

## Trust law reform in Scotland - an update

Synopsis: The Trusts and Succession (Scotland) Act to shortly come into force.

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The Trusts and Succession (Scotland) Bill was introduced in the Scottish Parliament on 22 November 2022. After consultation, and a small number of amendments, on 20 December 2023 SMPs voted unanimously to pass it. The new legislation is to be known as The Trusts and Succession (Scotland) Act 2023 and will mostly come into effect once it receives the Royal Assent, expected later this month.

The Act will repeal in its entirety the Trusts (Scotland) Act 1921 and the Powers of Appointment Act 1874 as well as large parts of a myriad of other Acts dealing with trusts and succession in Scotland.

The Act makes comprehensive provisions in relation to the appointment, assumption, resignation, removal and discharge of trustees, decision-making by trustees, powers and duties of trustees, duration of trust, private purpose trusts, protectors, and powers of the court. Most of the provisions will apply by default, i.e. "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)" - the quoted words are used at the beginning of most sections of the Act.

For trust practitioners, the most important is the abolition of the restrictions on accumulations (currently generally limited to 21 years) and on creation of future interests (section 41 of the Act) and the new statutory powers of advancement (section 20) which so far have been missing from Scottish trust legislation, as well as the new powers for majority of trustees to remove a trustee in certain circumstances.

In relation to succession there are two important provisions: first, that where a person dies without a valid will and leaves a spouse but no issue, the surviving spouse will be entitled to the whole of the net estate; and, second, by extending the time limit within which a surviving cohabitant can apply for a share of the deceased's estate from six to 12 months.

While the above are of key importance to practitioners, what has received most publicity in the press is the removal of the "killer executor". The Act will close this loophole, allowing a court to remove someone convicted of murder or culpable homicide from a previously nominated role of executor. This change in the law follows the murder of Carol Taggart by her son, who was also her executor, the issue having been raised by Carol's friends and family.

### Comment

Scottish Minister for Victims and Community Safety Siobhian Brown has welcomed the Scottish Parliament's backing for the new law that will prevent killers from acting as an executor on their victim's estate and she thanked Carol's friends and

family for raising this issue. It is therefore an example of legislative change driven by public opinion.

Now that Scotland has updated and modernised its trust law, let us hope that England will follow suit. The English Trustee Act 1925 is long overdue for an update (not to mention several other even older pieces of legislation starting with the Wills Act 1837, although changes to this one are at least presently being consulted on).

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