



Judicial Factors (Scotland) Act 1889

1889 CHAPTER 39 52 and 53 Vict

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An Act to amend and extend the law relating to judicial factors and others in Scotland, and to unite the offices of the Accountant of the Court of Session and the Accountant in Bankruptcy in Scotland. [12th August 1889]

Editorial Information

X1 A dagger appended to a marginal note means that it is no longer accurate

Modifications etc. (not altering text)

- C1** Preamble recites [Judicial Factors Act 1849 \(c. 51\)](#) and [Judicial Factors \(Scotland\) Act 1880 \(c. 4\)](#) and is omitted under authority of [Statute Law Revision Act 1908 \(c. 49\)](#)
- C2** Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\)](#), [s. 3](#)
- C3** Certain words repealed by [Statute Law Revision Act 1908 \(c. 49\)](#)
- C4** Acts cited or referred to by their short title under authority of [Statute Law Revision Act 1893 \(c. 14\)](#), [s. 3](#)

Commencement Information

I1 Act wholly in force at Royal Assent

1 Appointment of accountant. **U.K.**

..... ^{F1} It shall be lawful for Her Majesty to appoint a person versant in law and accounts, to be called the accountant of court (hereinafter referred to as the accountant), with such yearly salary, as may from time to time be fixed by the Treasury, payable out of any moneys to be voted by Parliament for that purpose, and the accountant shall, subject to the approval of the Secretary for Scotland, appoint such number of clerks as may from time to time be necessary, and with such salaries as may be fixed by the Treasury, which salaries shall be paid out of any moneys to be voted by Parliament for that purpose.

^{F2}The principal civil service pension scheme within the meaning of section 2 of the ^{M1}Superannuation Act 1972 and for the time being in force shall apply in relation to

Changes to legislation: There are currently no known outstanding effects for the Judicial Factors (Scotland) Act 1889. (See end of Document for details)

the accountant and the said clerks as it applies in relation to persons to whom section 1 of that Act applies.] . . . ^{F3}

Textual Amendments

- F1** Words repealed by [Statute Law Revision Act 1908 \(c. 49\)](#)
- F2** Words substituted by [Superannuation Act 1972 \(c. 11\)](#), **Sch. 6 para. 2**
- F3** Proviso repealed by [Statute Law Revision Act 1963 \(c. 30\)](#)

Marginal Citations

- M1** [1972 c. 11.](#)

2 Accountant to hold no other office. U.K.

[^{F4} . . .]^{F5}Without prejudice to section 6(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (Accountant of Court to be Public Guardian)]the accountant to be appointed under this Act, and his successors in office, shall hold no other office, and shall not directly or indirectly, by himself or any partner, be engaged in or transact any business for profit other than the business devolving upon him as accountant of court.

Textual Amendments

- F4** Words in [s. 2](#) which were inserted (S.) by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\)](#), s. 75(1), **Sch. 7 para. 3**, repealed (1.4.1993) by [1993 c. 6, s. 11](#), **Sch. 2**; S.I. 1993/438, **art. 3**.
- F5** Words in [s. 2](#) inserted (S.) (2.4.2001) by [2000 asp 4, s. 88\(2\)](#), **Sch. 5 para. 6(1)**; S.S.I. 2001/81, **art. 2, Sch. 1**

3 ^{F6} **U.K.**

Textual Amendments

- F6** [Ss. 3, 4, 8, 9](#) repealed by [Statute Law Revision Act 1963 \(c. 30\)](#)

4 ^{F7} **U.K.**

Textual Amendments

- F7** [Ss. 3, 4, 8, 9](#) repealed by [Statute Law Revision Act 1963 \(c. 30\)](#)

5 Pupils Protection and Bankruptcy Acts to apply to accountant. U.K.

The provisions of the ^{M2}Judicial Factors Act, 1849 . . . ^{F8}relating to the accountant of the Court of Session . . . ^{F8} shall, so far as not altered by this Act, apply to the accountant to be appointed in terms of this Act and his successors in office.

Changes to legislation: There are currently no known outstanding effects for the Judicial Factors (Scotland) Act 1889. (See end of Document for details)

Textual Amendments

F8 Words repealed (S.) by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\)](#), s. 75(2), [Sch. 8](#)

Marginal Citations

M2 1849 c. 51.

6 All judicial factors to be under supervision of accountant. **U.K.**

In addition to the factors specified in the ^{M3}recited Judicial Factors Act, 1849, the accountant shall superintend the conduct of all other factors and persons already appointed or to be appointed by the Court of Session or any of the lords ordinary in the said court, or by any of the sheriffs or sheriff substitutes in the several sheriff courts in Scotland, to hold administer, or protect any property or funds belonging to persons or estates in Scotland; and all such factors and others subject to such rules as may from time to time be made by Acts of sederunt as herein-after provided, shall be and hereby are made subject to the provisions affecting judicial factors of the said recited Judicial Factors Act, 1849, and of any Acts amending the same, or in terms of the ^{M4}Judicial Factors (Scotland) Act, 1880, and of any Acts of sederunt made in terms of said Acts, and the accountant shall see that they duly observe all rules and regulations affecting them for the time: Provided that nothing in this section contained shall be held to apply to [^{F9}guardians appointed under the Adults with Incapacity (Scotland) Act 2000 (asp 4), to] executors dative or to trustees appointed by the Court under the Trusts (Scotland) Acts, [^{F10}the ^{M5}Entail (Scotland) Act, 1882,] or in virtue of any other power; but nothing in this section contained shall prevent trustees appointed by the court from availing themselves of the powers contained in section eighteen of this Act.

Textual Amendments

F9 Words in s. 6 inserted (S.) (2.4.2001) by [2000 asp 4](#), s. 88(2), [Sch. 5 para. 6\(2\)](#); S.S.I. 2001/81, [art. 2](#), [Sch. 1](#)

F10 Words in s. 6 repealed (S.) (28.11.2004) by [2000 asp 5](#), ss. 71, 76(2), 77, [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I 2003/456, {art. 2}

Modifications etc. (not altering text)

C5 S. 6 excluded (S.) (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 137, 458, [Sch. 3](#) {para. 8(2)}; S.S.I 2003/210, {art. 2(1)} {subject to art. 2(2) and the transitional provisions and savings in arts. 3-7}

C6 S. 6 excluded (S.) by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 13\(8\)](#), 47(4)(a) S. 6 excluded (S.) (31.3.1996) by [1995 c. 20](#), ss. 44(1), 100, [Sch. 3 para. 1\(9\)](#); S.I. 1996/517, art. (2) (which amending Act was repealed 1.4.1996 by [1995 c. 40](#), ss. 4, 6(2), [Sch. 3 Pt. II para. 16\(3\)](#), [Sch. 6](#)) S. 6 excluded (S.) (1.4.1996) by [1995 c. 43](#), ss. 34, 44, [Sch. 1 para. 1\(9\)](#), [Sch. 2 para. 2\(2\)](#)

C7 S. 6 excluded (S.) (31.12.2005) by [The Criminal Justice \(International Co operation\) Act 1990 \(Enforcement of Overseas Forfeiture Orders\) \(Scotland\) Order 2005 \(S.S.I 2005/581\)](#), arts. 1(1), 26, {Sch. 1 para. 8(2)}

Marginal Citations

M3 1849 c. 51.

M4 1880 c. 4

M5 1882 c. 53

Changes to legislation: There are currently no known outstanding effects for the Judicial Factors (Scotland) Act 1889. (See end of Document for details)

7 Penalties for misconduct. U.K.

Any person who in virtue of his office is subject to the provisions of this Act, and who fails to comply therewith, or who misconducts himself or fails in the discharge of his duties, shall be liable to the penalties imposed by section six of the Judicial Factors Act, 1849, or to any one or more of them as the court in its discretion shall decide.

8^{F11} U.K.

Textual Amendments
F11 Ss. 3, 4, 8, 9 repealed by Statute Law Revision Act 1963 (c. 30)

9^{F12} U.K.

Textual Amendments
F12 Ss. 3, 4, 8, 9 repealed by Statute Law Revision Act 1963 (c. 30)

10 Accountant in certain cases to apply for appointment of successor to factor deceased. U.K.

In the event of its being found that any factor or other person referred to in section six hereof has died undischarged or has ceased to discharge the duties of his office without anyone having been appointed in succession to him, unless the purposes of his appointment have, in the opinion of the accountant, been exhausted, it shall be the duty of the accountant, unless the persons interested in such factory or any of them shall make the application on his requisition, to apply to the court for the appointment of a factor in place of such factor or other person, and it shall be the duty of the factor so appointed to investigate the accounts of the former factor or other person aforesaid and to receive any balance due from his representatives or his cautioner or cautioners.

^{F13}11 S

Textual Amendments
F13 S. 11 repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(2), 11(2), Sch.2

[^{F14}11A Application for judicial factor on estate of person deceased. S

(1) It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary [^{F15}application] to the sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the

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[^{F16}application], or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor.

- (2) After such intimation of the [^{F17}application] to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the ^{F18}. . . sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with this Act and the Judicial Factors (Scotland) Act 1880 and relative acts of sederunt; and, if the deceased's estate is absolutely insolvent within the meaning of section [^{F19}228(5) of the Bankruptcy (Scotland) Act 2016, section 129] of, and Schedule 1 to, that Act shall apply as if for references to—
- (a) the interim trustee or ^{F20}. . . trustee there were substituted references to the judicial factor; and
 - (b) the date of sequestration there were substituted references to the date of the judicial factor's appointment.]

Textual Amendments

- F14** Ss. 11A, 11B inserted (S.) by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\), s. 75\(1\), Sch. 7 para. 4](#)
- F15** Words in s. 11A(1) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 226, 227, sch. 5 para. 5\(a\)\(i\)](#) (with s. 223); S.S.I 2009/67, {art. 3(2)(3)} sch. 1 (with arts. 4-6 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31, art. 5](#)))
- F16** Words in s. 11A(1) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 226, 227, sch. 5 para. 5\(a\)\(ii\)](#) (with s. 223); S.S.I 2009/67, {art. 3(2)(3)} sch. 1 (with arts. 4-6 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31, art. 5](#)))
- F17** Words in s. 11A(1) substituted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 226, 227, sch. 5 para. 5\(b\)](#) (with s. 223); S.S.I 2009/67, {art. 3(2)(3)} sch. 1 (with arts. 4-6 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31, art. 5](#)))
- F18** Words in s. 11A(2) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 226, 227, sch. 6](#) (with s. 223); S.S.I 2008/115, {art. 3(2)(3)} sch. 2 (with arts. 4-6 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31, art. 5](#)))
- F19** Words in s. 11A(2) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\), s. 237\(2\), sch. 8 para. 1](#) (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F20** Word in s. 11A(2)(a) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 226, 227, sch. 6](#) (with s. 223); S.S.I 2008/115, {art. 3(2)(3)} sch. 2 (with arts. 4-6 (as amended (with effect from 31.1.2011) by [S.S.I. 2011/31, art. 5](#)))

[^{F21}11B Judicial factor's duties to be regulated by act of sederunt. **S**

The Court of Session shall have full power to regulate by act of sederunt—

- (a) the caution to be found by a factor appointed under section 11A above;
- (b) the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties; and
- (c) any other matter which they may deem necessary]

Textual Amendments

- F21** Ss. 11A, 11B inserted (S.) by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\), s. 75\(1\), Sch. 7 para. 4](#)

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12 Audit of accounts. **U.K.**

In all cases coming for the first time under the supervision of the accountant he shall be required to audit the accounts from their commencement, and if for this purpose it shall appear to him to be necessary, he shall have power to remit such cases or any of them to such duly qualified persons as he may with the approval of the Lord Advocate select to audit, but all such audits shall be supervised by him, and he shall be responsible for the correctness thereof, and such persons shall be paid such remuneration for their services in such audit as the Lord Advocate with the approval of the Treasury shall determine, out of moneys to be provided by Parliament.

Provided always, that the accountant may, if he thinks fit, on the production of reports of a professional or official auditor in any case, accept such report as sufficient for the period up to the date thereof, and shall not be required to audit the said accounts for that period.

Modifications etc. (not altering text)

C8 S. 12: functions transferred (19.5.1999) by virtue of S.I. 1999/678, art. 2(1), **Sch.**

13 ^{X2}†**Funds, &c., furth of Scotland to be paid to factor, &c. on the production of official extract of appointment.** **U.K.**

An official [^{F22}certified copy interlocutor] of the appointment of any judicial factor, trustee, ^{F23} . . . , or other person judicially appointed and subject to the provisions of the recited Acts or of this Act, shall have throughout the British Dominions, as well out of Scotland as in Scotland, the full force and effect of an assignment or transfer, executed in legal and appropriate form, of all funds, property, and effects situated or invested in any part of the British dominions, and belonging to or forming part of the estate under his charge; and all debtors and others holding any such funds, property, or effects, shall be bound, on production of such official [^{F22}certified copy interlocutor] to pay over, assign or transfer the same to such judicial factor, trustee, ^{F23} . . . , or other person.

Editorial Information

X2 A dagger appended to a marginal note means that it is no longer accurate

Textual Amendments

F22 Words substituted by S.I. 1967/487

F23 Words in s. 13 repealed (S.) (1.4.2002) by 2000 asp 4, s. 88(3), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**

14 Procedure before court. **U.K.**

All applications under this Act or any of the recited Acts shall, except as after mentioned and notwithstanding any provision in any of the recited Acts to the contrary, be dealt within the manner directed by sections four, five, six, and ten of the ^{M6}Court of Session Act, 1857: . . . ^{F24}

Textual Amendments

F24 Proviso repealed (S.) by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(2), **Sch. 8.**

Changes to legislation: There are currently no known outstanding effects for the Judicial Factors (Scotland) Act 1889. (See end of Document for details)

Marginal Citations

M6 1857 c. 56.

15, 16. Fees to be charged in bankruptcy cases. U.K.

F25

Textual Amendments

F25 Ss. 15, 16, 22 repealed (S.) by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(2), Sch. 8.

17 F26 U.K.

F26

Textual Amendments

F26 S. 17 repealed by Bankruptcy (Scotland) Act 1913 (c. 20), Sch. I

18, 19. F27 U.K.

F27

Textual Amendments

F27 Ss. 18, 19 repealed by Trusts (Scotland) Act 1921 (c. 58), Sch. C

20 Application of s. 23 of 12 & 13 Vict. c. 51. U.K.

Section twenty-three of the Judicial Factors Act, 1849, shall be held to apply to all factories brought under the supervision of the accountant by virtue of this Act.

21 Power to pass Acts of sederunt. U.K.

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 relating to all matters requisite for effectually carrying out the purposes of this Act.

22 Interpretation. U.K.

F28

Textual Amendments

F28 Ss. 15, 16, 22 repealed (S.) by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(2), Sch. 8.

23 ^{x3}† Short title and commencement of Act. U.K.

This Act may be cited as the Judicial Factors (Scotland) Act, 1889 . . . F29

Changes to legislation: There are currently no known outstanding effects for the Judicial Factors (Scotland) Act 1889. (See end of Document for details)

Editorial Information

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Textual Amendments

F29 Words repealed by [Statute Law Revision Act 1908 \(c. 49\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Judicial Factors (Scotland) Act 1889.