

Dear Marina,

Should the Trusts and Succession (Scotland) Bill be enacted with the provision in section 74 (interpretation) or 80 (commencement) to carve out pension trusts, as introduced to the Parliament, then the Scottish Government's aim is to bring the provisions of the Act and a section 104 Order into force at the same time. This would have the effect of applying the updated trust law contained in the Bill to all types of Scottish trusts at the same time, including Scottish pension trusts. This is the preferred approach as it is considered important to avoid fragmenting trust law by creating different regimes for pension trusts and other kinds of trusts.

Should a s. 104 Order ultimately not prove forthcoming in time for the commencement of the Trusts & Succession (S) Bill (once enacted), there would be a range of options to ensure that no gap in the law is created for pension trusts.

For instance, it would be possible, when commencing the Bill, to make provision under section 78 (ancillary provision) of the Bill to save the Trusts (Scotland) Act 1921 (and such other parts of the pre-reform trusts legislation as necessary) from repeal by schedule 2 of the Bill – to allow that existing law to remain in place for the limited purposes of pension trusts only until such time as a section 104 order is available to apply the Bill provisions to pension trusts. However, such an approach would result in the Bill updating Scots trust law for all types of trust except pensions trusts, which would instead rely on the unreformed provisions of the 1921 Act. This would complicate the legislative landscape and is not a desirable solution.

An alternative option would be to delay the timeline for commencement of the Bill so far as necessary to ensure coordination with a s. 104 Order applying the Bill to pension trusts can be achieved.

While partial or delayed commencement of the Bill can ensure that gaps in the law are not created for pension trusts, they are not the preferred solution. For that reason the Scottish Government is involved in ongoing positive engagement with UK Government officials around the preparation of a s. 104 Order to apply the provisions of the Trusts & Succession (S) Bill to pension trusts as to other kinds of trusts as from a single point of commencement.

In response to the 2019 consultation on succession law, the Scottish Government committed to seeking to explore the views of the wider general public regarding intestate succession. We have commissioned research from the [Scottish Civil Justice Hub](#), a venture led by the Glasgow University's School of Law in collaboration with the Scottish Government's Civil Law and Legal System Division. The first phase of research recently completed and we await the publication by the Hub of a report on the research findings, before considering any next steps. This work will be used to inform any future reform on this matter however we have no plans to progress any further primary legislation on reform of fundamental aspects of succession law during the course of this Parliamentary session.

Kind regards,

Michael