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Judicial Factors (Scotland) Bill

[DRAFT]

An Act of the Scottish Parliament to make new provision as respects judicial factors and the functions of the Accountant of Court; to make it incompetent to appoint a curator bonis to any person; and for connected purposes.

PART 1

APPOINTMENT OF JUDICIAL FACTOR OR OF INTERIM JUDICIAL FACTOR

1 Petition for appointment of judicial factor

- (1) Any person who the court is satisfied has an interest in the appointing of a judicial factor on an estate may petition the court for such an appointment to be made.
- (2) The petitioner must, without delay, intimate the petition to all persons who, so far as is known to the petitioner after reasonable enquiry, have an interest in the estate.
- (3) For the purposes of subsection (1), “the court” is the Court of Session or an appropriate sheriff court.
- (4) In subsection (3), the reference to “an appropriate sheriff court” is—
 - (a) where the petition relates to an estate a substantial part of which (that is to say a part comprising at least one fifth of its value) is situated in a particular sheriffdom, to the sheriff court of that sheriffdom,
 - (b) where the petitioner, or any person who has an interest in the estate, is habitually resident in a particular sheriffdom, to the sheriff court of that sheriffdom,
 - (c) where the petition relates to the estate of a person other than a natural person, to the sheriff court of a sheriffdom in which the person has a place of business, or
 - (d) where none of paragraphs (a) to (c) is applicable, to the sheriff court at Edinburgh.

2 Interim judicial factor

- (1) The court may, at its own instance or on the motion of the petitioner, appoint an interim judicial factor on the estate if it considers it necessary or expedient to do so pending the disposal of a petition under section 1(1).
- (2) Except where the context otherwise requires, the provisions of this Act apply in relation to an interim judicial factor appointed under subsection (1) as they apply to a judicial factor.
- (3) Such provisions as apply by virtue of subsection (2) apply with such modifications (if any) as the appointing court may consider appropriate.
- (4) The Accountant is from time to time to review the progress of any such interim judicial factory.

3 Appointment of judicial factor in course of proceedings

In the course of proceedings in the Court of Session or in the sheriff court, the court may at its own instance or on the motion of a party to the proceedings appoint a judicial factor on an estate if it considers it appropriate to do so.

4 Grounds on which judicial factor may be appointed

The grounds on which a judicial factor may be appointed under this Act are that it appears to the court there is an estate which requires to be managed or in relation to which actings of some kind are required and (either or both)—

- (a) for whatever reason, it is not possible, not practicable or not sensible for that management or those actings to be carried out by those who would ordinarily be responsible for carrying them out,
- (b) it would be to the advantage of the estate were a judicial factor to be appointed to manage it or to carry out the requisite actings.

5 Other powers of appointment

- (1) Sections 1 to 4 are without prejudice to—
 - (a) the power of the Court of Session to appoint a judicial factor (or interim judicial factor) by virtue of the *nobile officium*, or
 - (b) any power of that court or of the sheriff court to make such an appointment under or by virtue of any other enactment.
- (2) But the following provisions of this Act apply in relation to a judicial factor (or interim judicial factor) appointed under any of those powers as those provisions apply in relation to a judicial factor (or interim judicial factor) appointed under this Act.

6 Qualifications for appointment as judicial factor

- (1) To be appointed a judicial factor on an estate, a person must be—
 - (a) an individual,
 - (b) of full legal capacity, and
 - (c) in the opinion of the court to which it falls to make the appointment, a suitable person to hold that office.
- (2) A person may be so appointed whether or not domiciled in Scotland; and if domiciled furth of Scotland prorogates the jurisdiction of the Scottish courts by accepting the appointment.

7 Finding of caution

- (1) The court, in appointing a person as a judicial factor, may require the appointee to find caution for the observance and performance of the duties incumbent on the appointee by virtue of the appointment; but it is to

impose such a requirement only where it considers that exceptional circumstances peculiar to the particular appointment make it prudent to do so.

- (2) The Accountant—
 - (a) is to fix the amount of caution to be found, and
 - (b) may, at any time while the judicial factory subsists—
 - (i) require the person to find new, or additional, caution, or
 - (ii) authorise a reduction in the amount of caution to be found.

8 Intimation and registration of notice of appointment

- (1) Where a person is appointed a judicial factor, the clerk of court must as soon as reasonably practicable and in any event within 7 days after the interlocutor containing the order for the appointment is pronounced—
 - (a) intimate the appointment to the Accountant, and
 - (b) register notice of the appointment in the Register of Inhibitions.
- (2) Notice under subsection (1)(b) must specify an address at which service of documents may be effected on the person so appointed.
- (3) And the judicial factor must re-register notice of the appointment in the Register of Inhibitions every 5 years until the appointment is recalled (on each occasion informing the Accountant, without delay, that the requirement for re-registration has been complied with).
- (4) Any amount payable by virtue of subsection (1)(b) is to be met from the factory estate.

9 Vesting

- (1) The whole estate on which a judicial factor is appointed vests in the appointee (in the appointee's capacity as judicial factor) on the date on which the interlocutor containing the order for the appointment is pronounced.
- (2) Without prejudice—
 - (a) to the generality of subsection (1), and
 - (b) to sections 41 (appointment of judicial factor on estate of solicitor) and 42 (distribution of sums in client account) of the Solicitors (Scotland) Act 1980,in the case of an appointment under section 41 of that Act of a judicial factor on the estate of a solicitor, the estate vesting by of subsection (1) includes, unless the appointing court otherwise determines, all property held by the solicitor in a fiduciary capacity (irrespective of whether it is held at the credit of any client account or is held other than in the solicitor's professional capacity).

10 Warrant to intromit with estate

- (1) A certified copy of an interlocutor containing the order for the appointment of a person as a judicial factor on an estate—
 - (a) is the appointee's warrant to intromit with the estate, and

- (b) is to be issued to the appointee without delay by the clerk of court.
- (2) But where the court has imposed on the appointee a requirement under section 7, that copy is not to be issued before—
 - (a) the appointee’s bond of caution is transmitted to the Accountant, and
 - (b) the Accountant—
 - (i) is satisfied that the requirement has been met, and
 - (ii) so informs the court.

PART 2

POWERS AND DUTIES OF JUDICIAL FACTORS

11 Powers of judicial factor: general

- (1) On the date mentioned in section 9(1) there vest in the judicial factor all the powers of a natural person beneficially entitled to the estate.
- (2) Subsection (1) is without prejudice to any other enactment conferring powers on, or by virtue of which powers vest in, a judicial factor.
- (3) Schedule 1 provides for the interpretation of the expression “all the powers of a natural person beneficially entitled to the estate”.

12 Power of judicial factor to require information

- (1) A judicial factor may by written notice require any—
 - (a) public body,
 - (b) other body corporate,
 - (c) unincorporated association, or
 - (d) individual,
 to disclose to the judicial factor such information specified in the notice as the judicial factor reasonably considers relevant to the judicial factor’s functions.
- (2) The judicial factor is to send with any such notice the certified copy interlocutor containing the order for the judicial factor’s appointment.
- (3) A body or association which, or individual who, receives such a notice and its accompanying interlocutor is to comply with the notice without delay.
- (4) Subsection (5) applies where the information specified in the notice can readily be obtained by the judicial factor (either or both)—
 - (a) free of charge,
 - (b) under or by virtue of any other enactment.
- (5) The body, association or individual complies with the notice if, without delay, it (or as the case may be the individual) directs the judicial factor to the means by which the information can be so obtained.
- (6) If the body, association or individual is entitled by, under or by virtue of any other enactment to charge a fee for supplying the information requested, this section is without prejudice to that entitlement.

13 Further provision as to judicial factors' powers

- (1) In appointing a judicial factor the court may (either or both)—
 - (a) specify in the interlocutor of appointment powers which are granted to the appointee and are not mentioned in section 11(1) or 12(1),
 - (b) specify in that interlocutor that certain of the powers mentioned in section 11(1) are not to be exercisable by the appointee.
- (2) A judicial factor may, at any time, apply to the court to be granted powers additional to those which the judicial factor has by virtue of the interlocutor of appointment.
- (3) Any application under subsection (2) must be intimated to the Accountant who, after such inquiry (if any) as appears to that officer to be appropriate, must in a report to the court indicate whether in the opinion of that officer it would be expedient to grant the additional powers sought.

14 Duties of judicial factor: general

- (1) It is the duty of a judicial factor to hold, manage, administer and protect factory estate for the benefit of such persons as have an interest in the estate.
- (2) But subsection (1) is subject to the provisions of any other enactment and to such provision as is made in the interlocutor appointing the judicial factor.
- (3) In the performance of the duty imposed by subsection (1), a judicial factor must exercise care, prudence and diligence.

15 Ingathering

- (1) It is the duty of a judicial factor to ingather the factory estate.
- (2) The judicial factor may take such steps as are requisite to complete title to such property as is vested in the judicial factor by virtue of that person's appointment.
- (3) It is the duty of the judicial factor, on becoming aware that a person is a creditor or debtor of the factory estate, to inform the person of the judicial factor's appointment.
- (4) It is the duty of the judicial factor to ensure that all—
 - (a) cash accounts and share certificates, and
 - (b) other assets of a like nature,held by that person as judicial factor are readily identifiable as being so held.
- (5) This section is subject to section 23.

16 Inventory and management plan

- (1) A judicial factor is, within 6 months after the date on which the certified copy of the interlocutor containing the order for the judicial factor's appointment is issued, to send to the Accountant—

- (a) an inventory of the factory estate,
 - (b) a management plan (that is to say a plan as to how the judicial factor intends to administer the estate), and
 - (c) such accompanying documents as may be required by rules of court.
- (2) The Accountant may require the judicial factor to produce such further documents relevant to the inventory or management plan as the Accountant considers it necessary to examine.
- (3) The judicial factor is to seek to obtain the Accountant's agreement both to the inventory and to the management plan.
- (4) The Accountant may suggest or require (either or both)—
 - (a) an amendment to the inventory before agreeing to that inventory,
 - (b) an amendment to the management plan before agreeing to that plan.
- (5) The inventory, when agreed by the Accountant, is to be signed by the judicial factor and the Accountant as constituting, as at the date mentioned in subsection (1), a definitive statement of the estate for which the judicial factor is accountable.
- (6) The judicial factor and the Accountant may, at any time and in such manner as the Accountant may determine, take account of information discovered after the inventory is signed under subsection (5).
- (7) If the agreement of the Accountant to the management plan can be obtained, the judicial factor must administer the estate in accordance with that plan; but, if that agreement cannot be obtained, the judicial factor must administer the estate in accordance with the directions of the Accountant.
- (8) The judicial factor is to review an agreed management plan—
 - (a) from time to time (and at least annually), and
 - (b) whenever required to do so by the Accountant.
- (9) If, whether or not by virtue of a review under subsection (8), the judicial factor considers that an amendment to the management plan is required, the judicial factor may make the amendment provided that the Accountant's agreement is first obtained.
- (10) The Accountant may suggest or require an additional amendment to the management plan before agreeing to the amendment mentioned in subsection (9).
- (11) But if an additional amendment which the Accountant requires under subsection (10) is not effected by the judicial factor, the judicial factor must administer the factory estate in accordance with the directions of the Accountant.
- (12) It is the duty of the judicial factor to report to the Accountant, at such intervals as the Accountant may determine, as to how the administration of the estate is progressing.
- (13) This section is subject to section 23.

17 Submission of accounts etc.

- (1) It is the duty of a judicial factor to report to the Accountant (including by the submission of accounts) the judicial factor's intromissions with the factory estate.
- (2) Accounts prepared for the purposes of subsection (1) must be in such form as the Accountant may agree with the judicial factor (or, in the absence of such agreement, in such form as the Accountant may specify).
- (3) Without prejudice to subsection (2), reporting for the purposes of subsection (1) must be in a way agreed with the Accountant (or, in the absence of such agreement, in a way specified by the Accountant).
- (4) Accounts and other documents prepared for the purposes of subsection (1) must be submitted to the Accountant at such intervals as the Accountant may specify.
- (5) An interval specified under subsection (4)—
 - (a) is not to exceed 2 years, and
 - (b) is not ordinarily to be less than 1 year.
- (6) But, subject to subsection (5)(a), the Accountant may, on cause shown, defer a date by which accounts and other documents are to be submitted by virtue of subsection (4).
- (7) This section is subject to section 23.

18 Delegation

- (1) The judicial factor is not to delegate any of the judicial factor's functions and responsibilities other than—
 - (a) with the consent of the Accountant, or
 - (b) in so far as given the power to do so by this Act, by any other enactment or by the interlocutor appointing the judicial factor.
- (2) This section is subject to section 23.

19 Taking of professional advice

- (1) It is the duty of a judicial factor to take professional advice where it is appropriate to do so.
- (2) In determining whether it is appropriate to take professional advice in a particular case, a judicial factor may consult the Accountant.
- (3) This section is subject to section 23.

20 Investment

- (1) It is the duty of a judicial factor to consider whether (and if so how) to invest some or all of the funds of the factory estate.
- (2) This section is subject to sections 19 and 23.

21 Enforcing or defending claims

- (1) It is the duty of a judicial factor to enforce or defend any claim in relation to the estate provided that the judicial factor is satisfied that to do so would be sensible in all the circumstances.
- (2) In determining whether it is sensible in all the circumstances of a particular claim to enforce or defend the claim, a judicial factor may consult the Accountant.
- (3) This section is subject to sections 19 and 23.

22 Duty where estate object of dispute

- (1) This section applies where—
 - (a) the factory estate was, immediately before the appointment of the judicial factor, not being managed adequately because persons who required to agree among themselves on how to manage it could not reach such agreement, and
 - (b) the appointment was made wholly or mainly for that reason.
- (2) It is the duty of the judicial factor, by whatever method the judicial factor considers appropriate in the circumstances, to promote agreement on how to manage the estate; and if that method is mediation or arbitration the mediator or arbitrator may, but need not, be the judicial factor.
- (3) If agreement is not attained, or does not appear to the judicial factor to be attainable, by virtue of subsection (2), it is the duty of the judicial factor to formulate a scheme, being a scheme which the judicial factor considers equitable, for the management or distribution of the estate.
- (4) Without prejudice to the generality of subsection (3), the scheme may comprise—
 - (a) the appointment of a manager by the persons mentioned in subsection (1)(a),
 - (b) the division and sale of all or part of the factory estate.
- (5) This section is subject to section 23.

23 Further provision as to judicial factors' duties

- (1) In appointing a judicial factor the court may (either or both)—
 - (a) specify in the interlocutor of appointment duties which are imposed on the appointee and are not duties mentioned in sections 15 to 22,
 - (b) specify in that interlocutor certain duties (whether or not duties mentioned in those sections) from which the appointee is to be free.
- (2) A judicial factor may, at any time, apply to the court to be free from certain of the duties which the judicial factor has by virtue of the interlocutor of appointment.
- (3) Any application under subsection (2) must be intimated to the Accountant who, after such inquiry (if any) as appears to that officer to be appropriate,

must in a report to the court indicate whether in the opinion of that officer it would be expedient to grant what is sought by the judicial factor.

24 Validity of certain transactions by judicial factor appointed on trust estate

- (1) This section applies where a judicial factor is appointed on a trust estate and in relation to that estate, or any part of that estate—
 - (a) thinks it expedient to exercise a power enjoyed by virtue of this Act, but
 - (b) considers that its exercise might be at variance with the purposes of the trust.
- (2) The judicial factor may apply to the Accountant for the Accountant's consent to the exercise of the power.
- (3) The Accountant may grant the application (subject to such conditions, if any, as the Accountant may think fit to impose) provided that—
 - (a) the exercise is, in the opinion of the Accountant, in the best interests of all parties interested in the trust estate,
 - (b) the Accountant is satisfied that the judicial factor has complied with subsection (4) and with the provisions of any rules under that subsection, and
 - (c) the Accountant is satisfied either—
 - (i) that no objection is made, under subsection (4), to the exercise, or
 - (ii) that any objection so made is not sufficient cause for dismissing the application.
- (4) A judicial factor who proposes to make an application under subsection (2) must give such notification as is mentioned in subsection (5) to such persons, or such class or classes of person, as may be specified in rules of court and must do so in such manner as may be so specified.
- (5) The notification is—
 - (a) of the proposal to apply to the Accountant for consent to the exercise in question,
 - (b) of what that exercise would comprise, and
 - (c) of the person notified being entitled, by virtue of this section, to object (within such time and in such manner as the rules of court may specify) to the exercise.
- (6) Where a judicial factor exercises any power in accordance with a consent duly obtained under this section, the exercise is to be treated as not being at variance with the purposes of the trust.
- (7) This section is without prejudice to section 13(2).

PART 3

DEALINGS ETC. WITH THIRD PARTIES

25 Protection of person acquiring title

Where a person has, in good faith and for value, acquired title from—

- (a) a judicial factor, the title acquired is not challengeable on the ground that, subsequent to the acquisition, the judicial factor's appointment was recalled, or
- (b) a person deriving title directly from a judicial factor, the title acquired is not challengeable on the ground that the title should not have been transferred to that person.

26 Entitlements and liabilities of judicial factor

A judicial factor stands in place of the factory estate in any dealings with a third party and accordingly the judicial factor, in the judicial factor's capacity as such—

- (a) is liable for any debt or obligation of the estate to the third party, and
- (b) is entitled to receive any amount due to the estate by the third party and to enforce any obligation of the third party to the estate.

27 Contracts entered into by judicial factor

- (1) Where a judicial factor, in the judicial factor's capacity as such, enters into a contract with another person and that person either is aware, or ought to be aware, that the judicial factor is entering into the contract in that capacity—
 - (a) any rights which that person or any third party has under or by virtue of the contract are enforceable against the factory estate only, and
 - (b) if the contract gives rise to litigation, the action is to be raised by, or as the case may be directed against, the judicial factor in the judicial factor's capacity as such.
- (2) Subsection (1) is subject to section 31.

28 Expenses of litigation on behalf of factory estate

- (1) Where a judicial factor engages in litigation on behalf of the factory estate, any expenses of the litigation awarded against the judicial factor fall to be met from the factory estate.
- (2) Subsection (1) is subject to section 31.

29 Delict

- (1) Where the acts or omissions of—
 - (a) a judicial factor, in the judicial factor's capacity as such, or

- (b) an agent appointed, or person employed, by the judicial factor to carry out the business of the judicial factor, give rise to a claim in delict, any action to enforce the claim is to be brought against the judicial factor in that capacity.
- (2) Any damages awarded against the judicial factor by virtue of the action fall to be met from the factory estate.
- (3) This section is subject to section 31.

30 Unjustified enrichment

- (1) Where the acts or omissions of a judicial factor, in the judicial factor's capacity as such, give rise to a claim for unjustified enrichment against the factory estate, any liability resulting from the claim falls to be met from the estate.
- (2) Subsection (1) is subject to section 31.

31 Personal liability of judicial factor where breach of duty

- (1) This section applies where liability arises from a claim against a factory estate.
- (2) The claim falls to be met out of the estate unless the court—
 - (a) finds that the liability arose by virtue of a breach of duty on the part of the judicial factor, and
 - (b) considers it appropriate that the judicial factor be found personally liable for (as the court thinks fit) all, or some part of, the liability.

32 Prescription of obligations

- (1) Subject to subsection (2), obligations due to or by a factory estate prescribe in the ordinary way; that is to say as if there had been no appointment of a judicial factor on the estate.
- (2) Obligations due by a judicial factor to the factory estate are imprescriptible during the course of the judicial factory.

PART 4

DISTRIBUTION, TERMINATION, RECALL AND DISCHARGE

33 Approval of judicial factor's scheme for distribution of factory estate

- (1) This section applies where a judicial factor has formulated—
 - (a) a scheme for the distribution of the factory estate because it appears to the judicial factor —
 - (i) that the purpose for which that person was appointed is fulfilled or no longer exists, or
 - (ii) that there are not, or may not be, sufficient funds in the factory estate to meet the

- continuing expenses of the judicial factor,
or
- (b) a scheme by virtue of section 22(3), being a scheme comprising a distribution of the factory estate.
- (2) The judicial factor must—
- (a) send to the Accountant—
- (i) a current inventory of the factory estate, and
- (ii) a copy of the proposed scheme, and
- (b) seek the Accountant's approval of a distribution in accordance with the scheme in question,
- and may, if to obtain that approval it seems to the judicial factor to be appropriate to do so, amend that scheme.
- (3) If the Accountant approves the scheme (or, if the scheme has been amended, the scheme as amended), the judicial factor must without delay—
- (a) intimate that approval to all persons who, so far as is known to the judicial factor after reasonable enquiry, have an interest in the factory estate, and
- (b) send each of those persons—
- (i) a copy of the current inventory of the factory estate, and
- (ii) a copy of the approved scheme.
- (4) A person to whom intimation is given under paragraph (a) of subsection (3) may, within 21 days after receiving the copy documents mentioned in paragraph (b) of that subsection, lodge with the Accountant an objection to there being any distribution in accordance with the approved scheme.
- (5) If no objection is lodged timeously under subsection (4) (or an objection is lodged timeously but is then withdrawn) the judicial factor must distribute the estate in accordance with the approved scheme.
- (6) If an objection is lodged timeously under subsection (4) (and is not withdrawn) the Accountant must refer the objection to the court which appointed the judicial factor; and the Accountant is in that event to inform accordingly—
- (a) the judicial factor, and
- (b) any person to whom intimation is given under subsection (3)(a).
- (7) The court to which an objection is referred by virtue of subsection (6) is to require the objector to find caution for the expenses of the court proceedings unless it considers that, in all the circumstances, it would not be in the interests of justice to impose such a requirement.
- (8) The court, after hearing the objector, the judicial factor and any other person who it is satisfied has an interest in the matter may (unless it rejects the objection, in which case the judicial factor must distribute the estate in accordance with the approved scheme) instruct the judicial factor to distribute the estate in such manner as the court orders.

34 Petition for distribution of factory estate

- (1) This section applies where the court is satisfied that a petitioner has an interest in seeking the distribution of a factory estate.
- (2) The petitioner may petition the court for the estate to be distributed in such manner as the court thinks fit.
- (3) The petitioner must intimate the petition to any person to whom the court considers intimation should be made.
- (4) The court, after hearing the petitioner, the judicial factor (if not heard by virtue of being the petitioner), the Accountant and any other person who it is satisfied has an interest in the petition may, unless it refuses the application, instruct the judicial factor to distribute the estate in such manner as the court orders.
- (5) If the petitioner is not the judicial factor, the court must be satisfied that reasonable steps have been taken to persuade the judicial factor—
 - (a) to formulate a scheme for the distribution of the factory estate, and
 - (b) to seek, under section 33(2)(b), the Accountant's approval of a distribution in accordance with a scheme so formulated,but that the judicial factor will not do those things (or cannot obtain the requisite approval).
- (6) If the petitioner is the judicial factor, the court must be satisfied that the petitioner cannot obtain the approval mentioned in subsection (5).
- (7) The court is to require the petitioner (other than the judicial factor) to find caution for the expenses of the court proceedings unless it considers that, in all the circumstances, it would not be in the interests of justice to impose such a requirement.

35 Termination, recall and discharge after distribution of factory estate by virtue of section 33(5) or (8) or 34(4)

- (1) This section applies where a judicial factor has distributed the factory estate by virtue of section 33(5) or (8) or 34(4).
- (2) The judicial factor is to apply to the Accountant—
 - (a) for the judicial factor to be terminated,
 - (b) for the judicial factor's appointment to be recalled, and
 - (c) to be granted a certificate of discharge.
- (3) With any application under subsection (2) the judicial factor is to send a copy of the judicial factor's final accounts.
- (4) After auditing those accounts the Accountant is, except where subsection (6) applies, to grant the judicial factor a certificate—
 - (a) terminating the judicial factor,
 - (b) recalling the judicial factor's appointment, and
 - (c) discharging the judicial factor.
- (5) Subsection (6) applies if, after auditing the judicial factor's final accounts, the Accountant considers or suspects there has been misconduct or failure on the part of the judicial factor.

- (6) The Accountant is to take action under section 46 rather than to proceed as mentioned in subsection (4).

36 Registration where judicial factory terminated under section 35 (1)

- (1) This section applies where a judicial factory is terminated under section 35.
(2) As soon as reasonably practicable (and in any event within 7 days after the date on which a certificate is granted under subsection (4)(a) of that section) the Accountant must register in the Register of Inhibitions a certified copy of that certificate.

37 Formulations, approvals, petitions and registrations relating to part only of factory estate

Sections 33 to 36 apply in relation to any formulation, approval, petition or, as the case may be, registration in relation to a part only of a factory estate as they apply in relation to a factory estate.

38 Duty of Accountant to apply for appointment of replacement where judicial factor has died undischarged etc.

- (1) Where a judicial factor (in this section referred to as “JF”)—
(a) has died undischarged but no petition has been lodged by any person for a judicial factor to be appointed in place of JF, subsection (2) applies,
(b) though undischarged, has ceased for whatever reason to perform the duties of a judicial factor but no petition has been lodged by any person for a judicial factor to be appointed in place of JF, subsection (3) applies.
- (2) If the Accountant is of the opinion that the purpose for which JF was appointed still exists, it is the duty of the Accountant to petition the court, under section 1(1), for a judicial factor to be appointed in place of JF.
- (3) If the Accountant is of the opinion that the purpose for which JF was appointed still exists, it is the duty of the Accountant to petition the court—
(a) under section 1(1), for a judicial factor to be appointed in place of JF, and
(b) for the recall of JF’s appointment.
- (4) A judicial factor appointed by virtue of subsection (2) or (3) must—
(a) (in addition to fulfilling the duties imposed by sections 15 and 16) bring JF’s accounts up to date and close them as at the date on which the interlocutor containing the order for the appointment is pronounced, and
(b) on its appearing to the appointee to be appropriate to do so, apply to the Accountant for JF’s discharge.
- (5) The Accountant may grant an application made under paragraph (b) of subsection (4) if satisfied that it is appropriate to do so.
- (6) The expenses of any petition lodged under subsection (2) or (3) are, unless the court determines otherwise, to be met from the factory estate.

39 Other petitions for recall and discharge

- (1) In this section—
 - (a) subsection (2) applies where, in circumstances other than those mentioned in section 33(1), a judicial factor wishes to resign, and
 - (b) subsection (3) applies where, in such other circumstances, some person other than the judicial factor, being a person who the court is satisfied has an interest, seeks to have the judicial factor's appointment recalled.
- (2) The judicial factor may petition the court—
 - (a) to recall the judicial factor's appointment, and
 - (b) for the judicial factor's discharge.
- (3) The person may petition the court to recall the judicial factor's appointment and the judicial factor may apply by motion for the court, if it grants the petition, also to grant the judicial factor's discharge.
- (4) A petition under subsection (2) or (3) is to include a crave for the appointment of a judicial factor on the factory estate in place of the judicial factor whose appointment is to be recalled.
- (5) A petition under subsection (2) or (3) is not to be granted until the certified copy of an interlocutor containing an order for the appointment of a judicial factor on the factory estate in place of the judicial factor whose appointment has been recalled has been issued to that new judicial factor by the clerk of court.
- (6) The petitioner must intimate any petition under subsection (2) or (3) to—
 - (a) the Accountant, and
 - (b) any other person to whom the court considers intimation should be made.
- (7) When a petition is lodged under subsection (2), the petitioner must send a copy of the judicial factor's accounts to the Accountant.
- (8) In the case of any petition under subsection (3), the court—
 - (a) must require the petitioner to find caution for the expenses of the court proceedings unless it considers that, in all the circumstances, it would not be in the interests of justice to impose such a requirement, and
 - (b) if minded to grant the petition, must require the judicial factor to prepare and send to the Accountant of Court a copy of the judicial factor's accounts.
- (9) On receiving a copy of the judicial factor's accounts by virtue of subsection (7) or (8)(b), the Accountant must audit those accounts and present to the court a report—
 - (a) with regard to the audit, and
 - (b) as to whether, in the Accountant's view, the judicial factor's appointment ought to be recalled and (if so) whether discharge ought to be granted.
- (10) Neither recall nor discharge is to be granted by virtue of a petition under subsection (2) or (3) without the court having received and considered a

report under subsection (9) and made such further inquiry (if any) as it considers necessary.

40 Inventory and balance sheet where judicial factor appointed by virtue of section 38 or 39

- (1) Where a judicial factor is appointed by virtue of section 38(2) or (3), the opening balance sheet of the appointee is to be such as is agreed between the appointee and the Accountant.
- (2) Where a judicial factor is appointed by virtue of section 39(4)—
 - (a) the final inventory and balance sheet of the judicial factor replaced constitute the opening inventory and balance sheet of the appointee, but
 - (b) if, in consequence of the judicial factor replaced having been replaced undischarged, there is—
 - (i) no agreed final inventory of the judicial factor replaced, the opening inventory of the appointee,
 - (ii) no agreed final balance sheet of the judicial factor replaced, the opening balance sheet of the appointee,is to be such as is agreed between the appointee and the Accountant.

41 Writing off

- (1) This section applies where the Accountant is satisfied that, were the judicial factor to formulate a scheme, under section 33(1), for the distribution of a factory estate and to seek approval of a distribution in accordance with the scheme, such funds (if any) as there are in the estate would not be sufficient even to meet the expenses of, or arising in connection with, doing those things.
- (2) The Accountant is, except where subsection (5) applies, to—
 - (a) direct the judicial factor to distribute such funds (if any) as there are in the estate in any way the Accountant considers appropriate,
 - (b) terminate the judicial factory,
 - (c) recall the judicial factor's appointment, and
 - (d) discharge the judicial factor.
- (3) As soon as reasonably practicable after terminating a judicial factory under subsection (2)(b) the Accountant must register a notice of its termination in the Register of Inhibitions.
- (4) Subsection (5) applies if the Accountant considers or suspects there has been misconduct or failure on the part of the judicial factor.
- (5) The Accountant is to take action under section 46 rather than to proceed as mentioned in subsection (2).

42 Ending of judicial factor's accountability on discharge

On—

- (a) an interlocutor containing an order for discharge of a judicial factor being issued by the clerk of court, or
 - (b) a certificate of discharge being granted to a judicial factor, (whether in relation to the entire factory estate or to part only of that estate)
- the judicial factor's accountability for acts and omissions in the judicial factor's capacity as judicial factor in relation to that estate, or as the case may be in relation to that part, ends except if and in so far as the judicial factor has incurred criminal liability in the course of holding, managing, administering or protecting the estate.

PART 5

ACCOUNTANT

43 Accountant and Depute Accountant

- (1) The Accountant must be an individual knowledgeable in matters of law and accounting as must any Depute Accountant.
- (2) A Depute Accountant (if any is appointed) is to carry out the functions of the Accountant at any time when the Accountant is unable to do so.
- (3) Subject to the provisions of any other enactment, the Accountant is not to hold any other office.
- (4) The sole remuneration of the Accountant is to be of such amount as the Scottish Court Service may determine.
- (5) The Accountant is to charge a fee for anything done by that officer in connection with that officer's functions under this Act.
- (6) Without prejudice to the generality of subsection (5), the fees charged by virtue of that subsection are to be such as will ensure that the Accountant is reimbursed for any outlays reasonably incurred by that officer in connection with that officer's functions under this Act.
- (7) Any fee received by the Accountant by virtue of subsection (5), and any sum received by that officer other than as remuneration, is to be accounted for in such manner as the Scottish Court Service may direct.
- (8) Amounts payable by virtue of subsection (5) are to be met from the factory estate.
- (9) But subsection (8) is subject to section 51.
- (10) The Accountant may, if satisfied in relation to a particular case that a fee payable by virtue of subsection (5) is unlikely to be recovered, waive the right to recover it.

44 Functions of Accountant: general

- (1) The Accountant is—
 - (a) to supervise the performance by judicial factors of the functions conferred on them by this or any other enactment or by any rule of law, and

- (b) to ensure that they duly observe such legal requirements and guidance as affect that performance.
- (2) Subsection (1) is without prejudice to any duty imposed on the Accountant by or by virtue of any other enactment.

45 Power of Accountant to instruct judicial factor

The Accountant may instruct a judicial factor as to the manner in which that person is to carry out the functions of judicial factor.

46 Misconduct or failure of judicial factor

- (1) Subsection (2) applies where the Accountant has reason to believe that a judicial factor—
 - (a) has engaged, or is engaging, in misconduct,
 - (b) has failed, or is failing, to discharge certain duties, or
 - (c) has failed, or is failing, to comply with an instruction given under section 45.
- (2) The Accountant is to make such inquiries into the matter as that officer considers appropriate and is to seek comments and representations from the judicial factor as respects the matter.
- (3) Any other person who has reason to believe that a judicial factor—
 - (a) has engaged, or is engaging, in misconduct, or
 - (b) has failed, or is failing, to discharge certain duties, may so inform the Accountant.
- (4) On receiving information under subsection (3), the Accountant is to make such inquiries into the matter as that officer considers appropriate and is to seek comments and representations from the judicial factor as respects the matter.
- (5) Subsection (6) applies where, having made inquiries under subsection (2) or (4), the Accountant concludes that there has been, on the part of the judicial factor, some appreciable—
 - (a) misconduct, or
 - (b) failure.
- (6) The Accountant must report the misconduct or failure—
 - (a) to the court which appointed the judicial factor, and
 - (b) if the judicial factor is a member of a professional body, to that body.
- (7) If the court receives a report under subsection (6), it is to give the judicial factor an opportunity to make representations and to be heard before it disposes of the matter.
- (8) The court may dispose of the matter in whatever manner it considers appropriate.
- (9) A determination of the court under subsection (8) is final and is conclusive against both the Accountant and the judicial factor.
- (10) But any such determination is without prejudice to any right which a person may have in respect of any loss consequent upon the judicial factor's—
 - (a) misconduct,

- (b) failure to discharge a duty, or
 - (c) failure to comply with an instruction under section 45.
- (11) And subsections (1) to (8) are without prejudice to any right, under Part 4, to petition the court to recall the judicial factor's appointment and to the powers of the court in relation to any such petition.

47 Power of Accountant to require information

- (1) The Accountant may by written notice require any—
 - (a) judicial factor,
 - (b) public body,
 - (c) other body corporate,
 - (d) unincorporated association, or
 - (e) individual,to provide such information as is specified in the notice (being information which the Accountant considers relevant to the Accountant's functions under this Act).
- (2) It is the duty of the judicial factor, body, association or individual to comply with the notice without delay.
- (3) Subsection (4) applies where the information specified in the notice can readily be obtained by the Accountant (either or both)—
 - (a) free of charge,
 - (b) under or by virtue of any other enactment.
- (4) A body, association or individual complies with the notice if, without delay, the body, association or individual directs the Accountant to the means by which the information can be so obtained.
- (5) If a body, association or individual is entitled, by, under or by virtue of any other enactment, to charge a fee for supplying the information requested, this section is without prejudice to that entitlement.

48 Audit by Accountant

- (1) On receipt, by virtue of this Act, of accounts prepared by a judicial factor the Accountant is, after considering such further information as the Accountant thinks it appropriate to obtain, to audit the accounts.
- (2) The Accountant may, if the Accountant considers it necessary or expedient to do so, remit the accounts for auditing to such duly qualified persons as the Accountant may select.
- (3) But all such audits are to be supervised by the Accountant; and the Accountant is responsible for their correctness.
- (4) When the audit is completed, the Accountant is to set out its results in the form of a report.
- (5) On completing that report the Accountant is to send a copy of it to the judicial factor.
- (6) If in the course of the audit the Accountant (or as the case may be a person to whom the accounts have been remitted)—
 - (a) comes to the view that some aspect of the accounts requires to be explained, then the judicial factor is to be

- given an opportunity to provide the requisite explanation before the audit is completed, or
- (b) has made any correction to the accounts, then the Accountant (or that person), on being required to do so by the judicial factor, must explain the correction and the reason for making it.
- (7) Persons to whom accounts are remitted by virtue of subsection (2) are be remunerated for their services.

49 Further provision as regards audit and report under section 48

- (1) Subject to subsections (2) to (6), the audit completed under section 48, together with the accounts to which that audit relates and the report of its results, are conclusive.
- (2) The judicial factor to whom the report relates may lodge a written objection to the report with the Accountant.
- (3) Any such written objection must be lodged within 21 days after the judicial factor receives the report by virtue of section 48(5).
- (4) The Accountant is to consider any objection which is lodged timeously under subsection (2) and may, if that officer considers it appropriate to do so, alter the results and report of the audit in order to take account of matters raised in the objection.
- (5) Where the Accountant dismisses an objection considered under subsection (4) the judicial factor may require that officer to refer the objection to the court which appointed the judicial factor.
- (6) The determination of that court in relation to an objection so referred is final and is conclusive.

50 Annual review

- (1) The Accountant must publish annually a review of that officer's activities in relation to the judicial factories mentioned in subsection (3).
- (2) The review—
- (a) is to contain such particulars, and be published in such manner, as may be prescribed by rules of court, and
- (b) may contain such other particulars as the Accountant thinks it appropriate to include.
- (3) The judicial factories are those which at any time subsist during the year in question (irrespective of whether they came into being before or after the coming into force of this section).

51 Inspection of certain records held by Accountant

- (1) The inventory, management plan, annual accounts and audit report relating to a particular judicial factory and kept by the Accountant are open to inspection, by any person with an interest in the factory estate, on cause shown and on payment to the Accountant of a fee by that person.

- (2) Copies of any such records or papers, attested by the Accountant, are to have the same authority as the originals and are to be provided to any person—
- (a) requiring them, and
 - (b) with an interest in the factory estate,
- on cause shown and on payment to the Accountant of a fee by that person.

PART 6

MISCELLANEOUS AND GENERAL

Miscellaneous

52 Right of judicial factor to require determination as regards decision of Accountant: general

- (1) A judicial factor may apply to the court which appointed the judicial factor for a determination as regards any decision of the Accountant which relates to the judicial factor.
- (2) But (without prejudice to sections 49 and 53) subsection (1) does not apply as regards—
- (a) a decision to dismiss an objection considered under section 49(4), or
 - (b) a decision by virtue of which an appeal is competent under section 53(7).
- (3) The determination of the court in relation to a decision so referred to it is final and is conclusive against both the Accountant and the judicial factor.

53 Remuneration and reimbursement of judicial factors

- (1) A judicial factor is entitled to be remunerated from the factory estate for carrying out the functions of that office.
- (2) The Accountant is, after such consultation as appears to that officer to be appropriate, to fix rates for the remuneration of judicial factors.
- (3) Different rates may be fixed by virtue of subsection (2)—
- (a) for interim judicial factors,
 - (b) for different kinds of work, and
 - (c) for different circumstances.
- (4) The Accountant and the judicial factor are to agree the frequency with which amounts are to be paid to the judicial factor by way of remuneration; but if they are unable to agree, the Accountant is to determine that frequency.
- (5) The Accountant must review at least annually the rates so fixed.
- (6) The Accountant may fix a rate of remuneration for a particular interim judicial factor other than by virtue of subsections (2) to (5).
- (7) A judicial factor may appeal to the court which appointed that person in respect of (either or both)—
- (a) the amounts paid to the judicial factor by way of remuneration,

- (b) any determination of the Accountant under subsection (4).
- (8) The decision of the court in an appeal to it under subsection (7) is final and is conclusive against both the Accountant and the judicial factor.
- (9) A judicial factor is entitled to be reimbursed from the factory estate—
 - (a) for any outlays reasonably incurred, and
 - (b) as and when those outlays are so incurred.

54 Diversity of judgment or practice

- (1) This section applies where it appears to the Accountant that—
 - (a) there is a diversity of judgment or practice in proceedings in judicial factories in the sheriff courts, and
 - (b) it is important to put an end to that diversity.
- (2) It is the duty of the Accountant to report the matter to the Lord President of the Court of Session, specifying the proceedings in which the diversity has appeared and proposing that a rule be framed to secure uniformity of judgment and practice in such proceedings.
- (3) The Lord President is to consider the report and take such action in the matter as the Lord President thinks appropriate.

55 Competence of appointing curator bonis

In any proceedings begun after the coming into force of this section it is not competent to appoint a curator bonis to any person.

General

56 Interpretation

In this Act—

“the Accountant” means the accountant of the Court of Session,
“clerk of court” means the sheriff clerk or as the case may be a clerk of session,
“estate” means whole estate, irrespective of whether the property in question is heritable or moveable,
“factory estate” means the estate on which a judicial factor is appointed,
“interest in the estate” means an interest in the residual estate (that is to say, in the estate after payment of any debts), and
“judicial factor” means a person appointed as such by a court (whether under an enactment or a rule of law) to hold, manage, administer and protect property.

57 Modification of enactments

Schedule 2 makes provision for the modification of enactments.

58 Repeals and revocations

Schedule 3 contains repeals and revocations.

59 Ancillary provision

- (1) The Scottish Ministers may, by order, make such incidental, supplemental, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by, under or by virtue of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under subsection (1)—
 - (a) is subject to the affirmative procedure if it modifies any enactment, and
 - (b) is otherwise subject to the negative procedure.

60 Commencement

- (1) This section and section 61 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

61 Short title

The short title of this Act is the Judicial Factors (Scotland) Act 2019.

SCHEDULE 1

(introduced by section 11(3))

INTERPRETATION OF SECTION 11(1)

- 1 Without prejudice—
 - (a) to the generality of section 11(1), and
 - (b) to section 13(1)(b),the powers mentioned in section 11(1) include powers to take any of the measures mentioned in paragraph 2.
- 2 (1) To take possession of, collect and ingather the property of the factory estate.
 - (2) On behalf of the factory estate—
 - (a) to bring or defend any action,
 - (b) to make any application to the court, or
 - (c) to engage in any other legal proceedings.
 - (3) To carry out works.
 - (4) To grant any deed necessary for carrying into effect a power vested in the judicial factor.
 - (5) To carry on—
 - (a) the business (if any) of the factory estate, or
 - (b) any part of that business.
 - (6) To enter into, or take over, a contract.
 - (7) To pay a debt due by the estate without requiring the creditor to constitute the debt, provided that the judicial factor is satisfied that the debt is a proper debt of the factory estate.
 - (8) To employ, or dismiss from employment, any person.
 - (9) To appoint an agent to carry out business which the judicial factor does not have the competence to carry out.
 - (10) To remunerate any person appointed under sub-paragraph (9).
 - (11) To sell the factory estate, or any part of the factory estate, (whether heritable or moveable).
 - (12) To grant, vary or accept the surrender of a lease or tenancy of any duration of the heritable factory estate or of any part of the heritable estate.
 - (13) To remove a tenant.
 - (14) To take a lease or tenancy of any duration of any property if it is a lease or tenancy required for the business of the estate.
 - (15) To make any kind of investment of the factory estate, including an investment in heritable property.
 - (16) To appoint a person as the judicial factor's nominee, to exercise the judicial factor's power of investment under sub-paragraph (15).
 - (17) To authorise an agent to exercise any of the judicial factor's investment management functions at the agent's discretion.
 - (18) To exchange any part of the heritable factory estate for heritable estate of a like, or greater, value.
 - (19) To acquire property (whether heritable or moveable).
 - (20) To borrow money on the security of the factory estate or of any part of the factory estate (whether heritable or moveable).
 - (21) On behalf of the factory estate, to draw, accept, make or endorse any bill of exchange or promissory note.

- (22) To refer to arbitration a question affecting the factory estate.
 - (23) To formulate and propose a scheme for division of the factory estate.
 - (24) To petition the court for (either or both)—
 - (a) authority to act at variance with the purposes of the judicial factory,
 - (b) a variation of the judicial factor's powers.
 - (25) To concur, in respect of any securities of a company which are comprised in the factory estate and in like manner as if the judicial factor was entitled to the securities beneficially, in any scheme or arrangement for—
 - (a) the reconstruction of the company,
 - (b) the sale of the property and undertaking of the company, or any part of that property and undertaking, to another company,
 - (c) the acquisition of the securities of the company, or of control of those securities, by another company,
 - (d) the amalgamation of the company with another company, or
 - (e) the release, modification or variation of any rights, privileges or liabilities attached to the securities or to any of the securities.
 - (26) To accept any securities of the reconstructed, purchasing or new company in lieu of, or in exchange for, all or any of the original securities.
 - (27) To retain any such securities for any period for which the judicial factor could properly have retained the original securities.
 - (28) To such extent as the judicial factor thinks fit—
 - (a) to exercise any conditional or preferential right to subscribe for any securities in a company,
 - (b) to apply capital of the factory estate in payment of the consideration for such subscription,
 - (c) to retain the securities for any period for which the judicial factor has power to retain the holding in respect of which the right to subscribe was offered (but subject to any conditions subject to which the judicial factor has that power),
 - (d) to renounce any such conditional or preferential right, or
 - (e) to assign to any person, for the best consideration that reasonably can be obtained the benefit of, or title to, any such conditional or preferential right.
- 3 "Person" in paragraph 2(28)(e) includes any person having an interest in the factory estate.

SCHEDULE 2
(introduced by section 57)

MODIFICATION OF ENACTMENTS

Trusts (Scotland) Act 1921

- 1
- (1) The Trusts (Scotland) Act 1921 is amended as follows.
 - (2) In section 2 (definitions)—
 - (a) in the definition of “Trust”, paragraph (b) and the word “and” immediately preceding that paragraph are repealed,
 - (b) in the definition of “Trust deed”, paragraph (b) and the word “and” immediately preceding that paragraph are repealed,
 - (c) in the definition of “Trustee”, for the words “, executor nominate and judicial factor” there is substituted “or executor nominate”.
 - (3) In the proviso to section 3 (what trusts shall be held to include), paragraph (3) and the word “and” immediately preceding that paragraph are repealed.
 - (4) In section 8(2)(b) (conveyances to non-existing or unidentifiable persons), the words “or judicial factor”, in the second place at which they occur, are repealed as are the words from “, or a warrant” to “as the case may be”.
 - (5) In each of sections 22 (appointment of new trustees by the court) and 24 (completion of title by the beneficiary of a lapsed trust), the words from “in like manner” to “1874” are repealed.
 - (6) Section 25 (completion of title of judicial factors) is repealed.

Conveyancing (Scotland) Act 1924

- 2
- In section 5(3)(b) of the Conveyancing (Scotland) Act 1924 (deduction of title)—
- (a) for the words from the beginning to “are” there is substituted “Section 44 of the Conveyancing (Scotland) Act 1874 is”,
 - (b) for the words “section forty four of the said Act of 1874, as hereby amended,” there is substituted “that section”, and
 - (c) the words “shall be applicable to all judicial factors within the meaning of section three of the said Act of 1868, and both of such sections hereby amended” are repealed.

Companies Act 1989

- 3
- In section 182(3)(b) of the Companies Act 1989 (powers of court in relation to certain proceedings begun before the commencement of that section)—
- (a) the words “by a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889” are repealed, and

- (b) after the word “person” there is inserted “by a judicial factor appointed under the Judicial Factors (Scotland) Act 2019”.

Pension Schemes Act 1993

- 4 (1) The Pension Schemes Act 1993 is amended as follows.
- (2) In section 123 (interpretation of Chapter 2 of that Act), in subsection (2)(b), for the words “section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section” there is substituted “the Judicial Factors (Scotland) Act 2019 is required by virtue of section 129A of the Bankruptcy (Scotland) Act 2016”.
- (3) In section 127(2)(b) (transfer to Secretary of State of rights and remedies), for the words “11A of the Judicial Factors (Scotland) Act 1889” there is substituted “51A of that Act”.

Employment Rights Act 1996

- 5 (1) The Employment Rights Act 1996 is amended as follows.
- (2) In each of sections 166(6)(b)(ii) (applications for payment) and 183(2)(b)(ii) (insolvency), for the words “section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent” there is substituted “the Judicial Factors (Scotland) Act 2019 on his insolvent estate is required by section 129A of the Bankruptcy (Scotland) Act 2016 to divide the”.
- (3) In section 189(2)(b) (transfer to Secretary of State of rights and remedies), for the words “11A of the Judicial Factors (Scotland) Act 1889” there is substituted “51A of that Act”.

Pensions Act 2004

- 6 In section 121(2)(e)(ii) of the Pensions Act 2004 (insolvency event, insolvency date and insolvency practitioner), for the words “section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) is required by that section to divide the individual’s” there is substituted “the Judicial Factors (Scotland) Act 2019 on the individual’s insolvent estate is required by section 129A of the Bankruptcy (Scotland) Act 2016 to divide the”.

Bankruptcy and Diligence etc. (Scotland) Act 2007

- 7 In section 168(2)(a) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (inhibition effective against judicial factor), for the words “under section 11A of the Judicial Factors (Scotland) Act 1889 (c.39) (application for judicial factor on deceased person’s estate)” there is substituted “, under the Judicial Factors (Scotland) Act 2019, on the insolvent estate of a deceased person”.

Third Parties (Rights against Insurers) Act 2010

- 8 In section 5(2)(c) of the Third Parties (Rights against Insurers) Act 2010 (individuals who die insolvent), for the words “section 11A of the Judicial Factors (Scotland) Act 1889 in respect of” there is substituted “the Judicial Factors (Scotland) Act 2019 on”.

Bankruptcy (Scotland) Act 2016

- 9 (1) The Bankruptcy (Scotland) Act 2016 is amended as follows.
(2) In section 88(1) (limitations on vesting), after paragraph (b) there is inserted—
“(bb) property held by the debtor in the debtor’s capacity as a judicial factor.”.
(3) After section 129 there is inserted—

“129A Modification of section 129 and schedule 2 where judicial factor appointed

- (1) This section applies where a judicial factor is appointed under the Judicial Factors (Scotland) Act 2019 on the estate of a deceased person and that estate is absolutely insolvent.
(2) Section 129 of, and schedule 2 of, this Act shall apply as if for references—
(a) to the trustee in the sequestration there were substituted references to the judicial factor; and
(b) to the date of sequestration there were substituted references to the date of the judicial factor’s appointment.”.

SCHEDULE 3

(introduced by section 58)

REPEALS AND REVOCATIONS

Part 1

Repeals

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Judicial Factors Act 1849	The whole Act.
Titles to Land Consolidation (Scotland) Act 1868	Section 24.
Conveyancing (Scotland) Act 1874	In section 44, the words “or judicial factor” in both places at which they occur.

Conveyancing and Land Transfer (Scotland) Act 1874	In section 43, the words “or judicial factor”.
	In section 44, the words “or judicial factor” in both places at which they occur.
Judicial Factors (Scotland) Act 1880	The whole Act.
Judicial Factors (Scotland) Act 1889	The whole Act.
Administration of Justice (Scotland) Act 1933	In section 25, the words “Accountant of Court,”.
Conveyancing Amendment (Scotland) Act 1938	Section 1, in so far as relating to judicial factors.
Trusts (Scotland) Act 1961	Section 2(3) to (6). Section 3.
Conveyancing and Feudal Reform (Scotland) Act 1970	In Schedule 3, in paragraph 9(2)(b), the words “under section 11A of the Judicial Factors (Scotland) Act 1889”.
Superannuation Act 1972	In Schedule 6, paragraph 2.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1980	Section 7. Section 14.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1990	Section 67. In Schedule 8, paragraph 21.
Children (Scotland) Act 1995	In Schedule 4, paragraphs 2 and 4.
Adults with Incapacity (Scotland) Act 2000	In schedule 5, paragraphs 3 and 6.
Abolition of Feudal Tenure etc. (Scotland) Act 2000	In schedule 12, paragraph 8(8).
Bankruptcy and Diligence etc. (Scotland) Act 2007	In schedule 5, paragraph 5.

Part 2

Revocations

<i>Title and date</i>	<i>Extent of revocation</i>
Act of Sederunt (Aliments and Factors Being Liable for Annual Rent) July 31st. 1690	The whole Act of Sederunt
Act of Sederunt (Factors upon and Tacksmen of Sequestrate Estates) December 25th. 1708	The whole Act of Sederunt
Act of Sederunt (More Speedy Discussing of Compts and Reckonings) November 22nd. 1711	The whole Act of Sederunt
Act of Sederunt (Dispatch of Business) July 31st. 1717	The whole Act of Sederunt
Act of Sederunt (Factors Appointed by the Lords on the Estates of Pupils not Having Tutors and Others) February 13th. 1730	The whole Act of Sederunt