



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 8

POWERS OF THE COURT

Alteration of trust purposes

PROSPECTIVE

65 Alteration of trust purposes on material change in circumstances

- (1) The court may, if satisfied—
- (a) in the case of an inter vivos trust, that there has been a material change in circumstances since the trust was created (or that such a change is reasonably to be regarded as in prospect), or
 - (b) in the case of a testamentary trust—
 - (i) that there has been a material change in circumstances since the testamentary writing was executed (or that such a change is reasonably to be regarded as in prospect), and
 - (ii) that the testator is dead,alter the trust purposes in so far as it is, in the opinion of the court expedient to do so to offset or counter the effect, or as the case may be the prospective effect, of the change in circumstances.
- (2) The power in subsection (1) is exercisable on the application of a person mentioned in subsection (9) in relation to any trust other than a commercial trust or a public trust.
- (3) Any other person mentioned in subsection (9) may oppose the application.

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 65. (See end of Document for details)

- (4) As respects an inter vivos trust, if the trust deed provides expressly that the purposes of the trust may not be altered by the court during (either or both)—
- (a) the lifetime of the truster,
 - (b) such period of up to 25 years from the date of the creation of the trust (as may be specified in the deed),
- no application may be made under this section in contravention of that provision.
- (5) A provision in an inter vivos trust deed that provides expressly that the purposes of the trust may not be altered by the court for a period longer than one mentioned in subsection (4)(b) is to be read as specifying that the purposes may not be altered until (the later of)—
- (a) the death of the truster, or
 - (b) a period of 25 years has elapsed since the date of the creation of the trust.
- (6) Subject to subsection (7), as respects a testamentary trust, if the trust deed provides expressly that the purposes of the trust may not be altered by the court during such period of up to 25 years from the date of death of the testator, no application may be made under this section in contravention of that provision.
- (7) The court may, if satisfied that there was a period between the change of circumstances mentioned in subsection (1)(b)(i) and the date of death, during which the testator (either or both)—
- (a) was incapable,
 - (b) was unaware (or could not reasonably be supposed to have been aware) of the change and its effect on the trust,
- determine that the period provided for in subsection (6) began to run, not from the date of death, but from the date of the change of circumstances or, if the court thinks fit, from the commencement of the period of incapacity or unawareness.
- (8) A provision in a testamentary trust deed that provides expressly that the purposes of the trust may not be altered by the court for a period longer than one mentioned in subsection (6) is to be read as specifying that the purposes may not be altered until a period of 25 years has elapsed since the date of death of the testator.
- (9) The persons are—
- (a) the trustees,
 - (b) in the case of an inter vivos trust, the truster,
 - (c) a descendant of the truster,
 - (d) a beneficiary or potential beneficiary,
 - (e) a descendant or ancestor of a beneficiary or potential beneficiary,
 - (f) an appropriate person in relation to a beneficiary or potential beneficiary (see section 81(2)),
 - (g) a judicial factor, and
 - (h) unless the trust deed expressly or impliedly excludes the possibility—
 - (i) a protector, and
 - (ii) a supervisor.
- (10) Without prejudice to the generality of [subsection \(1\)](#), in the exercise of its power under that subsection the court—
- (a) is in particular to have regard—

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- (i) to the intentions, or probable intentions, of the truster as they appear from the trust deed or testamentary writing and from such other evidence as is available to the court (except that if those intentions, or probable intentions, cannot be ascertained the court is instead to have regard to the probable intentions of a reasonable truster in the circumstances current when the power is exercised),
 - (ii) to whether the beneficiaries consent to the alteration in question, and
 - (iii) to the fairness of that alteration,
 - (b) may bring the trust to an end whether in whole or in part, and
 - (c) may make provision as regards vesting, or postponement of vesting, of the trust property.
- (11) For the purposes of [subsection \(10\)\(a\)](#), any intention, or probable intention, to exclude the exercise of the court’s powers under [subsection \(1\)](#) may be disregarded.
- (12) In this section “change in circumstances” includes (without prejudice to the generality of the expression) a change in—
- (a) the nature or amount of the trust property,
 - (b) the personal or financial circumstances of—
 - (i) a member of the truster’s family, or
 - (ii) any other person intended to be benefited by the trust, or
 - (c) the tax regime.
- (13) In deciding, for the purposes of [this section](#), if a trust is a commercial trust, the court is in particular to have regard to whether—
- (a) the trust is set up under, or by virtue of, a contract (bilateral or multilateral) of a commercial nature, or
 - (b) the truster has settled property into the trust for value.
- (14) For the purposes of [this section](#) “commercial trust”—
- (a) means a trust which—
 - (i) forms part of a commercial arrangement, and
 - (ii) is intended to further that arrangement, and
 - (b) without prejudice to that generality, includes—
 - (i) a life assurance policy,
 - (ii) a unit trust or any other trust-based investment scheme, and
 - (iii) a trust created under or comprised in a partnership agreement.
- (15) [This section](#)—
- (a) applies irrespective of when the trust was created, and
 - (b) is without prejudice to [section 67](#).

Commencement Information

II S. 65 not in force at Royal Assent, see [s. 88\(3\)](#)

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Changes to legislation:

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