EXPLANATORY MEMORANDUM TO

THE TRUSTS AND SUCCESSION (SCOTLAND) ACT 2024 (CONSEQUENTIAL PROVISIONS AND MODIFICATIONS) (PENSION SCHEMES) ORDER 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Melanie Ward, Parliamentary Under Secretary of State at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Louise Nicholls, Deputy Director for Constitutional Policy at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Cat Carrigan at the Scotland Office can be contacted with any queries regarding the instrument (enquiries@ukgovscotland.gov.uk).

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order brings pensions schemes which are established under a trust within the scope of the Trusts and Succession (Scotland) Act 2024 ("the 2024 Act").[1] The 2024 Act is an Act of the Scottish Parliament which brings together and modernises various pieces of the existing Scots law of trusts (and some aspects of the Scots law of succession). The 2024 Act excluded pension schemes established under a trust from scope because the power to legislate in relation to the regulation of occupational and personal pensions schemes is reserved to the UK Parliament. In Scotland, as in the rest of the United Kingdom, many pension schemes are established using trust structures therefore trust law is vitally important for their administration. Bringing pensions schemes which are established under a trust within the scope of the 2024 Act enables those pension schemes to use the modernised trust law set out in that Act.

Where does the legislation extend to, and apply?

4.2 The extent of this Order (that is, the jurisdiction which the Order forms part of the law of) is Scotland, except for Articles 1 and 11 which also extend to England and Wales. The modifications made by the Schedule to the Order have the same extent as the enactments to which they relate.

4.3 The territorial application of this Order (that is, where the instrument produces a practical effect) is Scotland.

[1] 2024 asp 2.

5. Policy Context

What is being done and why?

5.1 The main existing legislation on the law of trusts in Scotland is over a century old. It has failed to keep up with modern social and economic conditions and is complicated to use. Amongst other things, the 2024 Act updates the law on trustees' powers and duties; their appointment, resignation, removal and discharge; and reforms the powers of the courts to deal with problems arising from trust management.

5.2 The Order ensures that the modernised Scots trust law set out in the 2024 Act applies to pension schemes established under a trust in Scotland. The Order does not give Scots trust law precedence over UK pensions law; it ensures that Scottish pension schemes operate under the updated trust law framework while continuing to be subject to existing UK pensions legislation.

What was the previous policy, how is this different?

5.3 The existing Scots law of trusts applies to all trusts created under Scots law, including those which take the form of a pension scheme and which are regulated through pensions legislation. The Order will ensure that when the reformed Scots law of trusts, in the form of the 2024 Act, comes into force, it also applies to all trusts created under Scots law, including those which take the form of a pension scheme and which are regulated by UK pensions legislation.

6. Legislative and Legal Context

How has the law changed?

6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1). 113(3) and 113(5) of the Scotland Act 1998 ("the Scotland Act"). Section 104 of the Scotland Act enables provisions to be made that are necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament. This Order makes provisions that are necessary and expedient in consequence of the changes that the 2024 Act made to the Scots law of trusts.

6.2 This Order also makes provision to amend section 34(2)(b) of the Pensions Act 1995 to allow trustees of a pension scheme established under Scots trust law to delegate decisions about investments in a way which is equivalent to the powers of delegation of trustees of a pension scheme established under the law of England & Wales.

Why was this approach taken to change the law?

6.3 This Order's principal purpose is to ensure that pensions schemes established under Scots trust law can benefit from the reforms of the 2024 Act rather than rely on outdated legislation from over a century ago. Given that the Scotland Act 1998 reserves the power to legislate in relation to the regulation of occupational and personal pensions schemes to the UK Parliament, it was decided that the most legally certain way of achieving this effect is by way of a Scotland Act Order.

7. Consultation

Summary of consultation outcome and methodology

7.1 The main consultation has been carried out by the Scottish Law Commission as part of its 2014 Report of Trust Law. A series of discussion papers were published

between 2003 and 2012 (10 in total)[2] and the responses were reflected in the final report.

7.2 When the Trusts and Succession (Scotland) Bill was introduced to the Scottish Parliament on 22 November 2022, the lead committee to which it was assigned – the Delegated Powers and Law Reform Committee ("the DPLRC") - carried out further consultation and a number of written and oral responses were received[3] regarding pension schemes. The consensus amongst stakeholders was that it is important that the trust law reforms brought about by the 2024 Act also apply to pension scheme trusts.

7.3 The Scottish Government, HM Treasury and the Department of Work and Pensions have been consulted in the preparation and drafting of this Order. HM Treasury and the Department of Work and Pensions are content that this Order does not impact on policy reserved to the UK Government.

8. Applicable Guidance

8.1 This instrument does not include applicable guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has not been prepared for this Order because a Business Regulatory Impact Assessment[4] was prepared by the Scottish Government in relation to the Bill when it was introduced to the Scottish Parliament in 2022. As the assessment concludes: "Implementation of the Bill will secure and develop the already thriving trust industry which exists in Scotland. This is likely to create an increased demand for trust-related professionals and heightened economic activity."

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on business, charities or voluntary bodies as this instrument brings together various pieces of trust legislation and case law in a single statue, while modernising the Scots law of trusts, benefiting pension trustees and beneficiaries trying to understand trustees' powers and duties under trust law.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through normal business accuracy and assurance processes. No formal monitoring is necessary.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Blair McDougall has made the following statement "In my view the provisions of the Trusts and Succession (Scotland) Act 2024 (Consequential Provisions and Modifications) (Pension Schemes) Order 2026 have no net cost to business."

[2] The discussion papers can be accessed from the SLC's completed law reform projects webpage.
[3] A summary of the responses was prepared by the Scottish Parliament's Information Centre and the DPLRC's Stage 1 Report referred to oral evidence received on the issue (paragraphs 238 to 249).
[4] Business and Regulatory Impact Assessment for the Trusts and Succession (Scotland) Bill.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

"In my view the provisions of the Trusts and Succession (Scotland) Act 2024 (Consequential Provisions and Modifications) (Pension Schemes) Order 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").