

ANNEX C

TYPES AND VOLUMES OF JUDICIAL FACTOR APPOINTMENTS

The following data has been replicated from the Scottish Court and Tribunal Service website at this web address <http://www.scotcourts.gov.uk/the-courts/more/the-accountant-of-court/judicial-factors>

Types of Judicial Factory

There are many circumstances where a Judicial Factory may be required and appointed, these include:

Section 41 of the Solicitors (Scotland) Act 1980

Applications for the appointment of a Judicial Factor over a solicitors firm are normally made by The Law Society of Scotland where there has been a breach of Law Society Accounting Rules or where a sole practitioner dies. A Factor will normally be appointed to investigate the position of the firm and deal with client claims, and usually over the estate of the individual partners of the firm.

Section 11A of the Judicial Factors (Scotland) Act 1889

These appointments relate to the estate of a deceased person. It may be that the person nominated to be the executor of the estate is unable or unwilling to act, or where the executor has failed to carry out their duties. It can also be in situations where no one has been nominated as executor and no one is prepared to be appointed by the Court.

A Judicial Factor in these cases will ingather anything that may be due to the deceased's estate, settling any lawful debts and thereafter distributing the estate to anyone deemed to be a beneficiary.

Section 35 of the Partnership Act 1980

These appointments relate to the winding up of a partnership. They normally arise where the partners are unable to agree on how the partnership will operate or wound up. The Judicial Factor is responsible for determining how the partnership will be concluded and how the partnership assets will be distributed.

Section 9(5)(a) of The Children (Scotland) Act 1995

These appointments can be made where a child is due to receive funds in excess of £20K and/or where the child's estate is large or complicated. The Accountant of Court can seek to have a Judicial Factor appointed by the Court to administer the estate, until the child turns 16 (the age of legal capacity).

Appointments on Trust Estate

These appointments can be made if the last Trustee has died without appointing a successor, or where Trustees are in disagreement. In these types of cases the Judicial Factor will take control of the estate and operate it in accordance with the trust provisions until such times as the purpose of the trust is fulfilled, or the estate is exhausted. These normally represent the longest running types of Judicial Factor, with the oldest active case relating to a trust drawn up in 1826.

Appointments relating to Limited Companies

In rare occasions a Judicial Factor can be appointed on an interim basis over a limited company, where the relationship between the directors is adversely affecting the running of the company.

Appointments relating to Bankruptcy

When someone dies with outstanding debts then one of the creditors may apply to have a Judicial Factor appointed, to wind the estate up and arrange for payments of the debts. This will only happen when there is no one willing or able to wind up the deceased person's estate. A Factor in these cases will be required to take control of the estate, investigate the debts due from the estate, and make payment of any debts. If the estate is insolvent then the Factor will arrange to pay all creditors a proportionate share of the available estate in settlement of the total debt due to them.

Appointments relating to Charities

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

Miscellaneous appointments

This covers cases not mentioned above and may also include "Loco Absentis" cases. A Judicial Factor will be appointed in a "Loco Absentis" case where an individual goes missing and has not made any provision for their affairs to be managed on their behalf. A Judicial Factor will be appointed to administer their estate until the absentee returns, or is declared dead. It should be noted that a Judicial Factor is restricted to preserving the estate in these types of cases.

Other miscellaneous types of Judicial Factor may include, for example a Commissary Factor.

Case Volumes by Type

Number of active Judicial Factory's (by type) at year end.

CASE TYPE	2016	2017	2018
Bankruptcy	4	4	4
Charity	2	2	1
Children Scotland Act	1	1	1
Executry	15	12	17
Limited Co	1	0	0
Partnership	10	11	11
Misc	0	0	3
Solicitor Act *	42	35	26
Trust	9	7	11
TOTAL	84	72	74

* Includes if appropriate the individual personal estates of the partners of the firm.