



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 3

POWERS AND DUTIES OF TRUSTEES

PROSPECTIVE

Delegation and the appointment of agents and nominees

22 Delegation and the appointment of agents

- (1) Subject to the provisions of [this section](#) and except in so far as the trust deed expressly provides otherwise, the trustees may delegate the exercise of any of their powers and in particular may—
 - (a) appoint an agent,
 - (b) authorise a person so appointed to execute a deed or other document on behalf of the body of trustees.
- (2) Except in so far as the trust deed expressly provides otherwise, the trustees have (and are to be taken always to have had) the power to authorise an agent to exercise any of their investment management functions—
 - (a) at the agent's discretion, or
 - (b) in such other manner as the trustees may direct.
- (3) Without prejudice to the generality of [subsections \(1\)](#) and [\(2\)](#), a person who is a trustee may be—
 - (a) appointed or authorised under [subsection \(1\)](#),
 - (b) authorised under [subsection \(2\)](#).

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Cross Heading: Delegation and the appointment of agents and nominees. (See end of Document for details)

- (4) Except in so far as the trust deed expressly provides otherwise, the trustees may pay such remuneration as they consider reasonable to any person appointed or authorised under [subsection \(1\)](#).
- (5) Except in so far as the trust deed expressly provides otherwise, the reference in [subsection \(1\)](#) to the trustee’s powers does not include a reference to a power—
 - (a) relating to whether or in what way assets of the trust should be distributed,
 - (b) relating to whether any fee or other payment due to be made out of the trust funds should be made out of capital or income,
 - (c) to appoint a person to be a trustee of the trust, or
 - (d) which is conferred by any other enactment or by the trust deed and permits the trustees—
 - (i) to delegate any of their functions, or
 - (ii) to appoint a person to act as a nominee in relation to the trust property.
- (6) In [subsection \(2\)](#), “investment management functions” means functions relating to the management of investments of the trust property, heritable as well as moveable.
- (7) [Subsections \(1\)](#) and [\(2\)](#) are subject to any restriction or exclusion imposed by or under any enactment.
- (8) [This section](#) applies irrespective of when the trust was created.

Commencement Information

- II** S. 22 not in force at Royal Assent, see [s. 88\(3\)](#)

23 Appointment of nominees

- (1) Except in so far as the trust deed expressly provides otherwise, the trustees may, for the purpose of the exercise of any of their powers—
 - (a) appoint a person to act as their nominee in relation to such of the trust property, heritable as well as moveable, as they may determine (in [this section](#) referred to as the “determined assets”), and
 - (b) take such steps as are requisite to secure the transfer of title to the determined assets to the nominee.
- (2) Without prejudice to the generality of [subsection \(1\)](#), reference in that subsection to the powers of the trustees includes a reference to their investment management functions (as defined in [section 22\(6\)](#)).
- (3) Determined assets held by the nominee are held on trust for the trustees by the nominee (irrespective of any purported agreement to the contrary).
- (4) Determined assets title to which is transferred to the nominee may include clients’ money.
- (5) Without prejudice to [subsection \(3\)](#), [subsection \(1\)](#) is subject to any restriction or exclusion imposed by or under any enactment.
- (6) A person is not to be appointed under [subsection \(1\)\(a\)](#) unless the trustees reasonably believe—
 - (a) the appointment is appropriate in the circumstances of the trust, and

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- (b) the person has the skills, knowledge and expertise it is reasonable to expect of one who is to act as a nominee.
- (7) An appointment under [subsection \(1\)\(a\)](#) is—
- (a) to be made in writing,
 - (b) to be subject to the trustees obtaining, as soon as is reasonably practicable, the written acknowledgment of the nominee that the determined assets are held on trust for the trustees by the nominee,
 - (c) to be subject to the trustees retaining power to—
 - (i) direct the nominee, and
 - (ii) revoke the appointment, and
 - (d) subject to [subsection \(8\)](#), otherwise to be on such terms as to suitable remuneration and other matters as the trustees may determine.
- (8) The trustees are not to appoint a nominee on any of the terms mentioned in [subsection \(9\)](#) unless they have good cause to do so.
- (9) The terms are—
- (a) a term permitting the nominee to appoint a substitute,
 - (b) a term restricting the liability of the nominee, or of any substitute, to the trustees or to any beneficiary, and
 - (c) a term permitting the nominee, or any substitute, to act in circumstances capable of giving rise to a conflict of interest.
- (10) While a nominee continues to act for the trust, the trustees are—
- (a) to keep under review—
 - (i) the arrangements under which the nominee acts, and
 - (ii) how those arrangements are being put into effect,
 - (b) to consider, if circumstances make it appropriate to do so, whether there is a need to exercise their power—
 - (i) to direct the nominee, or
 - (ii) to revoke the nominee’s appointment.
- (11) The trustees are to exercise either or both of the powers mentioned in [subsection \(10\)\(b\)](#) if they consider that there is a need to do so.
- (12) The Scottish Ministers may, by regulations, specify particular circumstances which may constitute a good cause for the purpose of subsection (8).
- (13) Regulations under this section are subject to the negative procedure.
- (14) [This section](#) applies irrespective of when the trust was created.

Commencement Information

12 S. 23 not in force at Royal Assent, see [s. 88\(3\)](#)

Status:

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Changes to legislation:

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