



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 8

POWERS OF THE COURT

Variation and termination of private trusts

58 Arrangements to vary or terminate a trust etc.

- (1) [This section](#) applies to an arrangement which—
 - (a) varies the purposes of a trust,
 - (b) terminates a trust, whether in whole or in part,
 - (c) varies the powers of trustees to manage or administer trust property, or
 - (d) creates a new trust in relation to all or part of trust property.
- (2) The arrangement may be made if agreement or approval is given in accordance with [section 59](#) by or on behalf of each beneficiary, and of each potential beneficiary, of the trust in question.
- (3) [This section](#) is subject to [section 62](#).
- (4) [This section](#)—
 - (a) applies irrespective of when the trust was created, but
 - (b) does not apply as respects a private purpose trust or a public trust.

59 Agreement or approval for purposes of [section 58\(2\)](#)

- (1) In [this section](#) “agreement” means agreement for the purposes of [section 58\(2\)](#) and “approval” means approval for those purposes.
- (2) Agreement may be given by a beneficiary if the beneficiary either—

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- (a) has attained the age of 18 years and is capable, or
 - (b) is not a natural person.
- (3) Approval may be given by a potential beneficiary if that person falls within [subsection \(7\)](#).
- (4) Approval on behalf of a person who is incapable may be given by any person authorised to give it and having powers relating to the matter—
- (a) under the Adults with Incapacity (Scotland) Act 2000, or
 - (b) under the law of a country other than Scotland.
- (5) Approval may be given by the court on behalf of—
- (a) a person who has not attained the age of 18 years,
 - (b) a person who is incapable,
 - (c) a potential beneficiary who does not fall within [subsection \(7\)](#),
 - (d) an unborn person, or
 - (e) a person who is untraceable.
- (6) The powers of the court under [subsection \(5\)](#) are exercisable on the application of the trustees or of any of the beneficiaries.
- (7) A potential beneficiary falls within [this subsection](#) where—
- (a) the potential beneficiary either—
 - (i) has attained the age of 18 years and is capable, or
 - (ii) is not a natural person, and
 - (b) the potential beneficiary would be of the specified description, or as the case may be a member of the specified class, if—
 - (i) the future date were the date of the hearing of the application for approval, or
 - (ii) the future event had happened at the date of that hearing.
- (8) In [subsection \(7\)\(b\)](#), “specified description”, “specified class”, “future date” and “future event” are to be construed by reference to the definition, in [section 81\(1\)](#), of “potential beneficiary”.
- (9) [This section](#)—
- (a) applies irrespective of when the trust was created, but
 - (b) does not apply as respects a private purpose trust or a public trust.

60 Giving of approval by court

- (1) The court is to give approval under [section 59\(5\)](#) only if it is of the opinion that the carrying out of the arrangement in question would not be prejudicial to the person on whose behalf the approval is sought.
- (2) Except that [subsection \(1\)](#) does not apply where the approval is sought under—
- (a) [paragraph \(c\)](#) of [section 59\(5\)](#) on behalf of a potential beneficiary who cannot be ascertained if the court is satisfied that there is no reasonable likelihood of the event taking place which would make that person a beneficiary, or
 - (b) [paragraph \(d\)](#) of that section if the court is satisfied that there is no reasonable likelihood of the person on whose behalf the approval is sought being born.

- (3) In considering, for the purposes of [subsection \(1\)](#), whether the carrying out of an arrangement would be prejudicial to a person the court may have regard to—
- (a) any economic or other benefit which the person is likely to receive from the arrangement,
 - (b) any economic or other detriment which the person is likely to sustain in consequence of the arrangement,
 - (c) the welfare of any member of the person’s family, and
 - (d) such other factors as seem to the court to be material.
- (4) [This section](#)—
- (a) applies irrespective of when the trust was created, but
 - (b) does not apply as respects a private purpose trust or a public trust.

61 Interests of negligible value

- (1) [This section](#) applies in relation to loss sustained by—
- (a) a beneficiary, or
 - (b) a potential beneficiary,
- (either such person being referred to in [this section](#) as “B”) as a consequence of the making of an arrangement to which [section 58](#) applies.
- (2) The trustees are not liable to B for the loss if—
- (a) B was a beneficiary, or potential beneficiary, when the arrangement was made,
 - (b) agreement by, or approval on behalf of, B to the arrangement (being agreement or approval in accordance with [section 59](#)) was not given, and
 - (c) prior to the arrangement being made the court, on the application of the trustees or of any of the beneficiaries, was satisfied either—
 - (i) that B’s interest was so remote as to be of negligible value, or
 - (ii) that, in the event of B becoming a beneficiary, B’s interest would be so remote as to be of negligible value.
- (3) [This section](#)—
- (a) applies irrespective of when the trust was created, but
 - (b) does not apply as respects a private purpose trust or a public trust.

62 Arrangements to vary or revoke alimentary purposes

- (1) Where a beneficiary under a trust has entered into enjoyment of—
- (a) an alimentary liferent of, or
 - (b) any alimentary income from,
- the trust property, or any part of the trust property, an arrangement to vary or revoke the alimentary purpose in question requires the authorisation of the court under [this section](#) as well as agreement or approval given in accordance with [section 59](#).
- (2) The court may give authorisation under [this section](#) if it considers that the carrying out of the arrangement would be reasonable having regard to—
- (a) the income of the beneficiary from all sources, and
 - (b) such other factors as seem to the court to be material.

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- (3) The powers of the court under [this section](#) are exercisable on the application of the trustees or of any of the beneficiaries.
- (4) [Subsection \(1\)](#) does not apply to an alimentary purpose created by a woman in her own favour prior to 24th July 1984.
- (5) In [this section](#), “alimentary purpose” means a trust purpose entitling the beneficiary to an alimentary liferent of, or alimentary income from, the trust property or any part of the trust property.
- (6) [This section](#)—
 - (a) applies irrespective of when the trust was created, but
 - (b) does not apply as respects a private purpose trust or a public trust.

63 Views of persons under 18

- (1) [This section](#) applies where the court is considering whether—
 - (a) to give, on behalf of a person who—
 - (i) has not attained the age of 18 years, and
 - (ii) is capable,
 approval under [section 59\(5\)](#) to an arrangement, or
 - (b) to authorise, under [section 62](#), an arrangement in a case where the alimentary beneficiary is a person mentioned in [paragraph \(a\)](#).
- (2) Where the person has attained the age of 16 years but not that of 18 years, the court is to have regard to the person’s views in relation to the arrangement.
- (3) Where the person has not attained the age of 16 years, the court is to—
 - (a) give the person an opportunity to express the person’s views in relation to the arrangement in—
 - (i) the manner that the person prefers, or
 - (ii) a manner that is suitable to the person if the person has not indicated a preference or it would not be reasonable in the circumstances to accommodate the person’s preference, and
 - (b) have regard to any views expressed by the person, taking into account the person’s age and maturity.
- (4) But the court is not required to comply with [subsection \(3\)](#) if satisfied that the person is not able to form a view.
- (5) For the purpose of [subsection \(4\)](#), the person is to be presumed to be able to form a view unless the contrary is shown.
- (6) [This section](#)—
 - (a) applies irrespective of when the trust was created, but
 - (b) does not apply as respects a private purpose trust or a public trust.

64 No requirement for agreement of truster

- (1) An arrangement referred to in [section 58\(1\)](#) or [62\(1\)](#) may be made without the agreement of the truster unless that person is, other than by virtue of being the truster, a beneficiary or potential beneficiary of the trust.

(2) **This section—**

- (a) applies irrespective of when the trust was created, but
- (b) does not apply as respects a private purpose trust or a public trust.