



# Trusts (Scotland) Act 1961

## 1961 CHAPTER 57

An Act to amend the law of Scotland relating to trusts.

[27th July, 1961]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Jurisdiction of court in relation to variation of trust purposes**

(1) In relation to any trust taking effect, whether before or after the commencement of this Act, under any will, settlement or other disposition, the court may if it thinks fit, on the petition of the trustees or any of the beneficiaries, approve on behalf of—

- (a) any of the beneficiaries who by reason of nonage or other incapacity is incapable of assenting, or
- (b) any person (whether ascertained or not) who may become one of the beneficiaries as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this paragraph shall not include any person who is capable of assenting and would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the presentation of the petition to the court, or
- (c) any person unborn,

any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trust purposes or enlarging the powers of the trustees of managing or administering the trust estate:

Provided that the court shall not approve an arrangement under this subsection on behalf of any person unless it is of the opinion that the carrying out thereof would not be prejudicial to that person.

(2) For the purposes of the foregoing subsection a person who is over the age of pupillarity but has not attained the age of twenty-one years (whether acting with the concurrence

of a curator, administrator-at-law, or other guardian or not) shall be deemed to be incapable of assenting; but before approving an arrangement under that subsection on behalf of any such person the court shall take such account as it thinks appropriate of his attitude to the arrangement.

- (3) Where the court has approved an arrangement on behalf of any person under subsection (1) of this section, or that subsection as extended by the last foregoing subsection, the arrangement shall not be reducible by that person on grounds of minority and lesion.
- (4) Where under any trust such as is mentioned in subsection (1) of this section a trust purpose entitles any of the beneficiaries (in this subsection referred to as " the alimentary beneficiary ") to an alimentary liferent of, or any alimentary income from, the trust estate or any part thereof, the court may if it thinks fit, on the petition of the trustees or any of the beneficiaries, authorise any arrangement varying or revoking that trust purpose and making new provision in lieu thereof, including, if the court thinks fit, new provision for the disposal of the fee or capital of the trust estate or, as the case may be, of such part thereof as was burdened with the liferent or the payment of the income:

Provided that the court shall not authorise an arrangement under this subsection unless—

- (a) it considers that the carrying out of the arrangement would be reasonable, having regard to the income of the alimentary beneficiary from all sources, and to such other factors, if any, as the court considers material, and
- (b) the arrangement is approved by the alimentary beneficiary, or, where the alimentary beneficiary is a person on whose behalf the court is empowered by subsection (1) of this section or that subsection as extended by subsection (2) of this section to approve the arrangement, the arrangement is so approved by the court under that subsection.
- (5) Nothing in the foregoing provisions of this section shall be taken to limit or restrict any power possessed by the court apart from this section under any Act of Parliament or rule of law.
- (6) In this section the expression " beneficiary " in relation to a trust includes any person having, directly or indirectly, an interest, whether vested or contingent, under the trust.

## **2 Validity of certain transactions by trustees**

- (1) Where, after the commencement of this Act, the trustees under any trust enter into a transaction with any person (in this section referred to as " the second party"), being a transaction under which the trustees purport to do in relation to the trust estate or any part thereof an act of any of the descriptions specified in paragraphs (a) to (ee) of subsection (1) of section four of the Act of 1921 (which empowers trustees to do certain acts where such acts are not at variance with the terms or purposes of the trust) the validity of the transaction and of any title acquired by the second party under the transaction shall not be challengeable by the second party or any other person on the ground that the act in question is at variance with the terms or purposes of the trust:

Provided that in relation to a transaction entered into by trustees who are acting under the supervision of the Accountant of Court this section shall have effect only if the said Accountant consents to the transaction.

- (2) Nothing in this section shall affect any question of liability or otherwise between any of the trustees on the one hand and any co-trustee or any of the beneficiaries on the other hand.

### **3 Definition of "judicial factor" in Act of 1921**

Section two of the Act of 1921 shall have effect as if for the definition therein of "judicial factor" there were substituted the following definition:—

“Judicial factor ' shall mean any person holding a judicial appointment as a factor or curator on another person's estate.”

### **4 Power of trustees to acquire interests in residential accommodation for use of beneficiaries**

Section four of the Act of 1921 (which empowers trustees to do certain acts where such acts are not at variance with the terms or purposes of the trust) shall have effect as if in subsection (1) thereof, after paragraph (e), there were inserted the following paragraph:—

“(ee) To acquire with funds of the trust estate any interest in residential accommodation (whether in Scotland or elsewhere) reasonably required to enable the trustees to provide a suitable residence for occupation by any of the beneficiaries.”

### **5 Accumulations of income**

- (1) The following provisions of this section shall have effect in substitution for the provisions of the Accumulations Act, 1800, and that Act is hereby repealed.
- (2) No person may by any will, settlement or other disposition dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for any longer period than one of the following, that is to say—
- (a) the life of the grantor; or
  - (b) a term of twenty-one years from the death of the grantor ; or
  - (c) the duration of the minority or respective minorities of any person or persons living or in utero at the death of the grantor; or
  - (d) the duration of the minority or respective minorities of any person or persons who, under the terms of the will, settlement or other disposition directing the accumulation, would for the time being, if of full age, be entitled to the income directed to be accumulated.
- (3) In every case where any accumulation is directed otherwise than as aforesaid, the direction shall, save as hereinafter provided, be void, and the income directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person or persons who would have been entitled thereto if such accumulation had not been directed.
- (4) For avoidance of doubt it is hereby declared that, in the case of a settlement or other disposition inter vivos, a direction to accumulate income during a period specified in paragraph (d) of subsection (2) of 'this section shall not be void, nor shall the accumulation of the income be contrary to this section, solely by reason of the fact that the period begins during the life of the grantor and ends after his death.

- (5) The restrictions imposed by this section apply to wills, settlements and other dispositions made on or after the twenty-eighth day of July, eighteen hundred, but, in the case of wills, only where the testator was living and of testamentary capacity after the end of one year from that date.
- (6) In this section " minority " in relation to any person means the period beginning with the birth of the person and ending with his attainment of the age of twenty-one years, and " grantor " includes settlor and, in relation to a will, the testator.

## **6 Interpretation**

- (1) In this Act, unless the context otherwise requires.—
  - " Act of 1921 " means the Trusts (Scotland) Act, 1921;
  - " the court " means the Court of Session; and
  - " trust " and " trustee " have the same meanings respectively as in the Act of 1921.
- (2) Unless the context otherwise requires references in this Act to any other Act are references to that Act as amended, modified or extended by any Act including this Act.

## **7 Short title, citation, application and commencement**

- (1) This Act may be cited as the Trusts (Scotland) Act, 1961, and this Act and the Act of 1921 may be cited together as the Trusts (Scotland) Acts, 1921 and 1961.
- (2) This Act shall apply to trusts which have come into operation before, as well as to trusts coming into operation after, the commencement of this Act.
- (3) This Act shall come into operation on the expiration of the period of one month beginning with the date of the passing thereof.