

TRUSTEE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART VI: Miscellaneous and Supplementary

Schedule 2 – Minor and consequential amendments

136. The majority of the amendments in Schedule 2 simply extend the application of the new general power of investment under section 3 to regimes where the powers of investment were as wide as the equivalent powers of trustees were allowed to be under the present law in the absence of express provision in the trust instrument (see for example paragraphs 3, 4 and 8). These notes refer to a few of the more significant.
137. [Paragraph 1](#) - Trustee Investments Act 1961 - the provisions of the Trustee Investments Act 1961 mentioned in paragraph 1(1), which are replaced by the new power of investment in Part II of the Act, are repealed by the Act, except in so far as they are applied by or under any other enactment. Consequently, where (notwithstanding the provisions in Parts II and III of Schedule 2) an enactment continues to operate by reference to the Trustee Investments Act 1961, its effect is preserved. For this purpose it will still be possible (under section 12 of the 1961 Act) for additions to be made to the list of investments specified in Schedule 1 to that Act.
138. In brief the provisions mentioned relate to the following matters: paragraph 1(1) - section 1 (new power of investment of trustees); 2 (restrictions on wide range investments); 5 (certain valuations to be conclusive for purposes of division of trust fund); 6 (duty of trustees in choosing investments); 12 (power to confer additional powers of investment); 13 (power to modify provisions as to division of trust fund) and 15 (saving for court powers);
139. [Paragraph 1\(2\)](#) – section 3 (relationship between Act and other powers of investment); Schedules 2 and 3 (supplementary provision);
140. [Paragraph 1\(3\)](#) – section 8 (special cases); 9 (supplementary); Schedule 4 paragraph 1(1) and section 16(1) to the extent mentioned (construction of references to section 1 of the Trustee Act 1925 which was replaced by section 1 of the 1961 Act).
141. [Paragraph 2](#) - Charities Act 1993 – sections 70 and 71 of the 1993 Act were enacted to enable the Secretary of State, by secondary legislation, to expand the investment opportunities of charity trustees. In view of the new wider powers of investment which will be available to charity trustees under Part II these provisions are no longer needed. The amendments of section 86(2) remove references to sections 70 and 71. Sections 70 and 71 are to be repealed by Schedule 4 to the Act.
142. [Paragraphs 7 - 17](#) make consequential amendments to the Settled Land Act 1925. These fall into a number of broad groups. The amendments in the first group (paragraphs 7 - 9) either grant to trustees of the settlement (in relation to the investment of capital money) the general power of investment in section 3, or make provision to reflect this widening of investment power.

*These notes refer to the Trustee Act 2000 (c.29)
which received Royal Assent on 23 November 2000*

143. The second group of amendments (in paragraph 10) operate on section 75 of the 1925 Act. They amend the section so as to make the investment (or other application) of capital money under that Act a matter exclusively for the trustees of the settlement (subject to a requirement to consult and act in accordance with the wishes of the tenant for life so far as practicable) or the court. These amendments permit the trustees to delegate their functions in accordance with Part IV of the Act, but this is again subject to restrictions designed to safeguard the life tenant's right to be consulted in relation to the investment or application of capital money.
144. [Paragraph 11](#) inserts a new section 75A into the Settled Land Act 1925. The new provision is closely based on section 10(2) of the Trustee Act 1925 (which is repealed by the Act), and permits life tenants or statutory owners (with the consent of the trustees of the settlement), when selling land, to act as mortgagee for up to two thirds of the value of the property being sold.
145. The amendments in the next group (paragraphs 12 - 14) repeal those sections of the Settled Land Act 1925 which concern matters which will in future be governed by other provisions in the Act (such as the remuneration of trustees of the settlement).
146. [Paragraph 16](#) concerns the role of an assignee for value of a life tenant's estate or interest in the investment of capital money, and the final group of amendments (paragraphs 15 and 17) implement a number of changes to the powers both of trustees of the settlement and life tenants, reflecting some of the changes made to the powers of trustees by the Act.
147. [Paragraphs 18, 21, 23 and 24](#) amend the Trustee Act 1925 by removing provisions which are no longer necessary. [Paragraph 19](#) clarifies that the power of trustees to give receipts extends to investments.