

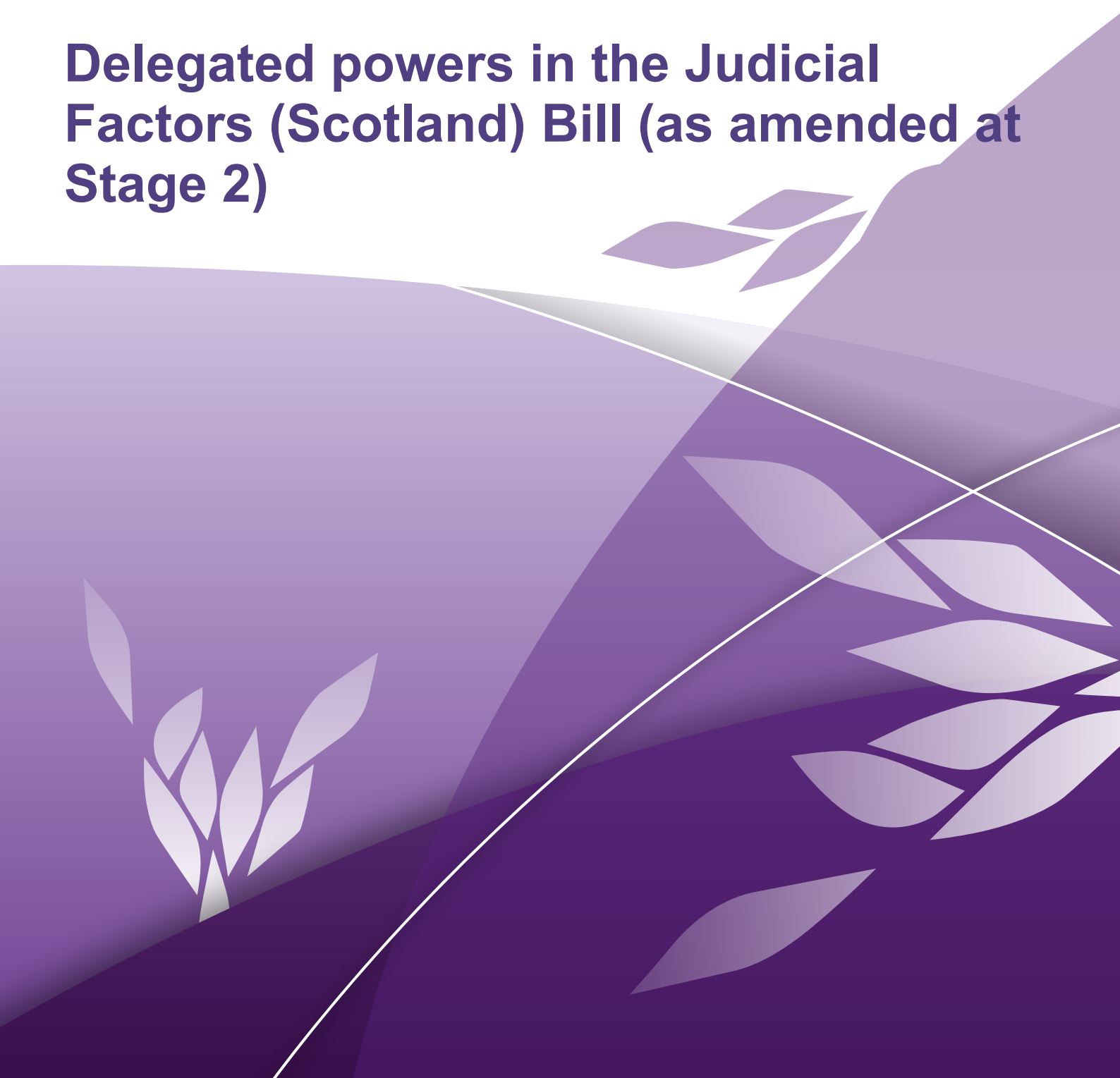


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Pàrlamaid na h-Alba

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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Delegated powers in the Judicial Factors (Scotland) Bill (as amended at Stage 2)**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is 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; and

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

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



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# Committee Membership



**Stuart McMillan**  
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Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Daniel Johnson**  
Scottish Labour



**Roz McCall**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 3 December 2024, the Committee considered the delegated powers contained in the Judicial Factors(Scotland) Bill (“the Bill”) following [amendments made at Stage 2](#).
2. The Committee previously considered the delegated powers in this Bill at Stage 1 and published its [report](#) on 7 February 2024, stating that it was content with the 3 delegated powers contained in the Bill.
3. Delegated powers in the Bill have since been amended, and therefore the Committee is required to consider the Bill as amended at Stage 2.
4. This Bill was introduced on 5 December 2023. The lead committee was the Delegated Powers and Law Reform Committee ("DPLRC").
5. The stated focus of the Bill is to consolidate and update the law relating to the office of judicial factor in Scotland, and to put in place a comprehensive and modern regime in this area of law.

# Delegated Powers

6. The amended Bill introduces 4 new powers. The Scottish Government has prepared a [Supplementary Delegated Powers Memorandum \("SDPM"\)](#) which sets out the powers and provides a brief explanation of what each allows for, why the power has been taken and why the Parliamentary procedure has been considered appropriate.
7. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

# Review of powers

## Section 6A(1) – Review of appropriateness of registration in the Register of Inhibitions

**Power conferred on: Scottish Ministers**

**Power exercisable by: regulations**

**Parliamentary procedure: affirmative**

**Revised or new: new**

### Provision

8. Section 6A(1) requires Scottish Ministers to review the continuing appropriateness of registering notices of appointment of judicial factors in the Register of Inhibitions; and that they may make changes to the registration arrangements by regulations.

### Committee consideration

9. The Scottish Government explains in the SDPM that the DPLRC supported the proposal to register judicial factories in the Register of Inhibitions. However, the DPLRC also considered that the Bill should be flexible enough to allow for registration to be changed in the future. It recommended periodic review and consideration of other ways in which appointments could be registered, including the creation of a standalone register. The Scottish Government agreed and brought forward section 6A.
10. The Scottish Government further explains that as the power can amend primary legislation which specifies the register to publicise a judicial factor's appointment, and includes the possibility of creating a new register, it considers the affirmative procedure provides a suitable level of parliamentary scrutiny.
11. The Committee find this power acceptable. It considers that there is sufficient detail in section 6A and in the SDPM as to how this power is to be exercised, that this power is limited as to how the appointment of judicial factors are registered, allows for flexibility in the future and can be implemented more easily than by primary legislation. The Committee also agrees that the affirmative procedure is appropriate given this power can amend primary legislation and that this provides for appropriate parliamentary oversight.
12. **The Committee find the power acceptable in principle and is content that it is subject to the affirmative procedure.**

## Section 9A(1) – Guidance about the appointment of judicial factors on the estates of missing persons

**Power conferred on: Scottish Ministers**

**Power exercisable by: guidance**



**Parliamentary procedure: none****Revised or new: new****Provision**

13. Section 9A(1) requires Scottish Ministers to issue guidance about the appointment of judicial factors on the estates of missing persons.

**Committee consideration**

14. The Scottish Government explains in the SDPM that the DPLRC recommended that consideration be given to including a reference to missing people in the Bill in such a way that makes it clear that the Bill may be used by those seeking to manage the estate of a missing person. The new power for Scottish Ministers to issue, review and revise guidance is, according to the Scottish Government in the SDPM, to assist families of missing persons to decide whether they wish to seek an appointment of a judicial factor and what such an appointment might entail.
15. The Scottish Government further explains that guidance is considered to be an appropriate method to address the specific issues associated with seeking the appointment of a judicial factor over the estate of a missing person and for signposting to other relevant resources - e.g. how to evidence a person as missing when making an application for appointment; and what happens if a missing person returns. In its view, the information envisaged to be set out in guidance would not be suitable for a regulation-making power or for further detailing on the face of the Bill. Also, it considers that it is not appropriate to provide for Parliamentary scrutiny of the issuing of guidance in this context.
16. The Committee find this power acceptable. It considers that there is sufficient detail in section 9A and in the SDPM as to how this power is to be exercised. The Committee agrees with the Scottish Government that the issuing of guidance is a suitable vehicle to assist families of missing persons to understand the appropriateness and legal complexities of appointing a judicial factor; and fulfils its recommendation to include a reference to missing people in the Bill. Further, guidance allows for flexibility and can be issued and updated easily. The Committee also agrees that because the guidance is intended to be of assistance only then it is appropriate that there is no requirement for parliamentary oversight of this guidance

- 17. The Committee find the power acceptable in principle and is content that it is not subject to any parliamentary procedure.**

**Section 35(1A) – Accountant of Court: appointment criteria****Power conferred on: Scottish Ministers****Power exercisable by: regulations****Parliamentary procedure: affirmative****Revised or new: new****Provision**

18. Section 35(1A) enables the Scottish Ministers, by regulations, to alter the criteria a person must satisfy to be appointed as the Accountant of Court by the Scottish Courts and Tribunals Service (“SCTS”).

### **Committee consideration**

19. The Scottish Government explains in the SDPM that section 35(1) of the Bill requires that the person appointed to the office of Accountant of Court must be, in the view of the SCTS, appropriately qualified or experienced in law and accounting. The DPLRC considered this requirement to reflect current practice to be sufficient. However, it also considered that there may be benefit in the Accountant’s qualification being subject to review, and that Scottish Ministers have flexibility to amend the qualification requirement in the future should the outcome of a review indicate that it is necessary or expedient to do so. The Scottish Government agreed and brought forward section 35(1A).
20. The Scottish Government further explains that as this is a power which allows modification of primary legislation, it is considered appropriate that it be made subject to the affirmative procedure.
21. The Committee find this power acceptable. It considers that there is sufficient detail in section 35(1A) and in the SDPM as to how this power is to be exercised, that this power is limited as to the criteria for the appointment of the Accountant of Court, allows for flexibility in the future and can be implemented more easily than by primary legislation. The Committee also agree that the affirmative procedure is appropriate given this power can amend primary legislation and that this provides appropriate parliamentary oversight.

- 22. The Committee find the power acceptable in principle and is content that it is subject to the affirmative procedure.**

### **Section 36(2A) – Depute Accountant: appointment criteria**

**Power conferred on: Scottish Ministers**

**Power exercisable by: regulations**

**Parliamentary procedure: affirmative**

**Revised or new: new**

### **Provision**

23. Section 36(2A) enables the Scottish Ministers, by regulations, to alter the criteria a person must satisfy to be appointed as the Depute Accountant of Court by the SCTS.

### **Committee consideration**

24. The Scottish Government explains in the SDPM that section 36(2) of the Bill requires that the person appointed to the office of Depute Accountant must be, in the view of SCTS, appropriately qualified or experienced in law and accounting. The qualification criteria imposed on the person appointed as the Depute Accountant is

the same as that imposed on the Accountant of Court under section 35(1). Given that the qualifications of the Accountant require to be periodically reviewed by the Scottish Ministers, the Scottish Government considers that the Depute Accountant's qualifications should also be subject to review, and able to be amended if needed.

25. The Scottish Government further explains that as this is a power which allows modification of primary legislation, it is considered appropriate that it be made subject to the affirmative procedure.
26. The Committee find this power acceptable. It considers that there is sufficient detail in section 36(2A) and in the SDPM as to how this power is to be exercised, that this power is limited as to the criteria for the appointment of the Depute Accountant of Court, allows for flexibility in the future and can be implemented more easily than by primary legislation. The Committee also agrees that the affirmative procedure is appropriate given this power can amend primary legislation and that this provides appropriate parliamentary oversight.

27. **The Committee find the power acceptable in principle and is content that it is subject to the affirmative procedure.**

