



Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
Scottish Parliament

BY EMAIL ONLY: DPLR.Committee@parliament.scot

26 May 2023

Dear Convener,

Thank you for your letter of 17 May following the evidence session on 16 May. Thank you for the opportunity to give evidence to the committee.

During the evidence session, the committee asked the panel if it was possible for the purposes of Section 72, Part 2 of the Bill to provide any form of proposed wording in relation to how the Bill might define separation for the purposes of distinguishing spouses or civil partners who were separated from the deceased person, but without there being a divorce or dissolution at the time of death.

Defining separation in these circumstances is difficult, particularly as the circumstances in which couples live apart will vary considerably. One would not wish to deny inheritance to the survivor of a couple who were still very much "a couple", even if circumstances (such as residence in a care home for one of them; or one being in prison, to take examples put forward) prevent them actually living together.

After some consideration, we would suggest that an addition to Section 72 along the lines of the following may achieve the effect that I was driving at in my evidence to the committee:

"The reference in paragraph (ab) to a husband, wife or civil partner is only to such if they were living together with the deceased as a couple at the date of death, or were not so living together only because the couple were (a) temporarily living apart or (b) permanently living apart because of circumstances outwith their control."

The above may require some further adjustment or refinement. We would be happy to discuss this with the Committee, or with the Scottish Government in due course.

Our Pensions Law Sub-Committee intend to write to the Committee under separate cover to highlight some of the possible implications of extending or not extending the Bill to cover pension trusts.

I hope this is helpful to the committee.

Yours sincerely,

Alan Barr
Convener, Trust and Succession Sub-Committee
Law Society of Scotland