

POLICY NOTE

THE TRUSTS AND SUCCESSION (SCOTLAND) ACT 2024 (COMMENCEMENT NO. 1) REGULATIONS 2024

SSI 2024/164 (C. 14)

The above instrument was made in exercise of the powers conferred by section 88(3) and (4) of the Trusts and Succession (Scotland) Act 2024. The instrument is laid with no procedure.

Summary Box

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 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) the removal from office by a majority of co-trustees of 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.

Policy Objectives

Unlawful killer as executors

Commencement of these provisions will mean that an unlawful killer, such as a convicted murderer, may be prevented from continuing to act as executor to their victim's estate. The present position in Scots law appears to be uncertain and commencing this provision will help to clarify the law. Once commenced, an executor convicted of, or being prosecuted for, the murder or culpable homicide of the deceased will be regarded as unfit for that office and can therefore be removed by the court. An application to remove can be made at the appropriate sheriff court and the provision is retrospective so, for example, an executor convicted of murder before the provision comes into force could be removed from office.

Removal of professional trustee by co-trustee

Commencement of these provisions also deal with situations where there are significant practical difficulties in co-trustees removing a trustee who was appointed as a trustee in their professional capacity but is no longer a member of their profession or entitled to practice as such. The provisions allow co-trustees to take a decision to remove such trustees. The professional trustee in question cannot participate in any such decision and where there are two or more such professional trustees, neither (or none) of them can make a decision in respect of their removal.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

These regulations have not been consulted on. They are, however, laid in order to commence certain provisions of the Trusts and Succession (Scotland) Act 2024 which was subject to recent parliamentary scrutiny, including by the lead Committee.

Impact Assessments

The Scottish Government has considered a Child Rights and Wellbeing Impact assessment (CRWIA), Equality Impact Assessment (EQIA), Island Communities Impact Assessment (ICIA), Fairer Scotland Duty (FSD), Strategic Environmental Assessment (SEA) and Data Protection Impact Assessment (DPIA) but has concluded that none are required for these regulations as there are no significant impact on the respective matters.

Financial Effects

The Minister for Victims and Community Safety confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Civil Law and Legal System; Justice Directorate

June 2024