



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

PROSPECTIVE

CHAPTER 3

POWERS AND DUTIES OF TRUSTEES

Powers: general

15 General powers of trustees

- (1) Except in so far as the trust deed expressly provides otherwise (or, in a case where there is no trust deed, the context requires or implies otherwise) the trustees have in relation to the trust property all the powers of a natural person beneficially entitled to the property.
- (2) But [this section](#) is without prejudice to—
 - (a) a trustee’s fiduciary duty (including a trustee’s duty to fulfil the trust purposes),
 - (b) a trustee’s duty of care, and
 - (c) any restriction or exclusion imposed by or under this Act or any other enactment.
- (3) [This section](#) applies irrespective of when the trust was created.

Commencement Information

- II** S. 15 not in force at Royal Assent, see [s. 88\(3\)](#)

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

Changes to legislation: There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Chapter 3. (See end of Document for details)

16 Conferring of additional powers by court

- (1) The court may, on the application of the trustees, grant them additional powers of administration or management in relation to the trust property (being powers specified in the application).
- (2) Before granting additional powers under subsection (1), the court must—
 - (a) take into account any objection timeously made by virtue of [subsection \(3\)](#), and
 - (b) be satisfied that the trustees having the additional powers in question would benefit the future administration or management of the trust property.
- (3) An application under [subsection \(1\)](#) is to be intimated to the persons mentioned in [subsection \(4\)](#), any of whom may object to its being granted.
- (4) The persons are—
 - (a) any supervisor,
 - (b) any protector,
 - (c) any beneficiary who has a vested interest in the trust property,
 - (d) such other persons as the court may specify.
- (5) The court is to consider specifying under [subsection \(4\)\(d\)](#) any beneficiary who has a contingent interest, and any potential beneficiary, under the trust but—
 - (a) need not specify under that subsection any such beneficiary or potential beneficiary, and
 - (b) may specify under it a person other than any such beneficiary or potential beneficiary.
- (6) The court may, in granting powers under [subsection \(1\)](#), impose such conditions as to the exercise of those powers as it thinks fit.
- (7) [This section](#) applies irrespective of when the trust was created.

Commencement Information

I2 S. 16 not in force at Royal Assent, see [s. 88\(3\)](#)

17 Power to take out insurance

- (1) Except in so far as the trust deed expressly provides otherwise, a trustee has power to take out such insurance as it is reasonable to take out against personal liability arising from the trustee's actings in carrying out the duties of a trustee.
- (2) In [subsection \(1\)](#), the reference to actings is to be construed as including intentionally not acting in some matter.
- (3) The expense of taking out the insurance is to be paid out of the trust property.
- (4) [This section](#) applies irrespective of when the trust was created.

Commencement Information

I3 S. 17 not in force at Royal Assent, see [s. 88\(3\)](#)

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

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Investment

18 Power of investment

- (1) The trustees have the power to make any kind of investment of trust property, including an investment in heritable property, except in so far as—
 - (a) the trust deed, expressly or by implication, provides otherwise, or
 - (b) in a case where there is no trust deed, the context requires or implies otherwise.
- (2) The power to act under [subsection \(1\)](#)—
 - (a) is subject to any restriction or exclusion imposed by or under any enactment, and
 - (b) is not conferred on trustees—
 - (i) of an authorised unit trust, or
 - (ii) under any other trust who are entitled by or under another enactment to make investments of trust property.
- (3) A term—
 - (a) relating to the powers of a trustee and contained in a trust deed executed before 3rd August 1961, or
 - (b) restricting the powers of investment of a trustee to those conferred by the Trustee Investments Act 1961 and contained in a trust deed executed on or after that date,is not to be treated as restricting or excluding the power to act under [subsection \(1\)](#).
- (4) The reference, in [paragraph \(b\)](#) of [subsection \(3\)](#), to a trustee does not include a reference to a trustee under a trust constituted by a private or local Act of Parliament or a private Act of the Scottish Parliament; and in that paragraph “trust deed” is to be construed accordingly.
- (5) In [this section](#), “authorised unit trust” means a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 is in force.
- (6) [This section](#) applies irrespective of when the trust was created.

Commencement Information

I4 S. 18 not in force at Royal Assent, see [s. 88\(3\)](#)

19 Exercise of power of investment

- (1) Before acting under [section 18\(1\)](#) the trustees—
 - (a) are to have regard to—
 - (i) the suitability to the trust of the proposed investment, and
 - (ii) the need for diversification of investments of the trust in so far as is appropriate to the circumstances of the trust, and
 - (b) are (except where [subsection \(3\)](#) applies) to obtain and consider proper advice about the way in which the power in question should be exercised.

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- (2) When reviewing the investments of the trust, the trustees are (except where [subsection \(3\)](#) applies) to obtain and consider proper advice about whether the investments should be varied.
- (3) If the trustees reasonably conclude that in all the circumstances it is unnecessary or inappropriate to obtain such advice, they need not obtain it.
- (4) In [this section](#), “proper advice” means the advice of a person who is reasonably believed by the trustees, on the basis of the person’s—
 - (a) ability, and
 - (b) practical experience of financial and other matters relating to the proposed investment,
 to be qualified to give it.
- (5) [This section](#) applies irrespective of when the trust was created.

Commencement Information

I5 S. 19 not in force at Royal Assent, see [s. 88\(3\)](#)

20 Exercise of power of investment: further provision

- (1) For the purposes of section 19(1) and (2), where two or more proposed investments are suitable for the trust, the trustees may (except in so far as the trust deed, expressly or by implication provides otherwise) take into account appropriate non-financial considerations in determining which investment to make.
- (2) An appropriate non-financial consideration may be (either or both)—
 - (a) a consideration that one investment is more consistent with the purposes of the trust than the other investment,
 - (b) an ethical, social or environmental consideration.
- (3) This section—
 - (a) does not apply as respects a trust created before the section comes into force, and
 - (b) is without prejudice to any other power of trustees to take into account non-financial considerations in relation to determining investments.

Commencement Information

I6 S. 20 not in force at Royal Assent, see [s. 88\(3\)](#)

Sale of property

21 Charitable trusts: sale of property

- (1) Except in so far as the trust deed expressly or by implication provides otherwise, the trustees of a charitable trust are not under a duty to achieve best value when selling trust property where—
 - (a) the property being sold is heritable property, and

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- (b) the purchaser is a charity.
- (2) But this section is without prejudice to any duty imposed by the Charities and Trustee Investment (Scotland) Act 2005 to act in the interests of the charity (see, in particular, section 66 of that Act).
- (3) For the purposes of this section, a “charity” is a non-natural person—
- (a) registered in the Scottish Charity Register,
 - (b) which—
 - (i) is registered as a charity in England and Wales in accordance with section 30 of the Charities Act 2011, or
 - (ii) by virtue of subsection (2) of that section, is not required to register as a charity under that section,
 - (c) which—
 - (i) is registered as a charity in Northern Ireland in accordance with section 16 of the Charities Act (Northern Ireland) 2008, or
 - (ii) by virtue of subsection (2A) of that section, is not required to register as a charity under that section.
- (4) The Scottish Ministers may by regulations modify subsection (3) so as to specify further descriptions of person who are a charity for the purposes of this section.
- (5) Regulations under this section are subject to the affirmative procedure.
- (6) This section—
- (a) does not apply as respects a trust created before the section comes into force, and
 - (b) is without prejudice to any other power of trustees in relation to the selling of trust property.

Commencement Information

17 S. 21 not in force at Royal Assent, see [s. 88\(3\)](#)

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.

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- (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 \(2\)](#).
- (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

18 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.

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- (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
 - (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.

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Commencement Information

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

Power of advancement

24 Power to advance from capital

- (1) Except in so far as the trust deed expressly provides otherwise (or, in a case where there is no trust deed, the context requires otherwise) the trustees may, provided that the requirements of subsections (4) and (5) are satisfied, advance all or part of the trust capital to a beneficiary for the benefit of the beneficiary.
- (2) The advance may be on such conditions (if any) as the trustees consider it reasonable to impose.
- (3) But the trustees may subsequently waive or vary any condition imposed under [subsection \(2\)](#) if they consider it appropriate to do so.
- (4) A right to the capital advanced must, as at the date on which the advance is made, be destined to vest in the beneficiary—
 - (a) unconditionally,
 - (b) subject, if an uncertain future event were to occur, to defeasance or diminution, or
 - (c) on the occurrence of an uncertain future event.
- (5) Either—
 - (a) the consent must have been obtained of any person who has a prior interest as respects the trust property, being an interest which would be prejudiced were the advance made, or
 - (b) authorisation to make the advance must have been obtained from the court—
 - (i) on an application to it in that regard by the trustees or by any person with an interest in the trust property, and
 - (ii) on its being satisfied that any person whose consent is (but for [this paragraph](#)) required by [paragraph \(a\)](#) is either withholding consent unreasonably or does not have capacity to give consent.
- (6) Authorisation under [subsection \(5\)\(b\)](#) may be granted subject to such conditions (if any) as the court thinks fit to impose.
- (7) Any amount advanced under [this section](#) (other than an amount which has been repaid) must be brought into account by the trustees as part of the share in the trust property to which the beneficiary is, or will become, entitled.
- (8) For the purposes of [subsection \(7\)](#), the value of the advance is its market value as at the date on which the advance is made (interest in relation to the advance being disregarded).
- (9) It is not an objection to an advance to the beneficiary under [this section](#) that the advance is made by setting up a new trust for the benefit of the beneficiary and transferring the capital advanced as assets to be held in that new trust (or, without setting up a new

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trust, by transferring the capital advanced to assets for the time being held in any trust for the benefit of the beneficiary).

- (10) [Subsection \(9\)](#) applies whether or not any third party gains incidental benefit from the transfer or as the case may be from the setting up of the new trust.
- (11) The trustees are not liable for any loss which the trust property may incur by virtue of—
- (a) a condition imposed by them under [subsection \(2\)](#),
 - (b) a condition which might have been so imposed not having been so imposed,
 - (c) their exercising, or failing to exercise, powers under [subsection \(3\)](#).
- (12) [This section](#) applies—
- (a) irrespective of when the trust was created, but
 - (b) only as respects an advance made after the section comes into force.

Commencement Information

I10 S. 24 not in force at Royal Assent, see [s. 88\(3\)](#)

Apportionment

25 Exercise of power to apportion between or among beneficiaries

- (1) Except in so far as the trust deed, expressly or by implication, provides otherwise, no exercise by a trustee of a power to apportion funds or other property between or among certain beneficiaries is invalid on the ground only that—
- (a) an insubstantial, illusory or nominal part is apportioned to (or left to devolve unapportioned upon) one of the beneficiaries, or
 - (b) one of the beneficiaries is not apportioned a part.
- (2) But [subsection \(1\)](#) is without prejudice to the grounds on which the court may grant a remedy under [section 68](#).
- (3) [This section](#) applies irrespective of when the trust was created.

Commencement Information

I11 S. 25 not in force at Royal Assent, see [s. 88\(3\)](#)

26 Time apportionment

- (1) Except in so far as the trust deed expressly provides otherwise (or, in a case where there is no trust deed, the context requires otherwise), the trustees may determine that amounts mentioned in section 2 of the Apportionment Act 1870 (which provides for rents, dividends and other periodical payments to be apportionable in respect of time) are—
- (a) to be apportioned as mentioned in that section, or
 - (b) not to be apportioned in such manner, but instead to accrue as they arise.
- (2) [This section](#) applies irrespective of when the trust was created.

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Commencement Information

I12 S. 26 not in force at Royal Assent, see [s. 88\(3\)](#)

27 Apportionment: disapplication of certain rules

- (1) Any rule of law relating to the allocation and apportionment of trust receipts and outgoings ceases to have effect in relation to a trust, irrespective of when that trust was created.
- (2) [Subsection \(1\)](#) does not affect allocation and apportionment which falls to be made before [this section](#) comes into force.

Commencement Information

I13 S. 27 not in force at Royal Assent, see [s. 88\(3\)](#)

Payments from income

28 Power to make payments etc. from income

- (1) Subject to [subsection \(8\)](#) and except in so far as the trust deed, expressly or by implication, provides otherwise (or, in a case where there is no trust deed, the context requires or implies otherwise) the trustees may, provided that the requirements of [subsections \(4\) and \(5\)](#) are satisfied, pay or otherwise apply all or part of the trust income (whether as it arises or after it has accumulated) to a beneficiary for the benefit of the beneficiary.
- (2) The paying or applying may be on such conditions (if any) as the trustees consider it reasonable to impose.
- (3) But the trustees may subsequently waive or vary any condition imposed under [subsection \(2\)](#) if they consider it appropriate to do so.
- (4) The income paid or applied must, as at the date on which it is paid or applied, be income from capital destined to vest in the beneficiary—
 - (a) unconditionally,
 - (b) subject, if an uncertain future event were to occur, to defeasance or diminution, or
 - (c) on the occurrence of an uncertain future event.
- (5) The trustees must be satisfied, as at the date mentioned in [subsection \(4\)](#), that no person other than the beneficiary is entitled to the income paid or applied.
- (6) Any amount paid or applied under [this section](#) (other than an amount which has been repaid) must be brought into account by the trustees as part of the share in the trust property to which the beneficiary is, or will become, entitled.
- (7) For the purposes of [subsection \(6\)](#), the payment or application is to be deemed to be for a consideration equal to the market value of the payment or application as at the date mentioned in [subsection \(4\)](#) (interest in relation to the payment or application being disregarded).

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- (8) If the trust deed directs or permits the trustees to accumulate income, the authorisation of the court must be obtained under [subsection \(9\)](#) to any exercise of their power under [subsection \(1\)](#).
- (9) Such authorisation may be granted by the court on an application to it in that regard by the trustees or by any person with an interest.
- (10) Authorisation under [subsection \(9\)](#) may be granted subject to such conditions (if any) as the court thinks fit to impose.
- (11) The trustees are not liable for any loss which the trust property may incur by virtue of—
 - (a) a condition imposed by them under [subsection \(2\)](#),
 - (b) a condition which might have been so imposed not having been so imposed,
 - (c) their exercising, or failing to exercise, powers under [subsection \(3\)](#).
- (12) [This section](#) applies—
 - (a) irrespective of when the trust was created, but
 - (b) only as regards a payment, or application of income, made after the section comes into force.

Commencement Information

I14 S. 28 not in force at Royal Assent, see [s. 88\(3\)](#)

Duty to provide information

29 Trustees' duty to provide information other than on request

- (1) It is the duty of the trustees, on becoming aware that a person is as described in [subsection \(2\)](#)—
 - (a) to inform the person (or if the person has not attained the age of 16 years, or is incapable, an appropriate person in relation to that person (see section 81(2))) accordingly, and
 - (b) to disclose with that information—
 - (i) the names of all the trustees, and
 - (ii) information sufficient to enable the person (or an appropriate person in relation to that person) to enter readily into correspondence with them.
- (2) The persons are—
 - (a) a beneficiary who has a vested interest in the trust property,
 - (b) any other beneficiary who the trustees reasonably consider ought to be informed under [subsection \(1\)](#), and
 - (c) a potential beneficiary, the imminence of whose becoming a beneficiary appears to the trustees to be such that it would be unreasonable not to inform that potential beneficiary under [subsection \(1\)](#).
- (3) For the purposes of [this section](#), trustees must take such steps as appear to them to be appropriate in all the circumstances to ensure that beneficiaries and potential beneficiaries are identified and traced.

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- (4) The information is to be provided within such period as is reasonable in all the circumstances; except that if the person to be informed is a beneficiary who has acquired an immediate interest in the trust property the information must be provided as soon as is reasonably practicable.
- (5) In providing information, or making a disclosure, to any person under [subsection \(1\)](#), the trustees need not—
 - (a) give any advice to that person, or
 - (b) comment upon the information or disclosure in question.
- (6) If information provided by virtue of [subsection \(1\)](#) ceases to be current, the trustees must without delay inform the beneficiary or potential beneficiary (or an appropriate person in relation to the beneficiary or potential beneficiary) of such changes as are needed to update it.
- (7) [This section](#)—
 - (a) applies irrespective of when the trust was created, but
 - (b) except in the case of a beneficiary who has a personal interest in the trust property, does not apply as respects a private purpose trust.

Commencement Information

I15 S. 29 not in force at Royal Assent, see [s. 88\(3\)](#)

30 Trustees' duty to provide information on request

- (1) It is the duty of the trustees to disclose—
 - (a) to a beneficiary or potential beneficiary,
 - (b) where the beneficiary or potential beneficiary has not attained the age of 16 years, or is incapable, to an appropriate person in relation to that person (see [section 81\(2\)](#)),
 - (c) where the beneficiary or potential beneficiary has attained the age of 16 years and is capable but has instructed a solicitor to act on that person's behalf, to the solicitor, or
 - (d) where the beneficiary or potential beneficiary has (wholly or in part) assigned that person's interest in the trust, to the assignee,

information requested by the beneficiary (or as the case may be by the potential beneficiary, appropriate person, solicitor or assignee) as regards the trust unless the trustees consider it would be inappropriate, in all the circumstances, to make the disclosure.
- (2) But [subsection \(1\)](#) is subject—
 - (a) to the express provisions of the trust deed, and
 - (b) to the following provisions of [this section](#).
- (3) Subsections (1) and (9) do not apply where—
 - (a) a person is a potential beneficiary (or an appropriate person in relation to, solicitor or assignee of, such a person), and
 - (b) that person's interest in the trust is, or would be, so remote as to be of negligible value.

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- (4) The disclosure—
 - (a) is to be made in such a way as is appropriate in all the circumstances, and
 - (b) may be conditional on payment of such expenses as are reasonably incurred by the trustees in making it.
- (5) Any duty arising by virtue of [paragraph \(d\)](#) of [subsection \(1\)](#) is without prejudice to any other duty under that subsection.
- (6) A disclosure under [subsection \(1\)](#) is to be made as soon as is reasonably practicable after receipt of the request.
- (7) It is to be presumed that the trustees will not ordinarily disclose under [subsection \(1\)](#) information requested in respect of—
 - (a) some other beneficiary or potential beneficiary,
 - (b) the trustees' deliberations or reasons for their decisions, or
 - (c) letters of wishes (that is to say documents in which an account is given, whether or not by the truster, of circumstances which are to be relevant to the exercise by them of a discretion).
- (8) The trustees may seek a direction from the court as to the fulfilment of their duty under [subsection \(1\)](#) in relation to a particular request.
- (9) The court may, on the application of any person to whom the trustees have declined to disclose information requested under [subsection \(1\)](#), direct the trustees to disclose the information (or such part of that information as may be specified by the court) to the person.
- (10) At any time after the trust is created, a person mentioned in [subsection \(12\)](#) may apply to the court for a determination as to whether a limitation on disclosure of information as respects the trust, imposed by the express provisions of the trust deed, is reasonable in all the circumstances.
- (11) If, on an application under [subsection \(10\)](#) as respects such a limitation, the court determines that the limitation is not reasonable in all the circumstances it may—
 - (a) alter the limitation to such extent as it considers expedient having regard to the need for a beneficiary or potential beneficiary to be able to hold the trustees to account at an appropriate time, or
 - (b) rescind the limitation.
- (12) The persons are—
 - (a) the trustees,
 - (b) in the case of an inter vivos trust, the truster,
 - (c) a descendant of the truster,
 - (d) a beneficiary or potential beneficiary,
 - (e) a descendant or ancestor of a beneficiary or potential beneficiary,
 - (f) an appropriate person in relation to a beneficiary or potential beneficiary,
 - (g) a judicial factor, and
 - (h) unless the trust deed expressly or impliedly excludes the possibility—
 - (i) a protector, and
 - (ii) a supervisor.
- (13) Subsection (10) does not apply where—

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- (a) a person is—
 - (i) a descendant of the truster,
 - (ii) a potential beneficiary (or an appropriate person in relation to, solicitor or assignee of, such a person), or
 - (iii) a descendant or ancestor of a beneficiary or potential beneficiary, and
 - (b) that person's interest in the trust is, or would be, so remote as to be of negligible value.
- (14) **This section**—
- (a) applies irrespective of when the trust was created, but
 - (b) except in the case of a beneficiary who has a personal interest in the trust property, does not apply as respects a private purpose trust.
- (15) But **subsection (14)(a)** is subject to **subsection (16)**.
- (16) In the period of a year beginning with the day on which this section comes into force, this section does not apply to a trust created before that day.

Commencement Information

I16 S. 30 not in force at Royal Assent, see **s. 88(3)**

Trustees' duty of care etc.

31 Trustees' duty of care etc.

- (1) Subject to **subsections (2) and (3)**, a trustee, in managing the affairs of the trust, is required to exercise such care and diligence as any person of ordinary prudence would exercise in managing the affairs of another person.
- (2) A person who in the course of business provides professional services in relation to managing the affairs of trusts is required, where appointed or assumed as a trustee and remunerated for carrying out the duties of that office, to exercise such skill, care and diligence as it is reasonable to expect from a member of the profession in question.
- (3) A natural person with professional qualifications who is appointed or assumed as a trustee but is not a person mentioned in **subsection (2)** is—
 - (a) if expressly instructed by or on behalf of the trustees to provide professional services or advice to the trust, required (whether remunerated or not) to exercise such skill, care and diligence in providing those services or that advice as it is reasonable to expect from a member of the profession in question, and
 - (b) if not so instructed, required only to exercise such care and diligence as is mentioned in **subsection (1)**.
- (4) A provision of a trust deed is of no effect in so far as the provision purports—
 - (a) to lessen a requirement imposed by **subsections (1) to (3)**,
 - (b) to relieve a trustee from liability arising from a failure to exercise the skill, care or diligence required of that trustee by **subsection (2) or (3)(a)**,

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- (c) in the case of a trustee who is required only to exercise such care and diligence as is mentioned in [subsection \(1\)](#), to relieve the trustee from liability arising by virtue of the trustee’s gross negligence,
 - (d) to exclude or restrict any right or remedy in relation to a liability arising as mentioned in [paragraph \(b\)](#) or [\(c\)](#),
 - (e) to indemnify a trustee for any liability arising as mentioned in either of those paragraphs,
 - (f) to subject a person to any prejudice in respect of pursuing such a right or remedy,
 - (g) to exclude or restrict any rule of evidence or procedure in its application to the pursuit of such a right or remedy, or
 - (h) to make a liability arising as mentioned in [paragraph \(b\)](#) or [\(c\)](#), or its enforcement, subject to restrictive or onerous conditions.
- (5) [This section](#) applies—
- (a) irrespective of when the trust was created, but
 - (b) only as respects managing the affairs of the trust after the section comes into force.

Commencement Information

I17 S. 31 not in force at Royal Assent, see [s. 88\(3\)](#)

Breach of duty etc.

32 Breach of fiduciary duty at instigation or request of beneficiary or with consent of beneficiary

- (1) [This section](#) applies where a trustee is in breach of a fiduciary duty—
 - (a) at the instigation or request of a beneficiary, or
 - (b) with the written consent of a beneficiary.
- (2) The court may if it thinks fit make such order, assigning by way of indemnity all or part of the beneficiary’s interest in the trust property to the trustee or (as the case may be) to any person claiming through the trustee, as seems to the court to be just.
- (3) [This section](#) applies—
 - (a) irrespective of when the trust was created, but
 - (b) only as respects a breach of a fiduciary duty occurring after the section comes into force.

Commencement Information

I18 S. 32 not in force at Royal Assent, see [s. 88\(3\)](#)

33 Order relieving trustee of consequences of actings which are ultra vires

- (1) [This section](#) applies where actings of a trustee are ultra vires.

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- (2) On the application of the trustee the court may, if the condition mentioned in [subsection \(3\)](#) is satisfied, make such order relieving the trustee of the consequences of those actings as seems to the court to be just.
- (3) The condition is that the trustee believes (after taking all reasonable steps and making all reasonable enquiry) that it is within the trustee's powers to act as the trustee does.
- (4) [Subsection \(2\)](#) is without prejudice to any right of a beneficiary or trustee to recover trust property from a person, other than a trustee, to whom a payment would not have been made but for the actings in question.
- (5) [This section](#) applies—
 - (a) irrespective of when the trust was created, but
 - (b) only as respects actings occurring after the section comes into force.

Commencement Information

I19 S. 33 not in force at Royal Assent, see [s. 88\(3\)](#)

34 Provision purporting to limit liability for, or indemnify for, breach of fiduciary duty

- (1) In so far as a provision of a trust deed purports generally to—
 - (a) limit any liability of a trustee for, or
 - (b) indemnify a trustee for,
 the trustee's breach of a fiduciary duty, the provision is of no effect.
- (2) But [subsection \(1\)](#) is without prejudice to any provision of a trust deed which authorises a particular action or decision, or a particular class of actions or decisions, which but for that authority would constitute a breach of a fiduciary duty.
- (3) [This section](#) applies—
 - (a) irrespective of when the trust was created, but
 - (b) only as respects a breach of a fiduciary duty occurring after the section comes into force.

Commencement Information

I20 S. 34 not in force at Royal Assent, see [s. 88\(3\)](#)

35 Order relieving trustee of consequences of entering into a transaction in breach of fiduciary duty

- (1) [This section](#) applies where a trustee has entered into, or proposes to enter into, a transaction in breach of a fiduciary duty.
- (2) The court may, on the application of the trustee, if it thinks fit and if the conditions mentioned in [subsection \(3\)](#) are satisfied make such order, relieving the trustee of the consequences of breaching that duty, as seems to the court to be just.
- (3) The conditions are—

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- (a) that the transaction has benefited, or is likely to benefit, both the trust property and (collectively) the beneficiaries, and
 - (b) that the terms of the transaction are at least as favourable to the trust property as those likely to have been, or to be, obtained in a comparable commercial transaction at arms-length.
- (4) **This section** applies—
- (a) irrespective of when the trust was created, but
 - (b) only as respects a transaction entered into, or to be entered into, after the section comes into force.

Commencement Information

I21 S. 35 not in force at Royal Assent, see **s. 88(3)**

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).

Commencement Information

I22 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—

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- (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

I23 S. 37 not in force at Royal Assent, see [s. 88\(3\)](#)

Status:

This version of this chapter contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Chapter 3.