. Official Report, 16 May 2023. Col 59

270 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 29

271 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 29

272 Delegated Powers and Law Reform Committee. Official Report, 6 June 2023. Col 22

273 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 25

274 Delegated Powers and Law Reform Committee. Official Report, 9 May 2023. Col 27

275 Published response for the Trusts and Succession (Scotland) Bill: Financial Memorandum - Scottish Parliament - Citizen Space