



2001 CHAPTER 14

PART IV

AGENTS NOMINEES AND CUSTODIANS

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

Application of sections 22 and 23

21.—(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 statutory provision—

- (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 statutory provision, the section in question does not apply.

Review of agents, nominees and custodians, etc.

22.—(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,

- (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.

Liability for agents, nominees and custodians, etc.

- 23.—**(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.