



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 6

PRIVATE PURPOSE TRUSTS

Private purpose trusts: general

46 Private purpose trusts: general

- (1) A private purpose trust exists where—
 - (a) the trust property is held by, or is vested in, a trustee for the furtherance of a specific purpose which is not a charitable or other public purpose, and
 - (b) the trust is not constituted solely for the benefit of a specific beneficiary (or potential beneficiary).
- (2) For the purposes of [subsection \(1\)](#), it is immaterial whether the trust property is also held by, or vested in, the trustee for the benefit of any person (whether or not a person yet ascertained or in existence).
- (3) [This section](#) applies irrespective of when the trust was created.

Applications to the court

47 Application for order requiring fulfilment of purpose of private purpose trust

- (1) Any person with an interest in the purpose of a private purpose trust (including, without prejudice to the generality of [section 50\(1\)\(a\)](#), any supervisor) may apply to the court for an order requiring steps to be taken for the fulfilment of that purpose.
- (2) [This section](#) applies irrespective of when the trust was created.

48 Application to reform trust

- (1) [This section](#) applies where property is held for the specific purpose of a private purpose trust.
- (2) If executing the trust in accordance with its terms becomes, whether in relation to all or only to part of the property—
 - (a) impossible or impracticable,
 - (b) unlawful or contrary to public policy, or
 - (c) inappropriate because, by reason of changed circumstances, to do so would no longer accord with the general intent of the trust,
 the trustees or (unless the trust deed expressly or impliedly excludes the possibility) a supervisor may apply to the court to reform the trust.
- (3) On such application the court—
 - (a) may direct that the trust property, or where the application relates only to part of the trust property the part in question, be held for such other purpose as it considers to be consistent with the spirit of the truster’s directions, or
 - (b) if it is of the opinion that the trust cannot be reformed consistently with the spirit of those directions, may direct—
 - (i) where the application relates to all of the trust property, that the trustees dispose of that property as though the trust has failed, or
 - (ii) where the application relates only to part of the trust property, that the trustees dispose of that part as though the trust has failed in relation to that part.
- (4) But [subsections \(2\)](#) and [\(3\)](#) are to be disregarded if the trust can be reformed in accordance with its own terms.
- (5) [This section](#) applies irrespective of when the trust was created.

*Supervisors***49 Appointment of supervisor**

- (1) The truster may, in respect of a private purpose trust, by the trust deed make provision for the appointment of a person (to be known as a “supervisor”) to oversee the fulfilment by the trustees of the trust’s specific purpose.
- (2) The duties of the supervisor are fiduciary obligations; and the supervisor is subject to a duty of care.
- (3) It is not competent to appoint—
 - (a) a trustee to be a supervisor of the trust, or
 - (b) a supervisor of the trust to be a trustee.
- (4) Except in so far as the trust deed, expressly or by implication, provides otherwise, it is competent for there to be more than one supervisor of the trust at any time.
- (5) [Subsection \(6\)](#) applies where—
 - (a) the terms of a private purpose trust require the appointment of a supervisor but it is impossible, difficult or inexpedient to make the appointment without the court’s assistance, or

- (b) no supervisor exists or is traceable who has the legal capacity, and is willing and fit, to carry out the duties of that office.
- (6) The court may appoint a person to be a supervisor of the private purpose trust—
- (a) in the case mentioned in [paragraph \(a\)](#) of [subsection \(5\)](#), on the application of—
 - (i) the trustees,
 - (ii) a supervisor, or
 - (iii) any other person with an interest in the trust, or
 - (b) in the case mentioned in [paragraph \(b\)](#) of that subsection, on the application of—
 - (i) the trustees, or
 - (ii) any other person with an interest in the trust.
- (7) The making of an appointment under [subsection \(6\)\(b\)](#) removes any existing supervisor from office.
- (8) [This section](#) applies irrespective of when the trust was created.

50 Rights and remedies of supervisor

- (1) Except in so far as the trust deed, expressly or by implication, provides otherwise, the supervisor of a private purpose trust has the same rights as a beneficiary would have—
- (a) to bring an action, or make an application to the court, in respect of the trust,
 - (b) to be informed by the trustees of the terms of the trust deed,
 - (c) to receive information concerning the trust and its administration from the trustees, and
 - (d) to inspect, and take copies of, the trust documents.
- (2) [Subsections \(4\) and \(6\) to \(9\)](#) of [section 30](#) apply to a disclosure to a supervisor by virtue of [subsection \(1\)](#) as they apply to a disclosure to a beneficiary by virtue of [subsection \(1\)\(a\)](#) of that section.
- (3) The supervisor has, in the performance of the supervisor's duties as respects the private purpose trust, the same rights as a trustee would have—
- (a) to protection and indemnity, and
 - (b) to make an application to the court for—
 - (i) an opinion,
 - (ii) advice or direction, or
 - (iii) relief from personal liability.
- (4) In the event of a breach of trust, the supervisor has, on behalf of the private purpose trust, the same remedies against the trustees or a third party as a beneficiary would have.
- (5) [This section](#) applies irrespective of when the trust was created.

51 Application to supervisors of certain provisions relating to removal from office and to decision making

- (1) [Sections 7, 13 and 14](#) apply in relation to a supervisor and the duties of a supervisor as they apply in relation to a trustee and the duties of a trustee.

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

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

52 Resignation of supervisor

- (1) A supervisor has power to resign office by notice in writing sent to the trustees.
- (2) The resignation takes effect on receipt of that notice.
- (3) But any resignation sent under [this section](#) in order to facilitate a breach of trust is of no effect.
- (4) [This section](#) applies irrespective of when the trust was created.