



Delegated Powers and Law Reform Committee

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Dear Lady Paton

Trusts and Succession (Scotland) Bill

Thank you for giving evidence to the Committee, along with Lord Drummond Young, on the Trusts and Succession (Scotland) Bill (“the Bill”) on Tuesday, 2 May. Your evidence was very helpful and appreciated by the Committee.

For information, the Official Report (substantially verbatim transcript) of the meeting is now available here: [DPLR Committee: Tuesday 2 May - Official Report](#).

As I mentioned at the meeting, I have noted below a reminder of areas you committed to respond to the Committee on—

Pension Trusts

You will recall you noted you were in favour of the Scottish Government seeking an Order under section 104 of the Scotland Act 1998 to include pension trusts in its definition of a trust.

The Committee would therefore be grateful if you could provide it with the further information you said you could provide on what dialogue is taking place in relation to the Section 104 order.

Trustees’ powers of investment (sections 16 and 17)

Lord Drummond Young offered to send the Committee a copy of a talk he delivered on green investment last year, which may be relevant to suggestions made by the [Law Society](#), and the academic lawyer, [Yvonne Evans](#) that, in view of Scotland’s increasing emphasis on net zero goals, sections 16 and 17 could be amended.

This information would be gratefully received.

Court Actions

Section 7 of the Bill

Responding to questions about stakeholders highlighting policy concerns about a risk of abuse of section 7 of the Bill, in the context of the trustee who is regarded as incapable by their co-trustees, but who believes instead that they should continue as a trustee, Lord Drummond Young said he could see some merit in the policy concerns. However, he also commented:

“Any decision can be challenged in court – I emphasise the generality of the right to go to court. That is why we did not see that there was any need for particular protections in that regard.” (Official Report, col 15)

It would be helpful for the Committee if the SLC could provide some more details in relation to the type of legal challenge the SLC were envisaging might be available to a trustee who had been removed by their fellow trustees but who disagreed with that decision. For example, it would be helpful if the SLC could explain:

- **whether this general right of challenge is set out explicitly in the Bill. If not, what its legal basis is, i.e. the common law or another statute**
- **whether such a case would be considered in the Court of Session or the sheriff court**
- **the type of remedy the SLC envisages the court awarding at the end of a successful court action (e.g. declarator or reduction of the decision made).**

Chapter 6 of the Bill – private purpose trusts

Later, when discussing Chapter 6 of the Bill, in particular whether the role of supervisor should be mandatory for a private purpose trust. Lord Drummond Young commented:

“Patrick Ford pointed out to us that, in Scots law, there is a well-established concept of interest to sue. To raise an action in court, you have to have title to sue in the sense of a legal title, and you must establish that you have an interest to sue in the sense of a pecuniary or proprietary interest in the outcome of the action. It must make a difference to you; you cannot raise abstract points...We felt that, ultimately, that was the answer. The concept of interest to sue allows a range of people to enforce a purpose trust. If you do not have an interest to sue, you cannot go to court to enforce the trust, but there will be people with that interest.” (Official Report, col 22)

Again, it would be helpful for the Committee if the SLC could provide some further details in relation to:

- **whether this right to go to court is set out explicitly in the Bill. If not, what its legal basis is, i.e. the common law or another statute,**
- **which court would consider the case,**

- **who, precisely, would be able to raise court action and in what circumstances,**
- **what legal remedies a court would be able to award at the conclusion of a successful court action.**

Trustees' duties to provide information on sections 25 and 26

Following my questions in relation to concerns expressed by respondents to the committee's consultation regarding the information provision requirements in these sections, Lord Drummond Young confirmed he would provide further considerations on these sections.

This information would be gratefully received.

Charities (Regulation and Administration) (Scotland) Bill

Jeremy Balfour MSP asked how the Scottish Law Commission envisages that OSCR's administrative power to appoint interim trustees to charitable trusts on its own initiative under section 8 of the Charities (Regulation and Administration) (Scotland) Bill will work with the court's power to appoint trustees under chapter 1 of part 1 of the Trusts and Succession (Scotland) Bill.

In his response, Lord Drummond Young confirmed he would look at section 8 of the Charities (Regulation and Administration) (Scotland) Bill and get back to the Committee on these questions.

This information would be gratefully received.

Expenses of litigation (sections 65 and 66)

As you will see from the Law Society's response to the committee's consultation (linked to above), the Law Society is concerned about the current policy underpinning section 65, which provides principles to determine how legal bills are paid for in trust cases. It says that trustees shouldn't find themselves personally liable for the expenses of litigation where there is insufficient trust property.

Furthermore, the Law Society thinks section 65 could deter people from becoming trustees and may lead trustees to unfavourably settle or abandon legal proceedings for fear of personal liability.

Oliver Mundell MSP also asked if the Scottish Law Commission thought there would be merit in putting in the Bill an exemption from personal liability when people act in a charitable capacity or when a trust is relatively modest.

Lord Drummond Young responded that, although the commission felt that what it provided gives trustees fair and reasonable protection and should not serve as a disincentive, he would also like the opportunity to read what the Law Society has said and reconsider matters in that light.

Do you have any comments you want to make in relation to the Law Society's concerns at this stage, after having had the opportunity to review its response to the consultation?

Part 2 of the Bill – Succession

Finally, moving to questions on Part 2 of the Bill dealing with succession.

In relation to section 72 of the Bill, the Law Society and various other respondents to the Committee's call for views have said that they want a distinction to be drawn between:

- (a) spouses or civil partners who were living with the deceased person at the time of their death; and
- (b) those spouses or civil partners who had previously separated from the deceased person (but not divorced or had the partnership dissolved).

Having had time to reflect, does the Commission have any views on this suggestion?

The Committee would be grateful for a response to its questions above by **Thursday, 25 May**.

I look forward to hearing from you.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee