



# Trustee Act 2000

## 2000 CHAPTER 29

### PART I

#### THE DUTY OF CARE

#### 1 The duty of care.

- (1) Whenever the duty under this subsection applies to a trustee, he must exercise such care and skill as is reasonable in the circumstances, having regard in particular—
- (a) to any special knowledge or experience that he has or holds himself out as having, and
  - (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- (2) In this Act the duty under subsection (1) is called “the duty of care”.

#### **Modifications etc. (not altering text)**

- C1** S. 1(1) applied by 1993 c. 10, s. 73F(5) (as inserted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), **ss. 39**, 79(2); S.I. 2007/309, art. 2, Sch.)
- C2** S. 1(1) applied by 1993 c. 10, s. 73B(2) (as inserted (18.3.2008) by [Charities Act 2006 \(c. 50\)](#), **ss. 36**, 79(2) (with Sch. 10 para. 12); S.I. 2008/751, art. 2, Sch.)

#### 2 Application of duty of care.

Schedule 1 makes provision about when the duty of care applies to a trustee.

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*Status: Point in time view as at 02/01/2013.*

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## PART II

### INVESTMENT

#### 3 General power of investment.

- (1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust.
- (2) In this Act the power under subsection (1) is called “the general power of investment”.
- (3) The general power of investment does not permit a trustee to make investments in land other than in loans secured on land (but see also section 8).
- (4) A person invests in a loan secured on land if he has rights under any contract under which—
  - (a) one person provides another with credit, and
  - (b) the obligation of the borrower to repay is secured on land.
- (5) “Credit” includes any cash loan or other financial accommodation.
- (6) “Cash” includes money in any form.

#### 4 Standard investment criteria.

- (1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee must have regard to the standard investment criteria.
- (2) A trustee must from time to time review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.
- (3) The standard investment criteria, in relation to a trust, are—
  - (a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind, and
  - (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

#### 5 Advice.

- (1) Before exercising any power of investment, whether arising under this Part or otherwise, a trustee must (unless the exception applies) obtain and consider proper advice about the way in which, having regard to the standard investment criteria, the power should be exercised.
- (2) When reviewing the investments of the trust, a trustee must (unless the exception applies) obtain and consider proper advice about whether, having regard to the standard investment criteria, the investments should be varied.
- (3) The exception is that a trustee need not obtain such advice if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.
- (4) Proper advice is the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investment.

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## 6 Restriction or exclusion of this Part etc.

- (1) The general power of investment is—
  - (a) in addition to powers conferred on trustees otherwise than by this Act, but
  - (b) subject to any restriction or exclusion imposed by the trust instrument or by any enactment or any provision of subordinate legislation.
- (2) For the purposes of this Act, an enactment or a provision of subordinate legislation is not to be regarded as being, or as being part of, a trust instrument.
- (3) In this Act “subordinate legislation” has the same meaning as in the <sup>M1</sup>Interpretation Act 1978.

### Marginal Citations

M1 1978 c. 30.

## 7 Existing trusts.

- (1) This Part applies in relation to trusts whether created before or after its commencement.
- (2) No provision relating to the powers of a trustee contained in a trust instrument made before 3rd August 1961 is to be treated (for the purposes of section 6(1)(b)) as restricting or excluding the general power of investment.
- (3) A provision contained in a trust instrument made before the commencement of this Part which—
  - (a) has effect under section 3(2) of the <sup>M2</sup>Trustee Investments Act 1961 as a power to invest under that Act, or
  - (b) confers power to invest under that Act,is to be treated as conferring the general power of investment on a trustee.

### Marginal Citations

M2 1961 c. 62.

## PART III

### ACQUISITION OF LAND

## 8 Power to acquire freehold and leasehold land.

- (1) A trustee may acquire freehold or leasehold land in the United Kingdom—
  - (a) as an investment,
  - (b) for occupation by a beneficiary, or
  - (c) for any other reason.
- (2) “Freehold or leasehold land” means—
  - (a) in relation to England and Wales, a legal estate in land,

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- (b) in relation to Scotland—
    - (i) the estate or interest of the proprietor of the dominium utile or, in the case of land not held on feudal tenure, the estate or interest of the owner, or
    - (ii) a tenancy, and
  - (c) in relation to Northern Ireland, a legal estate in land, including land held under a fee farm grant.
- (3) For the purpose of exercising his functions as a trustee, a trustee who acquires land under this section has all the powers of an absolute owner in relation to the land.

## 9 Restriction or exclusion of this Part etc.

The powers conferred by this Part are—

- (a) in addition to powers conferred on trustees otherwise than by this Part, but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any enactment or any provision of subordinate legislation.

## 10 Existing trusts.

- (1) This Part does not apply in relation to—
- (a) a trust of property which consists of or includes land which (despite section 2 of the <sup>M3</sup>Trusts of Land and Appointment of Trustees Act 1996) is settled land, or
  - (b) a trust to which the <sup>M4</sup>Universities and College Estates Act 1925 applies.
- (2) Subject to subsection (1), this Part applies in relation to trusts whether created before or after its commencement.

### Marginal Citations

**M3** 1996 c. 47.

**M4** 1925 c. 24.

## PART IV

### AGENTS, NOMINEES AND CUSTODIANS

### Modifications etc. (not altering text)

**C3** Pt. 4 applied in part (with modifications) (2.1.2013) by [The Charitable Incorporated Organisations \(General\) Regulations 2012 \(S.I. 2012/3012\)](#), regs. 1, **33**

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## Agents

### 11 Power to employ agents.

- (1) Subject to the provisions of this Part, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent.
- (2) In the case of a trust other than a charitable trust, the trustees' delegable functions consist of any function other than—
  - (a) any function relating to whether or in what way any assets of the trust should be distributed,
  - (b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital,
  - (c) any power to appoint a person to be a trustee of the trust, or
  - (d) any power conferred by any other enactment or the trust instrument which permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.
- (3) In the case of a charitable trust, the trustees' delegable functions are—
  - (a) any function consisting of carrying out a decision that the trustees have taken;
  - (b) any function relating to the investment of assets subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land);
  - (c) any function relating to the raising of funds for the trust otherwise than by means of profits of a trade which is an integral part of carrying out the trust's charitable purpose;
  - (d) any other function prescribed by an order made by the Secretary of State.
- (4) For the purposes of subsection (3)(c) a trade is an integral part of carrying out a trust's charitable purpose if, whether carried on in the United Kingdom or elsewhere, the profits are applied solely to the purposes of the trust and either—
  - (a) the trade is exercised in the course of the actual carrying out of a primary purpose of the trust, or
  - (b) the work in connection with the trade is mainly carried out by beneficiaries of the trust.
- (5) The power to make an order under subsection (3)(d) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 12 Persons who may act as agents.

- (1) Subject to subsection (2), the persons whom the trustees may under section 11 authorise to exercise functions as their agent include one or more of their number.
- (2) The trustees may not authorise two (or more) persons to exercise the same function unless they are to exercise the function jointly.
- (3) The trustees may not under section 11 authorise a beneficiary to exercise any function as their agent (even if the beneficiary is also a trustee).

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- (4) The trustees may under section 11 authorise a person to exercise functions as their agent even though he is also appointed to act as their nominee or custodian (whether under section 16, 17 or 18 or any other power).

### 13 Linked functions etc.

- (1) Subject to subsections (2) and (5), a person who is authorised under section 11 to exercise a function is (whatever the terms of the agency) subject to any specific duties or restrictions attached to the function.

For example, a person who is authorised under section 11 to exercise the general power of investment is subject to the duties under section 4 in relation to that power.

- (2) A person who is authorised under section 11 to exercise a power which is subject to a requirement to obtain advice is not subject to the requirement if he is the kind of person from whom it would have been proper for the trustees, in compliance with the requirement, to obtain advice.
- (3) Subsections (4) and (5) apply to a trust to which section 11(1) of the <sup>M5</sup>Trusts of Land and Appointment of Trustees Act 1996 (duties to consult beneficiaries and give effect to their wishes) applies.
- (4) The trustees may not under section 11 authorise a person to exercise any of their functions on terms that prevent them from complying with section 11(1) of the 1996 Act.
- (5) A person who is authorised under section 11 to exercise any function relating to land subject to the trust is not subject to section 11(1) of the 1996 Act.

#### Marginal Citations

M5 1996 c. 47.

### 14 Terms of agency.

- (1) Subject to subsection (2) and sections 15(2) and 29 to 32, the trustees may authorise a person to exercise functions as their agent on such terms as to remuneration and other matters as they may determine.
- (2) The trustees may not authorise a person to exercise functions as their agent on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.
- (3) The terms are—
- a term permitting the agent to appoint a substitute;
  - a term restricting the liability of the agent or his substitute to the trustees or any beneficiary;
  - a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

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## **15 Asset management: special restrictions.**

- (1) The trustees may not authorise a person to exercise any of their asset management functions as their agent except by an agreement which is in or evidenced in writing.
- (2) The trustees may not authorise a person to exercise any of their asset management functions as their agent unless—
  - (a) they have prepared a statement that gives guidance as to how the functions should be exercised (“a policy statement”), and
  - (b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with—
    - (i) the policy statement, or
    - (ii) if the policy statement is revised or replaced under section 22, the revised or replacement policy statement.
- (3) The trustees must formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the trust.
- (4) The policy statement must be in or evidenced in writing.
- (5) The asset management functions of trustees are their functions relating to—
  - (a) the investment of assets subject to the trust,
  - (b) the acquisition of property which is to be subject to the trust, and
  - (c) managing property which is subject to the trust and disposing of, or creating or disposing of an interest in, such property.

### *Nominees and custodians*

## **16 Power to appoint nominees.**

- (1) Subject to the provisions of this Part, the trustees of a trust may—
  - (a) appoint a person to act as their nominee in relation to such of the assets of the trust as they determine (other than settled land), and
  - (b) take such steps as are necessary to secure that those assets are vested in a person so appointed.
- (2) An appointment under this section must be in or evidenced in writing.
- (3) This section does not apply to any trust having a custodian trustee or in relation to any assets vested in the official custodian for charities.

## **17 Power to appoint custodians.**

- (1) Subject to the provisions of this Part, the trustees of a trust may appoint a person to act as a custodian in relation to such of the assets of the trust as they may determine.
- (2) For the purposes of this Act a person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any documents or records concerning the assets.
- (3) An appointment under this section must be in or evidenced in writing.
- (4) This section does not apply to any trust having a custodian trustee or in relation to any assets vested in the official custodian for charities.

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## **18 Investment in bearer securities.**

- (1) If trustees retain or invest in securities payable to bearer, they must appoint a person to act as a custodian of the securities.
- (2) Subsection (1) does not apply if the trust instrument or any enactment or provision of subordinate legislation contains provision which (however expressed) permits the trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.
- (3) An appointment under this section must be in or evidenced in writing.
- (4) This section does not apply to any trust having a custodian trustee or in relation to any securities vested in the official custodian for charities.

## **19 Persons who may be appointed as nominees or custodians.**

- (1) A person may not be appointed under section 16, 17 or 18 as a nominee or custodian unless one of the relevant conditions is satisfied.
- (2) The relevant conditions are that—
  - (a) the person carries on a business which consists of or includes acting as a nominee or custodian;
  - (b) the person is a body corporate which is controlled by the trustees;
  - (c) the person is a body corporate recognised under section 9 of the <sup>M6</sup>Administration of Justice Act 1985.
- (3) The question whether a body corporate is controlled by trustees is to be determined in accordance with [<sup>F1</sup>section 1124 of the Corporation Tax Act 2010].
- (4) The trustees of a charitable trust which is not an exempt charity must act in accordance with any guidance given by the [<sup>F2</sup>Charity Commission] concerning the selection of a person for appointment as a nominee or custodian under section 16, 17 or 18.
- (5) Subject to subsections (1) and (4), the persons whom the trustees may under section 16, 17 or 18 appoint as a nominee or custodian include—
  - (a) one of their number, if that one is a trust corporation, or
  - (b) two (or more) of their number, if they are to act as joint nominees or joint custodians.
- (6) The trustees may under section 16 appoint a person to act as their nominee even though he is also—
  - (a) appointed to act as their custodian (whether under section 17 or 18 or any other power), or
  - (b) authorised to exercise functions as their agent (whether under section 11 or any other power).
- (7) Likewise, the trustees may under section 17 or 18 appoint a person to act as their custodian even though he is also—
  - (a) appointed to act as their nominee (whether under section 16 or any other power), or
  - (b) authorised to exercise functions as their agent (whether under section 11 or any other power).



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#### Textual Amendments

- F1** Words in s. 19(3) substituted (1.4.2010 with effect in accordance with s. 1184(1)) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 319** (with Sch. 2)
- F2** Words in s. 19(4) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 197**; S.I. 2007/309, art. 2, Sch.

#### Marginal Citations

- M6** 1985 c. 61.

## 20 Terms of appointment of nominees and custodians.

- (1) Subject to subsection (2) and sections 29 to 32, the trustees may under section 16, 17 or 18 appoint a person to act as a nominee or custodian on such terms as to remuneration and other matters as they may determine.
- (2) The trustees may not under section 16, 17 or 18 appoint a person to act as a nominee or custodian on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.
- (3) The terms are—
  - (a) a term permitting the nominee or custodian to appoint a substitute;
  - (b) a term restricting the liability of the nominee or custodian or his substitute to the trustees or to any beneficiary;
  - (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

*Review of and liability for agents, nominees and custodians etc.*

## 21 Application of sections 22 and 23.

- (1) Sections 22 and 23 apply in a case where trustees have, under section 11, 16, 17 or 18—
  - (a) authorised a person to exercise functions as their agent, or
  - (b) appointed a person to act as a nominee or custodian.
- (2) Subject to subsection (3), sections 22 and 23 also apply in a case where trustees have, under any power conferred on them by the trust instrument or by any enactment or any provision of subordinate legislation—
  - (a) authorised a person to exercise functions as their agent, or
  - (b) appointed a person to act as a nominee or custodian.
- (3) If the application of section 22 or 23 is inconsistent with the terms of the trust instrument or the enactment or provision of subordinate legislation, the section in question does not apply.

## 22 Review of agents, nominees and custodians etc.

- (1) While the agent, nominee or custodian continues to act for the trust, the trustees—
  - (a) must keep under review the arrangements under which the agent, nominee or custodian acts and how those arrangements are being put into effect,

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- (b) if circumstances make it appropriate to do so, must consider whether there is a need to exercise any power of intervention that they have, and
  - (c) if they consider that there is a need to exercise such a power, must do so.
- (2) If the agent has been authorised to exercise asset management functions, the duty under subsection (1) includes, in particular—
- (a) a duty to consider whether there is any need to revise or replace the policy statement made for the purposes of section 15,
  - (b) if they consider that there is a need to revise or replace the policy statement, a duty to do so, and
  - (c) a duty to assess whether the policy statement (as it has effect for the time being) is being complied with.
- (3) Subsections (3) and (4) of section 15 apply to the revision or replacement of a policy statement under this section as they apply to the making of a policy statement under that section.
- (4) “Power of intervention” includes—
- (a) a power to give directions to the agent, nominee or custodian;
  - (b) a power to revoke the authorisation or appointment.

## **23 Liability for agents, nominees and custodians etc.**

- (1) A trustee is not liable for any act or default of the agent, nominee or custodian unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1—
- (a) when entering into the arrangements under which the person acts as agent, nominee or custodian, or
  - (b) when carrying out his duties under section 22.
- (2) If a trustee has agreed a term under which the agent, nominee or custodian is permitted to appoint a substitute, the trustee is not liable for any act or default of the substitute unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1—
- (a) when agreeing that term, or
  - (b) when carrying out his duties under section 22 in so far as they relate to the use of the substitute.

### *Supplementary*

## **24 Effect of trustees exceeding their powers.**

- A failure by the trustees to act within the limits of the powers conferred by this Part—
- (a) in authorising a person to exercise a function of theirs as an agent, or
  - (b) in appointing a person to act as a nominee or custodian,
- does not invalidate the authorisation or appointment.

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**25 Sole trustees.**

- (1) Subject to subsection (2), this Part applies in relation to a trust having a sole trustee as it applies in relation to other trusts (and references in this Part to trustees—except in sections 12(1) and (3) and 19(5)—are to be read accordingly).
- (2) Section 18 does not impose a duty on a sole trustee if that trustee is a trust corporation.

**26 Restriction or exclusion of this Part etc.**

The powers conferred by this Part are—

- (a) in addition to powers conferred on trustees otherwise than by this Act, but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any enactment or any provision of subordinate legislation.

**27 Existing trusts.**

This Part applies in relation to trusts whether created before or after its commencement.

**PART V**

REMUNERATION

**28 Trustee's entitlement to payment under trust instrument.**

- (1) Except to the extent (if any) to which the trust instrument makes inconsistent provision, subsections (2) to (4) apply to a trustee if—
  - (a) there is a provision in the trust instrument entitling him to receive payment out of trust funds in respect of services provided by him to or on behalf of the trust, and
  - (b) the trustee is a trust corporation or is acting in a professional capacity.
- (2) The trustee is to be treated as entitled under the trust instrument to receive payment in respect of services even if they are services which are capable of being provided by a lay trustee.
- (3) Subsection (2) applies to a trustee of a charitable trust who is not a trust corporation only—
  - (a) if he is not a sole trustee, and
  - (b) to the extent that a majority of the other trustees have agreed that it should apply to him.
- (4) Any payments to which the trustee is entitled in respect of services are to be treated as remuneration for services (and not as a gift) for the purposes of—
  - (a) section 15 of the <sup>M7</sup>Wills Act 1837 (gifts to an attesting witness to be void), and
  - (b) section 34(3) of the <sup>M8</sup>Administration of Estates Act 1925 (order in which estate to be paid out).
- (5) For the purposes of this Part, a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with—

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- (a) the management or administration of trusts generally or a particular kind of trust, or
  - (b) any particular aspect of the management or administration of trusts generally or a particular kind of trust,
- and the services he provides to or on behalf of the trust fall within that description.
- (6) For the purposes of this Part, a person acts as a lay trustee if he—
- (a) is not a trust corporation, and
  - (b) does not act in a professional capacity.

#### Marginal Citations

**M7** 1837 c. 26.

**M8** 1925 c. 23.

## 29 Remuneration of certain trustees.

- (1) Subject to subsection (5), a trustee who—
- (a) is a trust corporation, but
  - (b) is not a trustee of a charitable trust,
- is entitled to receive reasonable remuneration out of the trust funds for any services that the trust corporation provides to or on behalf of the trust.
- (2) Subject to subsection (5), a trustee who—
- (a) acts in a professional capacity, but
  - (b) is not a trust corporation, a trustee of a charitable trust or a sole trustee,
- is entitled to receive reasonable remuneration out of the trust funds for any services that he provides to or on behalf of the trust if each other trustee has agreed in writing that he may be remunerated for the services.
- (3) “Reasonable remuneration” means, in relation to the provision of services by a trustee, such remuneration as is reasonable in the circumstances for the provision of those services to or on behalf of that trust by that trustee and for the purposes of subsection (1) includes, in relation to the provision of services by a trustee who is an authorised institution under the <sup>M9</sup>Banking Act 1987 and provides the services in that capacity, the institution’s reasonable charges for the provision of such services.
- (4) A trustee is entitled to remuneration under this section even if the services in question are capable of being provided by a lay trustee.
- (5) A trustee is not entitled to remuneration under this section if any provision about his entitlement to remuneration has been made—
- (a) by the trust instrument, or
  - (b) by any enactment or any provision of subordinate legislation.
- (6) This section applies to a trustee who has been authorised under a power conferred by Part IV or the trust instrument—
- (a) to exercise functions as an agent of the trustees, or
  - (b) to act as a nominee or custodian,
- as it applies to any other trustee.

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#### Marginal Citations

M9 1987 c. 22.

### 30 Remuneration of trustees of charitable trusts.

- (1) The Secretary of State may by regulations make provision for the remuneration of trustees of charitable trusts who are trust corporations or act in a professional capacity.
- (2) The power under subsection (1) includes power to make provision for the remuneration of a trustee who has been authorised under a power conferred by Part IV or any other enactment or any provision of subordinate legislation, or by the trust instrument—
  - (a) to exercise functions as an agent of the trustees, or
  - (b) to act as a nominee or custodian.
- (3) Regulations under this section may—
  - (a) make different provision for different cases;
  - (b) contain such supplemental, incidental, consequential and transitional provision as the Secretary of State considers appropriate.
- (4) The power to make regulations under this section is exercisable by statutory instrument, but no such instrument shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.

### 31 Trustees' expenses.

- (1) A trustee—
  - (a) is entitled to be reimbursed from the trust funds, or
  - (b) may pay out of the trust funds,expenses properly incurred by him when acting on behalf of the trust.
- (2) This section applies to a trustee who has been authorised under a power conferred by Part IV or any other enactment or any provision of subordinate legislation, or by the trust instrument—
  - (a) to exercise functions as an agent of the trustees, or
  - (b) to act as a nominee or custodian,as it applies to any other trustee.

### 32 Remuneration and expenses of agents, nominees and custodians.

- (1) This section applies if, under a power conferred by Part IV or any other enactment or any provision of subordinate legislation, or by the trust instrument, a person other than a trustee has been—
  - (a) authorised to exercise functions as an agent of the trustees, or
  - (b) appointed to act as a nominee or custodian.
- (2) The trustees may remunerate the agent, nominee or custodian out of the trust funds for services if—
  - (a) he is engaged on terms entitling him to be remunerated for those services, and

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- (b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.
- (3) The trustees may reimburse the agent, nominee or custodian out of the trust funds for any expenses properly incurred by him in exercising functions as an agent, nominee or custodian.

**Modifications etc. (not altering text)**

C4 S. 32 applied (with modifications) (2.1.2013) by [The Charitable Incorporated Organisations \(General\) Regulations 2012 \(S.I. 2012/3012\)](#), regs. 1, 33

**33 Application.**

- (1) Subject to subsection (2), sections 28, 29, 31 and 32 apply in relation to services provided to or on behalf of, or (as the case may be) expenses incurred on or after their commencement on behalf of, trusts whenever created.
- (2) Nothing in section 28 or 29 is to be treated as affecting the operation of—
  - (a) section 15 of the <sup>M10</sup>Wills Act 1837, or
  - (b) section 34(3) of the <sup>M11</sup>Administration of Estates Act 1925,
 in relation to any death occurring before the commencement of section 28 or (as the case may be) section 29.

**Marginal Citations**

M10 1837 c. 26.  
M11 1925 c. 23.

**PART VI**

MISCELLANEOUS AND SUPPLEMENTARY

**34 Power to insure.**

- (1) For section 19 of the <sup>M12</sup>Trustee Act 1925 (power to insure) substitute—

**“19 Power to insure.**

- (1) A trustee may—
  - (a) insure any property which is subject to the trust against risks of loss or damage due to any event, and
  - (b) pay the premiums out of the trust funds.
- (2) In the case of property held on a bare trust, the power to insure is subject to any direction given by the beneficiary or each of the beneficiaries—
  - (a) that any property specified in the direction is not to be insured;

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- (b) that any property specified in the direction is not to be insured except on such conditions as may be so specified.
- (3) Property is held on a bare trust if it is held on trust for—
  - (a) a beneficiary who is of full age and capacity and absolutely entitled to the property subject to the trust, or
  - (b) beneficiaries each of whom is of full age and capacity and who (taken together) are absolutely entitled to the property subject to the trust.
- (4) If a direction under subsection (2) of this section is given, the power to insure, so far as it is subject to the direction, ceases to be a delegable function for the purposes of section 11 of the Trustee Act 2000 (power to employ agents).
- (5) In this section “trust funds” means any income or capital funds of the trust.”
- (2) In section 20(1) of the <sup>M13</sup>Trustee Act 1925 (application of insurance money) omit “whether by fire or otherwise”.
- (3) The amendments made by this section apply in relation to trusts whether created before or after its commencement.

#### **Marginal Citations**

**M12** 1925 c. 19.

**M13** 1925 c. 19.

### **35 Personal representatives.**

- (1) Subject to the following provisions of this section, this Act applies in relation to a personal representative administering an estate according to the law as it applies to a trustee carrying out a trust for beneficiaries.
- (2) For this purpose this Act is to be read with the appropriate modifications and in particular—
  - (a) references to the trust instrument are to be read as references to the will,
  - (b) references to a beneficiary or to beneficiaries, apart from the reference to a beneficiary in section 8(1)(b), are to be read as references to a person or the persons interested in the due administration of the estate, and
  - (c) the reference to a beneficiary in section 8(1)(b) is to be read as a reference to a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.
- (3) Remuneration to which a personal representative is entitled under section 28 or 29 is to be treated as an administration expense for the purposes of—
  - (a) section 34(3) of the <sup>M14</sup>Administration of Estates Act 1925 (order in which estate to be paid out), and
  - (b) any provision giving reasonable administration expenses priority over the preferential debts listed in Schedule 6 to the <sup>M15</sup>Insolvency Act 1986.
- (4) Nothing in subsection (3) is to be treated as affecting the operation of the provisions mentioned in paragraphs (a) and (b) of that subsection in relation to any death occurring before the commencement of this section.

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#### Marginal Citations

**M14** 1925 c. 23.

**M15** 19876 c. 45.

### 36 Pension schemes.

- (1) In this section “pension scheme” means an occupational pension scheme (within the meaning of the <sup>M16</sup>Pension Schemes Act 1993) established under a trust and subject to the law of England and Wales.
- (2) Part I does not apply in so far as it imposes a duty of care in relation to—
  - (a) the functions described in paragraphs 1 and 2 of Schedule 1, or
  - (b) the functions described in paragraph 3 of that Schedule to the extent that they relate to trustees—
    - (i) authorising a person to exercise their functions with respect to investment, or
    - (ii) appointing a person to act as their nominee or custodian.
- (3) Nothing in Part II or III applies to the trustees of any pension scheme.
- (4) Part IV applies to the trustees of a pension scheme subject to the restrictions in subsections (5) to (8).
- (5) The trustees of a pension scheme may not under Part IV authorise any person to exercise any functions relating to investment as their agent.
- (6) The trustees of a pension scheme may not under Part IV authorise a person who is—
  - (a) an employer in relation to the scheme, or
  - (b) connected with or an associate of such an employer,
 to exercise any of their functions as their agent.
- (7) For the purposes of subsection (6)—
  - (a) “employer”, in relation to a scheme, has the same meaning as in the <sup>M17</sup>Pensions Act 1995;
  - (b) sections 249 and 435 of the <sup>M18</sup>Insolvency Act 1986 apply for the purpose of determining whether a person is connected with or an associate of an employer.
- (8) Sections 16 to 20 (powers to appoint nominees and custodians) do not apply to the trustees of a pension scheme.

#### Marginal Citations

**M16** 1993 c. 48.

**M17** 1995 c. 26.

**M18** 1986 c. 45.

### 37 Authorised unit trusts.

- (1) Parts II to IV do not apply to trustees of authorised unit trusts.



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- (2) “Authorised unit trust” means a unit trust scheme in the case of which an order under section 78 of the <sup>M19</sup>Financial Services Act 1986 is in force.

#### Marginal Citations

M19 1986 c. 60.

### 38 Common investment schemes for charities etc.

Parts II to IV do not apply to—

- (a) trustees managing a fund under a common investment scheme made, or having effect as if made, under [<sup>F3</sup>section 96 of the Charities Act 2011], other than such a fund the trusts of which provide that property is not to be transferred to the fund except by or on behalf of a charity the trustees of which are the trustees appointed to manage the fund, or
- (b) trustees managing a fund under a common deposit scheme made, or having effect as if made, under [<sup>F4</sup>section 100] of that Act.

#### Textual Amendments

- F3 Words in s. 38(a) substituted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, Sch. 7 para. 89(a) (with s. 20(2), Sch. 8)
- F4 Words in s. 38(b) substituted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, Sch. 7 para. 89(b) (with s. 20(2), Sch. 8)

### 39 Interpretation.

- (1) In this Act—

“asset” includes any right or interest;

“charitable trust” means a trust under which property is held for charitable purposes and “charitable purposes” [<sup>F5</sup>has the meaning given by section 11 of the Charities Act 2011];

“custodian trustee” has the same meaning as in the <sup>M20</sup>Public Trustee Act 1906;

“enactment” includes any provision of a Measure of the Church Assembly or of the General Synod of the Church of England;

“exempt charity” has the same meaning as in [<sup>F6</sup>the Charities Act 2011];

“functions” includes powers and duties;

“legal mortgage” has the same meaning as in the <sup>M21</sup>Law of Property Act 1925;

“personal representative” has the same meaning as in the <sup>M22</sup>Trustee Act 1925;

“settled land” has the same meaning as in the <sup>M23</sup>Settled Land Act 1925;

“trust corporation” has the same meaning as in the <sup>M24</sup>Trustee Act 1925;

“trust funds” means income or capital funds of the trust.

- (2) In this Act the expressions listed below are defined or otherwise explained by the provisions indicated—

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asset management functions	section 15(5)
custodian	section 17(2)
the duty of care	section 1(2)
the general power of investment	section 3(2)
lay trustee	section 28(6)
power of intervention	section 22(4)
the standard investment criteria	section 4(3)
subordinate legislation	section 6(3)
trustee acting in a professional capacity	section 28(5)
trust instrument	sections 6(2) and 35(2)(a)

#### Textual Amendments

- F5** Words in s. 39(1) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 90\(a\)](#) (with s. 20(2), [Sch. 8](#))
- F6** Words in s. 39(1) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 90\(b\)](#) (with s. 20(2), [Sch. 8](#))

#### Marginal Citations

- M20** 1906 c. 55.
- M21** 1925 c. 20.
- M22** 1925 c. 19.
- M23** 1925 c. 18.
- M24** 1925 c. 19.

#### 40 Minor and consequential amendments etc.

- (1) Schedule 2 (minor and consequential amendments) shall have effect.
- (2) Schedule 3 (transitional provisions and savings) shall have effect.
- (3) Schedule 4 (repeals) shall have effect.

#### 41 Power to amend other Acts.

- (1) A Minister of the Crown may by order make such amendments of any Act, including an Act extending to places outside England and Wales, as appear to him appropriate in consequence of or in connection with Part II or III.
- (2) Before exercising the power under subsection (1) in relation to a local, personal or private Act, the Minister must consult any person who appears to him to be affected by any proposed amendment.
- (3) An order under this section may—
  - (a) contain such transitional provisions and savings as the Minister thinks fit;
  - (b) make different provision for different purposes.

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- (4) The power to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) “Minister of the Crown” has the same meaning as in the Ministers of the <sup>M25</sup>Crown Act 1975.

#### **Marginal Citations**

**M25** 1975 c. 26.

### **42 Commencement and extent.**

- (1) Section 41, this section and section 43 shall come into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument; and different days may be so appointed for different purposes.
- (3) An order under subsection (2) may contain such transitional provisions and savings as the Lord Chancellor considers appropriate in connection with the order.
- (4) Subject to section 41(1) and subsection (5), this Act extends to England and Wales only.
- (5) An amendment or repeal in Part II or III of Schedule 2 or Part II of Schedule 4 has the same extent as the provision amended or repealed.

#### **Subordinate Legislation Made**

**P1** S. 42(2) power fully exercised: 1.2.2001 appointed by S.I. 2001/49, **art. 2**

### **43 Short title.**

This Act may be cited as the Trustee Act 2000.

**Status:**

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**Changes to legislation:**

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