



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Alan Barr
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Dear Mr Barr

Trusts and Succession (Scotland) Bill

Thank you for giving evidence to the Committee on the Trusts and Succession (Scotland) Bill (“the Bill”) on Tuesday, 16 May. Your evidence was very helpful and appreciated by the Committee.

Now that the Committee has concluded its evidence sessions at this stage, it wanted to come back to you on one point in particular.

In its [written evidence to the Committee](#), the Law Society of Scotland expressed a view that section 65 of the Bill (expenses of litigation) was “quite a radical provision” in relation to the personal liability of trustees in cases where trust property is insufficient to meet the expenses (section 65(2)) that would disincentivise people from becoming trustees and may lead to a “severe danger of a conflict of interest being created between the personal interests of the trustees and those of the trust”.

When you gave [evidence on 16 May](#), you stated that this position was “fundamentally unfair” and would “go against the notion of the separate patrimony of a trustee’s position”.

When we raised these concerns with the [Minister on 6 June](#), she stated:

“Section 65 achieves what the Law Society seemed to be asking for by making the default position that trustees are not personally liable for expenses. There are some exceptions to that default position, but they are subject to the court’s discretion, which is widely drawn. That ensures that trustees of underfunded trusts who unnecessarily litigate are not given an unfair advantage in litigation proceedings”

In addition, a Scottish Government official added:

“The issue of litigation expenses was consulted on extensively by the Scottish Law Commission. The approach set out in the initial consultation on litigation expenses was very similar to what the Law Society seemed to be asking for, which was a blanket no-personal-liability approach, but the responses that were received by the Scottish Law Commission—in particular, from the Faculty of Advocates and STEP—made it reconsider the original proposal, principally in respect of the issue of litigation by trusts with insufficient funds. The Scottish Law Commission took on board the views of the Faculty of Advocates and STEP, which is why it has attempted a compromise in the bill.”

The committee would be interested to know whether, having had the opportunity to reflect on the evidence heard by the Committee on this point (in particular the evidence from the Minister and the Scottish Government), the Law Society of Scotland has any further comments to make in relation to section 65 of the Bill.

The Committee would be grateful for a response to its questions above by **Friday, 28 July**.

A copy of this letter has been sent to the Minister for Victims and Community Safety.

I look forward to hearing from you.

Yours sincerely

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