



# Trusts (Scotland) Act 1961

## 1961 CHAPTER 57 9 and 10 Eliz 2

### 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 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<sup>[F2]</sup>(other than a transaction such as is specified in paragraph (ea) of that subsection)] 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.

- <sup>[F3]</sup>(2) Nothing in subsection (1) of this section shall affect any question of liability between any of the trustees on the one hand and any co-trustee or any of the beneficiaries on the other hand.
- ( 3 ) Without prejudice to the operation of subsection (1) of this section, where in relation to the trust estate or any part thereof a judicial factor thinks it expedient to do any of the acts mentioned in that subsection but the act in question might be at variance with the terms or purposes of the trust, he may, subject to the following provisions of this section, apply to the Accountant of Court for his consent to the doing of the act.
- (4) Where an application is made under subsection (3) of this section to the Accountant of Court for his consent to the doing of an act to which that subsection applies, he may grant the application subject to such conditions (including conditions as to price) as he thinks fit if—
- he considers that the doing of the act is in the best interests of the owner of the trust estate to which the judicial factor’s appointment relates or of any person to whom the owner owes a duty of support; and
  - he is satisfied—

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*Changes to legislation: There are currently no known outstanding effects for the Trusts (Scotland) Act 1961, Section 2. (See end of Document for details)*

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- (i) that the judicial factor is not expressly prohibited by the terms of his appointment from doing the act; and
  - (ii) that there has been compliance with the provisions of subsection (5) of this section and of any rules made thereunder; and
  - (c) no objection is made to the doing of the act under subsection (5) of this section.
- (5) A judicial factor proposing to make an application under subsection (3) of this section to the Accountant of Court shall notify such persons or such class or classes of persons as may be specified in rules of court in such manner as may be so specified of the proposed application, the act to which it relates, and of their right to object to him doing that act within such time and in such manner as the rules may specify; and the rules may make different provision in respect of different classes of judicial factors, and may make provision exempting a judicial factor or a class of judicial factors from giving notification under this subsection in such circumstances as the rules may specify.
- (6) Where a judicial factor does any act in accordance with the consent of the Accountant of Court granted under subsection (4) of this section and in compliance with the provisions of this section and of any rules made thereunder, it shall be treated as being not at variance with the terms or purposes of the trust.]

#### Textual Amendments

- F1** Word in s. 2(1) substituted (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 3(a)**; S.S.I. 2005/644, art. 2(1), Sch. 1
- F2** Words in s. 2(1) inserted (S.) (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 3 para. 3(b)**; S.S.I. 2005/644, art. 2(1), Sch. 1
- F3** S. 2(2)–(6) substituted for s. 2(2) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), **s. 8**

#### Modifications etc. (not altering text)

- C1** S. 2(3) restricted (9.3.1992) by S.I. 1992/272, **rule16**

**Changes to legislation:**

There are currently no known outstanding effects for the Trusts (Scotland) Act 1961, Section 2.