



# Trusts and Succession (Scotland) Act 2024

## 2024 asp 2

### PART 3

#### MISCELLANEOUS AND GENERAL

VALID FROM 26/06/2024

#### *Miscellaneous*

PROSPECTIVE

#### **79 Amendment of Requirements of Writing (Scotland) Act 1995**

- (1) In section 7(7) of the Requirements of Writing (Scotland) Act 1995 (subscription and signing), after “partnerships,” insert “bodies of trustees,”.
- (2) In schedule 2 of that Act (subscription and signing: special cases), after paragraph 2 insert—

#### *“Trusts*

- 2A
- (1) Except where an enactment or the trust deed expressly provides otherwise, where a granter of a document executed after the commencement of [section 79](#) of the Trusts and Succession (Scotland) Act 2024 is a body of trustees, the document is signed by that body if it is signed on the body’s behalf either by a majority of the trustees or by a person (whether or not one of the trustees) authorised to sign the document on the body’s behalf.
  - (2) Sub-paragraph (1) of this paragraph applies in relation to the signing of an alteration to a document as it applies in relation to the signing of a document.
  - (3) In this paragraph, “trust” has the meaning assigned to that expression by [section 81\(1\)](#) of that Act of 2024.”.

*Status: Point in time view as at 30/04/2024. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Part 3. (See end of Document for details)*

### Commencement Information

II S. 79 not in force at Royal Assent, see [s. 88\(3\)](#)

## 80 Amendment of Confirmation of Executors (Scotland) Act 1858

After section 6 of the Confirmation of Executors (Scotland) Act 1858, insert—

### “6A Restrictions on appointment of executor dative

- (1) This section applies where a sheriff is in receipt of a petition for the appointment of a person (“P”) as an executor dative in respect of the estate of a deceased person (“D”).
- (2) The sheriff must refuse the petition if satisfied that P is a person falling within subsection (3).
- (3) A person falls within this subsection if that person—
  - (a) is being prosecuted in Scotland for the murder or culpable homicide of D,
  - (b) has been convicted, whether before or after the coming into force of this section, in Scotland of such an offence as regards D,
  - (c) is being prosecuted in a jurisdiction outside Scotland for an offence which, in the opinion of the sheriff, is equivalent to the murder or culpable homicide of D, or
  - (d) has been convicted, whether before or after the coming into force of this section, in a jurisdiction outside Scotland of such an offence as regards D.
- (4) For the purposes of subsection (3), a person is to be regarded as being prosecuted for an offence if—
  - (a) a prosecutor has initiated proceedings against the person in respect of the offence, and
  - (b) those proceedings have not been dismissed or resulted in the conviction or acquittal of the person in respect of the offence.
- (5) If, despite subsection (1) or any rule of law to the contrary, a person falling within subsection (3) is appointed as an executor dative in respect of D’s estate—
  - (a) the person’s appointment as executor dative is not invalid by reason of the fact that the person falls within subsection (3), but
  - (b) the appointment does not prevent the removal of that person from office following the making of an application under section 7 of the Trusts and Succession (Scotland) Act 2024 (as read with section 8 of that Act) on the ground that the person is unfit to carry out the duties of a trustee.
- (6) This section is without prejudice to any power of a sheriff to refuse a petition for the appointment of P in any case where—
  - (a) P does not fall within subsection (3), but
  - (b) P—

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**Changes to legislation:** There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Part 3. (See end of Document for details)

- (i) has acted (or is suspected of having acted) in a manner that caused or contributed to the death of D, or
- (ii) has otherwise been involved (or is suspected of having otherwise been involved) in the death of D.”.

#### Commencement Information

**I2** S. 80 not in force at Royal Assent, see **s. 88(3)**

### General

VALID FROM 26/06/2024

## 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,

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—

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- (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).

#### Commencement Information

**I3** S. 81 not in force at Royal Assent, see [s. 88\(3\)](#)

**Status:** Point in time view as at 30/04/2024. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Part 3. (See end of Document for details)

VALID FROM 26/06/2024

## 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

**I4** S. 82 not in force at Royal Assent, see [s. 88\(3\)](#)

VALID FROM 26/06/2024

## 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.

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(3) Regulations under this section are subject to the affirmative procedure.

#### Commencement Information

**I5** S. 83 not in force at Royal Assent, see [s. 88\(3\)](#)

PROSPECTIVE

#### 84 Persons who are untraceable

For the purposes of sections 1(1)(b), 2(1)(b), 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

**I6** 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

**I7** 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.

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**Changes to legislation:** There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Part 3. (See end of Document for details)

- (2) Regulations under this section may—
  - (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**

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

VALID FROM 26/06/2024

**87 Repeals**

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

**Commencement Information**

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

**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**

**110** 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.

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### Commencement Information

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



**Status:**

Point in time view as at 30/04/2024. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Part 3.