



Trusts and Succession (Scotland) Act 2024

2024 asp 2

PART 1

TRUSTS

CHAPTER 3

POWERS AND DUTIES OF TRUSTEES

Delegation and the appointment of agents and nominees

PROSPECTIVE

23 Appointment of nominees

- (1) Except in so far as the trust deed expressly provides otherwise, the trustees may, for the purpose of the exercise of any of their powers—
 - (a) appoint a person to act as their nominee in relation to such of the trust property, heritable as well as moveable, as they may determine (in [this section](#) referred to as the “determined assets”), and
 - (b) take such steps as are requisite to secure the transfer of title to the determined assets to the nominee.
- (2) Without prejudice to the generality of [subsection \(1\)](#), reference in that subsection to the powers of the trustees includes a reference to their investment management functions (as defined in [section 22\(6\)](#)).
- (3) Determined assets held by the nominee are held on trust for the trustees by the nominee (irrespective of any purported agreement to the contrary).
- (4) Determined assets title to which is transferred to the nominee may include clients’ money.
- (5) Without prejudice to [subsection \(3\)](#), [subsection \(1\)](#) is subject to any restriction or exclusion imposed by or under any enactment.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Trusts and Succession (Scotland) Act 2024, Section 23. (See end of Document for details)

- (6) A person is not to be appointed under [subsection \(1\)\(a\)](#) unless the trustees reasonably believe—
- (a) the appointment is appropriate in the circumstances of the trust, and
 - (b) the person has the skills, knowledge and expertise it is reasonable to expect of one who is to act as a nominee.
- (7) An appointment under [subsection \(1\)\(a\)](#) is—
- (a) to be made in writing,
 - (b) to be subject to the trustees obtaining, as soon as is reasonably practicable, the written acknowledgment of the nominee that the determined assets are held on trust for the trustees by the nominee,
 - (c) to be subject to the trustees retaining power to—
 - (i) direct the nominee, and
 - (ii) revoke the appointment, and
 - (d) subject to [subsection \(8\)](#), otherwise to be on such terms as to suitable remuneration and other matters as the trustees may determine.
- (8) The trustees are not to appoint a nominee on any of the terms mentioned in [subsection \(9\)](#) unless they have good cause to do so.
- (9) The terms are—
- (a) a term permitting the nominee to appoint a substitute,
 - (b) a term restricting the liability of the nominee, or of any substitute, to the trustees or to any beneficiary, and
 - (c) a term permitting the nominee, or any substitute, to act in circumstances capable of giving rise to a conflict of interest.
- (10) While a nominee continues to act for the trust, the trustees are—
- (a) to keep under review—
 - (i) the arrangements under which the nominee acts, and
 - (ii) how those arrangements are being put into effect,
 - (b) to consider, if circumstances make it appropriate to do so, whether there is a need to exercise their power—
 - (i) to direct the nominee, or
 - (ii) to revoke the nominee’s appointment.
- (11) The trustees are to exercise either or both of the powers mentioned in [subsection \(10\)\(b\)](#) if they consider that there is a need to do so.
- (12) The Scottish Ministers may, by regulations, specify particular circumstances which may constitute a good cause for the purpose of [subsection \(8\)](#).
- (13) Regulations under this section are subject to the negative procedure.
- (14) [This section](#) applies irrespective of when the trust was created.

Commencement Information

II S. 23 not in force at Royal Assent, see [s. 88\(3\)](#)

Status:

This version of this provision is prospective.

Changes to legislation:

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