



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 7

PROTECTORS

53 Protectors

- (1) The truster may by the trust deed—
 - (a) make provision for the appointment of a person (to be known as a “protector”) to oversee the exercise by the trustees of their functions, and
 - (b) require the trustees to obtain the consent of the protector before exercising (or before exercising in circumstances specified in the trust deed) such of those functions as may be so specified.
- (2) For the purposes of [subsection \(1\)](#) the truster may, by the trust deed, confer powers on the protector.
- (3) Without prejudice to the generality of [subsection \(2\)](#), powers conferred by virtue of that subsection may include the power to—
 - (a) direct the trustees to remove, under [section 9\(1\)](#), one of their number from office,
 - (b) direct the trustees to assume, under [section 3\(1\)](#), an additional trustee,
 - (c) withhold, whether conditionally or unconditionally, consent required by trustees to—
 - (i) a person being given or refused a beneficial interest, or
 - (ii) such other matter to which consent may be required by trustees by virtue of subsection (1)(b),
 - (d) make an application under [section 65\(1\)](#),
 - (e) oppose any application made under that section,
 - (f) verify the trust accounts, and
 - (g) represent—

Status: This is the original version (as it was originally enacted).

- (i) an incapable person,
 - (ii) a person who has not attained the age of 16 years,
 - (iii) a beneficiary not yet ascertained,
 - (iv) a potential beneficiary not yet ascertained, or
 - (v) a person who is untraceable.
- (4) Except in so far as the trust deed, expressly or by implication, provides otherwise, the protector may, on application to the trustees, inspect, without charge and at any reasonable time, any document held by them or on their behalf.
- (5) The duties of the protector are fiduciary obligations; and the protector is subject to a duty of care.
- (6) It is not competent to appoint—
- (a) a trustee to be the protector of the trust, or
 - (b) the protector of the trust to be a trustee.
- (7) It is competent for the truster to appoint the truster’s own self to be the protector of the trust.
- (8) Except in so far as the trust deed, expressly or by implication, provides otherwise, it is competent for there to be more than one protector of the trust at any time.
- (9) [This section](#) applies irrespective of when the trust was created.

54 Appointment of new protector

- (1) [Subsection \(2\)](#) applies where—
- (a) by the trust deed, the truster appointed a protector, but
 - (b) no protector exists or is traceable who has the legal capacity, and is willing and fit, to carry out the duties of that office.
- (2) The truster may appoint a new protector.
- (3) But if the truster has died or is incapable then, except in so far as the trust deed, expressly or by implication, provides otherwise, the trustees may appoint a new protector in the circumstances mentioned in [paragraphs \(a\) and \(b\) of subsection \(1\)](#).
- (4) The making of an appointment under [subsection \(2\)](#) or [\(3\)](#) removes any existing protector from office.
- (5) [This section](#) applies irrespective of when the trust was created.

55 Application to protectors of certain provisions relating to removal from office and to decision making

- (1) [Sections 7, 13 and 14](#) apply in relation to a protector and the duties of a protector as they apply in relation to a trustee and the duties of a trustee.
- (2) [This section](#) applies irrespective of when the trust was created.

56 Resignation of protector

- (1) A protector has power to resign office by notice in writing sent to the trustees.

- (2) The resignation takes effect on receipt of that notice.
- (3) But any resignation sent under [this section](#) in order to facilitate a breach of trust is of no effect.
- (4) [This section](#) applies irrespective of when the trust was created.

57 Liability for compliance with protector’s direction

- (1) [This section](#) applies where a trustee complies timeously and correctly with a protector’s direction (being a direction which the protector has power to give).
- (2) In so far as such compliance comprises the breach of a duty owed to a beneficiary or third party then, except in so far as the trust deed expressly provides otherwise, the protector, and not the trustee, incurs personal liability for any resultant harm.
- (3) [This section](#) applies irrespective of when the trust was created.