



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.

Alteration of trust purposes

65 Alteration of trust purposes on material change in circumstances

(1) The court may, if satisfied—

- (a) in the case of an inter vivos trust, that there has been a material change in circumstances since the trust was created (or that such a change is reasonably to be regarded as in prospect), or
- (b) in the case of a testamentary trust—
 - (i) that there has been a material change in circumstances since the testamentary writing was executed (or that such a change is reasonably to be regarded as in prospect), and
 - (ii) that the testator is dead,alter the trust purposes in so far as it is, in the opinion of the court expedient to do so to offset or counter the effect, or as the case may be the prospective effect, of the change in circumstances.

(2) The power in subsection (1) is exercisable on the application of a person mentioned in subsection (9) in relation to any trust other than a commercial trust or a public trust.

(3) Any other person mentioned in subsection (9) may oppose the application.

(4) As respects an inter vivos trust, if the trust deed provides expressly that the purposes of the trust may not be altered by the court during (either or both)—

- (a) the lifetime of the truster,
- (b) such period of up to 25 years from the date of the creation of the trust (as may be specified in the deed),

no application may be made under this section in contravention of that provision.

(5) A provision in an inter vivos trust deed that provides expressly that the purposes of the trust may not be altered by the court for a period longer than one mentioned in subsection (4)(b) is to be read as specifying that the purposes may not be altered until (the later of)—

- (a) the death of the truster, or
- (b) a period of 25 years has elapsed since the date of the creation of the trust.

(6) Subject to subsection (7), as respects a testamentary trust, if the trust deed provides expressly that the purposes of the trust may not be altered by the court during such period of up to 25 years from the date of death of the testator, no application may be made under this section in contravention of that provision.

(7) The court may, if satisfied that there was a period between the change of circumstances mentioned in subsection (1)(b)(i) and the date of death, during which the testator (either or both)—

- (a) was incapable,
- (b) was unaware (or could not reasonably supposed to have been aware) of the change and its effect on the trust,

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determine that the period provided for in subsection (6) began to run, not from the date of death, but from the date of the change of circumstances or, if the court thinks fit, from the commencement of the period of incapacity or unawareness.

- (8) A provision in a testamentary trust deed that provides expressly that the purposes of the trust may not be altered by the court for a period longer than one mentioned in subsection (6) is to be read as specifying that the purposes may not be altered until a period of 25 years has elapsed since the date of death of the testator.
- (9) 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 (see section 81(2)),
 - (g) a judicial factor, and
 - (h) unless the trust deed expressly or impliedly excludes the possibility—
 - (i) a protector, and
 - (ii) a supervisor.
- (10) Without prejudice to the generality of [subsection \(1\)](#), in the exercise of its power under that subsection the court—
- (a) is in particular to have regard—
 - (i) to the intentions, or probable intentions, of the truster as they appear from the trust deed or testamentary writing and from such other evidence as is available to the court (except that if those intentions, or probable intentions, cannot be ascertained the court is instead to have regard to the probable intentions of a reasonable truster in the circumstances current when the power is exercised),
 - (ii) to whether the beneficiaries consent to the alteration in question, and
 - (iii) to the fairness of that alteration,
 - (b) may bring the trust to an end whether in whole or in part, and
 - (c) may make provision as regards vesting, or postponement of vesting, of the trust property.
- (11) For the purposes of [subsection \(10\)\(a\)](#), any intention, or probable intention, to exclude the exercise of the court’s powers under [subsection \(1\)](#) may be disregarded.
- (12) In this section “change in circumstances” includes (without prejudice to the generality of the expression) a change in—
- (a) the nature or amount of the trust property,
 - (b) the personal or financial circumstances of—
 - (i) a member of the truster’s family, or
 - (ii) any other person intended to be benefited by the trust, or
 - (c) the tax regime.
- (13) In deciding, for the purposes of [this section](#), if a trust is a commercial trust, the court is in particular to have regard to whether—

- (a) the trust is set up under, or by virtue of, a contract (bilateral or multilateral) of a commercial nature, or
 - (b) the trust is set up under, or by virtue of, a contract (bilateral or multilateral) of a commercial nature, or
- (14) For the purposes of [this section](#) “commercial trust”—
- (a) means a trust which—
 - (i) forms part of a commercial arrangement, and
 - (ii) is intended to further that arrangement, and
 - (b) without prejudice to that generality, includes—
 - (i) a life assurance policy,
 - (ii) a unit trust or any other trust-based investment scheme, and
 - (iii) a trust created under or comprised in a partnership agreement.
- (15) [This section](#)—
- (a) applies irrespective of when the trust was created, and
 - (b) is without prejudice to [section 67](#).

Powers in relation to ex officio trustees

66 Appointment by the court of a trustee to take the place of an ex officio trustee

- (1) The court may, as regards any trust, on the application of an ex officio trustee appoint a person nominated by the applicant to be a trustee in place of the applicant if the court—
 - (a) considers it expedient to do so for the administration of the trust, and
 - (b) is satisfied that the power to make such a nomination is not, expressly or by implication, excluded by the trust deed.
- (2) The making of an appointment under [subsection \(1\)](#) removes the applicant from the office of trustee.
- (3) A person who, having been nominated under [subsection \(1\)](#), still holds the office of trustee as at the date mentioned in [subsection \(4\)](#), ceases to hold the office of trustee on that date.
- (4) The date referred to in [subsection \(3\)](#) is the date on which the nominator ceases to hold the office by virtue of which that person was an ex officio trustee when the nomination was made.
- (5) In [subsection \(1\)](#), the expression “in place of” is not to be construed as implying that the person appointed is to be in any way dependent upon, or under the direction of, the nominating trustee.
- (6) [This section](#) applies irrespective of when the trust was created.

67 Office supplying ex officio trustee

- (1) Where the holder of an office specified in a trust deed is (in terms of the trust deed) eligible to be a trustee by virtue only of being the holder of that office, the court may remove the specification of the office from the trust deed on the application of the trustees.

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- (2) Where the specified office is extant, an application under [subsection \(1\)](#) may also be made by—
 - (a) the holder, or
 - (b) the body of which the holder is an officer.
- (3) If an application under [subsection \(1\)](#) seeks the specification of a different office in substitution for the specification removed, the court may make that substitution if satisfied either—
 - (a) that the specification sought is more appropriate to the purposes of the trust than the specification removed, or
 - (b) that the office removed is no longer extant.
- (4) [This section](#) applies irrespective of when the trust was created.

Application in respect of defective exercise of fiduciary power etc.

68 Application in respect of defective exercise of fiduciary power etc.

- (1) [This section](#) applies where a relevant person—
 - (a) considers that a trustee has taken a decision in purported exercise of a fiduciary power but that taking it was a defective exercise of the power, or
 - (b) reasonably apprehends that a trustee is about to take a decision in purported exercise of a fiduciary power but that taking it would be a defective exercise of the power.
- (2) The relevant person may apply to the court for an appropriate remedy in respect of the decision taken or as the case may be of the decision which is about to be taken.
- (3) The grounds on which the court may grant such a remedy are—
 - (a) that the trustee, in taking the decision, either has considered (or would be considering) the wrong question or has not considered (or would not be considering) the correct question,
 - (b) that the trustee, in taking the decision, either has failed (or would be failing) to take a relevant consideration into account or has taken (or would be taking) an irrelevant consideration into account,
 - (c) that taking the decision was (or would be) ultra vires,
 - (d) that taking the decision was (or would be) fraud on a power,
 - (e) that in taking the decision the trustee failed (or would be failing) to act honestly or in good faith,
 - (f) where the application is made in respect of a decision mentioned in [paragraph \(a\)](#) of [subsection \(1\)](#)—
 - (i) that no reasonable person, properly instructed as to the facts and the law, could have come to the decision, or
 - (ii) that in some other way the decision was perverse,
 - (g) where the application is made in respect of a decision mentioned in [paragraph \(a\)](#) of [subsection \(1\)](#), that the decision would not have been taken but for the trustee being in error as to fact or law, and
 - (h) where the application is made in respect of a decision mentioned in [paragraph \(b\)](#) of [subsection \(1\)](#), that to take the decision would be perverse.

- (4) Where the application is made in respect of a decision mentioned in [paragraph \(a\)](#) of [subsection \(1\)](#), [paragraph \(a\)](#) of [subsection \(3\)](#) applies whether or not the trustee purported to consider the correct question.
- (5) For the purposes of [subsection \(3\)\(g\)](#), the error—
- (a) must relate to the factual or legal situation at the time the decision in question was taken, and
 - (b) need not be as to the effect or consequence of that decision.
- (6) Nothing in this section limits the power of the court, when considering whether it is appropriate to grant a remedy on the ground described in [subsection \(3\)\(g\)](#), to take into account the purpose (or likely purpose) of the relevant person making the application (for example, that the application is being made wholly or mainly for the purpose of avoiding the tax consequences of the trustee’s decision).
- (7) In [this section](#)—
- (a) “appropriate remedy” means—
 - (i) where the application is made in respect of a decision mentioned in [paragraph \(a\)](#) of [subsection \(1\)](#), reduction (whether partial or full), rectification, or declarator, and
 - (ii) where the application is made in respect of a decision mentioned in [paragraph \(b\)](#) of that subsection, interdict, and
 - (b) “relevant person” means—
 - (i) the truster, a trustee, a beneficiary or a potential beneficiary,
 - (ii) any protector or supervisor, and
 - (iii) any other person if that other person has a patrimonial interest in the exercise of the fiduciary power in question (or in its not being exercised).
- (8) [This section](#) applies—
- (a) irrespective of when the trust was created, but
 - (b) only as regards a decision taken (or, as the case may be, which it is reasonably apprehended will be taken) after the section comes into force.

Directions relating to trust matters and the estates of deceased persons

69 Applications in relation to trusts and to the estates of deceased persons

- (1) Trustees, protectors or supervisors under a trust deed, or any other person with an interest in the trust property, may apply to the Court of Session for a direction on questions relating to—
- (a) the investment, distribution, management or administration of the trust estate, or
 - (b) the exercise of any power vested in, or the performance of any duty imposed on, the trustees notwithstanding that such direction may affect contingent interests in the estate, whether of persons in existence at, or of persons who may be born after, the date of the direction.
- (2) An executor (nominate or dative) of a person who dies after the coming into force of this section may, whether or not there is a testamentary trust, apply to the Court of Session for a direction on questions relating to—

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- (a) the investment, distribution, management or administration of the person’s estate,
 - (b) the exercise of any power vested in, or the performance of any duty imposed on, the executor notwithstanding that such direction may affect contingent interests in the estate, whether of persons in existence at, or of persons who may be born after, the date of the direction.
- (3) In subsection (1)—
- “protector” is to be construed in accordance with section 53(1)(a), and
 - “supervisor” is to be construed in accordance with section 49(1).

Expenses

70 Expenses of litigation

- (1) Subject to the following provisions of [this section](#), a trustee does not incur personal liability for the expenses of civil litigation to which the trust is party.
- (2) A trustee may be found personally liable, in whole or in part, for the expenses of civil litigation to which the trust is party if—
 - (a) the litigation is, in the opinion of the court, unnecessary,
 - (b) the litigation relates to the trustee’s opposing the appointment of a judicial factor to administer the trust in place of the trustee and the trustee is unsuccessful both—
 - (i) in opposing the appointment, and
 - (ii) as regards being removed from office,
 - (c) the litigation relates to the trustee’s opposing the reduction of the trust deed and the trustee is unsuccessful in opposing the reduction,
 - (d) the trustee has, by breach of duty, brought about the litigation,
 - (e) the trustee is part of a minority of the body of trustees and that minority has, in the name of the trust, pursued the litigation—
 - (i) without consulting such of the other trustees as are both capable and traceable, and
 - (ii) unsuccessfully,
 - (f) the trustee is part of a minority of the body of trustees and that minority has, in the name of the trust, defended the litigation—
 - (i) without consulting such of the other trustees as are both capable and traceable, and
 - (ii) without the defence being of any benefit to the trust, or
 - (g) the trust property is (or is likely to be) insufficient to meet the expenses incurred.
- (3) Where, by virtue of [subsection \(2\)\(a\) to \(f\)](#), a trustee is found personally liable for the expenses of civil litigation to which the trust is party, the court may allow the trustee relief against the trust property if and in so far as the court considers it appropriate to do so.
- (4) Where a trust is party to an ongoing civil litigation the court may, on the application of a party, make a determination about the personal liability (or relief from such liability) of a trustee for expenses yet to be incurred.

- (5) [This section](#) applies irrespective of when the trust was created.

71 Expenses of application

- (1) Any question of expenses in relation to an application under this Act is to be determined by the court.
- (2) Without prejudice to the generality of [subsection \(1\)](#), the court may, if it considers it reasonable to do so, direct that any such expenses be paid out of the trust property.

Miscellaneous powers

72 Authorisation to make payments on basis that an event has or has not occurred or will or will not occur

- (1) The court may, on the application of one or more of the trustees or of any person with an interest in the trust property, grant an order authorising the trustees to make payments from the trust property on the basis that an event specified in the application—
- (a) has, or has not, occurred, or
 - (b) will, or will not, occur.
- (2) An order under [subsection \(1\)](#) may be granted on such conditions as the court thinks fit to impose.
- (3) Should it be found that the basis on which the order was granted was untrue, a trustee who has acted in accordance with the order incurs no personal liability unless, in connection with the making of the application—
- (a) some relevant fact was concealed from the court—
 - (i) by the trustee, or
 - (ii) by some other person and the trustee knew, or ought to have known, of the concealment, or
 - (b) there were fraudulent actings—
 - (i) on the part of the trustee, or
 - (ii) on the part of some other person and the trustee knew, or ought to have known, of those actings and that they were fraudulent.
- (4) [This section](#) is without prejudice to any right of a beneficiary to recover trust property from a person to whom, by virtue of the order, a payment has been made or from any successor of such a person.
- (5) [This section](#) applies irrespective of when the trust was created.

73 Completion of title by beneficiary

- (1) A beneficiary absolutely entitled to heritable or incorporeal moveable property, title to which has been taken in the name of a trustee who has died or become incapable without having executed a conveyance (or as the case may be an assignation) of the property, may apply to the court for authority to complete title to the property in the beneficiary's own name.
- (2) The court may, on any such application, grant warrant for completing title to the property.

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- (3) Any such warrant is effectual as a conveyance (or as the case may be as an assignment) of the property in favour of the beneficiary.
- (4) Reference in [subsections \(1\) and \(3\)](#) to a beneficiary includes reference to any person deriving right from a beneficiary.
- (5) [This section](#) applies irrespective of when the trust was created.

74 Warrant to vest corporeal moveable property in beneficiary where trustee has died or become incapable

- (1) [This section](#) applies where—
 - (a) a trustee has died or become incapable vested in corporeal moveable property to which a beneficiary is absolutely entitled, but
 - (b) delivery of the property to, or possession of the property by, the beneficiary is required for the property to vest in the beneficiary.
- (2) The court may, on the application of the beneficiary, grant warrant for the property to vest in the beneficiary.
- (3) Any such warrant is effectual to vest the property in the beneficiary, as at the date of the warrant, as if the beneficiary had taken delivery or possession of the property on that date.
- (4) Reference in [subsections \(1\) to \(3\)](#) to a beneficiary includes reference to any person deriving right from a beneficiary.
- (5) [This section](#) applies irrespective of when the trust was created.

75 Superintendence order as to investment and distribution of trust property

- (1) The court may, on the application of one or more of the trustees, order the accountant of court to superintend the trustees' administration of the trust insofar as that administration relates to—
 - (a) the investment of trust property, and
 - (b) the distribution of trust property among creditors and beneficiaries.
- (2) If the order (to be known as a “superintendence order”) is granted, the accountant of court—
 - (a) must, annually, examine and audit the trustees' accounts, and
 - (b) may report to the court, and obtain the court's directions, on any question which may arise with regard to the administration superintended.
- (3) [This section](#) applies irrespective of when the trust was created.