



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 3

POWERS AND DUTIES OF TRUSTEES

Payments from income

PROSPECTIVE

28 Power to make payments etc. from income

- (1) Subject to [subsection \(8\)](#) and except in so far as the trust deed, expressly or by implication, provides otherwise (or, in a case where there is no trust deed, the context requires or implies otherwise) the trustees may, provided that the requirements of [subsections \(4\) and \(5\)](#) are satisfied, pay or otherwise apply all or part of the trust income (whether as it arises or after it has accumulated) to a beneficiary for the benefit of the beneficiary.
- (2) The paying or applying 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) The income paid or applied must, as at the date on which it is paid or applied, be income from capital 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.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Section 28. (See end of Document for details)

- (5) The trustees must be satisfied, as at the date mentioned in [subsection \(4\)](#), that no person other than the beneficiary is entitled to the income paid or applied.
- (6) Any amount paid or applied 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.
- (7) For the purposes of [subsection \(6\)](#), the payment or application is to be deemed to be for a consideration equal to the market value of the payment or application as at the date mentioned in [subsection \(4\)](#) (interest in relation to the payment or application being disregarded).
- (8) If the trust deed directs or permits the trustees to accumulate income, the authorisation of the court must be obtained under [subsection \(9\)](#) to any exercise of their power under [subsection \(1\)](#).
- (9) Such authorisation may be granted by the court on an application to it in that regard by the trustees or by any person with an interest.
- (10) Authorisation under [subsection \(9\)](#) may be granted subject to such conditions (if any) as the court thinks fit to impose.
- (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 regards a payment, or application of income, made after the section comes into force.

Commencement Information

II S. 28 not in force at Royal Assent, see [s. 88\(3\)](#)

Status:

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Changes to legislation:

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