

Mr Nigel Don MSP
Convener
Delegated Powers and Law Reform Committee
Scottish Parliament
EDINBURGH
EH99 1SP

14 January 2016

Dear Nigel,

SUCCESSION (SCOTLAND) BILL – STAGE THREE AMENDMENTS AND BONDS OF CAUTION

You will be aware that the Scottish Government consulted on the Scottish Law Commission's recommendation that the requirement placed on Executors Dative (those appointed by the Court usually because there is no will to administer an estate) to obtain a Bond of Caution (an insurance against maladministration on the part of the Executor) should be abolished.

Whilst there was support for the abolition of Bonds of Caution there was also a majority view that alternative safeguards would be needed and, as there was no real consensus about those safeguards, we decided to consult further on the issue as part of the substantive succession law reforms and this is the position I had set out to the Committee during my evidence to you.

Earlier this week the Scottish Courts and Tribunal Service advised us, urgently, that one of the two providers of executor caution (Zurich Insurance) were withdrawing from the market with effect from 1 February 2016. I understand that this is due to the resourcing requirements of this specialist business area, and also a decision by the company that their surety business will be focusing on the corporate sector in the future. I regret that Zurich are apparently not prepared to reconsider or to delay their decision.

This leaves only one provider – Royal Sun Alliance – who stipulate that where they provide a Bond of Caution, a solicitor must be appointed.

We are not in a position to bring forward any substantive reform in relation to Bonds of Caution at this time, especially given the proximity to dissolution, and indeed that would be inappropriate, but we do consider that the decision by Zurich places a new and potentially disproportionate burden on certain small estates (under £36,000) who will face the additional cost of legal fees as a consequence of RSA's stipulation of appointing a solicitor for each bond. These estates currently benefit from a streamlined, supported process to minimise

costs and to enable individuals to administer the estate without the need to engage a solicitor. That benefit would otherwise be negated.

Whilst I appreciate that it is not ideal, and would not be my preference, to bring forward amendments on this issue at this stage in the Bill process, if we were not to do this, would represent a lost opportunity to do what we can, as quickly as we can, to mitigate the impact of Zurich's decision and would place those tasked with administering small estates in an invidious position.

By way of background the law already provides that in circumstances where a spouse (but not a civil partner) would be in effect the sole beneficiary a Bond of Caution is not required. The only risk in these circumstances is to creditors.

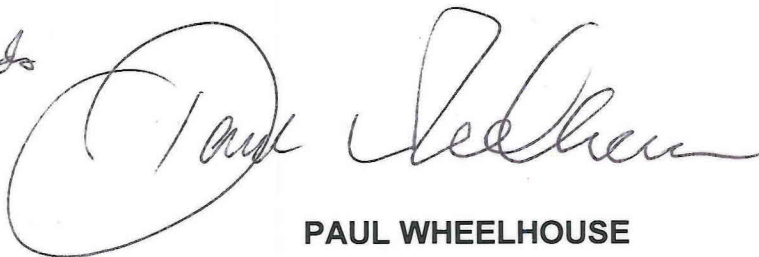
We therefore propose lodging amendments at Stage 3 to extend the existing exemption to certain small estates. We would also intend to take the opportunity of amending the legislation to bring the position of civil partners in line with spouses.

In order to mitigate the effect of the decision it is likely that we will seek to ensure that these amendments come into force immediately and we are exploring the detail of how that might work and I would propose Scottish Ministers would keep a close eye on the impact of this provision as part of any work that is required to facilitate a more substantive reform of bonds of caution.

We will also be making other amendments at Stage 3 related to the survivorship provisions in section 9 which deals with the situation where the order of death of two people is uncertain and deems them to have failed to survive each other. The terminology is not consistent with the replacement for the *conditio si institutus* in section 6 which continues to use the concept of dying before the vesting of the legacy, nor with sections 5(1) and 11 of the Succession (Scotland) Act 1964 which deal with 'representation' i.e. where someone with a child/children dies before being able to inherit. We therefore intend to adjust the terminology to ensure that there are no unintended consequences.

I hope this information is helpful to you and the Committee and I would welcome any comments, particular concerns, about our proposed amendments ahead of Stage 3 as I appreciate this is a situation that has presented late in the Committee's deliberations of the Bill.

Kindest regards



PAUL WHEELHOUSE