

Child Rights and Wellbeing Impact
Assessment (CRWIA)
for The Trusts and Succession
(Scotland) Act 2024 (Commencement
No. 1) Regulations 2024

CRWIA Stage 1 – Screening

1. Terms Used

Culpable homicide: the criminal offence of causing the death of another person without planning or intending to;

Executor: a person appointed to administer the property, such as money or a house, which belonged to a deceased person during their lifetime;

Professional trustee (as defined by the Trusts and Succession (Scotland) Act 2024): a person who is a member of a regulated profession (for example a solicitor, accountant or financial adviser) who was appointed or assumed as trustee to provide professional services in relation to the managing of the trust in the course of business;

Trustee: a person who manages and administers trust property for the benefit of other persons (or for a specified purpose).

2. Brief Summary

These Regulations bring into force certain provisions of the Trusts and Succession (Scotland) Act 2024. The provisions brought into force primarily relate to:

(1) the ability to apply to the court to have an executor removed from office as executor where they are prosecuted for, or have been convicted of, the murder or culpable homicide of the deceased.

(2) the removal from office by a majority of co-trustees of a trustee who was appointed as a professional trustee but who is no longer a member of their regulated profession or entitled to practice as such.

For example, if a solicitor has been appointed and paid to act as a professional trustee but they subsequently become prohibited from acting as a solicitor, this provision would allow their co-trustees to remove them as a trustee without having to ask the court to do so.

Start date of relevant proposal: February 2024

Start date of CRWIA process: April 2024

3. Which aspects of the relevant proposal currently affects or will affect children and young people up to the age of 18?

Both the proposal to bring into force provisions relating to:

(1) the ability to apply to the court to have an executor of a deceased person removed as executor where they are prosecuted for, or have been convicted of, the murder or culpable homicide of the deceased; and

(2) the removal from office, by a majority of trustees, of a professional trustee who is no longer a member of their regulated profession or entitled to practice as such.

have the potential to affect children and young people, however, we expect that that impact will be limited to a very small number of children and young people.

4. Which groups of children and young people are currently or will be affected by the relevant proposal?

These Regulations will have an effect on children and young people aged between 16 and 18 years old because children of this age can legally act as executor or trustee, although it is our expectation that such persons very rarely, if at all, act as executor or trustee.

Children and young people who are beneficiaries of trusts will also be affected by the proposals because they, along with beneficiaries of any age, will now have the ability to apply to the court to have an executor of a deceased person removed as executor where that executor is being prosecuted for, or has been convicted of, the murder or culpable homicide of the deceased.

Declaration

5. Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required? (Tick relevant requirement)

CRWIA required No explanation required, please complete questions 5 and 6

CRWIA not required Please explain why below and contact the children's rights unit to discuss this decision crwia@gov.scot

Explanation why CRWIA is not required:

The policy aim of these regulations is to (1) provide certain specified persons with the ability to apply to the court to have an executor nominate of a testator, trustee of a trust established under a testamentary writing, or executor dative of a deceased person removed from office where they are prosecuted for, or have been convicted of, the murder or culpable homicide of the testator or the deceased; and, (2) provide a means by which a majority of co-trustees may remove from office a trustee who is no longer a member of a regulated profession or entitled to practice as such, and who was appointed or assumed as trustee to provide professional services in relation to the managing of the trust. Overall, it is very unlikely that these regulations will have a direct or indirect impact on children and young people because although 16-18 year olds have the legal capacity to act as an executor or trustee, this is improbable in practice.

6. Sign & Date

Policy Lead Signature & Date of Sign Off: Michael Paparakis, **04 June 2024**

Head of Unit Signature & Date of Sign Off: Simon Stockwell. **04 June 2024**

Date SGLD contacted: May 2024