



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 8

POWERS OF THE COURT

Variation and termination of private trusts

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—
 - (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.

Status: This is the original version (as it was originally enacted).

- (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.