



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 3

MISCELLANEOUS AND GENERAL

General

81 Interpretation

(1) In this Act, unless the context otherwise requires—

“beneficiary”, in relation to a trust, means a person having, whether directly or indirectly, a vested or contingent interest under the trust,

“the court” means the Court of Session except that in [sections 1, 7, 8, 66, 67, 70, 71, 73](#) and [74](#) the expression includes the appropriate sheriff court,

“guardian” includes a person’s continuing attorney,

“potential beneficiary” means a person (whether or not an ascertained person) who—

- (a) is not a beneficiary, but
- (b) may become a beneficiary on being, at a future date or on the happening of a future event, a person of some specified description or a member of some specified class of persons,

“private purpose trust” is to be construed in accordance with [section 46](#),

“protector” is to be construed in accordance with [section 53\(1\)\(a\)](#),

“supervisor” is to be construed in accordance with [section 49\(1\)](#),

“trust” means any trust (whether or not constituted by deed or other writing, by or by virtue of Act of Parliament or of the Scottish Parliament, by Royal Charter, or by resolution of any corporation, public body or ecclesiastical body) but does not include any pension scheme established under a trust,

“trust deed” means any—

- (a) deed or other writing,
- (b) enactment,
- (c) Royal Charter, or
- (d) resolution of any corporation, public body or ecclesiastical body,

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which constitutes any trust, and

“trustee” means a trustee under any trust but includes an executor nominate and, except in [sections 3 and 5](#), an executor dative.

(2) In this Act, “appropriate person” means—

- (a) in relation to a beneficiary or, as the case may be, potential beneficiary, who has not attained the age of 16 years—
 - (i) a parent or guardian who has the parental responsibility or parental right to act as that person’s legal representative under section 1(1)(d) or 2(1)(d) of the Children (Scotland) Act 1995 (“the 1995 Act”),
 - (ii) a person in whom that parental responsibility or parental right is vested by virtue of section 11(2)(b) of the 1995 Act,
 - (iii) a person having that parental responsibility or parental right by virtue of section 11(12) of the 1995 Act,
 - (iv) a person in whom that parental responsibility or parental right is vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007),
 - (v) a parent or guardian who has the right, in relation to the beneficiary or potential beneficiary, to act as that person’s legal representative, by virtue of having parental responsibility for that person under Part 1 of the Children Act 1989 (“the 1989 Act”),
 - (vi) a person having that right, in relation to the beneficiary or potential beneficiary, by virtue of having parental responsibility for that person by virtue of—
 - (A) section 12(2) of the 1989 Act,
 - (B) section 14C of the 1989 Act, or
 - (C) section 25(3) of the Adoption and Children Act 2002,
 - (vii) a parent or guardian who has that right, in relation to the beneficiary or potential beneficiary, by virtue of having parental responsibility for that person under Part 2 or Part 15 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755) (“the 1995 Order”),
 - (viii) a person having that right, in relation to the beneficiary or potential beneficiary, by virtue of having parental responsibility for that person under Article 12(2) of the 1995 Order, or
- (b) in relation to a beneficiary or, as the case may be, potential beneficiary, who is incapable, that person’s guardian.

(3) In the definition of “the court” in [subsection \(1\)](#), “the appropriate sheriff court” means—

- (a) where the sole trustee is, or a majority of the trustees are, habitually resident in a particular sheriffdom—
 - (i) a sheriff court of that sheriffdom, or
 - (ii) where a majority of the trustees consent, a sheriff court of any other sheriffdom in which at least one of the trustees is habitually resident, or
- (b) where [paragraph \(a\)](#) is not applicable, the sheriff court at Edinburgh.

(4) In the definition of “guardian” in [subsection \(1\)](#), “continuing attorney” is to be construed in accordance with section 15(2) of the Adults with Incapacity (Scotland) Act 2000 (creation of continuing power of attorney).

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Commencement Information

- I1** S. 81 not in force at Royal Assent, see **s. 88(3)**
I2 S. 81 in force at 26.6.2024 by **S.S.I. 2024/164**, reg. 2, **sch.**

82 Power to amend jurisdiction in relation to trusts

- (1) The Scottish Ministers may by regulations make provision conferring on or removing from the Court of Session or, as the case may be, the appropriate sheriff court, power to decide particular types of cases relating to trusts under this Act.
- (2) In particular, the Scottish Ministers may—
- (a) make provision modifying section 81 in so far as it relates to the definitions of “the court” and “the appropriate sheriff court” for the purposes of this Act, and
 - (b) make such incidental, supplementary or consequential provision (including provision modifying this Act or another enactment) relating to the jurisdiction of the Court of Session or the appropriate sheriff court as they consider appropriate for the purposes of giving full effect to the conferral or removal of a power.
- (3) Regulations under this section may only be made with the consent of the Lord President of the Court of Session.
- (4) Regulations under this section are subject to the affirmative procedure.

Commencement Information

- I3** S. 82 not in force at Royal Assent, see **s. 88(3)**
I4 S. 82 in force at 26.6.2024 by **S.S.I. 2024/164**, reg. 2, **sch.**

83 Meaning of incapable and related expressions

- (1) In this Act—
- (a) “incapable” (and related expressions) is to be construed in accordance with section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (fundamental definitions), but with the modification that the reference in the closing words of that definition to any provision of that Act is to be read as to any provision of this Act,
 - (b) a reference to a person having legal capacity is a reference to a person who—
 - (i) is not incapable, and
 - (ii) does not otherwise lack legal capacity (for example, by reason of non-age).
- (2) The Scottish Ministers may by regulations—
- (a) make provision modifying the effect of the definition of “incapable” in the Adults with Incapacity (Scotland) Act 2000 as it applies for the purposes of this Act by virtue of this section, or
 - (b) amend this section to replace or modify the definition of “incapable” for the purposes of this Act.
- (3) Regulations under this section are subject to the affirmative procedure.

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Commencement Information

- I5** S. 83 not in force at Royal Assent, see [s. 88\(3\)](#)
I6 S. 83 in force at 26.6.2024 by [S.S.I. 2024/164](#), reg. 2, [sch.](#)

PROSPECTIVE

84 Persons who are untraceable

For the purposes of sections [1\(1\)\(b\)](#), [2\(1\)\(b\)](#), [5\(5\)\(a\)\(i\)](#), [7\(1\)\(e\)](#), [14\(2\)\(c\)](#), [44\(1\)](#), [49\(5\)\(b\)](#), [53\(3\)\(g\)\(v\)](#), [54\(1\)\(b\)](#), [59\(5\)\(e\)](#), [70\(2\)\(e\)\(i\)](#) and [70\(2\)\(f\)\(i\)](#) (and without prejudice to the generality of those sections) a person is to be regarded as untraceable if—

- (a) the person has not been traced, and
- (b) in the case of—
 - (i) [section 1\(1\)\(b\)](#), [7\(1\)\(e\)](#), [49\(5\)\(b\)](#), [53\(3\)\(g\)\(v\)](#), [59\(5\)\(e\)](#), [70\(2\)\(e\)\(i\)](#) or [70\(2\)\(f\)\(i\)](#) the court is satisfied that reasonable steps have been taken to trace the person,
 - (ii) [section 2\(1\)](#), the truster is so satisfied,
 - (iii) [section 5\(5\)\(a\)\(i\)](#), [14\(2\)\(c\)](#) or [44\(1\)](#), every trustee who is both capable and has been traced is so satisfied, or
 - (iv) [section 54\(1\)\(b\)](#), the truster is so satisfied (or if the truster is not alive or is not capable, every trustee who is both capable and has been traced is so satisfied).

Commencement Information

- I7** S. 84 not in force at Royal Assent, see [s. 88\(3\)](#)

PROSPECTIVE

85 Modification of enactments

[Schedule 1](#) makes provision for the modification of enactments.

Commencement Information

- I8** S. 85 not in force at Royal Assent, see [s. 88\(3\)](#)

86 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—

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- (a) make different provision for different purposes,
 - (b) modify any enactment (including this Act).
- (3) Regulations under this section—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and
 - (b) are otherwise subject to the negative procedure.

Commencement Information

I9 S. 86 in force at 31.1.2024, see [s. 88\(1\)](#)

87 Repeals

The enactments mentioned in [schedule 2](#) are repealed to the extent mentioned in the second column of that schedule.

Commencement Information

I10 S. 87 not in force at Royal Assent, see [s. 88\(3\)](#)

I11 S. 87 in force at 26.6.2024 for specified purposes by [S.S.I. 2024/164, reg. 2, sch.](#)

88 Commencement

- (1) [This section](#) and sections [86](#) and [89](#) come into force on the day after Royal Assent.
- (2) [Sections 76](#) and [77](#) come into force at the end of the period of 3 months beginning with the day of Royal Assent.
- (3) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (4) Regulations under [this section](#) may—
 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

Commencement Information

I12 S. 88 in force at 31.1.2024, see [s. 88\(1\)](#)

89 Short title

The short title of this Act is the Trusts and Succession (Scotland) Act 2024.

Commencement Information

I13 S. 89 in force at 31.1.2024, see [s. 88\(1\)](#)

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