

# TRUSTEE ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part IV: Agents, Nominees and Custodians

##### *Section 13: Linked functions etc*

56. [Section 13](#) provides that, subject to the exceptions specified below, an agent authorised to act under section 11 is subject to any specific duties or restrictions attached to the function delegated. The reference to specific duties does not include the duty of care imposed by section 1 of the Act. That duty is limited to *trustees* and does not apply to an agent in the performance of the agency. Nevertheless, agents will owe a separate duty of care to the trustees under the general law of agency.
57. As the example given in subsection (1) of section 13 suggests, the obligation to comply with specific duties and restrictions attached to the trustee function delegated under section 11 will most commonly apply in cases where the trustees delegate their investment function. In these cases the agent will be obliged to have regard to the standard investment criteria in accordance with section 4. The agent may also be required to obtain and consider proper advice in accordance with section 5. However, it will usually be the case that the person appointed to exercise the trustees' powers of investment as an agent would be able, if he were a trustee, to utilise the exception in section 5(3). This fact is recognised by section 13(2). Section 13(1) is, however, not restricted to investment. For example, sections 36 - 39 of the Charities Act 1993 impose restrictions on dispositions and mortgages of land owned by charities. If charity trustees delegate functions in relation to land under section 11(3)(b), the agent will be required to comply with the requirements of the 1993 Act in carrying out those functions.
58. [Section 13\(3\)](#), (4) and (5) relate to the duties imposed by section 11(1) of the Trusts of Land and Appointment of Trustees Act 1996. These duties require some trustees of land, in the exercise of their functions in relation to trust land, so far as practicable, to consult certain beneficiaries and, so far as consistent with the general interest of the trust, to give effect to their wishes. The beneficiaries are those of full age and beneficially entitled to an interest in possession in the land (Trusts of Land and Appointment of Trustees Act 1996 section 11(1)). This duty can be excluded and does not apply to trusts of land created or arising under a will made before the 1996 Act came into force (Trusts of Land and Appointment of Trustees Act 1996 section 11(2) and (3)).
59. The duty to consult beneficiaries under section 11(1) of the 1996 Act is not delegable. Delegation under section 11 is therefore only permitted on terms that allow the trustees to consult and give effect to the wishes of the beneficiaries (section 13(4)). Consistently with this, an agent under section 11 is not obliged to consult under section 11(1) (section 13(5)).