



# Trusts and Succession (Scotland) Act 2024

## 2024 asp 2

### PART 1

### TRUSTS

### CHAPTER 3

### POWERS AND DUTIES OF TRUSTEES

PROSPECTIVE

#### *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—

*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: Power of advancement. (See end of Document for details)*

- (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 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

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

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