



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 3

POWERS AND DUTIES OF TRUSTEES

PROSPECTIVE

Personal liability of trustees

36 Trustees' personal liability for beneficiary's loss

- (1) Except in so far as the trust deed, expressly or by implication, provides otherwise, a trustee only has personal liability for any loss to a beneficiary which results from—
 - (a) the trustee's own acts or omissions, or
 - (b) a breach of trust, or of fiduciary duty, by a co-trustee if the trustee failed to take reasonable steps to ensure that the co-trustee did not commit the breach.
- (2) **This section** applies—
 - (a) irrespective of when the trust was created, but
 - (b) only as respects—
 - (i) an act,
 - (ii) an omission, or
 - (iii) a breach of trust or of fiduciary duty, occurring after the section comes into force.
- (3) This section is subject to the other provisions of this Act concerning the personal liability of trustees (including, in particular, sections 39, 40 and 70).

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: Personal liability of trustees. (See end of Document for details)

Commencement Information

I1 S. 36 not in force at Royal Assent, see [s. 88\(3\)](#)

37 Errors in distribution: circumstances in which trustee not personally liable

- (1) A trustee is not personally liable for any error in the distribution of any property, or the income of property, vested in the trustee as trustee if—
 - (a) the error was caused by the trustee not knowing (either or both)—
 - (i) of the existence, or non-existence, of a person,
 - (ii) of a person's relationship, or lack of relationship, to another person, and
 - (b) the distribution takes place—
 - (i) in good faith and after such enquiries as any reasonable and prudent trustee would have made in the circumstances of the case, or
 - (ii) in accordance with an order of the court.
- (2) [Subsection \(1\)](#) does not affect any right which a person entitled to the property or income concerned has to recover it from another person.
- (3) [Subsection \(2\)](#) is without prejudice to section 24 of the Succession (Scotland) Act 2016.
- (4) [This section](#) applies—
 - (a) irrespective of when the trust was created, but
 - (b) only as respects distributions occurring after the section comes into force.

Commencement Information

I2 S. 37 not in force at Royal Assent, see [s. 88\(3\)](#)

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: Personal liability of trustees.