



# Trusts and Succession (Scotland) Act 2024

## 2024 asp 2

### PART 1

### TRUSTS

### CHAPTER 4

#### CONTRACTUAL RIGHTS, DAMAGES AND THE VALIDITY OF CERTAIN TRANSACTIONS AND DOCUMENTS

#### *Contractual rights*

#### **38 Contractual rights**

- (1) [Subsection \(2\)](#) applies where, acting *intra vires*, the trustees enter into an onerous contract with a person who, at the time the contract is entered into, is aware (whether or not by virtue of having been so informed by the trustees) that the trustees are entering into the contract in their capacity as trustees.
- (2) Subject to [subsections \(3\) and \(4\)](#) and except in so far as the contract otherwise provides, any rights of the person under the contract are enforceable against the trust property only.
- (3) [Subsection \(4\)](#) applies where—
  - (a) a person has a contractual right enforceable against the trustees' private property, but
  - (b) the trustees have a right of relief against the trust property in respect of any finding against the trustees' private property.
- (4) The person may elect to enforce the right against the trustees' private property or directly against the trust property (liability being joint and several).
- (5) [Subsection \(6\)](#) applies where, acting *ultra vires* (and whether or not purporting to be acting *intra vires*), the trustees enter into an onerous contract with a person.
- (6) Any rights of the person under the contract—

- (a) are not enforceable against the trust property, but
  - (b) if the person enters into the contract in good faith, are enforceable against the trustees' private property.
- (7) **This section** applies—
- (a) irrespective of when the trust was created, but
  - (b) only as respects a contract entered into after the section comes into force.

### *Damages*

#### **39 Damages for loss resulting from trustee's act or omission in ordinary course of administration**

- (1) **This section** applies where—
- (a) in consequence of a trustee's act or omission (or of an act or omission of a person for whom the trustees are responsible) a person other than a trustee suffers loss, and
  - (b) that act or omission arises in the ordinary course of administering the trust.
- (2) Subject to **subsection (3)**, any damages awarded in respect of that loss are recoverable from the trust property only.
- (3) In making any award in respect of that loss the court may, if satisfied that the act or omission was in any way attributable to the trustee's failure to exercise such skill, care or diligence as is required of that trustee by **section 31**, determine that damages are recoverable, in whole or in part, from the trustee's private property (to the extent of the trustee's failure) and the balance (if any) from the trust property.
- (4) **This section** applies—
- (a) irrespective of when the trust was created, but
  - (b) only as respects an act or omission occurring after the section comes into force.

#### **40 Bringing of action for damages for loss resulting from trustee's act or omission in ordinary course of administration**

- (1) **This section** applies where—
- (a) in consequence of the act or omission of a trustee (in **this section** referred to as "T"), a person other than a trustee suffers loss, and
  - (b) that act or omission arises in the ordinary course of administering the trust.
- (2) Any action for damages in respect of that loss may be brought—
- (a) against the body of trustees,
  - (b) on the basis of personal liability, against T, or
  - (c) jointly and severally, against both the body of trustees and T.
- (3) At any time before final judgement in proceedings brought as mentioned in **subsection (2)(a)**, the court may, under rules of court, allow the body of trustees an amendment—
- (a) adding T, as an additional defender, to the instance of the principal writ, and
  - (b) directing existing or additional conclusions or craves, averments and pleas-in-law against T.

**41 Delictual liability: trustee’s right of relief against other trustees**

- (1) **Subsection (2)** applies where a body of trustees incurs delictual liability but none of them incurs personal liability as respects the delict.
- (2) Each trustee has a right of relief against the other trustees jointly and severally.
- (3) **Subsection (2)** is subject to section 3(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (which provides for contributions to be in such proportions as are deemed just).
- (4) **This section** applies—
  - (a) irrespective of when the trust was created, but
  - (b) only as respects liability incurred after the section comes into force.

**42 Trustees’ liability in relation to certain obligations**

- (1) **This section** applies where a body of trustees incurs liability in respect of an obligation under—
  - (a) environmental law, or
  - (b) the law relating to an occupier’s ownership or control of heritable property, being liability incurred in the ordinary course of administering the trust.
- (2) Subject to **subsection (3)**, any damages awarded in respect of that liability are recoverable from the trust property only.
- (3) In making any award in respect of that liability the court may, if satisfied that the liability was in any way attributable to a trustee’s failure to exercise such skill, care or diligence as is required of that trustee by **section 31**, determine that damages are recoverable, in whole or in part, from the trustee’s private property (to the extent of the trustee’s failure) and the balance (if any) from the trust property.
- (4) **This section** applies—
  - (a) irrespective of when the trust was created, but
  - (b) only as respects a liability incurred after the section comes into force.

*Validity of certain transactions and documents***43 Validity of certain transactions entered into by trustees**

- (1) **Subsection (2)** applies where—
  - (a) the trustees enter into an onerous transaction with any person, and
  - (b) the transaction is one under which the trustees purport to exercise, in relation to the trust property, or to any part of the trust property, a power under **section 15(1)** or **18(1)** whether the power derives from the trust deed or is implied by those sections.
- (2) The validity of the transaction, and of any title acquired under the transaction by the second party, are not challengeable by that or any other person on the ground that—
  - (a) the exercise of the power is at variance with the terms or purposes of the trust, or
  - (b) on the part of the trustees, there has been some procedural irregularity or omission.

- (3) Except that, if the trustees are acting under the supervision of the accountant of court and the exercise of the power is under [section 15\(1\)](#), then [subsection \(2\)\(a\)](#) applies only if the accountant consents to the transaction.
- (4) Nothing in [subsections \(1\) to \(3\)](#) affects any question of liability as between the trustees.
- (5) [This section](#) applies—
  - (a) irrespective of when the trust was created, but
  - (b) only as respects a transaction entered into after the section comes into force.

#### **44      Validity of certain deeds and other documents bearing to be executed by trustees**

- (1) Except in so far as the trust deed expressly provides otherwise, a deed, or other document, bearing to be executed by the body of trustees is valid if executed by a majority of the trustees of that body.
- (2) [Subsection \(1\)](#) is without prejudice to [section 22\(1\)\(b\)](#).
- (3) [This section](#) applies—
  - (a) irrespective of when the trust was created, but
  - (b) only as respects a document executed after the section comes into force.