



# **Isle of Man**

*Ellan Vannin*

**AT 10 of 1961**

## **TRUSTEE ACT 1961**





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## TRUSTEE ACT 1961

### Index

| Section  | Page      |
|--|-----------|
| <b>PART I</b>  | <b>7</b>  |
| 1 to 8 [Repealed].....   | 7         |
| <b>PART II – GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES</b>                             | <b>7</b>  |
| <i>General Powers</i>  | <b>7</b>  |
| 9 Power of trustees for sale to sell by auction, etc.....  | 7         |
| 10 Securities becoming vested in a trustee or trustees .....   | 8         |
| 11 Power to sell subject to depreciatory conditions.....   | 8         |
| 12 Power of trustees to give receipts.....   | 9         |
| 13 Power to compound liabilities.....  | 9         |
| 14 Power to raise money by sale, mortgage, etc.....  | 9         |
| 15 Protection to purchasers and mortgagees dealing with trustees .....                               | 10        |
| 16 Devolution of powers of trusts .....  | 10        |
| 17 Power to insure .....   | 10        |
| 18 Application of insurance money where policy kept up under any trust,<br>power or obligation ..... | 11        |
| 19 [Repealed] .....  | 12        |
| 20 Reversionary interests, valuations and audit .....  | 12        |
| 21 [Repealed] .....  | 14        |
| 22 Power to concur with others .....   | 14        |
| 23 Assignment or conveyance of property.....   | 14        |
| 24 Delegation of powers by trustees .....  | 14        |
| <i>Indemnities</i>   | <b>16</b> |
| 25 Protection against liability in respect of rents and covenants .....                              | 16        |
| 26 Protection by means of advertisements.....  | 17        |
| 27 Protection in regard to notice.....   | 18        |
| 28 [Repealed] .....  | 18        |
| 29 [Repealed] .....  | 18        |
| 30 [Repealed] .....  | 18        |

|   |   |           |
|---|---|-----------|
| 31  | Power to apply income for maintenance and to accumulate surplus income during a minority .....  | 18        |
| 32  | Power of advancement .....  | 20        |
| 33  | Protective trusts .....   | 21        |
| <b>PART III – APPOINTMENT AND DISCHARGE OF TRUSTEES</b> |   | <b>22</b> |
| 34  | Limitation of the number of trustees .....  | 22        |
| 35  | Power of appointing new or additional trustees .....  | 22        |
| 36  | Supplemental provisions as to appointment of trustees .....                                     | 24        |
| 37  | Evidence as to a vacancy in a trust .....   | 25        |
| 38  | Retirement of trustee without a new appointment .....   | 25        |
| 39  | Vesting of trust property in new or continuing trustees .....                                   | 26        |
| 40  | Vesting of property held for charitable purposes by any person in office in his successor ..... | 27        |
| 40A   | Public Trustee .....  | 28        |
| <b>PART IV – POWERS OF THE COURT</b>                    |   | <b>28</b> |
|   | <i>Appointment of new Trustees</i>  | <b>28</b> |
| 41  | Power of court to appoint new trustees .....  | 28        |
| 42  | Power to authorise remuneration .....   | 29        |
| 43  | Powers of new trustees appointed by the court.....  | 29        |
| 43A   | Appointment and retirement of trustee at instance of beneficiaries.....                         | 29        |
| 43B   | Appointment of substitute for incapable trustee .....   | 30        |
| 43C   | Supplementary.....  | 30        |
|   | <i>Vesting Orders</i>   | <b>31</b> |
| 44  | Vesting orders of land .....  | 31        |
| 45  | Orders as to contingent rights of unborn persons .....  | 32        |
| 46  | Vesting order in place of conveyance by infant mortgagee .....                                  | 33        |
| 47  | Vesting order consequential on order for sale or mortgage of land .....                         | 33        |
| 48  | Vesting order consequential on judgment for specific performance etc .....                      | 33        |
| 49  | Effect of vesting order.....  | 34        |
| 50  | Power to appoint person to convey .....   | 34        |
| 51  | Vesting orders as to stock and things in action.....  | 34        |
| 52  | Vesting orders of charity property.....   | 36        |
| 53  | Vesting orders in relation to infant's beneficial interests .....                               | 36        |
| 54  | Orders made upon certain allegations to be conclusive evidence .....                            | 36        |
|   | <i>Jurisdiction to make other Orders</i>  | <b>37</b> |
| 55  | Power of court to authorise dealings with trust property .....                                  | 37        |
| 56  | Persons entitled to apply for orders .....  | 37        |
| 57  | Power to give judgment in absence of a trustee .....  | 38        |
| 58  | Power to charge costs on trust estate.....  | 38        |
| 59  | Power to relieve trustee from personal liability.....   | 38        |
| 60  | Power to make beneficiary indemnify for breach of trust.....                                    | 38        |

|  |  |           |
|--|--|-----------|
| 61                                       | Trustee, executor, etc, may apply by petition, etc, to judge of Civil Division of High Court for opinion, advice, etc, in management, etc, of trust property ..... | 39        |
|  | <i>Payment into Court</i> .....  | 39        |
| 62                                       | Payment into court by trustees .....   | 39        |
| <b>PART V – GENERAL PROVISIONS</b> ..... |  | <b>40</b> |
| 63                                       | Application of Act to Settled Land Act trustees .....  | 40        |
| 64                                       | Indemnity to banks, etc.....   | 40        |
| 65                                       | Definitions.....   | 41        |
| 65A                                      | Trust corporations .....   | 43        |
| 66                                       | Application of Act.....  | 43        |
| 67                                       | [Repealed] .....   | 43        |
| 68                                       | Short title and extent .....   | 43        |
| 69                                       | Commencement .....   | 43        |
| <b>SCHEDULE</b> .....                    |  | <b>45</b> |
| <b>ENDNOTES</b> .....                    |  | <b>47</b> |
| TABLE OF LEGISLATION HISTORY .....       |  | 47        |
| TABLE OF RENUMBERED PROVISIONS .....     |  | 47        |
| TABLE OF ENDNOTE REFERENCES .....        |  | 47        |





**Isle of Man**

*Ellan Vannin*

## TRUSTEE ACT 1961

*Received Royal Assent:* 24 March 1961  
*Passed:* 16 May 1961  
*Commenced:* 16 May 1961<sup>1</sup>

AN ACT to consolidate certain enactments relating to trustees in the Isle of Man.

**GENERAL NOTE:** References to a Board of Tynwald are to be construed in accordance with the *Government Departments Act 1987 s 7*.

### PART I

**1 to 8 [Repealed]**<sup>1</sup>

### PART II – GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES

#### *General Powers*

#### **9 Power of trustees for sale to sell by auction, etc**

[1925/12]

- (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 re-sell, without being answerable for any loss.

<sup>1</sup> [EDITORIAL NOTE: See section 69 for the effect of the Act]

- (2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof whether the division is horizontal, vertical, or made in any other way.
- (3) This section does not enable an express power to sell settled land to be exercised where the power is not vested in the tenant for life or statutory owner.

## 10 Securities becoming vested in a trustee or trustees

- (1) Where any property upon which trustees hold a security becomes by virtue of the *Limitation Act 1984* or of a Coroner's sale, or otherwise, vested in the trustees, it shall be held by them on trust for sale, with power to postpone such sale for such period as they may think proper.<sup>2</sup>
- (2) The net proceeds of the sale, after payment of costs and expenses shall be applied in like manner as the debt so secured, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest of such debt, if received, would have been applicable, but this subsection shall operate without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.
- (3) This section shall not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.
- (4) This section applies to property becoming vested in trustees before, as well as after, the commencement of this Act.

## 11 Power to sell subject to depreciatory conditions

[1925/13]

- (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 any of the grounds aforesaid.
- (4) This section applies to sales made before or after the commencement of this Act.



## 12 Power of trustees to give receipts

[1925/14]

- (1) The receipt in writing of a trustee for any money, securities, investments, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.<sup>3</sup>
- (2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for capital money arising under the Settled Land Act.
- (3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

## 13 Power to compound liabilities

[1925/15]

A personal representative, or two or more trustees acting together, or a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit —

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or
- (e) allow any time for payment of any debt; or
- (f) 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 if he has or they have discharged the duty of care set out in section 1(1) of the *Trustee Act 2001*.<sup>4</sup>

## 14 Power to raise money by sale, mortgage, etc

[1925/16]

- (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any

purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

- (2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the Settled Land Act, not being also the statutory owners.

## **15 Protection to purchasers and mortgagees dealing with trustees**

[1925/17]

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

## **16 Devolution of powers of trusts**

[1925/18]

- (1) Where a power or trust is given to or imposed on two or more trustees jointly with or without words of limitation, the same may be exercised or performed by the survivors or survivor of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) In this section “personal representative” does not include an executor who has renounced or has not proved.

## **17 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;
  - (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 2001* (power to employ agents).
- (5) In this section “trust funds” means any income or capital funds of the trust.<sup>5</sup>

## **18 Application of insurance money where policy kept up under any trust, power or obligation**

[1925/20]

- (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Act, shall, where the policy has been kept up under any trust in that behalf or under any power, statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.<sup>6</sup>
- (2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.
- (3) Any such money —
  - (a) if it was receivable in respect of settled land within the meaning of the Settled Land Act or any building or works thereon, shall be deemed to be capital money arising under that Act from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;
  - (b) if it was receivable in respect of personal chattels settled as heirlooms within the meaning of the Settled Land Act, shall be deemed to be capital money arising under that Act, and shall be applicable by the trustees, or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as heirlooms as aforesaid;

- (c) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
  - (d) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
- (4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such applications by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the Settled Land Act, be subject to the provisions of that Act with respect to the application of capital money by the trustees of the settlement.
- (5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.
- (6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

## 19 [Repealed]<sup>7</sup>

## 20 Reversionary interests, valuations and audit

[1925/22]

- (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may —
- (a) agree or ascertain the amount or value thereof, or any part thereof, in such manner as they may think fit;
  - (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
  - (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
  - (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them if they have discharged the duty of care set out in section 1(1) of the *Trustee Act 2001*.<sup>8</sup>

- (2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission —
  - (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
  - (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

- (3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agent) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made shall be binding upon all persons interested under the trust if the trustees have discharged the duty of care set out in section 1(1) of the *Trustee Act 2001*.<sup>9</sup>
- (4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

**21 [Repealed]<sup>10</sup>****22 Power to concur with others**

[1925/24]

Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale effecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

**23 Assignment or conveyance of property**

A personal representative or trustee shall have power to assign personal property, and a trustee shall have power to convey real property, directly to himself, or to himself and another person or other persons or corporations, by the like means as he might assign or convey the same to another.

**24 Delegation of powers by trustees**

- (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate 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) A delegation under this section —
  - (a) commences as provided by the instrument creating the power or, if the instrument makes no provision as to the commencement of the delegation, with the date of the execution of the instrument by the donor, and
  - (b) continues for a period of 12 months or any shorter period provided by the instrument creating the power.
- (3) The persons who may be donees of a power of attorney under this section include a trust corporation.
- (4) An instrument creating a power of attorney under this section shall be attested by at least one witness.
- (5) Before or within 7 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 or instrument executed by the donee.

- (6) A power of attorney given under this section by a single donor —
  - (a) in the form set out in subsection (7), or
  - (b) in a form to the like effect but expressed to be made under this subsection,

shall operate to delegate to the person identified in the form as the single donee of the power the execution and exercise of all the trusts, powers and discretions vested in the donor as trustee (either alone or jointly with any other person or persons) under the single trust so identified.

- (7) The form referred to in subsection (6) is as follows:

“THIS GENERAL TRUSTEE POWER OF ATTORNEY is made on [date] by [name of one donor] as trustee of [name or details of one trust]

I appoint [name of one donee] of [address of donee] to be my attorney [if desired, the date on which the delegation commences or the period for which it continues (or both)] in accordance with section 24(6) of the Trustee Act 1961.

In witness etc.”

- (8) The donor of a power of attorney given under this section shall be liable for the acts and defaults of the donee in the same manner as if they were the acts or defaults of the donor.
- (9) 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 any power, for the purpose of the transfer of any registered stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.
- (10) 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 registered with any notice of the trust.
- (11) This section applies to a personal representative, tenant for life and statutory owner as it applies to a trustee except that subsection (5) applies 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 trustees of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life;
- (c) in the case of a statutory owner, to each of the persons, if any, who together with the person giving the notice constitute the statutory owner.<sup>11</sup>

### *Indemnities*

## **25 Protection against liability in respect of rents and covenants**

[1925/26]

- (1) Where a personal representative or trustee liable as such for —
  - (a) any rent, covenant or agreement reserved by or contained in any lease; or
  - (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent charge; or
  - (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs;

satisfies all liabilities under the lease or grant which may have accrued, and been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter —

- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, act apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.



- (2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.
- (3) In this section “lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; “grant” applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; “lessee” and “grantee” include persons respectively deriving title under them.

## 26 Protection by means of advertisements

[1925/27]

- (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale or personal representatives, may give notice by advertisement in two or more newspapers printed and circulating in the Isle of Man and such other like notices, including notices elsewhere than in the Isle of Man, as would, in any special case, have been directed by the court in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.
- (2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or amongst the persons entitled thereto, having regard only to the claims whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section —
  - (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
  - (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to

those which an intending purchaser would be advised to make or obtain.

- (3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

## **27 Protection in regard to notice**

[1925/28]

A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

## **28 [Repealed]<sup>12</sup>**

## **29 [Repealed]<sup>13</sup>**

## **30 [Repealed]<sup>14</sup>**

Maintenance, Advancement and Protective Trusts

## **31 Power to apply income for maintenance and to accumulate surplus income during a minority**

[1925/31]

- (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property —
- (i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is —
    - (a) any other fund applicable to the same purpose; or
    - (b) any person bound by law to provide for his maintenance or education; and
  - (ii) if such person on attaining the age of eighteen years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:<sup>15</sup>

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

- (2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income by investing it, and any profits from so investing it, from time to time in authorised investments, and shall hold those accumulations as follows: —

- (i) If any such person —
- (a) attains the age of eighteen years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest;<sup>16</sup>
  - (b) on attaining the age of eighteen years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest;<sup>17</sup>

the trustees shall hold the accumulations in trust for such person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his infancy, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

- (ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom;

but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.<sup>18</sup>

- (3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it

applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five pounds per centum per annum.

- (4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.
- (5) This section applies to any instrument under which the interest arises, whether the instrument came into operation before or after the commencement of this Act.

## 32 Power of advancement

- (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 indefeasably 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 Settled Land Act.

- (3) This section does not apply to trusts constituted or created before the second day of March, 1937.

### 33 Protective trusts

[1925/33]

- (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called “the principal beneficiary”) for the period of his life or for any less period, then, during that period (in this section called the “trust period”) the said income shall, without prejudice to any prior interest, be held on the following trusts, namely: —

(i) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do, or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

(ii) If the trust aforesaid fails or determines during subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say) —

- (a) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
- (b) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the person who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be;

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

- (1A) In subsection (1) —

- (a) the reference to the children or remoter issue of the principal beneficiary includes a reference to any illegitimate child of the principal beneficiary and to anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate; and
- (b) the reference to the issue of the principal beneficiary includes a reference to anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate.

This subsection applies only in relation to a disposition made after the commencement of the *Legitimacy Act 1985*.<sup>19</sup>

- (2) This section does not apply to trusts coming into operation before the second day of March, 1937, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.
- (3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

## PART III – APPOINTMENT AND DISCHARGE OF TRUSTEES

### 34 Limitation of the number of trustees

[1925/34]

- (1) Where, at the commencement of this Act, there are more than four trustees of a settlement of land, or more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.
- (2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Act the number of the trustees shall not be increased beyond four.
- (3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply —
  - (a) in the case of land vested in trustees for charitable, ecclesiastical or public purposes; or
  - (b) where the net proceeds of the sale of the land are held for like purposes.

### 35 Power of appointing new or additional trustees

[1925/36]

- (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the British Islands 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, or is an infant, then, subject to the restrictions imposed by this Act on the number of trustees —

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any creating the trust; or
- (b) 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 one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the British Islands, desiring to be discharged, refusing, or being unfit, or being incapable, or being an infant, as aforesaid.

- (2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Act on the number of trustees.
- (3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, then, for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.
- (4) The power of appointment given by subsection (1) of this section or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.
- (5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

- (6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then and in any such case —
- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
  - (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,
- may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the instrument, if any, creating the trust, or any statutory enactment provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.
- (7) Every new trustee appointed under this section 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.
- (8) The provisions of this section relating 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.
- (9) Where a trustee —
- (a) is incapable by reason of mental disorder, within the meaning of the *Mental Health Act 1998*, of exercising his functions as trustee, and
  - (b) is also entitled in possession to some beneficial interest in the trust property,
- no appointment of a new trustee in his place shall be made by virtue of subsection (1)(b) of this section unless leave to make the appointment has been given by the authority having jurisdiction under Part 7 of that Act.<sup>20</sup>

### **36 Supplemental provisions as to appointment of trustees**

[1925/37]

- (1) On the appointment of a trustee for the whole or any part of trust property —
- (a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased; and



- (b) a separate set of trustees, not exceeding four, 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, save as hereinafter provided, one separate trustee may be so appointed; and
  - (c) it shall not be obligatory, save as hereinafter provided, 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, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and
  - (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.
- (2) Nothing in this Act shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed would not be able to give valid receipts for all capital money arising under the trust.

### **37 Evidence as to a vacancy in a trust**

[1925/38]

- (1) A statement, contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the British Islands for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser, be conclusive evidence of the matter stated.
- (2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

### **38 Retirement of trustee without a new appointment**

[1925/39]

- (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid 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 or the trust property, 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.

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

[1925/40]

- (1) Where by a deed a new trustee is appointed to perform any trust, then —
  - (a) if the deed 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 or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate interest or right to which the declaration relates; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.
- (2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then —
  - (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed 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; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.
- (3) An express vesting declaration, whether made before or after the commencement of this Act shall, notwithstanding that the estate, interest

or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2) of this section, as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

- (4) This section does not extend —
- (a) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;
  - (b) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act of Parliament or Tynwald.

In this subsection “lease” includes an underlease and an agreement for a lease or underlease.

- (5) For purposes of registration of the deed in any registry, the person or persons making the declaration expressly or impliedly, 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.
- (6) This section applies to deeds of appointment or discharge executed before or after the commencement of this Act.

#### **40 Vesting of property held for charitable purposes by any person in office in his successor**

- (1) Whenever any property is vested for charitable purposes in any person holding any office, and it appears from the terms of the instrument creating the trust that such property is intended, on a vacancy in such office, to pass to the successor in such office, such property, when such vacancy occurs after the promulgation of this Act, shall vest, without any conveyance or assignment in such successor, provided always that such successor shall not be bound to act, but may, in writing, disclaim the trusteeship.
- (2) Subsection (1) of this section shall apply not only where the holder of such office is the sole trustee but also where he is a co-trustee with another or other persons.

**40A Public Trustee**

- (1) The Public Trustee may be appointed and, if he thinks fit, act as trustee in the Island in any case in which he may be appointed and act as trustee in England and Wales under any Act of Parliament for the time being in force.
- (2) Any person authorised by the Public Trustee may on his behalf take any oath or do anything else which the Public Trustee is required or authorised to do.<sup>21</sup>

**PART IV – POWERS OF THE COURT***Appointment of new Trustees***41 Power of court to appoint new trustees**

[1925/41]

- (1) The court may, whenever it is expedient to appoint a trustee or trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a trustee or 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 provision, the court may make an order appointing a new trustee in substitution for a trustee who –

- (a) is incapable by reason of mental disorder within the meaning of the *Mental Health Act 1998* of exercising his functions as trustee, or
  - (b) is a bankrupt, or
  - (c) is a corporation which is in liquidation or has been dissolved, or
  - (d) is unable to act as a trustee other than in contravention of section 4 of the *Financial Services Act 2008*.<sup>22 23</sup>
- (1A) Without prejudice to section 56 of this Act, any person may, with the leave of the court, make an application for an order under subsection (1) of this section.<sup>24</sup>
  - (2) [Repealed]<sup>25</sup>
  - (3) 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 trustees under any power for that purpose contained in any instrument would have operated.
  - (4) Nothing in this section gives power to appoint an executor or administrator.

**42 Power to authorise remuneration**

[1925/42]

Where the court appoints a corporation or person to be a trustee either solely or jointly with another person, the court may authorise the corporation or person to charge such remuneration for its or his services as trustee as the court may think fit.

**43 Powers of new trustees appointed by the court**

[1925/43]

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.

**43A Appointment and retirement of trustee at instance of beneficiaries**

[P1996/47/19]

- (1) This section applies in the case of a trust where —
  - (a) there is no person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, and
  - (b) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give a direction or directions of either or both of the following descriptions —
  - (a) a written direction to a trustee or trustees to retire from the trust, and
  - (b) a written direction to the trustee or trustees for the time being (or, if there is none, to the personal representative of the last person who was a trustee) to appoint by writing to be a trustee or trustees the person or persons specified in the direction.
- (3) Where —
  - (a) a trustee has been given a direction under subsection (2)(a),
  - (b) reasonable arrangements have been made for the protection of any rights of his in connection with the trust,
  - (c) after he has retired there will be either a trust corporation or at least 2 persons to act as trustees to perform the trust, and
  - (d) either another person is to be appointed to be a new trustee on his retirement (whether in compliance with a direction under subsection (2)(b) or otherwise) or the continuing trustees by deed consent to his retirement,

he shall make a deed declaring his retirement and shall be deemed to have retired and be discharged from the trust.

- (4) Where a trustee retires under subsection (3) he and the continuing trustees (together with any new trustee) shall, subject to any arrangements for the protection of his rights, do anything necessary to vest the trust property in the continuing trustees or in the continuing and new trustees, as the case may be.
- (5) This section has effect subject to the restrictions imposed by this Act on the number of trustees.<sup>26</sup>

### **43B Appointment of substitute for incapable trustee**

[P1996/47/20]

- (1) This section applies where —
  - (a) a trustee is incapable by reason of mental disorder of exercising his functions as trustee;
  - (b) there is no person who is entitled and willing and able to appoint a trustee in place of him under section 35(1), and
  - (c) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give to —
  - (a) a receiver of the trustee,
  - (b) an attorney acting for him under a power of attorney created by an instrument which is registered under section 6 of the *Powers of Attorney Act 1987*, or
  - (c) a person authorised for the purpose by the judge under Part VII of the *Mental Health Act 1974*,

a written direction to appoint by writing the person or persons specified in the direction to be a trustee or trustees in place of the incapable trustee.<sup>27</sup>

### **43C Supplementary**

[P1996/47/21]

- (1) For the purposes of section 43A or 43B a direction is given by beneficiaries if —
  - (a) a single direction is jointly given by all of them, or
  - (b) (subject to subsection (2)) a direction is given by each of them, whether solely or jointly with one or more, but not all, of the others,

and none of them by writing withdraws the direction given by him before it has been complied with.

- (2) Where more than one direction is given each must specify for appointment or retirement the same person or persons.
- (3) Section 35(7) applies to a trustee appointed under section 43A or 43B as if he were appointed under section 35.
- (4) Sections 43A and 43B do not apply in relation to a trust created by a disposition in so far as provision that they shall not apply is made by the disposition.
- (5) Sections 43A and 43B do not apply in relation to a trust created by a disposition before the coming into operation of those sections in so far as provision to the effect that they shall not apply is made by a deed executed —
  - (a) in a case in which the trust was created by one person and he is of full capacity, by that person, or
  - (b) in a case in which the trust was created by more than one person, by such of the persons who created the trust as are alive and of full capacity.
- (6) A deed executed for the purposes of subsection (5) is irrevocable.
- (7) Where a deed is executed for the purposes of subsection (5) —
  - (a) it does not affect anything done before its execution to comply with a direction under section 43A or 43B, but
  - (b) a direction under section 43A or 43B which has been given but not complied with before its execution shall cease to have effect.
- (8) In sections 43A and 43B and this section “**beneficiary**”, in relation to a trust, means any person who under the trust has an interest in property subject to the trust, other than a person who has such an interest only by reason of being a trustee or personal representative.<sup>28</sup>

### *Vesting Orders*

#### **44 Vesting orders of land**

[1925/44]

In any of the following cases, namely: —

- (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (ii) Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person —
  - (a) is under disability; or
  - (b) is out of the jurisdiction of the High Court; or

- (c) cannot be found, or, being a corporation, has been dissolved;
- (iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
- (iv) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (v) Where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (vi) Where a trustee jointly or solely entitled to or possessed of any interest in 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 interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;
- (vii) Where land or any interest therein is vested in a trustee whether by way of mortgage, charge or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest 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 trustee the land or interest therein 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 or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

## 45 Orders as to contingent rights of unborn persons

[1925/45]

Where any interest in 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 that interest on any trust, the court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of



which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

**46 Vesting order in place of conveyance by infant mortgagee**

[1925/46]

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

**47 Vesting order consequential on order for sale or mortgage of land**

[1925/47]

Where any court gives a judgement or makes an order directing the sale, mortgage or charge of any land, every person who is entitled to or possessed of any interest in 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 for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person.

**48 Vesting order consequential on judgment for specific performance etc**

[1925/48]

Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgement is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare —

- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Act; or
- (b) 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 transaction 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.

**49 Effect of vesting order**

[1925/49]

A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect —

- (a) 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 or interest as the court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest 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.

**50 Power to appoint person to convey**

[1925/50]

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 any interest therein 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.

**51 Vesting orders as to stock and things in action**

[1925/51]

- (1) In any of the following cases, namely —
  - (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
  - (ii) Where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action —
    - (a) is under disability; or
    - (b) is out of the jurisdiction of the High Court; or
    - (c) cannot be found, or, being a corporation, has been dissolved; or
    - (d) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing 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

- (e) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him;
- (iii) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (iv) Where stock is standing in the name of a deceased person whose personal representative is under disability;
- (v) Where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;

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 the thing in action, in any such person as the court may appoint:

Provided that —

- (a) Where the order is consequential on the appointment of a 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:

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

- (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 the bank, company or society 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 the bank, company or society 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 transfer any stock or thing 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 the Acts relating to merchant shipping as if they were stock.

## **52 Vesting orders of charity property**

[1925/52]

The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon 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.

## **53 Vesting orders in relation to infant's beneficial interests**

[1925/53]

Where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order —

- (a) appointing a person to convey such property; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

## **54 Orders made upon certain allegations to be conclusive evidence**

[1925/55]

Where a vesting order is made as to any land under this Act, founded on an allegation of any of the following matters, namely —

- (a) the personal incapacity of a trustee or mortgagee; or
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved; or
- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or

- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested;

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; but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

*Jurisdiction to make other Orders*

**55 Power of court to authorise dealings with trust property**

[1925/57]

- (1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.
- (2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.
- (3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.
- (4) This section does not apply to trustees of a settlement for the purposes of the Settled Land Act.

**56 Persons entitled to apply for orders**

[1925/58]

- (1) An order under this Act for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing 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 interest in land, stock, or thing 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.

**57 Power to give judgment in absence of a trustee**

[1925/59]

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 his counsel 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.

**58 Power to charge costs on trust estate**

[1925/60]

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 raised and paid out of the property 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.

**59 Power to relieve trustee from personal liability**

[1925/61]

If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.

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

[1925/62]

- (1) 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 persons claiming through him.
- (2) This section applies to breaches of trust committed as well before as after the commencement of this Act.

**61 Trustee, executor, etc, may apply by petition, etc, to judge of Civil Division of High Court for opinion, advice, etc, in management, etc, of trust property**

- (1) Any trustee shall be at liberty, without the institution of a suit, to apply, by petition, to the court, or by summons, upon a written statement, to the court at chambers, for the opinion, advice, or direction of the court on any question respecting the management or administration of the trust property, or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the court shall think expedient; and the trustee, acting upon the opinion, advice, or direction given by the said judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, in the subject matter of the said application: Provided, nevertheless, that this Act shall not extend to indemnify any trustee in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the court.
- (2) In this section the expression "trustee" shall be deemed to include a personal representative and a trustee whose trust arises by construction on implication of law as well as an express trustee.<sup>29</sup>

*Payment into Court*

**62 Payment into court by trustees**

[1925/63]

- (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 trustees for the money or securities so paid into court.
- (3) Where money 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.
- (4) Where any such money or securities are deposited with any banker, broker, or other depositary, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

- (5) 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 money and securities so transferred, paid, or delivered.

## PART V – GENERAL PROVISIONS

### 63 Application of Act to Settled Land Act trustees

[1925/64]

- (1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, apply to and include trustees for the purposes of the Settled Land Act, and trustees for the purpose of the management of land during a minority, whether such trustees are appointed by the court or by the settlement, or under provisions contained in any instrument.
- (2) Where, either before or after the commencement of this Act, trustees of a settlement have been appointed by the court or otherwise for the purposes of the *Settled Land Act, 1891*, or the Settled Land Act, then, after the commencement of this Act –
- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, though no trustees for the purposes of the said Acts were thereby appointed; or
- (b) if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being for the purposes of the said Acts or the personal representatives of the last surviving or continuing trustee for those purposes,

shall have the powers conferred by this Act to appoint new or additional trustees of the settlement for the purposes of the said Acts.<sup>30</sup>

- (3) Appointments of new trustees for the purposes of the said Acts made or expressed to be made before the commencement of this Act by the trustees or trustee or personal representatives referred to in paragraph (b) of the last preceding subsection or by the persons referred to in paragraph (a) of that subsection are, without prejudice to any order of the court made before such commencement hereby confirmed.

### 64 Indemnity to banks, etc

[1925/66]

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 by which the order was made had jurisdiction to make it.

## 65 Definitions

[1925/68]

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

- (1) “**Authorised investments**” means investments authorised by the instrument, if any, creating the trust for the investment of moneys subject to the trust, or by law;
- (2) “**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;
- (3) “**Convey**” and “**conveyance**” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) 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 for the validity of the conveyance; “**sale**” includes an exchange;
- (4) “**Court**” means the Civil Division of the High Court;<sup>31</sup>
- (5) “**Instrument**” includes Act of Parliament or Act of Tynwald;
- (6) “**Land**” includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land; and in this definition “**mines and minerals**” include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof;
- (7) “**Lunatic**” means a person suffering from mental disorder within the meaning of the *Mental Health Act 1974*, and “**defective**” has the same meaning;<sup>32</sup>
- (8) “**Mortgage**” and “**mortgagee**” include a deed of Bond and Security and the grantee of a deed of Bond and Security and charge or chargee 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;

- (9) “**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;
- (10) “**Personal representative**” means the executor, original or by representation, or administrator for the time being of a deceased person;
- (11) “**Possession**” includes receipt of rents and profits or the right to receive the same, if any; “**income**” includes rents and profits; and “**possessed**” applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;
- (12) “**Property**” includes real and personal property, and any estate, share and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest whether in possession or not;
- (13) “**Rights**” include estates and interests;
- (14) “**Securities**” include mortgages, bonds, debentures, debenture stock, stocks, funds and shares; and “**securities payable to bearer**” include securities transferable by delivery or by delivery and endorsement;
- (15) “**Settled Land Act**” means the Settled Land Act, 1891, together with any Act amending the same or any Act substituted therefor;
- (16) “**Statutory owner**” means the trustees of a settlement or other persons who during a minority or at any other time when there is no tenant for life have the powers of a tenant for life under the Settled Land Act;
- (17) “**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;
- (18) “**Tenant for life**”, “**settled land**”, “**settlement**”, “**trust instrument**”, “**trustees of the settlement**”, have the same meanings as in the Settled Land Act;<sup>33</sup>
- (19) “**Transfer**” in relation to stock or securities, 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;
- (20) “**Trust**” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions “**trust**” and “**trustee**” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “**trustee**” where the context admits, includes a personal representative, and “**new trustee**” includes an additional trustee;
- (21) “**Trust corporation**” [Repealed]<sup>34</sup>

- (22) “**Trust for sale**” in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; “**trustees for sale**” mean the persons (including a personal representative) holding land on trust for sale.

### 65A Trust corporations

Any reference in an enactment, whenever passed, to a trust corporation shall be construed as a reference to —

- (a) the Public Trustee established under the Public Trustee Act 1906 (an Act of Parliament), or
- (b) a body which is incorporated under the law of the Island or any part of the United Kingdom and is licensed under section 7 of the *Financial Services Act 2008* to act as a trust corporation.<sup>35</sup>

### 66 Application of Act

[P1925/69]

- (1) This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Act.
- (2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.
- (3) This Act does not affect the legality or validity of anything done before the commencement of this Act except as otherwise hereinbefore expressly provided.

### 67 [Repealed]<sup>36</sup>

### 68 Short title and extent

- (1) This Act may be cited as the Trustee Act, 1961.
- (2) The provisions of this Act bind the Crown.

### 69 Commencement

This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys, and shall take effect from such day as the Governor shall by Order appoint.<sup>37</sup>



**SCHEDULE<sup>E38</sup>**



## ENDNOTES

### Table of Legislation History

| Legislation | Year and No | Commencement |
|-------------|-------------|--------------|
|             |             |              |
|             |             |              |
|             |             |              |
|             |             |              |

### Table of Renumbered Provisions

| Original | Current |
|----------|---------|
|          |         |
|          |         |
|          |         |
|          |         |

### Table of Endnote References

- 
- <sup>1</sup> Ss 1 to 8 (Part I) repealed by Trustee Act 2001 Sch 4.
- <sup>2</sup> Subs (1) amended by Limitation Act 1984 Sch 3.
- <sup>3</sup> Subs (1) amended by Trustee Act 2001 Sch 2.
- <sup>4</sup> S 13 amended by Trustee Act 2001 Sch 2.
- <sup>5</sup> S 17 substituted by Trustee Act 2001 s 34.
- <sup>6</sup> Subs (1) amended by Trustee Act 2001 s 34.
- <sup>7</sup> S 19 repealed by Trustee Act 2001 Sch 4.
- <sup>8</sup> Subs (1) amended by Trustee Act 2001 Sch 2.
- <sup>9</sup> Subs (3) amended by Trustee Act 2001 Sch 2.
- <sup>10</sup> S 21 repealed by Trustee Act 2001 Sch 4.
- <sup>11</sup> S 24 substituted by Law Reform (Miscellaneous Provisions) Act 1996 s 2(1) (and see also s 2(3)).
- <sup>12</sup> S 28 repealed by Powers of Attorney Act 1983 Sch 2.
- <sup>13</sup> S 29 repealed by Trustee Act 2001 Sch 4.
- <sup>14</sup> S 30 repealed by Limitation Act 1984 Sch 4.
- <sup>15</sup> Para (ii) amended by Family Law Reform (Isle of Man) Act 1971 Sch 1.
- <sup>16</sup> Subpara (a) amended by Family Law Reform (Isle of Man) Act 1971 Sch 1.
- <sup>17</sup> Subpara (b) amended by Family Law Reform (Isle of Man) Act 1971 Sch 1.
- <sup>18</sup> Subs (2) amended by Trustee Act 2001 Sch 2.
- <sup>19</sup> Subs (1A) inserted by Legitimacy Act 1985 Sch 3.
- <sup>20</sup> Subs (9) substituted by Mental Health Act 1998 Sch 5.
- <sup>21</sup> S 40A inserted by Administration of Estates Act 1990 Sch 4.
- <sup>22</sup> Subs (1) amended by Mental Health Act 1998 Sch 5.

- <sup>23</sup> Para (d) added by Fiduciary Services Act 2005 Sch 3 and amended by Financial Services Act 2008 Sch 6.
- <sup>24</sup> Subs (1A) inserted by Fiduciary Services Act 2005 Sch 3.
- <sup>25</sup> Subs (2) repealed by High Court Act 1991 Sch 5.
- <sup>26</sup> S 43A inserted by Law Reform Act 1997 Sch 3.
- <sup>27</sup> S 43B inserted by Law Reform Act 1997 Sch 3.
- <sup>28</sup> S 43C inserted by Law Reform Act 1997 Sch 3.
- <sup>29</sup> S 61 amended by SD352/09.
- <sup>30</sup> Subs (2) amended by Settled Land Act 1983 Sch 1.
- <sup>31</sup> Definition of “Court” amended by SD352/09.
- <sup>32</sup> Definition of “Lunatic” substituted by Mental Health Act 1974 Sch 4.
- <sup>33</sup> References to “lunatic” and “defective” repealed by Mental Health Act 1974 Sch 5.
- <sup>34</sup> Definition of “Trust corporation” repealed by Administration of Estates Act 1990 Sch 5.
- <sup>35</sup> S 65A inserted by Administration of Estates Act 1990 Sch 4. Para (b) substituted by Financial Services Act 2008 Sch 6.
- <sup>36</sup> S 67 repealed by Statute Law Revision Act 1983 Sch 2.
- <sup>37</sup> ADO (whole Act) 5/7/1961 (GC60/61).
- <sup>38</sup> Sch repealed by Statute Law Revision Act 1983 Sch 2.