POLICY NOTE

THE TRUSTS AND SUCCESSION (SCOTLAND) ACT 2024 (COMMENCEMENT NO. 2 AND SAVING AND TRANSITORY PROVISION) REGULATIONS 2026

SSI 2026/323 (C. 36)

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[1] ("the Act"). The instrument is laid with no procedure.

Summary Box

The purpose of the instrument is to commence the provisions of the Act which were not commenced by the Act itself, on the day after Royal Assent (31 January 2024), or by the Trusts and Succession (Scotland) Act 2024 (Commencement No. 1) Regulations 2024 ("the Commencement No. 1 Regulations"), on 26 June 2024, except those relating to private purpose trusts.

The provisions come into force on **14 December 2026**.

Policy Objectives

The Act implements recommendations made by the Scottish Law Commission in its Report on Trust Law,[2] published in 2014.

The Act also includes a small number of provisions relating to the law of succession. These provisions were brought into force by the Commencement No. 1 Regulations on 26 June 2024, with the exception of the provision regarding a court application for financial provision by a surviving cohabitant.

The Explanatory Notes[3] to the Act were prepared by the Scottish Government in order to assist the reader of the Act and contain detail on individual provisions.

These Regulations commence the remaining provisions of the Act which were not commenced by the Act itself, on the day after Royal Assent (31 January 2024), or by the Commencement No. 1 (on 26 June 2024) except those relating to private purpose trusts. The provisions come into force on **14 December 2026**.

Trusts

The Act brings together various pieces of trust legislation within a single, coherent statute, drafted in modern form and with regard to modern conditions. A significant number of provisions deal with the management of trusts, including:

- appointment, assumption, resignation, removal and discharge of trustees,
- decision-making by trustees,

[1] Available at https://www.legislation.gov.uk/asp/2024/2.
[2] Available at https://www.scotlawcom.gov.uk/sites/default/files/2026-02/Report_on_Trust_Law_SLC_239.pdf.
[3] Available at https://www.legislation.gov.uk/asp/2024/2/notes/contents.

- powers and duties of trustees, and,
- powers of the court.

These Regulations bring into force all provisions of the Act, apart from substantive provisions relating to private purpose trusts (see below).

The Commencement No. 1 Regulations brought into force sections 7, 13, 14 and 87 and Schedule 2 of the Act for the purposes specified in column 3 of the table in the schedule to the Commencement No. 1 Regulations. These Regulations bring those provisions into force for all remaining purposes.

Private Purpose Trusts

There is some disagreement among stakeholders regarding whether the Scots common law of trusts already recognises arrangements which take the form of a "private purpose trust", as defined by section 46(1) of the Act. Following Royal Assent, a small number of stakeholders who took the view that Scots common law did not recognise such arrangements raised concerns that this type of trust could be abused for the purposes of tax evasion, money laundering, and opaque or anonymous asset holding.[4] The Scottish Government, having considered these views, has decided to review private purpose trusts as part of the 2026 Open Government Action Plan before deciding on any future commencement.[5]

In the meantime, regulation 3(2) allows the courts to continue to apply any applicable existing Scots law of trusts to any trusts which meet the definition of a private purpose trust, provided for by section 46(1) of the Act, until such time as the provision is commenced in full. The provision does not, however, change the law on whether such an arrangement can be considered a trust at common law.

Along with references to "private purpose trust", refences to "supervisor(s)" throughout the Act are not commenced by these Regulations. This is because supervisors are a concept brought in by Act exclusively in relation to private purpose trusts. Regulation 3(3) temporarily amends section 69(1) so that the "or" appears in the correct place, while the reference to "supervisors" is not commenced.

Succession

Section 78 of the Act amends section 29(6) of the Family Law (Scotland) Act 2006,[6] to increase the time during which a court application may be made by the surviving cohabitee of a person who has died without a valid will, for a share in the deceased's estate. The increase is from 6 to 12 months.

EU Alignment Consideration

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

Consultation

[4] For example, see Transparency International UK's blogpost, available at https://www.transparency.org.uk/news/what-purpose-why-scotlands-new-trusts-law-bad-transparency.
[5] See the Minister for Victims and Community Safety's letter to the Convener of the Delegated Powers and Law Reform Committee, 10 February 2025, available at https://www.gov.scot/publications/trusts-and-succession-scotland-act-2024-letter-to-delegated-powers-and-law-reform-committee/.
[6] Available at https://www.legislation.gov.uk/asp/2006/2/section/29.

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 parliamentary scrutiny, including by the lead Committee.

Impact Assessments

No impact assessments have been prepared for these commencement Regulations. The Scottish Government did, however, publish impact assessments when the Trusts and Succession (Scotland) Bill was introduced to the Scottish Parliament.

1. Child Rights and Wellbeing Impact Assessment;
2. Equality Impact Assessment;
3. Island Communities Impact Assessment; and,
4. Business and Regulatory Impact Assessment.

Financial Effects

The financial effects of the Act are detailed in the Business and Regulatory Impact Assessment (BRIA) and the Financial Memorandum prepared in respect of the Bill that preceded the Act. No significant financial effects are expected as a consequence of these Regulations.

Scottish Government

Civil Law and Legal System; Justice Directorate

5 November 2026