



Judicial Factors (Scotland) Act 1880

1880 CHAPTER 4 43 and 44 Vict

An Act to provide for the appointment of Judicial Factors in Sheriff Courts in Scotland. [9th July 1880]

Modifications etc. (not altering text)

- C1 Act amended by [Judicial Factors \(Scotland\) Act 1889 \(c. 39\), s. 6](#)
- C2 Preamble recites Judicial Factors Act 1849 and is omitted under authority of [Statute Law Revision Act 1894 \(c. 56\)](#)
- C3 Certain words repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)
- C4 Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

1 Short title.

This Act may be cited for all purposes as the Judicial Factors (Scotland) Act, 1880.

2^{F1}

Textual Amendments

- F1 [S. 2](#) repealed by [Statute Law Revision Act 1894 \(c. 56\)](#)

3 Interpretation of terms.

In this Act the following words and expressions shall have the meanings herein-after assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

The expression “Judicial Factor” shall [^{F2}include ^{F3} . . . , ^{F4} . . . a factor *loco* [^{F5}*absentis* and] a factor on trust or other estates, ^{F6} . . . but does not include a judicial factor appointed under [^{F7}section 11A of the ^{M1} Judicial Factors (Scotland) Act 1889]]

Changes to legislation: There are currently no known outstanding effects for the Judicial Factors (Scotland) Act 1880. (See end of Document for details)

The expressions “Accountant of the Court of Session” or “Accountant,” shall mean the Accountant of the Court of Session appointed under the recited Act:

The expression “prescribed” means prescribed by the regulations which the Court of Session are by this Act authorised to make from time to time by act of sederunt:

The expression “Lord Ordinary” shall mean the Lord Ordinary in the Court of Session discharging the duties of Junior Lord Ordinary in time of session, and the Lord Ordinary on the Bills in the time of vacation:

“Estate” shall include all property and funds, and all rights heritable and moveable.

Textual Amendments

- F2** Words substituted (S.) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), [s. 14\(1\)\(a\)](#)
- F3** Words in [s. 3](#) repealed (1.4.2002) by [2000 asp 4, s. 88\(3\)](#), [Sch. 6](#); S.S.I. 2001/81, [art. 3](#), [Sch. 2](#)
- F4** Words in [s. 3](#) repealed (25.9.1991) (S.) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), [ss. 10\(2\), 11\(2\)](#), [Sch. 2](#)
- F5** Words in [s. 3](#) substituted (S.) (1.11.1996) by [1995 c. 36, s. 105\(4\)](#), [Sch. 4 para. 4\(a\)](#); S.I. 1996/2203, [art. 3\(3\)](#), [Sch.](#)
- F6** Words in [s. 3](#) repealed (S.) (1.11.1996) by [1995 c. 36, s. 105\(4\)\(5\)](#), [Sch. 4 para. 4\(b\)](#), [Sch. 5](#); S.I. 1996/2203, [art. 3\(3\)](#), [Sch.](#)
- F7** Words substituted (S.) by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\)](#), [s. 75\(1\)](#), [Sch. 7 para. 1](#)

Marginal Citations

- M1** [1889 c. 39\(128\)](#)

4 Sheriff empowered to appoint Judicial Factors in small estates.

[^{F8}The sheriff shall have the same powers to appoint judicial factors as have the Court of Session and he]shall have and may exercise over and with regard to Judicial Factors appointed in the sheriff court the same powers and authorities that under the recited Act either division of the Court of Session or the Lord Ordinary respectively have and may exercise under the recited Act over and with regard to Judicial Factors appointed in the Court of Session; and for the purposes of this enactment the following provisions shall have effect; that is to say,

[^{F9}(1) Proceedings for appointment of judicial factors in the sheriff court shall commence by petition to be presented in an appropriate sheriff court as nearly as may be in the form in use in ordinary actions in that court:

(1A) In paragraph 1 above, the expression “appropriate sheriff court”—

- (a) in the case of a petition for the appointment of a judicial factor on a trust estate, shall have the same meaning as in sections 22 to 24 of the Trusts (Scotland) Act 1921; and
- (b) in any other case shall mean—
 - (i) where the petition is for the appointment of a judicial factor (other than a factor *loco absentis*) to an individual, a sheriff court of the sheriffdom in which the individual is resident;

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- (ii) where the petition is for the appointment of a factor *loco absentis* to an individual, a sheriff court of the sheriffdom in which the individual was last known to the petitioner to be resident; or,
 - (iii) where the petition is not as mentioned in either of the foregoing provisions of this subparagraph, the sheriff court at Edinburgh:]
- (2) F10
- (3) F10
- (4) Subject to such rules as may from time to time be made by act of sederunt as hereinafter provided, the whole provisions of the recited Act, and any Acts amending the same, and any acts of sederunt made in terms thereof applicable to Judicial Factors appointed in the Court of Session shall apply as nearly as may be to Judicial Factors appointed in the sheriff court:
- (5) In all cases of any appeal or reclaiming note being competent from a determination of the Lord Ordinary in the Court of Session to a division of the Inner House of that court an appeal shall be competent in the like cases from a determination by a sheriff substitute to the sheriff, and in all cases of the accountant of the Court of Session being bound to make any report to the Lord Ordinary in the Court of Session he shall be bound in the like case to make his report to a sheriff or sheriff substitute:
- (6) Until otherwise prescribed, proceedings in the fixing of caution, in applying for special powers, in the auditing of accounts, in the exoneration and discharge or removal of Judicial Factors, and all other proceedings necessary for the management of the estates dealt with under this Act, shall be taken in the sheriff court in as nearly as may be the same form and manner in which the like proceedings are taken before the Lord Ordinary:
- (7) It shall be the duty of the accountant, when it appears to him that there is a diversity of judgment or practice in proceedings in Judicial Factories in the sheriff courts which it would be important to put an end to, to report the same to the first division of the Court of Session, specifying the proceedings in which such diversity appeared, and asking for a rule to be laid down to secure uniformity of judgment or practice in such proceedings, and the Court shall consider such report, and if they shall see fit shall lay down such a rule accordingly, which rule the several sheriffs and their substitutes shall be bound to observe:
- (8) Decrees in absence shall not be opened up after the elapse of twelve months:
- (9) It shall be competent for the sheriff or for the Court of Session, upon the application of any person interested, to recall any appointment made under this Act:
- (10) The decision of the sheriff in all cases under this Act shall be final, and the decision of the Court of Session in all applications for recall of appointments under this Act shall be final.

Textual Amendments

- F8** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 14(1)(b)(i)
- F9** S. 4 paras. 1, 1A substituted for para. 1 by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 14(1)(b)(ii)

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F10 S. 4 paras. 2, 3 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), s. 28(2), **Sch. 3**

5 Power to pass acts of sederunt.

It shall be competent to the Court of Session, and they are hereby authorised and required, from time to time to pass such acts of sederunt as shall be necessary or proper for regulating or prescribing the manner of appointing Judicial Factors in the sheriff courts, and of finding caution by such Judicial Factors, and the manner in which such Judicial Factors shall discharge their duties, and the manner in which the accountant shall discharge his duties, and the forms of process to be used in pursuance of this Act, and the manner of verifying by affidavit, declaration, certificate, or otherwise the sufficiency of the caution offered for Judicial Factors in the sheriff courts, and all other matters requisite for more effectually carrying out the purposes of this Act.

6 Fees payable by estates deriving benefit from Act.

There shall be payable . . . ^{F11} by each estate under charge of a Judicial Factor appointed under this Act, such fees as shall from time to time be authorised by the Court of Session, having due regard to the sums required for the purposes of this Act, and to the interests of the estates to be benefited thereby; and . . . ^{F11} it shall be lawful for the Lords Commissioners of Her Majesty's Treasury to make such additions as they shall think fit to the salaries of the accountant and clerks appointed and acting under the recited Act, and to grant such salary or salaries as shall seem proper to any other clerk or clerks whom the said Commissioners shall think fit to appoint for the purposes of this Act.

Textual Amendments

F11 Words repealed by Statute Law Revision Act 1894 (c. 56)

Changes to legislation:

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