



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 1

APPOINTMENT, ASSUMPTION, RESIGNATION, REMOVAL AND DISCHARGE OF TRUSTEES

PROSPECTIVE

Resignation and removal

5 Resignation of trustee

- (1) Except in so far as the trust deed, expressly or by implication, provides otherwise (or, in a case where there is no trust deed, the context requires or implies otherwise), a trustee has power to resign office.
- (2) But where subsection (3) applies and the trustee has accepted office or, after intimation of their appointment, has acted in a way which indicates that they have accepted office, the trustee may do so only after—
 - (a) an additional trustee is assumed or appointed, or
 - (b) a judicial factor is appointed to administer the trust.
- (3) This subsection applies where—
 - (a) the trustee is a sole trustee, or
 - (b) the trustee is, in the trustee's opinion, the only remaining trustee who is both capable and traceable.
- (4) Any resignation given in breach of [subsection \(2\)](#) is of no effect.
- (5) Any resignation given under this section—
 - (a) must be intimated to—
 - (i) all of the other trustees who are traceable, and

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- (ii) any judicial factor appointed to administer the trust, and
- (b) is effective from the date on which such intimation is given.

(6) This section applies—

- (a) irrespective of when the trust was created, but
- (b) only as respects a resignation given after the section comes into force.

Commencement Information

II S. 5 not in force at Royal Assent, see [s. 88\(3\)](#)

6 Resignation of incapable trustee

- (1) Where a trustee is incapable, the power in section 5(1) may be exercised by the trustee’s guardian (“G”) on behalf of the trustee (and in such a case, the resignation will, for the purposes of this Act, be treated as a resignation by the trustee).
- (2) But where subsection (3) applies, G may do so only after—
 - (a) an additional trustee is assumed under section 3,
 - (b) an additional trustee is appointed—
 - (i) under section 1 or 2, or
 - (ii) by G, or
 - (c) a judicial factor is appointed to administer the trust.
- (3) This subsection applies where—
 - (a) the incapable trustee is a sole trustee, or
 - (b) in G’s opinion, no other trustee exists who is both capable and traceable.
- (4) Any resignation given by G on behalf of the incapable trustee in breach of subsection (2) is of no effect.
- (5) Section 4(2) (general conveyance of trust property) applies to an appointment of a trustee by G under subsection (2)(b)(ii) as it applies to an appointment of a trustee under section 1(1)(b) or 2(1).
- (6) Section 5(5) applies to a resignation given by G on behalf of an incapable trustee in accordance with this section as it applies to a resignation given by a trustee under section 5.
- (7) This section applies—
 - (a) irrespective of when the trust was created, but
 - (b) only as respects a resignation given after this section comes into force.

Commencement Information

I2 S. 6 not in force at Royal Assent, see [s. 88\(3\)](#)

7 Removal of trustee by court

- (1) Where a trustee—
 - (a) is unfit to carry out the duties of a trustee,

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- (b) purports to carry out those duties but does so in a way which is inconsistent with, or might be inconsistent with, a trustee’s fiduciary duty,
- (c) has neglected the trustee’s duties as trustee,
- (d) is incapable, or
- (e) is untraceable,

the court may, on the application of one or more of the other trustees, of a beneficiary or of any other person with an interest in the trust property, remove the trustee from office.

(2) The court ceases to have power at common law to remove a trustee.

(3) This section applies irrespective of when the trust was created.

Commencement Information

I3 S. 7 not in force at Royal Assent, see [s. 88\(3\)](#)

8 Removal of certain trustees by court: unfitness

(1) For the purposes of section 7(1)(a), a trustee to whom subsection (2) applies is to be regarded as unfit to carry out the duties of a trustee (and so may be removed from office).

(2) This subsection applies to any trustee—

- (a) who is—
 - (i) an executor nominate of a testator (“T”),
 - (ii) a trustee of a trust established by T under a testamentary writing, or
 - (iii) an executor dative appointed in respect of the estate of a deceased person (“D”), and
- (b) who—
 - (i) is being prosecuted in Scotland for the murder or culpable homicide of T or, as the case may be, D,
 - (ii) has been convicted, whether before or after the coming into force of this section, in Scotland of such an offence as regards T or, as the case may be, D,
 - (iii) is being prosecuted in a jurisdiction outside Scotland for an offence which, in the opinion of the court, is equivalent to the murder or culpable homicide of T or, as the case may be, D, or
 - (iv) 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 T or, as the case may be, D.

(3) For the purposes of subsection (2)(b), a trustee is to be regarded as being prosecuted for an offence if—

- (a) a prosecutor has initiated proceedings against the trustee in respect of the offence, and
- (b) those proceedings have not been dismissed or resulted in the conviction or acquittal of the trustee in respect of the offence.

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- (4) This section is without prejudice to any power of the court to find that a trustee to whom subsection (2)(a) applies (but to whom subsection (2)(b) does not apply) is unfit to carry out the duties of a trustee as a result of—
- (a) having acted (or being suspected of having acted) in a manner that caused or contributed to the death of T or, as the case may be, D, or
 - (b) having otherwise been involved (or being suspected of having otherwise been involved) in the death of T or, as the case may be, D.

Commencement Information

I4 S. 8 not in force at Royal Assent, see [s. 88\(3\)](#)

9 Removal of trustee by co-trustees

- (1) A trustee who is—
- (a) incapable,
 - (b) convicted of an offence involving dishonesty,
 - (c) sentenced to imprisonment on conviction of an offence, or
 - (d) imprisoned for contempt of court or for not having paid a fine,
- may be removed from office by a majority of the other trustees.
- (2) Except in so far as the trust deed expressly provides otherwise, a trustee who is—
- (a) a member of a regulated profession (such as a solicitor, accountant, financial adviser or teacher), and
 - (b) appointed or assumed as trustee to provide professional services in relation to managing the affairs of trusts in the course of business,
- may, in the circumstances described in subsection (3), be removed from office by a majority of the other trustees.
- (3) The circumstances are that the trustee—
- (a) is no longer a member of the regulated profession in question, or
 - (b) is such a member, but is not entitled to practise as such.
- (4) In a case where—
- (a) two or more trustees meet the description in subsection (2)(a) and (b), and
 - (b) the circumstances described in subsection (3) apply to each of them,
- neither (or none) of those trustees are, for the purpose of section 14, to be regarded as able to make a decision in respect of their removal.
- (5) [Subsection \(6\)](#) applies where—
- (a) a protector has been appointed in respect of the trust,
 - (b) there has been conferred on the protector, by virtue of [paragraph \(a\) of section 53\(3\)](#), the power to direct the removal of a trustee from office, and
 - (c) the protector gives such a direction.
- (6) The trustee to whom the direction relates must, without delay, be removed from office by the other trustees.

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- (7) A person who is removed from office as trustee under this section is to be given notice of the decision to remove and the date on which it was made as soon as reasonably practicable after it is made.
- (8) **This section** applies—
- (a) irrespective of when the trust was created, but
 - (b) **paragraphs (b) to (d) of subsection (1)** are to be disregarded in relation to, respectively, a conviction obtained, a sentence passed or an imprisonment effected before the section comes into force.

Commencement Information

I5 S. 9 not in force at Royal Assent, see **s. 88(3)**

10 Removal of trustee by beneficiaries

- (1) A trustee may, subject to **subsection (2)**, be removed from office by the beneficiaries provided that the removal is agreed to by them all and that at the time of reaching such agreement—
- (a) they are absolutely entitled to the trust property, and
 - (b) each of them—
 - (i) has attained the age of 18 years, and
 - (ii) is capable.
- (2) **Subsection (1)** does not apply while there subsists—
- (a) a trust purpose which cannot be secured, or
 - (b) a right to be indemnified which cannot be preserved, without the retention of some or all of the trust property.
- (3) A person who is removed from office as trustee under this section is to be given notice of the decision to remove and the date on which it was made as soon as reasonably practicable after it is made.
- (4) **This section**—
- (a) applies irrespective of when the trust was created, but
 - (b) does not apply as respects a private purpose trust.

Commencement Information

I6 S. 10 not in force at Royal Assent, see **s. 88(3)**

Status:

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