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**TRUSTEES ACT**
**Principal Act**

<b>Act. No. 1895-18</b>		<i>Commencement</i>	26.9.1895
		<i>Assent</i>	26.9.1895
Amending enactment	Relevant current provisions	Commencement date	
Acts. 1925-05	–		
1935-08	s. 32		
1949-25	–		
1953-18	s. 11		
1962-06	s. 20		
1965-12	ss. 33, 36(1)		
Regs. of 28.5.70	Sch. 1		
Acts. 1983-48	s. 17		
1983-48	ss. 37, 42(1)		
2007-17	ss. 30, 40(1), Sch. 1	14.6.2007	
2013-01 <sup>1</sup>	ss. 61, 62	21.3.2013	

## English sources

Court of Chancery (Funds) Act 1872 (35 & 36 Vict. c.44)  
 Vendor and Purchaser Act 1874 (37 & 38 Vict c.78)  
 Trustees Act 1883 (51 & 52 Vict c.59)  
 Trustees Act 1893 (56 & 57 Vict c.53)  
 Trustees Act 1893 Amendment Act 1894 (57 & 58 Vict c.10)  
 Finance Act 1917 (7 & 8 Geo.5 c.31)  
 Trustees Act 1925 (15 & 16 Geo.5 c.19)  
 Trustees Investments Act 1961 (9 & 10 Eliz.2 c.62)  
 Powers of Attorney Act 1971 (1971 c.27)

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<sup>1</sup> Commencement notice see LN. 2013/038

## DERIVATION OF SECTIONS

Section	Source	Section	Source
1	Act. 1895-18 s.1	33	“ s.7(1)
2	“ s.2	34	“ s.7(2)
3	“ s.12	35	Act. 1965-12 s.11
4	“ s.13	36	Act. 1895-18 s.4
5	“ s.14	37	“ s.9
6	“ s.25	38	Act. 1965-12 s.6(2) and (3)
7	“ s.15	39	“ s.7
8	“ s.16	40	“ s.10
9	“ s.17	41	Act. 1965-12 s.9
10	“ s.18	42	Act. 1895-18 s.29
11	“ s.28	43	“ s.30
12	“ s.20	44	“ s.31
13	“ s.22	45	“ s.32
14	“ s.24	46	“ s.33
15	“ s.23	47	“ s.34
16	“ s.44	48	“ s.35
17	“ s.26	49	“ s.36
18	“ s.19	50	“ s.37
19	“ s.27	51	“ s.38
20	“ s.46	52	“ s.39
21	Act. 1965-12 s.3(4) and 6(1)	53	“ s.40
22	Act. 1895-18 s.6	54	“ s.41
23	“ s.5	55	“ s.42
24	Act. 1965-12 s.8	56	“ s.43
25	Act. 1895-18 s.10	57	“ s.45
26	“ s.11	58	“ s.47
27	Act. 1965-12 s.3	59	“ s.21
28	“ s.4	66	“ s.48
29	“ s.5		
30	“ s.13	Sch. 1	Act. 1965-12 Sch. 1
31	“ s.12	Sch. 2	“ Sch. 2
32	Act. 1895-18 s.8	Sch. 3	“ Sch. 3

The numbers shown against Act. 1895-18 are those that appear in the 1964 Edition and those shown against Act. 1965-12 are those that appear in the 1965-69 Edition.

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## AN ACT TO CONSOLIDATE THE LAW RELATING TO TRUSTEES.

**PART I.**  
**PRELIMINARY.****Short title.**

1. This Act may be cited as the Trustees Act.

**Interpretation.**

2. In this Act, unless the context otherwise requires –

“contingent right,” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

“convey” and “conveyance” applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by tenants in tail in accordance with the provisions of the Acts for abolition of fines and recoveries in England;

“court” means the Supreme Court;

“devisee” includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description;

“instrument” includes enactment;

“land” includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land;

“mortgage” and “mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

“pay” and “payment” as applied in relation to stocks and securities, and in connection with the expression “into court” include the deposit or transfer of the same in or into court;

“possessed” applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land;

“property” includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and anything in action, and any other right or interest, whether in possession or not;

“rights” include estates and interests;

“securities” include stocks, funds and shares, and so far as relates to payments into court, include government securities, and any security of any foreign state, any part of Her Majesty's dominions out of the United Kingdom, or any body corporate or company, or standing in books kept by any body corporate, company or person in the United Kingdom, and all stock, funds, and effects;

“solicitor” includes any person qualified to practice as such in the United Kingdom or Gibraltar;

“stock” includes fully paid up shares; and, so far as relates to vesting orders made by the court under this Act, includes any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities and any share or interest therein;

“transfer”, in relation to stock, includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;

“trust” does not include the duties incident to an estate conveyed by way of mortgage; but with this exception the expressions “trust” and “trustee” include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person.

## **PART II.**

### **POWERS AND DUTIES OF TRUSTEES.**

#### *Appointment, Retirement and Death of Trustees.*

#### **Power of appointing new trustees.**

3.(1) Where a trustee, either original or substituted, and whether appointed by the court or otherwise, is dead or remains out of Gibraltar for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument (if any) creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of Gibraltar, desiring to be discharged, refusing, or being unfit to act or incapable of acting.

(2) On the appointment of a new trustee for the whole or any part of trust property,—

- (a) the number of trustees may be increased; and
- (b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and
- (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument (if any) creating the trust.



(4) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(6) This section applies to trusts created either before or after the coming into operation of this Act.

#### **Retirement of trustees.**

4.(1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person (if any) as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4) This section applies to trusts created either before or after the coming into operation of this Act.

#### **Vesting of trust property in new or continuing trustees.**

5.(1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other persons (if any) empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity or property as is only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament or local enactment.

(4) For purposes of registration of the deed under the Land (Titles) Order the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5) This section applies only to deeds executed after the 31st day of December, 1881.

#### **Powers of surviving trustees.**

6.(1) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument (if any) creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2) This section applies only to trusts constituted after or created by instruments coming into operation after the 31st day of December, 1881.

#### *Purchase and Sale.*

#### **Exercise of power of sale.**

7.(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect

subject to the terms of that instrument and to the provisions therein contained.

(3) This section applies only to a trust or power created by an instrument coming into operation after the 31st day of December, 1881.

**Sale subject to depreciatory conditions.**

8.(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4) This section applies only to sales made after the 2nd day of June, 1890.

**Statutory conditions of sale.**

9. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 2 of the Vendor and Purchaser Act, 1874.

**Married women as bare trustees.**

10. When any freehold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a feme sole.

*Miscellaneous powers and protection.*

**Power of advancement.**

11.(1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in

remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs:

Provided that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one half of the presumptive or vested share or interest of that person in the trust property; and
- (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and
- (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.

(2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion, and such money or securities, or the proceeds of such sale, calling in and conversion are not by statute or in equity considered as land, or applicable as capital money for the purposes of the Land Law and Conveyancing Act and the Settled Land Act, 1882, and applies to trusts whether constituted or created before or after the commencement of this Act.

**Power to insure buildings.**

12.(1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property, which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3) This section applies to trusts created either before or after the coming into operation of this Act, but nothing in this section shall authorize any

trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

**Power to renew leaseholds.**

13.(1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future, or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite:

Provided that, where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2) If money is required to pay for the renewal the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the hereditaments to be comprised in the renewed lease, or of any other hereditaments for the time being subject to the uses or trusts to which those hereditaments are subject, and no person advancing money upon a mortgage purporting to be under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3) This section applies to trusts created either before or after the coming into operation of this Act, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in the express terms directed to do, by the instrument creating the trust.

**Power for executors and trustees to compound etc.**

14.(1) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) An executor or administrator, or two or more trustees, acting together, or a sole acting trustee where by the instrument (if any) creating the trust a sole trustee is authorized to execute the trusts and powers thereof,

may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(4) This section applies to executorships, administratorships and trusts constituted or created either before or after the coming into operation of this Act.

#### **Receipts given by trustees.**

15.(1) The receipt in writing of any trustee for any money, securities or other personal property or effects payable, transferable or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section applies to trusts created either before or after the coming into operation of this Act.

#### **Power to pay moneys into court.**

16.(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court and the same shall, subject to rules of court, be dealt with according to the orders of the court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to the trustees for the money or securities so paid into court.

(3) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are

deposited with any banker, broker or other depositary, the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court, and every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid or delivered.

**Power to delegate.**

17.(1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.

(2) The persons who may be donees of a power of attorney under this section include a trust corporation but not (unless a trust corporation) the only other co-trustee of the donor of the power.

(3) An instrument creating a power of attorney under this section shall be attested by at least one witness.

(4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—

- (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
- (b) each of the other trustees, if any;

but failure to comply with this subsection shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.

(5) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(6) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to

delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(7) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(8) This section applies to a personal representative and tenant for life as it applies to a trustee except that subsection (4) shall apply as if it required the notice there mentioned to be given—

- (a) in the case of a personal representative, to each of the other personal representatives, if any, except any executor who has renounced probate:
- (b) in the case of a tenant for life, to the trustee of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life.

**Power to appoint agents.**

18.(1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed containing any such receipt as is referred to in section 56 of the Conveyancing Act, 1881, and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by the solicitor shall have the same validity and effect under the said section as if the person appointing the solicitor had not been a trustee.

(2) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or solicitor for a period longer than



is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee.

(5) Nothing in this section shall authorize a trustee to do anything, which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do by the instrument creating the trust.

**Implied indemnity of trustees.**

19. A trustee shall, without prejudice to the provisions of the instrument (if any) creating the trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust moneys, or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers.

**Power to make beneficiary indemnify for breach of trust.**

20. Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

**PART III.**  
**INVESTMENT OF TRUST FUNDS.**

*General*

**Interpretation of Part III.**

21. In this Part, unless the context otherwise requires –

“narrower-range investment” means an investment falling within Part I or II of Schedule I and “wider-range investment” means an investment falling within Part III of that Schedule.

“property” includes real or personal property of any description, including money and things in action:

Provided that it does not include an interest in expectancy, but the falling into possession of such an interest, or the receipt of proceeds of the sale

thereof, shall be treated for the purposes of this Act as an accrual of property to the trust fund.

**Application of sections 23 and 36.**

22. Sections 23 and 36 shall apply as well to trusts created before, as to trusts created after, the coming into operation of this Act, and the powers thereby conferred shall be in addition to the powers conferred by the instrument (if any) creating the trust.

**Discretion of trustees.**

23. Every power conferred by sections 27 and 36 shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument (if any) creating the trust with respect to the investment of the trust funds.

**Exercise of discretion.**

24.(1) In the exercise of his powers of investment a trustee shall have regard –

- (a) to the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust;
- (b) to the suitability to the trust of investments of the description of investment proposed and of the investment proposed as an investment of that description.

(2) Before exercising any power conferred by section 27 to invest in a manner specified in Part II or III of Schedule 1 or before investing in any such manner in the exercise of a power jailing within section 30(2) a trustee shall obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in paragraphs (a) and (b) of subsection (1).

(3) A trustee retaining any investment made in the exercise of such a power and in such a manner shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice, and shall obtain and consider such advice accordingly.

(4) For the purposes of subsections (2) and (3), proper advice is the advice of a person who is reasonably believed by the trustee to be qualified by his ability in and practical experience of financial matters; and such advice may be given by a person notwithstanding that he gives it in the course of his employment as an officer or servant.

(5) A trustee shall not be treated as having complied with subsection (2) or (3) unless the advice was given or has been subsequently confirmed in writing.

(6) Subsections (2) and (3) shall not apply to one of two or more trustees where he is the person giving the advice required by this section to his co-trustee or co-trustees, and shall not apply where powers of a trustee are lawfully exercised by an officer or servant competent under subsection (4) to give proper advice.

(7) Without prejudice to section 25 (which relates to valuation, and the proportion of the value to be lent, where a trustee lends on the security of property) the advice required by this section shall not include, in the case of a loan on the security of freehold or leasehold property in England, Wales, Northern Ireland and Gibraltar, or on heritable security in Scotland, advice on the suitability of the particular loan.

#### **Protection of trustees.**

25.(1) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production of investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in affecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(4) A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment, which has ceased to be an investment

authorized by the instrument of trust or by the general law, except where the investment ceased to be authorized by reason of paragraph 1 of Schedule 3.

**Limit on liability.**

26.(1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

*Extension of powers of investment.*

**New powers of investment.**

27.(1) A trustee may invest any property in his hands, whether at the time in a state of investment or not, in any manner specified in Part I or II of Schedule 1 or, subject to section 28, in any manner specified in Part III of that Schedule, and may also from time to time vary any such investments.

(2) The supplemental provisions contained in Part IV of that Schedule shall have effect for the interpretation and for restricting the operation of Parts I to III.

(3) No provision relating to the powers of the trustee contained in any instrument (not being an enactment or an instrument made under an enactment) made before the 4th day of June 1965 shall limit the powers conferred by this section, but those powers are exercisable only in so far as a contrary intention is not expressed in any Act or instrument made under an enactment, whenever passed or made, and so relating or in any other instrument so relating which is made after the 4th day of June 1965.

**Restrictions on wider-range investment.**

28.(1) A trustee shall not have power by virtue of section 27 to make or retain any wider-range investment unless the trust fund has been divided into two parts (hereinafter referred to as the narrower-range part and the wider-range part), the parts being, subject to the provisions of this Act, equal in value at the time of the division; and where such a division has been made no subsequent division of the same fund shall be made for the purposes of this section, and no property shall be transferred from one part of the fund to the other unless either –

- (a) the transfer is authorized or required by the following provisions of this Act; or

- (b) a compensating transfer is made at the same time.

In this section—

“compensating transfer”, in relation to any transferred property, means a transfer in the opposite direction of property of equal value.

(2) Property belonging to the narrower-range part of a trust fund shall not by virtue of section 27 be invested except in narrower-range investments, and any property invested in any other manner which is or becomes comprised in that part of the trust fund shall either be transferred to the wider-range part of the fund, with a compensating transfer, or be reinvested in narrower-range investments as soon as may be.

(3) Where any property accrues to a trust fund after the fund has been divided in pursuance of subsection (1), then —

- (a) if the property accrues to the trustee as owner or former owner of property comprised in either part of the fund, it shall be treated as belonging to that part of the fund;
- (b) in any other case, the trustee shall secure, by apportionment of the accruing property or the transfer of property from one part of the fund to the other, or both, that the value of each part of the fund is increased by the same amount.

Where a trustee acquires property in consideration of a money payment the acquisition of the property shall be treated for the purposes of this section as investment and not as the accrual of property to the trust fund, notwithstanding that the amount of the consideration is less than the value of the property acquired; and paragraph (a) of this subsection shall not include the case of a dividend or interest becoming part of a trust fund.

(4) Where in the exercise of any power or duty of a trustee property falls to be taken out of the trust fund, nothing in this section shall restrict his discretion as to the choice of property to be taken out.

**Powers additional, not in derogation.**

29.(1) The powers conferred by section 27 are in addition to and not in derogation from any power conferred otherwise than by this Act of investment or postponing conversion exercisable by a trustee (hereinafter referred to as a “special power”).

(2) Any special power (however expressed) to invest property in any investment for the time being authorized by law for the investment of trust property, being a power conferred on a trustee before the 4th day of June

1965 or conferred on him under any enactment which came into force before the 4th day of June 1965, shall have effect as a power to invest property in like manner and subject to the like provisions as under the foregoing provisions of this Act.

(3) In relation to property, including wider-range but not including narrower-range investments, which a trustee is authorized to hold apart from—

- (i) the provisions of any of sections 22, 23, 25, 32-34, 36 or 37;
- (ii) any such power to invest in authorized investments as is mentioned in subsection (2), section 28 shall have effect subject to the modifications set out in Schedule 2.

(4) Subsection (3) shall not apply where the powers of the trustee to invest or postpone conversion have been conferred or varied—

- (a) by an order of any court made within the period of ten years ending with the 4th day of June 1965; or
- (b) by any enactment coming into operation, or instrument having effect under an enactment made, within that period, being an enactment or instrument relating specifically to the trusts in question,

but the provisions of Schedule 3 shall have effect in a case falling within this subsection.

**Power to extend powers of investment.**

30. The Minister responsible for justice may by order published in the Gazette extend the powers of investment conferred by section 27 by adding to Part I, Part II or Part III of Schedule I any manner of investment specified in the order.

**Saving of powers of court.**

31. The enlargement of the investment powers of trustees by section 27 shall not lessen any power of a court to confer wider powers of investment on trustees, or affect the extent to which any such power is to be exercised.

*Supplementary provisions.*

**Land subject to drainage charges.**

32. A trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase or on mortgage of any land, notwithstanding the same is charged with a rent under the powers of the Public Money Drainage Act, 1846 to 1856, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

**Charges under Improvement of Land Act 1864.**

33. A trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust, may invest and shall be deemed to have always had power to invest on any charge, or upon mortgage of any charge, made under the Improvement of Land Act, 1864.

**Debenture stock of railway companies.**

34. A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may, unless the contrary is expressed in the instrument authorizing the investment, invest in the debenture stock of a railway company or such other company as aforesaid.

**Contracts not to call in.**

35. Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

**Purchase at a premium of redeemable stocks.**

36.(1) A trustee may invest in any security authorized by section 27, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with the powers of this Act.

**Bearer securities.**

37.(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorized investments:

Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(2) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of subsection (1), be deemed to be such an express prohibition as aforesaid.

(3) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

*Division of trust funds.*

**Division of trust funds.**

38.(1) So much of the property in the hands of a trustee shall for the purposes of this Act constitute one trust fund as is held on trusts which (as respects the beneficiaries or their respective interests or the purposes of the trust or as respects the powers of the trustee) are not identical with those on which any other property in his hands is held.

(2) Where property is taken out of a trust fund by way of appropriation so as to form a separate fund, and at the time of the appropriation the trust fund had (as to the whole or a part thereof) been divided in pursuance of subsection (1) of section 28, or that subsection as modified by Schedule 2, then if the separate fund is so divided the narrower-range and wider-range parts of the separate fund may be constituted so as either to be equal, or to bear to each other the same proportion as the two corresponding parts of the fund out of which it was so appropriated ( the values of those parts of those funds being ascertained as at the time of appropriation), or some intermediate proportion.

**Certain valuations to be conclusive.**

39(1) If for the purposes of section 28 or 38 or Schedule 2 a trustee obtains, from a person reasonably believed by the trustee to be qualified to make it, a valuation in writing of any property, the valuation shall be conclusive in determining whether the division of the trust fund in pursuance of section 28(1), or any transfer or apportionment of property under that section or Schedule 2, has been duly made.



(2) Subsection (1) of this section applies to any such valuation notwithstanding that it is made by a person in the course of his employment as an officer or servant.

**Power of variation.**

40.(1) The Minister responsible for justice may by order published in the Gazette direct that, subject to section 38(2), any division of a trust fund made in pursuance of section 28(1) during the continuance in force of the order shall be made so that the value of the wider-range part at the time of the division bears to the then value of the narrower-range part such proportion, greater than one but not greater than three to one, as may be prescribed by the order; and in this Act “the prescribed proportion” means the proportion for the time being prescribed under this subsection.

(2) A fund which has been divided in pursuance of section 28(1) before the coming into operation of an order under subsection (1) of this section may notwithstanding anything in that subsection be again divided (once only) in pursuance of section 28(1) during the continuance in force of the order.

(3) If an order is made under subsection (1) of this section, then as from the coming into operation of the order—

- (a) paragraph (b) of section 28(3) and paragraph 3(b) of Schedule 2 shall have effect with the substitution, for the words from “each” to the end, of the words “the wider-range part of the fund is increased by an amount which bears the prescribed proportion to the amount by which the value of the narrower-range part of the fund is increased”;
- (b) section 38(3) shall have effect as if for the words “so as either” to “each other” there were substituted the words “so as to bear to each other either the prescribed proportion or”.

(4) An order under this section may be revoked by a subsequent order thereunder prescribing a greater proportion.

*Application to persons other than trustees.*

**Application to persons, other than trustees.**

41.(1) Where any persons, not being trustees, have a statutory power of making investments, which is or includes power—

- (a) to make the like investments as were authorized by section 3 of the Trustee Act, 1895, immediately before the repeal of that section;
- (b) to make the like investments as trustees are for the time being by law authorized to make,

however the power is expressed, the provisions of sections 24, 27-29, 38 and 39 shall with the necessary modifications apply in relation to them as if they were trustees:

Provided that property belonging to any fund applicable wholly or partly for the redemption of debt shall not by virtue of the foregoing provisions of this Act be invested or held invested in any manner specified in paragraph 9 of Part II of Schedule 1 or in wider-range investments.

(2) Where, in the exercise of powers conferred by any enactment, an authority to which paragraph 12 of Part II of Schedule 1 applies uses money belonging to any fund for a purpose for which the authority has power to borrow, the provisions of sections 24, 27-29, 38 and 39, shall apply as if there were comprised in the fund (in addition to the actual content thereof) property, being narrower-range investments, having a value equal to so much of the said money as for the time being has not been repaid to the fund, and accordingly any repayment of such money to the fund shall not be treated for the said purposes as the accrual of property to the fund:

Provided that nothing in this subsection shall be taken to require compliance with any of the provisions of section 24 in relation to the exercise of such powers as aforesaid.

(3) In this section “statutory power” means a power conferred by an enactment, which came into force before the 4th day of June 1965 or by any instrument made under any such enactment.

#### **PART IV. POWERS OF THE COURT.**

##### *Appointment of new trustees and vesting orders.*

#### **Power of court to appoint new trustees.**

42.(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing

provisions, the court may make an order for the appointment of a new trustee in substitution for a trustee who is a bankrupt.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustee under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section shall give power to appoint an executor or administrator.

### **Vesting orders as to land.**

43. In any of the following cases:—

- (a) where the court appoints or has appointed a new trustee;
- (b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person,—
  - (i) is a minor; or
  - (ii) is out of the jurisdiction of the court; or
  - (iii) cannot be found;
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land;
- (d) where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead;
- (e) where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or
- (f) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement,

the court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner and for any such estate as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct:

Provided that—

- (a) where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the court may direct, in the persons who on the appointment are the trustees; and
- (b) where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

**Orders as to contingent rights of unborn persons.**

44. Where any land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of the land on any trust, the court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

**Vesting order in place of conveyance by minor mortgagee.**

45. Where any person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money, is a minor, the court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of a minor trustee.

**Vesting order in place of conveyance by heir or devisee of heir, etc., or personal representative of mortgagee.**

46. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land, then the court may make an order vesting the land in such person or persons in such manner and for such estate as the court may direct in any of the following cases:—

- (a) where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the court or cannot be found;
- (b) where an heir or personal representative or devisee of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the land, has stated in writing that he will not convey the same, or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled;
- (c) where it is uncertain which of several devisees of the mortgagee was the survivor; .
- (d) where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether he is living or dead; or
- (e) where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee.

**Vesting order consequential on judgment for sale or mortgage.**

47. Where the court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate as the court thinks fit in the purchaser or mortgagee or in any other person.

**Vesting order consequential on judgment for specific performance, etc.**

48. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the court may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transactions

concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

**Effect of vesting order.**

49. A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the court directs, or if there is no such person or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate as the court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

**Power to appoint person to convey.**

50. In all cases where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

**Vesting orders as to stock and choses in action.**

51.(1) In any of the following cases:—

- (a) where the court appoints or has appointed a new trustee;
- (b) where a trustee entitled alone or jointly with another person to stock or to a chose in action—
  - (i) is a minor; or
  - (ii) is out of the jurisdiction of the court; or
  - (iii) cannot be found; or
  - (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for twenty-eight days next

after a request in writing has been made to him by the person so entitled; or

- (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the court for that purpose has been served on him; or
- (c) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action in any such person as the court may appoint:

Provided that—

- (a) where the order is consequential on the appointment by the court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
  - (b) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.
- (2) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer.
- (3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act, may transfer the stock to himself or any other person, according to the order, and all other persons shall obey every order under this section according to its tenor.
- (4) After notice in writing of an order under this section it shall not be lawful for any person to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.
- (5) The court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.
- (6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under any enactment relating to merchant shipping as if they were stock.

**Persons entitled to apply for orders.**

52.(1) An order under this Act for the appointment of a new trustee or concerning any land, stock or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any land, stock or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

**Powers of new trustees appointed by court.**

53. Every trustee appointed by the court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument (if any) creating the trust.

**Power to charge costs on trust estates.**

54. The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

**Trustees of charities.**

55. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock or chose in action in any trustee of a charity or society over which the court would have jurisdiction upon an action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

**Orders made upon certain allegations to be conclusive evidence.**

56. Where a vesting order is made as to any land under this Act, or under any enactment in force in Gibraltar relating to mental health founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the court or cannot be found, or that it



is uncertain which of several trustees, or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order j but this section shall not prevent the court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

*Miscellaneous.*

**Power to give judgment in absence of trustee.**

57. Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by barrister and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

**PART IV.**

MISCELLANEOUS AND SUPPLEMENTAL.

**Application to trustees of settled land.**

58. All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Land Law and Conveyancing Act, and the Settled Land Act, 1882, whether appointed by the court or by the settlement or under provisions contained in the settlement.

**Limitation.**

59.(1) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply.—

- (a) all rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him;
- (b) if the action or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

(2) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

(3) This section shall not deprive any executor or administration of any right or defence to which he is entitled under any existing statute of limitations.

#### **Indemnity.**

60. This Act and every order purporting to be made under this Act, shall be a complete indemnity to all persons for any acts done pursuant thereto; and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the court had jurisdiction to make the same.

#### **Identity and ownership information.**

61. A trustee shall record in writing information as to the identity of the settlors, trustees and beneficiaries of the trust and maintain such information for a period of 5 years.

#### **Maintenance of accounting records.**

62.(1) A trustee shall maintain proper books of account with respect to—

- (a) all sums of money received and expended by the trust and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the trust; and
- (c) the assets and liabilities of the trust,

for a period of 5 years.

(2) In this section “proper books of account” means such books or accounts as are necessary to exhibit and explain the transactions and financial position of the administration, trade or business of the trust and includes books containing entries from day to day of all cash received and cash paid, statements of annual stocktaking, all goods sold and purchased showing sufficient detail to enable those goods, buyers and sellers to be identified, and any contracts, invoices or other underlying documentation significant to the trade, business or administration of the trust.

**SCHEDULE 1.**

## MANNER OF INVESTMENT.

Section 27.

**PART I**

## NARROWER-RANGE INVESTMENTS NOT REQUIRING ADVICE.

1. In defence Bonds, National Savings Certificates and Ulster Savings Certificates.
2. In deposits in the Government Savings Bank or the Post Office Savings Bank, ordinary deposits in a trustee savings bank and deposits in a bank or department thereof certified under section 9(3) of the Finance Act, 1956.

**PART II.**

## NARROWER-RANGE INVESTMENTS REQUIRING ADVICE.

1. In any debenture or stock issued under the Local Loan Act or the Local Loan (No. 2) Act.
2. *Deleted.*
3. In debentures or stock which may now or at any time hereafter be issued by the Minister responsible for justice under the authority of any enactment and charged on the Consolidated Fund.
4. In securities issued by Her Majesty's Government in the United Kingdom, the Government of Northern Ireland or the Government of the Isle of Man, not being securities falling within Part I of this Schedule and being fixed-interest securities registered in the United Kingdom or the Isle of Man. Treasury Bills or Tax Reserve Certificates.
5. In any securities the payment of interest on, which is guaranteed by Her Majesty's Government in the United Kingdom or the Government of Northern Ireland.
6. In fixed-interest securities issued in the United Kingdom by any public authority or nationalized industry or undertaking in the United Kingdom.

7. In fixed-interest securities issued in the United Kingdom by the government of any overseas territory within the Commonwealth or by any public or local authority within such a territory, being securities registered in the United Kingdom.
8. In fixed-interest securities issued in the United Kingdom by the International Bank for Reconstruction and Development, being securities registered in the United Kingdom.
9. In debentures issued in the United Kingdom by a company incorporated in the United Kingdom, being debentures registered in the United Kingdom.
10. In stock of the Bank of Ireland.
11. In debentures issued by the Agricultural Mortgage Corporation Limited or the Scottish Agricultural Securities Corporation Limited.
12. In loans to any authority to which this paragraph applies charged on all or any of the revenues of the authority or on a fund into which all or any of those revenues are payable, in any fixed-interest securities issued in the United Kingdom by any such authority for the purpose of borrowing money so charged, and in deposits with any such authority by way of temporary loan made on the giving of a receipt for the loan by the treasurer or other similar officer of the authority and on the giving of an undertaking by the authority, that, if requested to charge the loan as aforesaid, it will either comply with the request or repay the loan.

This paragraph applies to the following authorities that is to say—

- (a) any local authority in the United Kingdom;
- (b) any authority all the members of which are appointed or elected by one or more local authorities in the United Kingdom;
- (c) any authority the majority of the members of which are appointed or elected by one or more local authorities in the United Kingdom, being an authority which by virtue of any enactment has power to issue a precept to a local authority in England and Wales, or a requisition to a local authority in Scotland or to the expenses of which, by virtue of any enactment a local authority in the United Kingdom is or can be required to contribute;
- (d) the Receiver for the Metropolitan Police District or a combined police authority (within the meaning of the Police Act, 1946);

(e) the Belfast City and District Water Commissioners.

**13.** In debentures or in the guaranteed or preference stock of any incorporated company, being statutory water undertakers within the meaning of the Water Act, 1945, or any corresponding enactment in force in Northern Ireland, and having during each of the ten years immediately preceding the calendar year in which the investment was made paid a dividend of not less than five per cent on its ordinary shares.

**14.** In deposits by way of special investment in a trustee savings bank or in a department (not being a department certified under section 9(3) of the Finance Act, 1956) of a bank any other department of which is so certified.

**15.** In deposits in a building society designated under section I of the House Purchase and Housing Act, 1959.

**16.** In mortgages of freehold property in England, Wales, Northern Ireland or Gibraltar and of leasehold property in those countries of which the unexpired term at the time of investment is not less than sixty years, and in loans on heritable security in Scotland.

**17.** In perpetual rent-charges charged on land in England and Wales, Northern Ireland or Gibraltar and fee-farm rents (not being rent-charges) issuing out of such land and in feu-duties or ground annuals in Scotland.

### **PART III.**

#### **WIDER-RANGE INVESTMENTS.**

**1.** In any securities issued in the United Kingdom by a company incorporated in the United Kingdom or in Gibraltar by a company incorporated in Gibraltar, being securities registered in the United Kingdom or Gibraltar, as the case may be, and not being securities falling within Part II of this Schedule.

**2.** In shares in any building society designated under section I of the House Purchase and Housing Act, 1959.

**3.** In any units, or other shares of the investments subject to the trusts, of a unit trust scheme in the case of which there is in force at the time of investment an order of the Board of Trade under section 17 of the Prevention of Fraud (Investments) Act, 1958, or of the Ministry of Commerce for Northern Ireland under section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland), 1940.

### **PART IV.**

## SUPPLEMENTAL.

1. The securities mentioned in Parts I to III of this Schedule do not include any securities where the holder can be required to accept repayment of the principal, or the payment of any interest, otherwise than in sterling.

2. The securities mentioned in paragraphs 4 to II of Part II, other than Treasury Bills or Tax Reserve Certificates, securities issued before the commencement of this Act by the Government of the Isle of Man, securities falling within paragraph 7 of Part II issued before the commencement of this Act or securities falling within paragraph 12 of that Part, and the securities mentioned in paragraph I of Part III of this Schedule, do not include—

- (a) securities the price of which is not quoted on a recognized stock exchange within the meaning of the Prevention of Fraud (Investments) Act, 1958, or the Belfast stock exchange;
- (b) shares or debenture stock not fully paid up (except shares or debenture stock which by the terms of issue are required to be fully paid up within nine months of the date of issue).

3. The securities mentioned in paragraph 9 of Part II and paragraph 1 of Part III of this schedule do not include—

- (a) shares or debentures of an incorporated company of which the total issued and paid up share capital is less than one million pounds;
- (b) shares or debentures of an incorporated company which has not in each of the five years immediately preceding the calendar year in which the investment is made paid a dividend on all the shares issued by the company, excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for the dividend for that year.

For the purposes of sub-paragraph (b) of this paragraph a company formed—

- (i) to take over the business of another company or other companies, or
- (ii) to acquire the securities of, or control of, another company or other companies,

or for either of those purposes and for other purposes shall be deemed to have paid a dividend as mentioned in that sub-paragraph in any year in

which such a dividend has been paid by the other company or all the other companies, as the case may be.

4. In this Schedule, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“debenture” includes debenture stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

“enactment” includes an enactment of the Parliament of Northern Ireland;

“fixed-interest securities” means securities which under their terms of issue bear a fixed rate of interest;

“local authority” in relation to the United Kingdom, means any of the following authorities—

- (a) in England and Wales, the council of a county, a county, metropolitan or other borough (including a borough which has been included in a rural district), an urban or rural district or a parish, the Common Council of the City of London and the Council of the Isles of Scilly;
- (b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act, 1947;
- (c) in Northern Ireland, the council of a county, a county or other borough, or an urban or rural district;

“ordinary deposits” and “special investment” have the same meanings respectively as in the Trustee Savings Bank Act, 1954;

“securities” includes shares, debentures, Treasury Bills and Tax Reserve Certificates;

“share” includes stock;

“Treasury Bills” includes Exchequer bills and other bills issued by Her Majesty's Government in the United Kingdom and Northern Ireland Treasury Bills.

5. It is hereby declared that in this Schedule “mortgage”, in relation to freehold or leasehold property in Northern Ireland, includes a registered charge which, by virtue of section 40(4) of the Local Registration of Title (Ireland) Act, 1891, or any other enactment, operates as a mortgage by deed.



6. References in this Schedule to an incorporated company are references to a company incorporated by or under any enactment and include references to a body of persons established for the purpose of trading for profit and incorporated by Royal Charter.

7. The references in paragraph 15 of Part II and paragraph 2 of Part III of this Schedule to a building society designated under section I of the House Purchase and Housing Act, 1959, include references to a permanent society incorporated under the Building Societies Acts (Northern Ireland) 1874 to 1940 for the time being designated by the Registrar for Northern Ireland under subsection (2) of that section (which enables such a society to be so designated for the purpose of trustees powers of investment specified in paragraph (a) of subsection (1) of that section ).

**SCHEDULE 2.**

Section 29.

**MODIFICATION OF SECTION 28 IN RELATING TO PROPERTY  
FALLING WITHIN SECTION 29(3).**

**1.** In this Schedule “special-range property” means property falling within section 29(3) of this Act.

**2.**

(1) Where a trust fund includes special-range property, section 28(1) of this Act shall have effect as if references to the trust fund were references to so much thereof as does not consist of special-range property, and the special-range property shall be carried to a separate part of the fund.

(2) Any property which—

- (a) being property belonging to the narrower-range or wider-range part of a trust fund, is converted into special-range property, or
- (b) being special-range property, accrues to a trust fund after the division of the fund or part thereof in pursuance of section 28(1) of this Act or of that subsection as modified by sub-paragraph (1) of this paragraph,

shall be carried to such a separate part as aforesaid; and subsections (2) and (3) of section 28 shall have effect subject to this sub-paragraph.

**3.** Where property carried to such a separate part as aforesaid is converted into property other than special-range property,—

- (a) it shall be transferred to the narrower-range part of the fund or the wider-range part of the fund or apportioned between them, and
- (b) any transfer of property from one of those parts to the other shall be made which is necessary to secure that the value of each of those parts of the fund is increased by the same amount.

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**SCHEDULE 3.**

Section 29.

**PROVISIONS SUPPLEMENTARY TO SECTION 29(4).**

1. Where in a case falling within section 29(4) of this Act, property belonging to the narrower-range part of a trust fund—

- (a) is invested otherwise than in a narrower-range investment, or
- (b) being so invested, is retained and not transferred or as soon as may be reinvested as mentioned in section 28(2) of this Act,

then, so long as the property continues so invested and comprised in the narrower-range part of the fund, section 27 of this Act shall not authorize the making or retention of any wider-range investment.

2. Section 25(4) shall not apply where an investment ceases to be authorized in consequence of the foregoing paragraph.