

ANNEX D

Summary of Consultation questions

Question 1

Should the Scottish Government implement the Report by the Scottish Law Commission?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 2

Please provide any comments on the current procedure for the appointment of judicial factors in the case of a missing person.

Question 3

Should there be a qualifying period during which a factor in loco absentis cannot be appointed? If so, what should that period be?

Yes

No

Don't know

If yes, how long?

Question 4

Should the duty of a judicial factor appointed in the case of a missing person be limited to acting in their best interests only?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 5

Should the Scottish courts only have jurisdiction to appoint a judicial factor to an estate of a missing person if:

- The missing person was domiciled in Scotland on the day before the person was first known to be missing; or
- The missing person had been habitually resident in Scotland for at least one year;
- The application is made by the person's spouse or civil partner or cohabitee (i.e. living together as if married) and the applicant is domiciled in Scotland or has been habitually resident in Scotland for at least one year?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 6

Are there any other provisions in the Guardianship (Missing Persons) Act 2017 which could be usefully replicated in any Scottish legislation?

Yes

No

Don't know

Please set out which provisions and give reasons for your answer.

Question 7

Should there be a change of name of "loco absentis" cases?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 8

If so, what are your views on “judicial factor over a missing person estate”?

Yes

No

Don't know

Alternatives

Question 9

Should the Accountant in Court be able to draw matters of concern to the attention of the relevant sheriff court?

Yes

No

Why did you select your answer above?

Question 10

Should the Accountant of Court be able to vary or recall directions?

Yes

No

Why did you select your answer above?

Question 11

Do we need to specify the procedure where no joint minute or subsequent decree has taken place?

Yes

No

Why did you select your answer above?

Question 12

Do you agree that the views of the child should be taken into account (where practicable and taking account of their age and maturity) where a parent is appointed as the child's legal representative?

Yes

No

Why did you select your answer above?

Question 13

What would be the most proportionate way of ensuring that a child's views are taken into account and would it require legislative change (please provide details)?

Yes

No

Why did you select your answer above?

Question 14

Should applications to appoint a judicial factor be heard in the sheriff court rather than the Court of Session?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 15

If applications to appoint a judicial factor are to be heard in the sheriff court rather than the Court of Session, should it be the same rule for applications to appoint a judicial factor under the Solicitors (Scotland) Act 1980?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 16

The Scottish Government proposes that the “appropriate sheriff court” for an application would be:

Estates of missing persons

- Where the missing person was domiciled the day before the person was first known to be missing; or
- Where the missing person had been habitually resident for at least one year (or, if more than one place in Scotland, where most time had been spent); or
- Where the person’s spouse or civil partner or cohabitee is domiciled or has been habitually resident for at least one year (or, if more than one place in Scotland, where most time had been spent).

Estates of other natural persons

- In the Sheriffdom where the applicant, or any person with an interest in the estate.

Non-natural persons

- In the Sheriffdom where the person who has the estate has a place of business.

None of the above applies

If none of the above applies, the “appropriate sheriff court” would be the sheriff court in Edinburgh.

Does this seem a reasonable approach?

Yes

No

Don’t know

If you wish, please give reasons for your answer.

Question 17

Should sections 4 and 6 of the draft Commission Bill be followed in relation to who may be appointed as a judicial factor?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 18

Do you agree that the wording at section 7 of the draft Bill reflects that caution is only required in exceptional circumstances?

Yes

No

Don't know

If you wish, please give reasons for your answer.

Question 19

Do you consider that that interlocutors should contain provisions on how proactively an estimate should be managed?

Yes

No

Don't Know

If you wish, please give reasons for your answer

Question 20

Should judicial factors continue to be paid a commission?

Yes

No

Don't know

If you wish, please give reasons for your answer

Question 21

Do you have any other comments on how judicial factors should be paid in future?

Question 22

Do you have any comments on the Impact Assessments?