



Isle of Man

Ellan Vannin

AT 17 of 1990

ADMINISTRATION OF ESTATES ACT 1990



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**Isle of Man***Ellan Vannin*

ADMINISTRATION OF ESTATES ACT 1990

<i>Received Royal Assent:</i>	<i>10 July 1990</i>
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<i>Commenced:</i>	<i>10 October 1990</i>

AN ACT to re-enact with minor amendments the enactments relating to the administration of the estates of deceased persons; and for connected purposes.

PART I – REPRESENTATION OF DECEASED PERSONS

General provisions

1 [Repealed]¹

2 Grants by Chief Registrar

[P1981/54/106]

- (1) An application for a grant of representation in common form shall be made to the Chief Registrar, and any grant made by him shall be granted under his hand in the name of the High Court.
- (2) No grant shall be made by the Chief Registrar —
 - (a) in any case where there is contention, until the contention is disposed of; or
 - (b) in any case where it appears to him that a grant ought not to be made without the directions of a Deemster; or
 - (c) in any case where it appears to him that a grant ought not to be made until any particular matter relating to the grant, or to an application for it, has been determined by the High Court otherwise than under subsection (3); or
 - (d) in any case where it appears to him that some other application has been made in respect of the estate, or the part of the estate, in question and has not been either refused or withdrawn.

- (3) In any case within subsection (2)(b), the Chief Registrar shall obtain the directions of a Deemster, who may either –
- (a) direct the Chief Registrar to proceed with the matter in accordance with such instructions as he thinks necessary, or
 - (b) direct him to take no further action in relation to the matter.

3 Severance of grant

[P1981/54/113]

- (1) Subject to subsection (2), representation may be granted in respect of any part of the estate of a deceased person, limited in any way the court thinks fit.
- (2) Where the estate of a deceased person is known to be insolvent, the grant of representation to it shall not be severed under subsection (1) except as regards a trust estate in which he had no beneficial interest.

4 Number of personal representatives

[P1981/54/114]

- (1) Representation shall not be granted to more than 4 persons in respect of the same part of the estate of a deceased person.
- (2) Where under a will or intestacy any beneficiary is a minor, any grant of administration shall be made either –
- (a) to a trust corporation (with or without an individual), or
 - (b) to not less than 2 individuals,
- unless it appears to the court to be expedient in all the circumstances to appoint an individual as sole administrator.
- (3) For the purpose of determining whether a minority arises in any case, the court may act on such evidence as may be prescribed.
- (4) If at any time during the minority of a beneficiary under a will or intestacy there is only one personal representative (not being a trust corporation), the court may on the application of any person interested or the guardian or receiver of any such person appoint one or more additional personal representatives to act while the minority subsists and until the estate is fully administered.
- (5) The appointment of an additional personal representative under subsection (4) to act with an executor shall not have the effect of including him in any chain of representation.

5 Grant to trust corporation

[P1981/54/115]

- (1) Where a trust corporation is named in a will as executor, probate may be granted to the corporation either solely or jointly with any other person named in the will as executor, as the case may require.
- (2) Administration may be granted to a trust corporation, either solely or jointly with another person.
- (3) Where representation is granted to a trust corporation, the corporation may act accordingly as executor or administrator, as the case may be.
- (4) Representation shall not be granted to a nominee of a trust corporation.
- (5) Any officer authorised for the purpose by a trust corporation or its directors or governing body may, on behalf of the corporation, swear affidavits, give security and do any other act which the court may require with a view to the grant to the corporation of representation; and the acts of an officer so authorised shall be binding on the corporation.

6 Grant where no estate is left

Representation may be granted in respect of a deceased person notwithstanding that he left no estate.

7 Revocation of grant

[P1981/54/121]

Where it appears to the court that a grant of representation either ought not to have been made or contains an error, the court may, if satisfied that it would be revoked at the instance of a party interested, revoke the grant.

8 Substitution or removal of personal representative

[P1985/61/50]

- (1) On an application made to the court for the purpose by or on behalf of the personal representative of, or a beneficiary of the estate of, a deceased person, the court may —
 - (a) appoint a person (a ‘substituted personal representative’) to act as personal representative of the deceased in place of the existing personal representative or representatives or any of them; or
 - (b) if there are 2 or more existing personal representatives of the deceased, terminate the appointment of one or more (but not all) of them.
- (2) Where the court appoints a person to act as substituted personal representative of a deceased person, then —
 - (a) if that person is appointed to act with an executor or executors, the appointment shall (except for the purpose of including him in

any chain of representation) constitute him executor of the deceased as from the date of the appointment; and

- (b) in any other case the appointment shall constitute that person administrator of the deceased's estate as from the date of the appointment.
- (3) In this section 'beneficiary', in relation to the estate of a deceased person, means a person who under the will of the deceased or under Part III is beneficially interested in the estate.

9 Probate rules

[P1981/54/127]

The Deemsters may make rules ('probate rules') for regulating and prescribing the practice and procedure of the court with respect to non-contentious or common form probate business.

Grants of probate

10 Summons to executor to prove

[P1981/54/112]

The court may summon any person named as executor in a will to prove, or renounce probate of, the will, and to do all such other things concerning the will as the court had power to order such a person to do immediately before the 5th July 1961.

11 Cesser of right of executor to prove

[P1925/23/5]

Where a person appointed executor by a will —

- (a) survives the testator but dies without having taken out probate of the will; or
- (b) is cited to take out probate of the will and does not appear to the citation; or
- (c) renounces probate of the will;

his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his estate shall devolve and be committed in like manner as if that person had not been appointed executor.

12 Withdrawal of renunciation

[P1925/23/6]

- (1) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will, the probate shall take effect, and be deemed always to have taken effect, without prejudice to

the previous acts and dealings of and notices to any other personal representative who has previously taken out representation.

- (2) A memorandum of the subsequent probate shall be minuted on the original probate or administration.

13 Examination of person with knowledge of will

[P1981/54/122]

- (1) Where it appears that there are reasonable grounds for believing that any person has knowledge of any document which is or purports to be a testamentary document, the court may, whether or not any legal proceedings are pending, order him to attend for the purpose of being examined in open court.
- (2) The court may —
 - (a) require any person who is before it in compliance with an order under subsection (1) to answer any question relating to the document concerned; and
 - (b) if appropriate, order him to bring in the document in such manner as the court may direct.
- (3) Any person who, having been required by the court to do so under this section, fails to attend for examination, answer any question or bring in any document shall be guilty of contempt of court.

14 Summons to bring in will etc

[P1981/54/123]

Where it appears that any person has in his possession, custody or power any document which is or purports to be a testamentary document, the court may, whether or not any legal proceedings are pending, issue a summons requiring him to bring in the document in such manner as the court may in the summons direct.

15 Grant without notice

Except in such cases as may be prescribed, a will shall be admitted to probate in common form without notice being given to any person.

16 Will first proved abroad

[V p352/19]

- (1) In any case where a will has been first proved in any court of competent jurisdiction outside the Island, the production of an office copy of the will, duly certified or authenticated as required by the *Evidence Act 1871* for the purpose of being admissible in evidence, or of the probate copy of the will, shall be prima facie evidence of the will having been duly proved.

- (2) In such a case, probate or administration may be granted on the office copy, or on a copy of the probate copy certified by the Chief Registrar.

17 Chain of representation

[P1925/23/7]

- (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.
- (2) Subsection (1) does not apply to an executor who does not prove the will of his testator, and in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.
- (3) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.
- (4) The chain of representation is broken by —
- (a) an intestacy;
 - (b) the failure of a testator to appoint an executor; or
 - (c) the failure to obtain probate of a will;
- but is not broken by a temporary grant of administration if probate is subsequently granted.
- (5) Every person in the chain of representation to a testator —
- (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
 - (b) is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

Letters of administration

18 Discretion of court

In granting administration the court shall have regard to the rights of all persons interested in the estate of the deceased person, or the proceeds of sale thereof.

19 Notice to beneficiaries

An application for administration of an intestate estate shall be made with notice to all persons in the Island who under Part III are beneficially interested in the estate.

20 Vesting of estate pending grant

- (1) Where a person dies without leaving a valid will, his estate vests in the Treasury.
- (2) Where a person dies leaving a valid will and —
 - (a) at the time of his death there is no executor with power to obtain probate of the will, or
 - (b) at any time before probate of the will is granted there ceases to be any executor with power to obtain probate,his estate vests in the Treasury from the time specified in paragraph (a) or (b), as the case may be.
- (3) The vesting by virtue of this section of any estate in the Treasury shall not, without more, confer or impose on the Treasury any powers, duties, rights, equities, obligations or liabilities in respect of the estate.
- (4) Any estate or part of an estate vested in the Treasury under subsection (1) or (2) shall cease to be so vested on the grant of representation in respect of the estate or part in question.

21 Guarantee for administrators

[1987/8/11; P1981/54/120]

- (1) As a condition of granting administration the court may, subject to and in accordance with probate rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased person may suffer in consequence of a breach by the administrator of his duties as such.
- (2) A guarantee given in pursuance of any such requirement shall enure for the benefit of any person interested in the estate of the deceased as if contained in a deed made by the surety or sureties and, where there are 2 or more sureties, as if they had bound themselves jointly and severally.
- (3) No action shall be brought on any such guarantee without the leave of the court.
- (4) This section does not apply where administration is granted to the Attorney General or the Treasury, or in such other cases as may be prescribed.

22 Administration pending suit

[P1981/54/117]

- (1) Where any legal proceedings concerning the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased

to an administrator, who shall, subject to subsection (2), have all the rights and powers of a general administrator.

- (2) An administrator pending suit shall be subject to the immediate control of the court and act under its direction; and, except in such circumstances as may be prescribed, no distribution of the estate of the deceased person or any part of it shall be made by such an administrator without the leave of the court.

23 Continuance of proceedings after revocation of grant

[P1925/23/17]

If, while any legal proceedings are pending in the court by or against an administrator to whom temporary letters of administration have been granted, those letters of administration are revoked, the court may order that the proceedings be continued by or against the new personal representative in like manner as if they had been originally commenced by or against him, but subject to such conditions and variations, if any, as the court directs.

24 Administration with the will annexed

[P1981/54/119]

- (1) Letters of administration with the will annexed shall continue to be granted in every case in which the court had power to make such a grant before the 5th July 1961.
- (2) Where administration with the will annexed is granted, the will of the deceased shall be performed and observed in the same manner as if probate of it had been granted to an executor.

25 Grant to Crown nominee etc

[P1925/23/30]

- (1) Where administration of the estate of any deceased person is granted to a nominee of the Crown or the Treasury (whether the Attorney General or a person nominated by him, or any other person), any legal proceedings by or against that nominee for the recovery of the estate or any part or share of it shall be of the same character and shall be instituted and carried on in the same manner, and be subject to the same rules of law and equity (including any rules of limitation), in all respects as if the administration had been granted to the nominee as one of the persons interested under this Act in the estate of the deceased.
- (2) Any information or other proceeding on the part of Her Majesty shall not be filed or instituted, and a petition of right shall not be presented, in respect of the estate of any deceased person or any part or share of it, or any claim thereon, except within the same time and subject to the same rules of law and equity within and subject to which a proceeding for the like purposes might be instituted by or against a subject.

26 Rights and liabilities of administrator

[P1925/23/21]

Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were an executor or trustee.

27 Executor not to act

[P1925/23/15]

Where administration has been granted in respect of the estate of a deceased person or any part of it, no person may bring any action or otherwise act as executor of the deceased person in respect of the estate or part comprised in or affected by the grant until the grant has been recalled or revoked.

*Miscellaneous***28 Appointment of minor executor**

[P1981/54/118]

Where a testator by his will appoints a minor to be an executor, the appointment shall not operate —

- (a) to vest in the minor the estate of the testator or any part of it, or
 - (b) to constitute him a personal representative for any purpose,
- unless and until probate is granted to him in accordance with probate rules.

29 Protection of persons dealing with personal representative

[P1925/20/204(1)]

- (1) A grant of representation shall not as against a purchaser be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not.
- (2) Every person making or permitting to be made any payment or disposition in good faith under a grant of representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the grant.
- (3) Where a grant of representation is revoked or varied, all payments and dispositions made in good faith to the personal representative under the grant before the revocation or variation thereof are a valid discharge to the person making them; and the personal representative who acted under the revoked or varied grant may reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

- (4) All conveyances of any interest in any estate of a deceased person by a person to whom representation is granted are valid, notwithstanding any subsequent revocation or variation of the grant.

30 Liability of estate of personal representative

[P1925/23/29]

Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the estate of the deceased, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

31 Executor *de son tort*

[P1925/23/28]

If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming to his hands, or the debt or liability released, after deducting —

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and
- (b) any payment made by him which might properly be made by a personal representative.

32 Landlord's arrest

A personal representative may take out a landlord's arrest for rent due or accruing to the deceased in like manner as the deceased might have done if living, and the enactments relating to a landlord's arrest shall apply to any arrest made pursuant to this section.

33 Remuneration

A grant of administration, and an order under section 4(4) or 8(1) appointing an additional or substituted personal representative, may include provision entitling the personal representative thereby appointed to be paid out of the estate of the deceased such reasonable remuneration as may be specified in or determined in accordance with such provision, on such terms (including terms as to the submission of bills of charges for taxation) as may be so specified.

34 Compromise of probate action

[P1985/61/49]

- (1) Where on a compromise of a probate action —

- (a) the court is invited to pronounce for the validity of one or more wills, or against the validity of one or more wills, or for the validity of one or more wills and against the validity of one or more other wills; and
- (b) the court is satisfied that consent to the making of the pronouncement or each of the pronouncements in question has been given by or on behalf of every relevant beneficiary,

the court may without more pronounce accordingly.

(2) In this section —

“probate action” means an action for the grant of probate or administration or the revocation or variation of such a grant, or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business;

“relevant beneficiary”, in relation to a pronouncement relating to any will or wills of a deceased person, means —

- (a) a person who under any such will is beneficially interested in the deceased’s estate; and
- (b) where the effect of the pronouncement would be to cause the estate to devolve as on an intestacy or partial intestacy, or to prevent it from so devolving, a person who under Part III is beneficially interested in the estate.

PART II – ADMINISTRATION OF ESTATES

Duties of personal representatives

35 Duties of personal representatives

[1987/8/2; P1925/23/25; P1971/25/9]

The personal representative of a deceased person shall be under a duty to collect and get in the real and personal estate of the deceased and administer it according to law and, when required to do so by the court —

- (a) to exhibit on oath in the court a full inventory of the estate; and
- (b) to render an account of the administration of the estate to the court.

Vesting of property

36 Vesting of property

[1985/9/1; P1925/23/1-3]

- (1) Any property to which a deceased person was entitled for an interest not ceasing on his death shall on his death, notwithstanding any

testamentary disposition thereof, devolve from time to time on the personal representative of the deceased.

- (2) Without prejudice to the powers of a personal representative, this section does not affect —
 - (a) any rule as to marshalling or administration of assets;
 - (b) any beneficial interest under a testamentary disposition;
 - (c) any mode of dealing with the beneficial interest in any property or the proceedings of sale thereof; or
 - (d) the right of any person claiming to be interested in any property to take proceedings for the protection or recovery thereof against any person other than the personal representative.
- (3) For the purposes of this section —
 - (a) a testator shall be deemed to have been entitled at his death to any interest in property disposed of under a general power of appointment by his will;
 - (b) the interest of a deceased person held under a joint tenancy or on a joint account where another tenant or holder survives him shall be deemed to be an interest ceasing on his death; and
 - (c) on the death of a corporator sole his interest in the corporation's property shall be deemed to be an interest ceasing on his death.

Paragraph (c) applies on the demise of the Crown as respects property vested in the Crown as a corporation sole.

- (4) For the purposes of any enactment or instrument the personal representatives of a deceased person are deemed to be his heirs and assigns.

Collection of assets etc.

37 Assets of estate

[P1925/23/32]

- (1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and any property which a deceased person in pursuance of any general power of appointment disposes of by his will, are assets for payment of his debts (whether by special or simple contract) and liabilities.
- (2) Any disposition by will inconsistent with subsection (1) is void as against the creditors.
- (3) The court shall if necessary administer the estate for the purpose of the payment of the debts and liabilities.
- (4) Subsections (1) to (3) are without prejudice to the rights of incumbrancers.

38 Powers of management

[P1925/23/39]

- (1) In dealing with the estate of a deceased person, his personal representative shall have, for the purposes of administration or during the minority of any beneficiary or the subsistence of any life interest, or until the period of distribution expires —
 - (a) all the powers, discretions and duties conferred or imposed by law on trustees holding upon an effectual trust for sale; and
 - (b) all the powers conferred by statute on trustees for sale.
- (1A) Subsection (1) is without prejudice to the powers conferred on personal representatives by the *Trustee Act 2001*.²
- (2) Accordingly every contract entered into by a personal representative shall be binding on and enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect or be varied or rescinded by him and, in the case of a contract entered into by his predecessor, as if it had been entered into by himself.
- (3) Nothing in this section affects the right of any person to require an assent or conveyance to be made.

39 Insolvent estates

[P1925/23/34(1) and Sch 1]

Where the estate of a deceased person is insolvent, his estate shall be administered in accordance with the following rules —

- (a) the funeral, testamentary and administration expenses have priority;
- (b) subject to paragraph (a), the same rules shall prevail and be observed as to —
 - (i) the respective rights of secured and unsecured creditors;
 - (ii) debts and liabilities provable;
 - (iii) the valuation of annuities and future and contingent liabilities; and
 - (iv) the priorities of debts and liabilities;as apply for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

40 Payment of secured debts

[P1925/23/35]

- (1) Where —
 - (a) a person dies possessed of or entitled to, or under a general power of appointment by his will disposes of, an interest in property which at the time of his death is charged with the payment of

money, whether by way of mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and

- (b) the deceased has not by will, deed or other document signified a contrary or other intention,

the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for payment of the charge.

- (2) Every part of the said interest, according to its value, shall bear a proportionate part of the charge on the estate.
- (3) Such contrary or other intention shall not be deemed to be signified —
- (a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or
- (b) by a charge of debts upon any such estate;

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

- (4) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

41 Application of assets

- (1) Where the estate of a deceased person is solvent, his estate shall, subject to section 40 and to probate rules, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable out of the estate in the following order —
- (i) Property of the deceased specifically appropriated or given (either by a specific or a general description) for the payment of debts.
- (ii) Property of the deceased undisposed of by will, subject to the retention out of it of a fund sufficient to meet any pecuniary legacies.
- (iii) Property of the deceased not specifically given but included (either by a specific or a general description) in a residuary gift, subject to the retention out of it of a fund sufficient to meet any pecuniary legacies, so far as not provided for under (ii) above.
- (iv) Property of the deceased charged with, or given (either by a specific or a general description) subject to a charge for, the payment of debts.
- (v) The fund (if any) retained to meet pecuniary legacies.
- (vi) Property specifically given, rateably according to value.

- (vii) Property disposed of by will under a general power of appointment, rateably according to value.
- (2) Subsection (1) has effect subject to the provisions of the will of the deceased person.

42 Trust for sale on intestacy

[P1925/23/33]

- (1) On the death of any person intestate as to any estate, that estate shall be held by his personal representative —
 - (a) as to land, upon trust to sell the same;
 - (b) as to estate other than land, upon trust to call in, sell and convert into money such part of it as does not consist of money,with power to postpone such sale and conversion for such period as the personal representative, without being liable to account, may think proper.
- (2) Unless the personal representative sees special reason for sale —
 - (a) a reversionary interest shall not be sold until it falls into possession, and
 - (b) personal chattels shall not be sold unless required for purposes of administration owing to want of other assets.
- (3) Out of the net money arising from the sale and conversion of such estate after payment of expenses, and out of the ready money of the deceased so far as not disposed of by his will (if any), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable out of them having regard to the rules contained in this Part, and out of the residue of the money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies given by the will (if any) of the deceased.
- (4) During the minority of any beneficiary and pending the distribution of the whole or any part of the estate of the deceased, the personal representative may invest the residue of the said money, or so much of it as has not been distributed, under the *Trustee Act 2001*.³
- (5) The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for purposes of administration, is in this Act referred to as ‘the residuary estate of the intestate’.
- (6) The income (including net rents and profits of land after payment of rates, taxes, rent, insurance, repairs and other outgoings properly attributable to income) of so much of the estate of the deceased as has not been disposed of by his will (if any) and is not required for

administration may, however the estate is invested, be treated and applied as income, and no part of it shall be added to capital except accumulations of surplus income (if any) during a minority or pending a contingency.

- (7) Subsection (6) applies to income accrued within one year before the death of the deceased and paid after the death as it applies to income accruing after the death, but otherwise it does not apply to income accrued before the death.
- (8) Nothing in this section affects the rights of any creditor of the deceased.
- (9) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

Distribution of assets

43 Survivorship

- (1) Where 2 or more persons have died in circumstances rendering it uncertain which of them survived the other or others, then, subject to any order of the court and to the provisions of any instrument, the deaths shall for all purposes affecting the title to property be presumed to have occurred simultaneously, and accordingly no one of them shall be deemed to have survived the other or others.
- (2) Where 2 or more persons died, or are deemed by subsection (1) to have died, simultaneously —
 - (a) any land held by them as beneficial joint tenants shall (except where another person is a joint tenant with them) be deemed to be held by them as tenants in common in equal shares;
 - (b) any property other than land held by them beneficially on joint account shall (except where another person is a joint holder with them) be deemed to be held by them in equal shares;
 - (c) any gift by will by one of them to another of them (“the beneficiary”) of an estate or interest in property, with a gift over to some other person or persons in the event of the death of the beneficiary in the testator’s lifetime, shall take effect as if the beneficiary had died in the testator’s lifetime.

44 Power of appropriation

[P1925/23/41(pt)]

- (1) Subject to section 45, a personal representative may appropriate any part of the estate of the deceased (including things in action) in its actual condition or state of investment at the time of appropriation in or towards satisfaction of any gift by the deceased, or of any other share or interest in his estate, whether a settled interest or not, as to the personal

representative may seem just and reasonable, according to the respective rights of the persons interested in the estate of the deceased.

- (2) An appropriation shall not be made under this section so as to affect prejudicially any specific gift.
- (3) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.
- (4) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where that may be necessary, and may make any conveyance or assent which may be necessary for giving effect to the appropriation.
- (5) An appropriation under this section shall bind all persons interested in the estate of the deceased whose consent is not required by section 45.
- (6) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by section 45.
- (7) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and has effect with any extended powers conferred by the will (if any).
- (8) Where an appropriation is made under this section, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition and management or varying of investments which would have been applicable thereto or to the gift or interest in respect of which the appropriation is made, if no such appropriation had been made.
- (9) If after any land has been appropriated in purported exercise of the powers of this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser for money or money's worth, the appropriation shall be deemed to have been made in accordance with this section and after all the consents (if any) required by section 45 had been given.
- (10) In this section and section 45 'settled interest' includes any settled gift, share or interest, any annuity, and any gift, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation.
- (11) This section extends to property over which the deceased exercised a general power of appointment, and authorises the setting up of a fund to answer an annuity by means of the income of the fund or otherwise.

45 Consents to appropriation

[P1925/23/41(pt)]

- (1) An appropriation of property, whether or not an investment authorised by law or the will (if any) of the deceased, shall not be made under section 44 except –
 - (a) where made for the benefit of a person absolutely and beneficially entitled in possession, with the consent of that person;
 - (b) where made in respect of any settled gift or interest, with the consent of either the trustee thereof (if any, not being the personal representative) or the person for the time being entitled to the income.
- (2) If the person whose consent is required under subsection (1) is a minor or is incapable, by reason of mental disorder within the meaning of the *Mental Health Act 1998*, of managing and administering his property and affairs, the consent shall be given on his behalf by his parent or guardian or receiver or, if in the case of a minor there is no parent or guardian, by the court on the application of his next friend.⁴
- (3) No consent under subsection (1), except that of a trustee under subsection (1)(b), is required on behalf of a person who may come into existence after the time of appropriation or who cannot be found or ascertained at that time.
- (4) No consent under subsection (1) is required on behalf of a person suffering from mental disorder if –
 - (a) no receiver is acting for that person, and
 - (b) the appropriation is of an investment authorised by law or by the will (if any) of the deceased for the investment of money subject to the trust.

46 Powers of personal representative to assent etc

[P1925/23/36(pt) and 43(1)]

- (1) A personal representative of a deceased person may assent to the vesting in any person who is entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in land to which the deceased was entitled or over which he exercised a general power of appointment by his will, and which devolved on the personal representative.
- (2) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative and shall name the person in whose favour it is given.
- (3) Any person, other than a purchaser for money or money's worth, in whose favour an assent or conveyance of a legal estate is made by a

personal representative may require that the assent or conveyance be recorded in the General Registry at the cost of the estate of the deceased.

This subsection does not apply in the case of registered land within the meaning of the *Land Registration Act 1982*.

- (4) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any debt or liability to which the estate or interest to which it relates would have been subject if there had not been any assent or conveyance, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such debt or liability if reasonable arrangements have been made for discharging it; and an assent may be given subject to any legal estate or charge by way of mortgage.
- (5) A personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession or his power to convey the land as if he were in possession of it, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

47 Effect of assent or conveyance

[P1925/23/36 (pt)]

- (1) Subject to subsection (3), an assent under section 46 shall operate to vest in that person the estate or interest to which the assent relates and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.
- (2) An assent by a personal representative of a deceased person shall (unless expressly negated in the assent) imply a covenant that he has not executed or done or knowingly suffered or been party or privy to any deed or thing —
 - (a) whereby or by reason whereof the subject matter of the assent or any part thereof is or may be impeached, charged, affected or encumbered in title, estate or otherwise; or
 - (b) whereby or by means whereof he is in anywise hindered in assenting to the vesting of the subject matter of the assent or any part thereof in the manner in which it is expressed to be vested.
- (3) An assent to the vesting of a legal estate complying with section 46(2) shall (subject to section 29 of the *Registration of Deeds Act 1961* and to the provisions of the *Land Registration Act 1982*) operate to vest in the person in whose favour it is made the legal estate to which it relates; and (subject to subsection (4)) an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

- (4) Where by virtue of any testamentary disposition of a deceased person any land stands limited to or in trust for persons by way of succession, an assent by the personal representative to the vesting of a legal estate in possession in that land in the person for the time being entitled thereto shall operate from time to time to vest in the persons entitled thereto any estates or interests arising under that disposition and expectant (whether mediately or immediately) upon the determination of the estate of that person.
- (5) An assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser for money or money's worth, unless (except in the case of registered land within the meaning of the *Land Registration Act 1982*) a previous assent or conveyance affecting that legal estate has been recorded in the General Registry, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts (if any), but shall not otherwise prejudicially affect the claim of any person entitled to the estate vested or conveyed or any charge thereon.
- (6) A conveyance of a legal estate by a personal representative to a purchaser for money or money's worth shall not be invalidated by reason only that the purchaser has notice that all the debts, liabilities, funeral, testamentary and administration expenses, duties (if any) and legacies of the deceased have been discharged or provided for.
- (7) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser for money or money's worth of a legal estate, prejudice the right of the personal representative or any other person —
 - (a) to recover the estate or interest to which the assent or conveyance relates, or
 - (b) to be indemnified out of that estate or interest, against any debt or liability to which the estate or interest would have been subject if there had not been any assent or conveyance.

48 Claim to assent or conveyance

[P1925/23/43(2)]

Any person who against the personal representative of a deceased person claims —

- (a) possession of any land, or
- (b) the appointment of a receiver of any land, or
- (c) a conveyance of land or an assent to the vesting of land,

may apply to the court for directions, and the court may make such vesting or other order as may be considered proper, and the provisions of the *Trustee Act*

1961 relating to vesting orders and to the appointment of a person to convey shall apply.

49 Tracing of property

[P1925/23/38]

- (1) An assent or conveyance by a personal representative to a person other than a purchaser for money or money's worth does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing it, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser for money or money's worth) who may have received any such property or in whom it may be vested.
- (2) Notwithstanding any such assent or conveyance, the court may, on the application of any creditors or other person interested —
 - (a) order a sale, exchange, mortgage, charge, lease, payment, transfer or transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;
 - (b) declare that the person, not being a purchaser for money or money's worth, in whom the property is vested is a trustee for those purposes;
 - (c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;
 - (d) make any vesting order, or appoint a person to convey, in accordance with the provisions of the *Trustee Act 1961*.
- (3) This section does not prejudice the rights of a purchaser for money or money's worth or a person deriving title under him.

50 Appointment of trustee for minor

[P1925/23/42]

- (1) Where a minor is absolutely entitled to any gift or interest under the will or on the intestacy of a deceased person, and the gift or interest is not under the will (if any) given to the trustees for the minor, the personal representative of the deceased may —
 - (a) appoint a trust corporation, or 2 or more individuals not exceeding 4 (whether or not including one or more personal representatives), to be trustees of the gift or interest for the minor, and
 - (b) execute or do any act necessary for vesting the gift or interest in the trustees so appointed.

- (2) On an appointment under this section, the personal representative as such shall be discharged from all further liability in respect of the gift or interest, which may be either —
- (a) retained in its existing condition or state of investment, or
 - (b) converted into money and invested in any authorised investment.

51 Period for distribution

[P1925/23/44]

Subject to the provisions of this Part, a personal representative of a deceased person is not bound to distribute the estate of the deceased before the expiration of one year from the death.

PART III – DISTRIBUTION ON INTESTACY

52 Succession on intestacy

[1973/7/1-3; 1979/17/2; 1982/8/23]

- (1) The residuary estate of an intestate shall be distributed in the following manner or held on the following trusts —
- (a) If the intestate leaves a spouse or civil partner but no issue, the residuary estate shall be held in trust for the surviving spouse or civil partner absolutely.⁵
 - (b) If the intestate leaves both a spouse or civil partner and issue, then —
 - (i) the surviving spouse or civil partner shall take the personal chattels absolutely, and⁶
 - (ii) in addition the residuary estate (except the personal chattels) shall stand charged with the payment of a net sum of £250,000, free of duties (if any) and costs, to the surviving spouse or civil partner with interest at such rate as the Treasury may by order prescribe from the date of death until paid or appropriated, and⁷
 - (iii) subject to providing for that sum and the interest thereon, the residuary estate (except the personal chattels) shall be held, as to one half, on trust for the surviving spouse or civil partner absolutely, and as to the other half, on the statutory trusts for the issue of the intestate.⁸
 - (c) If the intestate leaves issue but no spouse or civil partner, the residuary estate shall be held on the statutory trusts for the issue of the intestate.⁹

- (d) If the intestate leaves no spouse or civil partner and no issue but both parents, the residuary estate shall be held in trust for the father and mother in equal shares absolutely.¹⁰
 - (e) If the intestate leaves no spouse or civil partner and no issue but one parent, the residuary estate shall be held in trust for the surviving father or mother absolutely.¹¹
 - (f) If the intestate leaves no spouse or civil partner, no issue and no parent, the residuary estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner —
 - (i) on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under those trusts, then
 - (ii) on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under those trusts, then
 - (iii) for the grandparents of the intestate and, if more than one surviving the intestate, in equal shares, but if there is no member of that class, then
 - (iv) on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under those trusts, then
 - (v) on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate); but if no person takes an absolutely vested interest under those trusts, then
 - (vi) on the statutory trusts for the great-uncles and great-aunts of the intestate (being brothers or sisters of the whole blood of a grandparent of the intestate); but if no person takes an absolutely vested interest under those trusts, then
 - (vii) on the statutory trusts for the great-uncles and great-aunts of the intestate (being brothers or sisters of the half blood of a grandparent of the intestate).¹²
 - (g) If no person takes an absolute interest under paragraph (a) to (f), the residuary estate of the intestate shall belong to the Treasury as *bona vacantia*.
- (2) The Treasury may, out of the whole or any part of the property devolving on it under subsection (1), provide in accordance with the existing practice for dependants of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

- (3) The Treasury may by order alter the amount of the net sum specified in subsection (1)(b) (or the amount substituted therefor by a previous order under this subsection), but no such order shall have effect unless it is approved by Tynwald.
- (4) The interest payable under subsection (1)(b) shall be primarily payable out of income.
- (5) Without prejudice to subsection (2), subsection (1) has effect subject to the provisions of the *Inheritance (Provision for Family and Dependents) Act 1982*.
- (6) A husband and wife shall for all purposes of distribution or division under this section be treated as 2 persons.¹³
- (7) Where an intestate's spouse or civil partner survives the intestate but dies before the end of the period of 14 days beginning with the day on which the intestate died, this section has effect as respects the intestate as if the spouse or civil partner had not survived the intestate.¹⁴

53 The statutory trusts

[1971/26/Sch 1; P1925/23/47]

- (1) Where under this Part the residuary estate of an intestate or any part of it is directed to be held on the statutory trusts for the issue of the intestate, it shall be held on the following trusts —
 - (a) In trust, in equal shares if more than one —
 - (i) for all or any of the child or children of the intestate who attain the age of 18 years or marry under that age, or form a civil partnership, under that age, and¹⁵
 - (ii) for all or any of the issue living at the death of the intestate, who attain the age of 18 years or marry or form a civil partnership under that age, of any child of the intestate who predeceases the intestate,¹⁶such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking.
 - (b) The statutory power of advancement, and the statutory provisions relating to maintenance and accumulation of surplus income, shall apply, but when a minor marries, or forms a civil partnership, he shall be entitled to give valid receipts for the income of his share or interest.¹⁷
 - (c) Where the property held on the statutory trusts is divisible into shares, then any money or property which has been paid by the intestate to, or settled by him for the benefit of, a child of the

intestate by way of advancement or on the marriage, or formation of the civil partnership, of the child (including any life or less interest and any property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of the child or the share which he would have taken if living at the intestate's death, and shall be brought into account at a valuation (reckoned as at the death of the intestate) in accordance with the requirements of the personal representative.¹⁸

- (d) The personal representative may permit any minor contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representative may consider reasonable, and without being liable to account for any consequential loss.
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest –
- (a) the residuary estate of the intestate and the income of it and all statutory accumulations (if any) of the income, or so much of them as has not been paid or applied under any power affecting them shall be held under the provisions of this Part as if the intestate had died without leaving issue living at his death; and
 - (b) references in this Part to the intestate leaving issue, or a child or other issue, or leaving no issue, shall be construed as references to him leaving issue, or no issue, as the case may be, who attain an absolutely vested interest.
- (3) Where under this Part the residuary estate of an intestate or any part of it is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, it shall be held on trusts corresponding to the statutory trusts for issue of the intestate (other than the provisions for bringing money or property into account), as if subsection (1), except paragraph (c), were repeated with the substitution for references to the child or children of the intestate of references to the member or members of that class.
- (4) If the trusts in favour of any class of relatives of the intestate, other than issue of the intestate, fail by reason of no member of that class attaining an absolutely vested interest, the residuary estate of the intestate and the income of it and all statutory accumulations (if any) of the income, or so much of them as has not been paid or applied under any power affecting them, shall by virtue of subsections (2) and (3) be held under the provisions of this Part as if the intestate had died without leaving any member of that class living at his death.

54 Power to raise lump sum

[P1925/23/48(2)(a)]

The personal representative may raise the net sum or any part of it and the interest on it payable to the surviving spouse or civil partner of the intestate under section 52(1)(b), together with any amount properly required for the costs of the transaction, on the security of the whole or any part of the residuary estate of the intestate (other than the personal chattels), so far as that estate is sufficient for the purpose and the said sum and interest have not been satisfied by an appropriation under section 44.¹⁹

55 The matrimonial or civil partnership home

[P1952/64/5]

Schedule 1 has effect for the purpose of enabling the surviving spouse or civil partner of an intestate to acquire the matrimonial home.²⁰

56 Partial intestacy

[P1925/23/49]

- (1) Where any person dies leaving a will effectively disposing of part of his estate, this Part shall have effect as respects the part of his estate not so disposed of subject to the provisions contained in his will and subject to the modifications in subsections (2) to (4).
- (2) Where the deceased leaves a spouse or civil partner who acquires a beneficial interest under the will of the deceased (other than personal chattels specifically bequeathed), the references in this Part to the net sum payable to a surviving spouse or civil partner under section 52(1)(b), and to interest on that sum, shall be taken as references to that sum diminished by the value at the date of death of that beneficial interest and to interest on that sum as so diminished, and accordingly, where that value exceeds that sum, this Part shall have effect as if references to that sum and interest on it were omitted.²¹
- (3) The requirements of section 53(1)(c) as to bringing property into account apply to any beneficial interests acquired by any issue of the deceased under his will (but not to beneficial interests so acquired by anyone else).
- (4) The personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Part in respect of the part of the estate not expressly disposed of, unless it appears by the will that the personal representative is intended to take that part beneficially.
- (5) The references in subsections (2) and (3) to a beneficial interest acquired under a will include references to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not of a special power of appointment.

- (6) For the purposes of subsection (2) the personal representative may employ a duly qualified valuer in any case where such employment may be necessary.

57 Illegitimacy

[1985/10/7 and 9; P1987/42/18 (1) and (2)]

- (1) Where any person dies intestate as respects any property, an illegitimate person, and any person related to an illegitimate person, shall be entitled to take any interest in it as if the illegitimate person had been born legitimate.
- (2) For the purposes of subsection (1), an illegitimate person shall be presumed not to have been survived by his father or by any person related to him through his father, unless the contrary is shown.
- (3) A personal representative is not under a duty to enquire before making any assent, conveyance or distribution relating to any property whether there is a person who is or may be entitled to any interest in the property by virtue of subsection (1), so far as it confers any interest on illegitimate persons or their issue or on the father of, or on any person related through the father to, an illegitimate person.
- (4) A personal representative is not liable to any such person by reason of any assent, conveyance or distribution of the property made without regard to any such claim, if he has not received notice of that claim before the assent, conveyance or distribution.
- (5) Subsections (3) and (4) do not prejudice the rights of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser for money or money's worth.

58 Legal separation

[1976/14/18(2)]

- (1) If either of the parties to a marriage dies intestate as respects any property while a legal separation is in force and the separation is continuing, the property shall devolve as if the other party to the marriage had then been dead.
- (2) In this section —
“legal separation” means —
 - (a) a decree of judicial separation granted by the High Court; or
 - (b) a judicial separation granted by a court of civil jurisdiction in any part of the British Islands and recognised in the Island; or
 - (c) a legal separation obtained in a country outside the British Islands and recognised in the Island;

“recognised” means entitled to be recognised by virtue of the *Recognition of Divorces etc. Act 1987*.

59 Construction of documents²²

- (1) References (however expressed) in any instrument *inter vivos* made, or any will coming into operation, on or after the 5th July 1961, to any Statutes of Distribution, or to the law relating to distribution on intestacy, shall be construed as references to this Part
- (2) References (however expressed) in any such instrument or will to next of kin or statutory next of kin shall, unless the context otherwise requires, be construed as references to the persons who would take beneficially on an intestacy under this Part.
- (3) References to this Part in subsection (1) and (2) do not include section 57(1) and (2) in relation to an instrument *inter vivos* made or a will coming into operation before the 1st January 1986, and do not include section 52(7) in relation to an instrument *inter vivos* made or a will coming into operation before the 1st July 1996.²³
- (4) Subject to subsection (5), where by any instrument or will referred to in subsection (1) an interest in any property is expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person shall take as would in the case of land have answered that description under the common law in force before the 5th July 1961.
- (5) Where the word ‘heir’ or ‘heirs’ is used in a disposition contained in any such instrument or will executed on or after the 1 January 1986, a person shall not be excluded from taking an interest under that disposition by reason only that he or any person related to him was born illegitimate.
- (6) Trusts declared in an instrument *inter vivos* made or a will coming into operation before the 5th July 1961 by reference to the Statutes of Distribution shall, unless a contrary intention appears, be construed as references to the enactments (other than the *Intestates’ Estates Act 1921*) relating to the distribution of effects of intestates which were in force immediately before that date.

PART IV – MISCELLANEOUS AND SUPPLEMENTAL

60 Small payments

[1987/8/3]

- (1) Subject to subsection (2), this section applies where a person dies and the total of –
 - (a) any sums payable to him by another person (‘the debtor’) and

- (b) any other sums payable to his personal representative by the debtor,
("the amount due") does not exceed £1,000.
- (2) This section does not apply to any such sum as is mentioned in subsection (1) in relation to which a statutory provision other than this section applies so as to enable the sum to be paid to a person without production of a grant of representation.
- (3) Where this section applies the debtor may, without requiring the production of a grant of representation, pay the whole or any part of the amount due —
 - (a) to the personal representative of the deceased, or
 - (b) to the person, or to or among any one or more of any persons, appearing to the debtor to be beneficially entitled to the estate.
- (4) A person to whom a payment is made under subsection (3) is, and the debtor is not, liable to account for the amount paid to him.
- (5) The Treasury may by order alter the amount specified in subsection (1) (or such other amount as may for the time being be substituted therefor by a previous order under this subsection); but no such order shall have effect unless it is approved by Tynwald.

61 Savings

- (1) Nothing in this Act affects the powers of the court existing apart from this Act.
- (2) Nothing in this Act affects any unrepealed statutory provision dispensing with probate or administration as respects estate other than land.
- (3) Subject to any express provision of this Act or probate rules, nothing in this Act affects any other law relating to the administration of estates.

62 Application of Act

Except as provided by Schedule 2, this Act applies to the estates of all deceased persons, whether dying before or after the commencement of this Act, and whether the will (if any) of the deceased was made before or after the commencement of this Act.

63 Application to Crown

This Act binds the Crown.

64 Interpretation

- (1) In this Act —

“**administration**” means letters of administration, whether general or limited, or with the will annexed or otherwise;

“**administrator**” means a person to whom administration is granted;

“**conveyance**” includes a mortgage, assignment, lease, assent, vesting declaration, vesting instrument, disclaimer, release and any other assurance of property or of an interest therein effected by an instrument, except a will;

“**the court**” means the High Court, and includes the Chief Registrar in respect of any functions conferred on him by this Act or probate rules;

“**disposition**” includes a conveyance, and any gift or appointment of property contained in a will;

“**estate**” means real and personal estate;

“**gift**” includes a devise and a bequest;

“**income**” includes rents and profits;

“**intestate**” includes a person who leaves a will but dies intestate as to some beneficial interest in his estate;

“**mortgage**” includes a bond and security;

“**non-contentious or common form probate business**” means the business of obtaining probate and administration where there is no contention as to the right thereto, including —

- (a) the passing of probates and administration through the High Court in contentious cases where the contest has been terminated;
- (b) all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action; and
- (c) the business of lodging caveats against the grant of probate or administration;²⁴

“**pecuniary legacy**” includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the designated property, and any other general direction by a testator for the payment of money;

“**personal chattels**” means motor cars (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include —

- (a) any chattels used at the death of the testator for business purposes, or
- (b) money or securities for money;

“**personal representative**” means the executor, original or by representation, or administrator for the time being of a deceased person;

“**possession**” includes the receipt of rents and profits or the right to receive them;

“**prescribed**” means prescribed by rules of court or probate rules;

“**probate**” means probate of a will;

“**probate rules**” means rules under section 9;

“**property**” means real or personal property, and includes things in action and any interest in property;

“**purchaser**” means a purchaser, lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, and also an intending purchaser;

“**representation**” means the probate of a will and administration, and “**taking out representation**” means obtaining probate or administration;

“**rent**” includes rents of every description, and any other periodical payment in money or money’s worth issuing out of or charged on land, except mortgage interest;

“**the residuary estate of the intestate**” has the meaning given by section 42(5);

“**the statutory trusts**” means the trusts declared by section 53;

“**securities**” includes stocks, funds and shares;

“**trust for sale**” 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 to postpone sale;

“**valuable consideration**” includes marriage, and the formation of a civil partnership, but does not include a nominal consideration in money;²⁵

“**will**” includes a codicil.

- (2) References to a child or issue living at the death of any person include a child or issue in its mother’s womb at the death.
- (3) References to the estate of a deceased person include property over which the deceased exercised a general power of appointment by his will.
- (4) A will or codicil executed before any date shall not be treated for the purposes of this Act as made on or after that date by reason only that it is confirmed by a codicil executed on or after that date.

65 Transitional provisions, amendments and repeals

- (1) The transitional provisions in Schedule 3 shall have effect.
- (2) The enactments specified in Schedule 4 are amended in accordance with that Schedule.

- (3) The enactments specified in Schedule 5 are repealed to the extent specified in column 3 of that Schedule.

66 Short title and commencement

This Act may be cited as the Administration of Estates Act 1990, and shall come into operation on the expiration of the period of 3 months beginning with the day on which it is passed.

SCHEDULE 1**RIGHTS OF SURVIVING SPOUSE OR CIVIL PARTNER AS
RESPECTS MATRIMONIAL OR CIVIL PARTNERSHIP HOME²⁶**

Section 55

Right to require appropriation of home

1. (1) Subject to the provisions of this Schedule, where the residuary estate of the intestate comprises an interest in a dwellinghouse in which the surviving spouse or civil partner was resident at the time of the intestate's death, the surviving spouse or civil partner may require the personal representative in exercise of the power conferred by section 44 (and with due regard to the requirements of that section as to valuation) to appropriate the said interest in the dwellinghouse in or towards satisfaction of any absolute interest of the surviving spouse or civil partner in the estate of the intestate.²⁷

(2) The right conferred by this paragraph shall not be exercisable where the interest is —

- (a) a tenancy which at the date of the death of the intestate was a tenancy which would determine within 2 years from that date; or
- (b) a tenancy which the landlord by notice given after that date could determine within the remainder of that period.

(3) Nothing in section 44(6) prevents the personal representative giving effect to the right conferred by this paragraph.

(4) Where part of a building was, at the date of the death of the intestate, occupied as a separate dwelling, that dwelling shall, for the purposes of this Schedule, be treated as a dwellinghouse.

Consent of court in certain cases

2. Where —

- (a) the dwellinghouse forms part of a building and an interest in the whole of the building is comprised in the residuary estate; or
- (b) the dwellinghouse is held with agricultural land and an interest in the agricultural land is comprised in the residuary estate; or
- (c) the whole or part of the dwellinghouse was at the time of the intestate's death used as a hotel or lodging house; or
- (d) a part of the dwellinghouse was at the time of the intestate's death used for purposes other than domestic purposes,

the right conferred in paragraph 1 shall not be exercisable unless the court so orders, on being satisfied that the exercise of that right is not likely to diminish the value of the

assets in the residuary estate (other than the said interest in the dwellinghouse) or make them more difficult to dispose of.

Exercise of right

3. (1) Unless the surviving spouse or civil partner is the sole personal representative, the right conferred by this paragraph shall be exercisable by notifying the personal representative (or, where there are 2 or more personal representatives of whom one is the surviving spouse or civil partner, all of them except the surviving spouse or civil partner) in writing.²⁸

(2) A notification under sub-paragraph (1) shall not be revocable except with the consent of the personal representative; but the surviving spouse or civil partner may require the personal representative to have the said interest in the dwellinghouse valued in accordance with section 44 and to inform him or her of the result of the valuation before he or she decides whether to exercise that right.²⁹

(3) Subject to sub-paragraph (4), the right conferred by paragraph 1 shall not be exercisable after —

- (a) the expiration of 12 months from the first taking out of representation with respect to the intestate's estate;
- (b) the death of the surviving spouse or civil partner.³⁰

(4) The court may extend the period of 12 months mentioned in sub-paragraph (3)(a) if the surviving spouse or civil partner satisfies the court that the limitation to the said period will operate unfairly in consequence of —

- (a) the representation first taken out in the Island being probate of a will subsequently revoked on the ground that the will was invalid; or
- (b) a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out in the Island; or
- (c) some other circumstances affecting the administration or distribution of the estate.³¹

(5) In considering for the purposes of this paragraph when representation was first taken out, a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Restriction on disposal within 12 months of death

4. (1) During the period of 12 months mentioned in paragraph 3(3)(a), the personal representative shall not without the written consent of the surviving spouse or civil partner sell or otherwise dispose of the said interest in the dwellinghouse except in the course of administration owing to want of other assets.³²

(2) An application to the court under paragraph 2 may be made by the personal representative as well as by the surviving spouse or civil partner, and if, on an application under that paragraph, the court does not order that the right conferred by paragraph 1 shall be exercisable by the surviving spouse or civil partner, the court may authorise the personal representatives to dispose of the said interest in the dwellinghouse within the said period of 12 months.³³

(3) Where the court extends the said period of 12 months under paragraph 3(4), the court may direct that this paragraph shall apply in relation to the extended period as it applied in relation to the original period of 12 months.

(4) This paragraph does not apply where the surviving spouse or civil partner is the sole personal representative or one of 2 or more personal representatives.³⁴

(5) Nothing in this paragraph confers any right on the surviving spouse or civil partner as against a purchaser from the personal representative.³⁵

Supplemental provisions

5. (1) Where the surviving spouse or civil partner is one of 2 or more personal representatives, the rule that a trustee may not be a purchaser of trust property shall not prevent the surviving spouse or civil partner from purchasing out of the estate of the intestate an interest in a dwellinghouse in which the surviving spouse or civil partner was resident at the time of the intestate's death.³⁶

(2) The power of appropriation under section 44 includes power to appropriate an interest in a dwellinghouse in which the surviving spouse or civil partner was resident at the time of the intestate's death partly in satisfaction of an interest of the surviving spouse or civil partner in the estate of the intestate and partly in return for a payment of money by the surviving spouse or civil partner to the personal representative.³⁷

Persons under disability

6. (1) Where the surviving spouse or civil partner is a person suffering from mental disorder within the meaning of the Mental Health Act 1974, a requirement or consent under this Schedule may be made or given on his or her behalf by the receiver or, where there is no receiver, by the court.³⁸

- (2) In the case of a surviving spouse or civil partner who is a minor —
- (a) a requirement or consent made or given under this Schedule shall be as valid and binding as if he or she were of full age; and
 - (b) section 45 does not apply as respects an appropriation in pursuance of paragraph 1.³⁹

Interpretation

7. References in this Schedule to a dwellinghouse include references to any garden or portion of ground attached to and usually occupied with the dwellinghouse or otherwise required for the amenity or convenience of the dwellinghouse.

SCHEDULE 2

[Section 62]

DEATHS BEFORE COMMENCEMENT ETC.

Number of personal representatives

1. (1) Section 4 does not apply to a grant of administration made before the 5th July 1961.
- (2) Section 4(1) and (2) does not apply to a grant of probate made before the commencement of this Act.
- (3) Where probate has been granted before the commencement of this Act with power reserved to another executor or executors to prove, double probate shall not be granted so that the number of executors entitled to act exceeds 4.

Grant to trust corporation

2. Section 5(3) does not affect a grant to a syndic of a trust corporation made before the 5th July 1961.

Vesting of estate pending grant

3. In relation to the estate of a person dying before the 1st January 1986, for section 20 there is substituted the following —

“20

- (1) Where a person dies wholly intestate his estate shall vest in the Treasury until administration is granted in respect of it.
- (2) Where a person dies testate but the will does not appoint an executor, or if no executor appointed is willing or able to apply for a grant of probate, the personal estate of the deceased shall vest in the Treasury until a grant of representation is made in respect of it.”.

Guarantee

4. Section 21 does not apply in relation to administration granted before the 1st October 1988.

Administration of estates

5. Part II, except sections 44, 45, 46(5) and 47, does not apply in relation to the estate of a person dying before the 5th July 1961, and the rules of law applicable before that date to the administration of a deceased person's estate continue to apply thereto.

Vesting of property in personal representative

6. Section 36 does not apply in relation to land the subject of a gift by will of a person dying before the 1st January 1986, but without prejudice to the power of a personal representative to convey any such land for the purpose of giving effect to a contract subsisting at the death of the deceased.

Minority

7. In relation to a beneficiary under a will made before the 1st April 1972 or on the death of a person intestate before that date, the reference to minority in sections 38(1) and 42(4) shall be construed without regard to section 1 (reduction of age of majority to 18) of the *Family Law Reform (Isle of Man) Act 1971*.

Assents and conveyances

8. Sections 46(1) and 47(2) and (4) do not apply to the estate of a person dying testate before the 1st January 1986.

Distribution on intestacy

9. (1) Part III does not apply to the estate of a person dying before the 5th July 1961, and the rules of descent of real property, and the statutory rules applicable to the distribution of personal property, which had effect before that date continue to apply thereto.

(2) Part III applies to the estate of a person dying on or after the 5th July 1961 but before the commencement of this Act subject to the following modifications —

- (a) for amount of the net sum and the rate of interest specified in section 52(1)(b) there are substituted the corresponding amount and rate specified in or having effect under section 45 of the Administration of Estates Act 1960, as it had effect at the time of death;
- (b) in the case of a person dying before the 1st April 1972 —
 - (i) in section 53(1)(a), for “18 years” there is substituted “21 years”; and
 - (ii) in relation to the application, by virtue of section 53(1)(b), of section 31 (maintenance during minority) of the *Trustee Act 1961*, the effect of section 1 (reduction of age of majority to 18) of the *Family Law Reform (Isle of Man) Act 1971* shall be disregarded;
- (c) in the case of a person dying before the 21st August 1972, section 58 does not apply, and section 22(1)(a) and (2) (wife’s property in case of judicial separation) of the *Judicature (Matrimonial Causes) Act 1965* continues to apply in such a case;

- (d) in the case of a person dying before the 15th May 1973, sub-paragraphs (vi) and (vii) of section 52(1)(f) are omitted;
- (e) in the case of a person dying before the 1st January 1986, section 57 is omitted;
- (f) [Repealed]⁴⁰
- (g) in the case of a person dying before the commencement of this Act, section 56(3) is omitted;
- (h) in the case of a person dying before the 1st July 1996, section 52(7) is omitted.⁴¹

(3) Where by virtue of sub-paragraph (2)(b) trustees may under section 31(1) of the *Trustee Act 1961* pay income to the parent or guardian of a person who has attained the age of 18, or apply it for or towards his maintenance, education or benefit, they may also pay it to that person himself.

Illegitimacy

10. (1) Where, on or after the 11th June 1928 and before the 1st January 1986, the mother of an illegitimate person died intestate as to any estate, and left no legitimate issue surviving her, that person or, if he is dead, his issue shall be entitled to take any interest therein to which he or his issue would have been entitled if he had been born legitimate.

(2) Where, on or after the 11th June 1928 and before the 1st January 1986, an illegitimate person died intestate as respects any estate, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if he had been born legitimate and she had been the only surviving parent.

(3) In this paragraph “illegitimate person” does not include a legitimated person.

Personal chattels

11. In relation to the estate of a person dying before the commencement of this Act, in this Act “**personal chattels**” includes carriages, horses and stable furniture and effects not used for business purposes.

SCHEDULE 3

[Section 65(1)]

TRANSITIONAL PROVISIONS

Grants under repealed provisions

1. Nothing in the repeals made by this Act affects —
 - (a) any grant made before the commencement of this Act under section 17 or 19 of the Administration of Estates Act 1960, or
 - (b) the continued operation of subsection (2) and (3) of the said section 17 in relation to a grant made under that section.

Administration bonds

2. Any administration bond given before the 1st October 1988 under section 17 of the Ecclesiastical Civil Judicature Transfer Act 1884 may be enforced and assigned as if this Act and the Administration of Estates Act 1987 had not been passed.

Remuneration

3. A grant of administration made before the commencement of this Act shall be deemed to include provision under section 33 entitling the administrators to remuneration equal to the following proportion of the estate passing through their hands, namely 5 per cent. of the first £100 and 21/2 per cent of the residue.

Interest on surviving spouse's net sum

4. Until an order is made by the Treasury under sub-paragraph (ii) of section 52(1)(b) the rate of interest for the purpose of that sub-paragraph shall be 9 per cent per annum.

Legal separations

5. A provision in force under an order made or having effect as if made under section 2(1)(a) of the Matrimonial Proceedings (Magistrates' Courts) Act 1962 exempting one party to a marriage from the obligation to cohabit with the other shall not have effect as a legal separation for the purposes of section 58.

Trust corporations

6. A corporation which immediately before the commencement of this Act was approved under the Judicature Amendment Act 1935 shall be deemed to be approved by the High Court for the purpose of section 65A of the *Trustee Act 1961*.

Saving for repealed provisions

7. (1) The repeal by this Act of the Administration of Estates Act 1960 does not affect —
- (a) any obligation arising under section 13(4) of that Act, or
 - (b) any right in the nature of dower preserved by section 44(1) of that Act.
- (2) The repeal by this Act of the Administration of Estates Act 1987 does not affect the amendments of the *Industrial and Building Societies Act 1892* made by section 4(1) of that Act.

SCHEDULE 4

[Section 65(2)]

AMENDMENT OF ENACTMENTS

[Sch 4 amends the following Acts —

Trustee Act 1961 q.v.

Redundancy Payments Act 1990 q.v.]



SCHEDULE 5

ENACTMENTS REPEALED

Section 65(3)

[Sch 5 repeals the following Acts and Order wholly —

Judicature Amendment Act 1935

Administration of Estates Act 1960

Administration of Estates Act 1961

Administration of Estates Act 1973

Usury Acts (Repeal) Act 1979

Administration of Estates Act 1987

Administration of Estates (Variation) Order 1987 (GC210/87)

and the following Acts and Orders in part —

Settled Land Act 1891

Trustee Act 1961

Conveyancing Act 1963

Family Law Reform (Isle of Man) Act 1971

Inheritance (Provision for Family and Dependents) Act 1982

Settled Land Act 1983

Conveyancing Act 1985

Legitimacy Act 1985

Treasury Act 1985

Transfer of Functions (Treasury) (No. 2) Order 1986 (GC191/86)

Powers of Attorney Act 1987

Transfer of Functions (Governor in Council) Order 1988 (GC55/88).]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ S 1 repealed by High Court Act 1991 Sch 5.

² Subs (1A) inserted by Trustee Act 2001 Sch 2.

³ Subs (4) amended by Trustee Act 2001 Sch 2.

⁴ Subs (2) amended by Mental Health Act 1998 Sch 5.

⁵ Para (a) amended by Civil Partnership Act 2011 Sch 14.

⁶ Subpara (i) amended by Civil Partnership Act 2011 Sch 14.

⁷ Subpara (ii) amended by Statute Law Revision Act 1992 Sch 1 (words 'from the date of death' operative 10/10/1990), by SD94/10 (net sum) with effect from 22/3/2010 and by Civil Partnership Act 2011 Sch 14. See SD74/94 as to prescribed rate of interest.

⁸ Para (b) amended by Civil Partnership Act 2011 Sch 14. Subpara (iii) amended by Civil Partnership Act 2011 Sch 14.

⁹ Para (c) amended by Civil Partnership Act 2011 Sch 14.

¹⁰ Para (d) amended by Civil Partnership Act 2011 Sch 14.

¹¹ Para (e) amended by Civil Partnership Act 2011 Sch 14.

¹² Para (f) amended by Civil Partnership Act 2011 Sch 14.

¹³ Subs (6) not amended by Civil Partnership Act 2011 as no presumption in law that civil partners are not 2 people.

¹⁴ Subs (7) added by Law Reform (Miscellaneous Provisions) Act 1996 s 5 and amended by Civil Partnership Act 2011 Sch 14.

¹⁵ Subpara (i) amended by Civil Partnership Act 2011 Sch 4.

¹⁶ Subpara (ii) amended by Civil Partnership Act 2011 Sch 4.

¹⁷ Para (b) amended by Civil Partnership Act 2011 Sch 4.

¹⁸ Para (c) amended by Civil Partnership Act 2011 Sch 4.

- ¹⁹ S 54 amended by Civil Partnership Act 2011 Sch 14.
- ²⁰ S 55 amended by Civil Partnership Act 2011 Schs 4 and 14.
- ²¹ Subs (2) amended by Civil Partnership Act 2011 Sch 14.
- ²² 1985/10/8(2)
- ²³ Subs (3) amended by Law Reform (Miscellaneous Provisions) Act 1996 s 5.
- ²⁴ Definition of ‘non-contentious or common form probate business’ inserted by Administration of Justice Act 2008 Sch 2.
- ²⁵ Definition of ‘valuable consideration’ amended by Civil Partnership Act 2011 Sch 4.
- ²⁶ Heading to Sch 1 amended by Civil Partnership Act 2011 Sch 4.
- ²⁷ Subpara (1) amended by Civil Partnership Act 2011 Sch 4.
- ²⁸ Subpara (1) amended by Civil Partnership Act 2011 Sch 4.
- ²⁹ Subpara (2) amended by Civil Partnership Act 2011 Sch 4.
- ³⁰ Item (b) amended by Civil Partnership Act 2011 Sch 4.
- ³¹ Subpara (4) amended by Civil Partnership Act 2011 Sch 4.
- ³² Subpara (1) amended by Civil Partnership Act 2011 Sch 4.
- ³³ Subpara (2) amended by Civil Partnership Act 2011 Sch 4.
- ³⁴ Subpara (4) amended by Civil Partnership Act 2011 Sch 4.
- ³⁵ Subpara (5) amended by Civil Partnership Act 2011 Sch 4.
- ³⁶ Subpara (1) amended by Civil Partnership Act 2011 Sch 4.
- ³⁷ Subpara (2) amended by Civil Partnership Act 2011 Sch 4.
- ³⁸ Subpara (1) amended by Civil Partnership Act 2011 Sch 4.
- ³⁹ Subpara (2) amended by Civil Partnership Act 2011 Sch 4.
- ⁴⁰ Item (f) repealed by SD29/03.
- ⁴¹ Item (h) added by Law Reform (Miscellaneous Provisions) Act 1996 s 5.

