



**Isle of Man**

*Ellan Vannin*

**AT 18 of 2001**

**TRUSTEE ACT 2001**





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## TRUSTEE ACT 2001

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## TRUSTEE ACT 2001

<i>Received Royal Assent:</i>	<i>19 June 2001</i>
<i>Passed:</i>	<i>19 June 2001</i>
<i>Commenced:</i>	<i>19 June 2001<sup>1</sup></i>

**AN ACT** to amend the law relating to trustees and persons having the investment powers of trustees; and for connected purposes.

### PART 1 – THE DUTY OF CARE

#### 1 The duty of care

- (1) Whenever the duty under this subsection applies to a trustee, he must exercise such care and skill as is reasonable in the circumstances, having regard in particular –
  - (a) to any special knowledge or experience that he has or holds himself out as having, and
  - (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- (2) In this Act the duty under subsection (1) is called “the duty of care”.

#### 2 Application of duty of care

Schedule 1 makes provision about when the duty of care applies to a trustee.

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<sup>1</sup> [EDITORIAL NOTE: See the endnote to section 42 for details of commencement: only sections 38,41 and 42 commenced upon announcement.]

## PART 2 – INVESTMENT

### 3 General power of investment

- (1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust.
- (2) In this Act the power under subsection (1) is called “the general power of investment”.
- (3) The general power of investment does not permit a trustee to make investments in land other than in loans secured on land (but see also section 8).
- (4) For the purposes of this section —
  - (a) a person invests in a loan secured on land if he has rights under any contract under which —
    - (i) one person provides another with credit, and
    - (ii) the obligation of the borrower to repay is secured on land;
  - (b) “credit” includes any cash loan or other financial accommodation;
  - (c) “cash” includes money in any form.

### 4 Standard investment criteria

- (1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee must have regard to the standard investment criteria.
- (2) A trustee must from time to time review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.
- (3) The “standard investment criteria”, in relation to a trust, are —
  - (a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind, and
  - (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

### 5 Advice

- (1) Before exercising any power of investment, whether arising under this Part or otherwise, a trustee must (unless the exception in subsection (3) applies) obtain and consider proper advice about the way in which, having regard to the standard investment criteria, the power should be exercised.
- (2) When reviewing the investments of the trust, a trustee must (unless the exception in subsection (3) applies) obtain and consider proper advice

about whether, having regard to the standard investment criteria, the investments should be varied.

- (3) The exception is that a trustee need not obtain such advice if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.
- (4) Proper advice is the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investment.

## **6 Restriction or exclusion of this Part etc**

- (1) The general power of investment is —
  - (a) in addition to powers conferred on trustees otherwise than by this Act, but
  - (b) subject to any restriction or exclusion imposed by the trust instrument or by any statutory provision.
- (2) For the purposes of this Act, a statutory provision is not to be regarded as being, or as being part of, a trust instrument.

## **7 Existing trusts**

- (1) This Part applies in relation to trusts whether created before or after its commencement.
- (2) No provision relating to the powers of a trustee contained in a trust instrument made before 3rd August 1961 is to be treated (for the purposes of section 6(1)(b)) as restricting or excluding the general power of investment.
- (3) A provision contained in a trust instrument made before the commencement of this Part which —
  - (a) has effect (by virtue of section 1 of the *Trustee Act 1961*) under section 3(2) of the *Trustee Investments Act 1961* (an Act of Parliament) as a power to invest under the said Act of 1961, or
  - (b) confers power to invest under the said Act of 1961,is to be treated as conferring the general power of investment on a trustee.

# **PART 3 – ACQUISITION OF LAND**

## **8 Power to acquire freehold and leasehold land**

- (1) A trustee may acquire freehold or leasehold land in the Island or the United Kingdom —
  - (a) as an investment,

- (b) for occupation by a beneficiary, or
  - (c) for any other reason.
- (2) “Freehold or leasehold land” means —
- (a) in relation to the Island —
    - (i) a legal estate in customary fee simple in land, or
    - (ii) a term of years absolute;
  - (b) in relation to England and Wales, a legal estate in land,
  - (c) in relation to Scotland —
    - (i) the estate or interest of the proprietor of the dominium utile or, in the case of land not held on feudal tenure, the estate or interest of the owner, or
    - (ii) a tenancy, and
  - (d) in relation to Northern Ireland, a legal estate in land, including land held under a fee farm grant.
- (3) For the purpose of exercising his functions as a trustee, a trustee who acquires land under this section has all the powers of an absolute owner in relation to the land.

## 9 Restriction or exclusion of this Part etc

The powers conferred by this Part are —

- (a) in addition to powers conferred on trustees otherwise than by this Part, but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any statutory provision.

## 10 Settlements and existing trusts

- (1) This Part does not apply in relation to a trust of property which consists of or includes land which is settled land.
- (2) Subject to subsection (1), this Part applies in relation to trusts whether created before or after its commencement.

# PART 4 – AGENTS, NOMINEES AND CUSTODIANS

## *Agents*

## 11 Power to employ agents

- (1) Subject to the provisions of this Part, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent.



- (2) In the case of a trust other than a charitable trust, the trustees' "delegable functions" consist of any function other than —
- (a) any function relating to whether or in what way any assets of the trust should be distributed,
  - (b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital,
  - (c) any power to appoint a person to be a trustee of the trust, or
  - (d) any power conferred by any other statutory provision or the trust instrument which permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.
- (3) In the case of a charitable trust, the trustees' "delegable functions" are —
- (a) any function consisting of carrying out a decision that the trustees have taken;
  - (b) any function relating to the investment of assets subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land);
  - (c) any function relating to the raising of funds for the trust otherwise than by means of profits of a trade which is an integral part of carrying out the trust's charitable purpose;
  - (d) any other function prescribed by an order made by the Council of Ministers for the purpose of this subsection.
- (4) For the purposes of subsection (3)(c) a trade is an integral part of carrying out a trust's charitable purpose if, whether carried on in the Island or elsewhere, the profits are applied solely to the purposes of the trust and either —
- (a) the trade is exercised in the course of the actual carrying out of a primary purpose of the trust, or
  - (b) the work in connection with the trade is mainly carried out by beneficiaries of the trust.
- (5) An order under subsection (3)(d) shall not have effect unless it is approved by Tynwald.

## 12 Persons who may act as agents

- (1) Subject to subsections (2) and (3), the persons whom the trustees may under section 11 authorise to exercise functions as their agent include one or more of their number.
- (2) The trustees may not authorise 2 (or more) persons to exercise the same function unless they are to exercise the function jointly.
- (3) The trustees may not under section 11 authorise a beneficiary to exercise any function as their agent (even if the beneficiary is also a trustee).

- (4) The trustees may under section 11 authorise a person to exercise functions as their agent even though he is also appointed to act as their nominee or custodian (whether under section 16, 17 or 18 or any other power).

### **13 Linked functions etc**

- (1) Subject to subsection (2), a person who is authorised under section 11 to exercise a function is (whatever the terms of the agency) subject to any specific duties or restrictions attached to the function.

For example, a person who is authorised under section 11 to exercise the general power of investment is subject to the duties under section 4 in relation to that power.

- (2) A person who is authorised under section 11 to exercise a power which is subject to a requirement to obtain advice is not subject to the requirement if he is the kind of person from whom it would have been proper for the trustees, in compliance with the requirement, to obtain advice.

### **14 Terms of agency**

- (1) Subject to subsection (2) and sections 15(2) and 29 to 32, the trustees may authorise a person to exercise functions as their agent on such terms as to remuneration and other matters as they may determine.
- (2) The trustees may not authorise a person to exercise functions as their agent on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.
- (3) The terms are —
  - (a) a term permitting the agent to appoint a substitute;
  - (b) a term restricting the liability of the agent or his substitute to the trustees or any beneficiary;
  - (c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

### **15 Asset management: special restrictions**

- (1) The trustees may not authorise a person to exercise any of their asset management functions as their agent except by an agreement which is in or evidenced in writing.
- (2) The trustees may not authorise a person to exercise any of their asset management functions as their agent unless —
  - (a) they have prepared a statement that gives guidance as to how the functions should be exercised (“a policy statement”), and
  - (b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with —
    - (i) the policy statement, or

- (ii) if the policy statement is revised or replaced under section 22, the revised or replacement policy statement.
- (3) The trustees must formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the trust.
- (4) The policy statement must be in or evidenced in writing.
- (5) The asset management functions of trustees are their functions relating to —
  - (a) the investment of assets subject to the trust,
  - (b) the acquisition of property which is to be subject to the trust, and
  - (c) managing property which is subject to the trust and disposing of, or creating or disposing of an interest in, such property.

Nominees and custodians

## **16 Power to appoint nominees**

- (1) Subject to the provisions of this Part, the trustees of a trust may —
  - (a) appoint a person to act as their nominee in relation to such of the assets of the trust as they determine (other than settled land), and
  - (b) take such steps as are necessary to secure that those assets are vested in a person so appointed.
- (2) An appointment under this section must be in or evidenced in writing.
- (3) This section does not apply to any trust having a custodian trustee.

## **17 Power to appoint custodians**

- (1) Subject to the provisions of this Part, the trustees of a trust may appoint a person to act as a custodian in relation to such of the assets of the trust as they may determine.
- (2) For the purposes of this Act a person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any documents or records concerning the assets.
- (3) An appointment under this section must be in or evidenced in writing.
- (4) This section does not apply to any trust having a custodian trustee.

## **18 Investment in bearer securities**

- (1) If trustees retain or invest in securities payable to bearer, they must appoint a person to act as a custodian of the securities.
- (2) Subsection (1) does not apply if the trust instrument or any statutory provision contains provision which (however expressed) permits the

trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.

- (3) An appointment under this section must be in or evidenced in writing.
- (4) This section does not apply to any trust having a custodian trustee.

## **19 Persons who may be appointed as nominees or custodians**

- (1) A person may not be appointed under section 16, 17 or 18 as a nominee or custodian unless one of the following conditions is satisfied —
  - (a) the person carries on a business which consists of or includes acting as a nominee or custodian;
  - (b) the person is a body corporate which is controlled by the trustees;
  - (c) the person is a body corporate recognised under section 26 of the *Advocates Act 1995*.
- (2) A body corporate shall be treated for the purpose of subsection (1)(b) as controlled by trustees in any case where, if the trustees were a company, the body corporate would be a subsidiary of that company for the purposes of the *Companies Act 1974*.
- (3) Subject to subsection (1), the persons whom the trustees may under section 16, 17 or 18 appoint as a nominee or custodian include —
  - (a) one of their number, if that one is a trust corporation, or
  - (b) 2 (or more) of their number, if they are to act as joint nominees or joint custodians.
- (4) The trustees may under section 16 appoint a person to act as their nominee even though he is also —
  - (a) appointed to act as their custodian (whether under section 17 or 18 or any other power), or
  - (b) authorised to exercise functions as their agent (whether under section 11 or any other power).
- (5) Likewise, the trustees may under section 17 or 18 appoint a person to act as their custodian even though he is also —
  - (a) appointed to act as their nominee (whether under section 16 or any other power), or
  - (b) authorised to exercise functions as their agent (whether under section 11 or any other power).

## **20 Terms of appointment of nominees and custodians**

- (1) Subject to subsection (2) and sections 29 to 32, the trustees may under section 16, 17 or 18 appoint a person to act as a nominee or custodian on such terms as to remuneration and other matters as they may determine.

- (2) The trustees may not under section 16, 17 or 18 appoint a person to act as a nominee or custodian on any of the following terms unless it is reasonably necessary for them to do so —
- (a) a term permitting the nominee or custodian to appoint a substitute;
  - (b) a term restricting the liability of the nominee or custodian or his substitute to the trustees or to any beneficiary;
  - (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

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

## **21 Application of sections 22 and 23**

- (1) Sections 22 and 23 apply in a case where trustees have, under section 11, 16, 17 or 18 —
- (a) authorised a person to exercise functions as their agent, or
  - (b) appointed a person to act as a nominee or custodian.
- (2) Subject to subsection (3), sections 22 and 23 also apply in a case where trustees have, under any power conferred on them by the trust instrument or by any statutory provision —
- (a) authorised a person to exercise functions as their agent, or
  - (b) appointed a person to act as a nominee or custodian.
- (3) If the application of section 22 or 23 is inconsistent with the terms of the trust instrument or the statutory provision, the section in question does not apply.

## **22 Review of agents, nominees and custodians etc**

- (1) While the agent, nominee or custodian continues to act for the trust, the trustees —
- (a) must keep under review the arrangements under which the agent, nominee or custodian acts and how those arrangements are being put into effect,
  - (b) if circumstances make it appropriate to do so, must consider whether there is a need to exercise any power of intervention that they have, and
  - (c) if they consider that there is a need to exercise such a power, must do so.
- (2) If the agent has been authorised to exercise asset management functions, the duty under subsection (1) includes, in particular —
- (a) a duty to consider whether there is any need to revise or replace the policy statement made for the purposes of section 15,

- (b) if they consider that there is a need to revise or replace the policy statement, a duty to do so, and
  - (c) a duty to assess whether the policy statement (as it has effect for the time being) is being complied with.
- (3) Subsections (3) and (4) of section 15 apply to the revision or replacement of a policy statement under this section as they apply to the making of a policy statement under that section
- (4) For the purposes of subsection (1)(b), a “power of intervention” includes —
- (a) a power to give directions to the agent, nominee or custodian;
  - (b) a power to revoke the authorisation or appointment.

### **23 Liability for agents, nominees and custodians etc**

- (1) A trustee is not liable for any act or default of the agent, nominee or custodian unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1 —
- (a) when entering into the arrangements under which the person acts as agent, nominee or custodian, or
  - (b) when carrying out his duties under section 22.
- (2) If a trustee has agreed a term under which the agent, nominee or custodian is permitted to appoint a substitute, the trustee is not liable for any act or default of the substitute unless he has failed to comply with the duty of care applicable to him, under paragraph 3 of Schedule 1 —
- (a) when agreeing that term, or
  - (b) when carrying out his duties under section 22 in so far as they relate to the use of the substitute.

#### *Supplementary*

### **24 Effect of trustees exceeding their powers**

A failure by the trustees to act within the limits of the powers conferred by this Part —

- (a) in authorising a person to exercise a function of theirs as an agent, or
  - (b) in appointing a person to act as a nominee or custodian,
- does not invalidate the authorisation or appointment.

### **25 Sole trustees**

- (1) Subject to subsection (2), this Part applies in relation to a trust having a sole trustee as it applies in relation to other trusts (and references in this

Part to trustees, except in sections 12(1) and 19(3), are to be read accordingly).

- (2) Section 18 does not impose a duty on a sole trustee if that trustee is a trust corporation.

## 26 Restriction or exclusion of this Part etc

The powers conferred by this Part are —

- (a) in addition to powers conferred on trustees otherwise than by this Act, but
- (b) subject to any restriction or exclusion imposed by the trust instrument or by any statutory provision.

## 27 Existing trusts

This Part applies in relation to trusts whether created before or after its commencement.

# PART 5 – REMUNERATION

## 28 Trustee's entitlement to payment under trust instrument

- (1) Except to the extent (if any) to which the trust instrument makes inconsistent provision, subsections (2) to (4) apply to a trustee if —
- (a) there is a provision in the trust instrument entitling him to receive payment out of trust funds in respect of services provided by him to or on behalf of the trust, and
- (b) the trustee is a trust corporation or is acting in a professional capacity.
- (2) The trustee is to be treated as entitled under the trust instrument to receive payment in respect of services even if they are services which are capable of being provided by a lay trustee.
- (3) Subsection (2) applies to a trustee of a charitable trust who is not a trust corporation only —
- (a) if he is not a sole trustee, and
- (b) to the extent that a majority of the other trustees have agreed that it should apply to him.
- (4) Any payments to which the trustee is entitled in respect of services are to be treated as remuneration for services (and not as a gift) for the purposes of —
- (a) section 4 of the *Wills Act 1985* (gifts to an attesting witness to be void), and

- (b) section 41(1) of the *Administration of Estates Act 1990* (order in which estate to be paid out).
- (5) For the purposes of this Part —
  - (a) a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with —
    - (i) the management or administration of trusts generally or a particular kind of trust, or
    - (ii) any particular aspect of the management or administration of trusts generally or a particular kind of trust,
 and the services he provides to or on behalf of the trust fall within that description; and
  - (b) a person acts as a lay trustee if he —
    - (i) is not a trust corporation, and
    - (ii) does not act in a professional capacity.

## 29 Remuneration of certain trustees

- (1) Subject to subsection (5), a trustee who —
  - (a) is a trust corporation, but
  - (b) is not a trustee of a charitable trust,
 is entitled to receive reasonable remuneration out of the trust funds for any services that the trust corporation provides to or on behalf of the trust.
- (2) Subject to subsection (5), a trustee who —
  - (a) acts in a professional capacity, but
  - (b) is not a trust corporation, a trustee of a charitable trust or a sole trustee,
 is entitled to receive reasonable remuneration out of the trust funds for any services that he provides to or on behalf of the trust if each other trustee has agreed in writing that he may be remunerated for the services.
- (3) “Reasonable remuneration” means, in relation to the provision of services by a trustee, such remuneration as is reasonable in the circumstances for the provision of those services to or on behalf of that trust by that trustee and for the purposes of subsection (1) includes, in relation to the provision of services by a trustee who is a licensed deposit taking institution and provides the services in that capacity, the institution’s reasonable charges for the provision of such services.<sup>1</sup>
- (4) A trustee is entitled to remuneration under this section even if the services in question are capable of being provided by a lay trustee.
- (5) A trustee is not entitled to remuneration under this section if any provision about his entitlement to remuneration has been made —



- (a) by the trust instrument, or
  - (b) by any statutory provision.
- (6) This section applies to a trustee who has been authorised under a power conferred by Part 4 or the trust instrument —
- (a) to exercise functions as an agent of the trustees, or
  - (b) to act as a nominee or custodian,
- as it applies to any other trustee.
- (7) In this section “licensed deposit taking institution” means the holder of a licence under section 7 of the *Financial Services Act 2008* in respect of deposit taking.<sup>2</sup>

### **30 Remuneration of trustees of charitable trusts**

- (1) The Deemsters may by regulations make provision for the remuneration of trustees of charitable trusts who are trust corporations or act in a professional capacity.
- (2) The power under subsection (1) includes power to make provision for the remuneration of a trustee who has been authorised under a power conferred by Part 4 or any other statutory provision, or by the trust instrument, —
- (a) to exercise functions as an agent of the trustees, or
  - (b) to act as a nominee or custodian.
- (3) Regulations under this section shall not have effect unless they are approved by Tynwald.

### **31 Trustees’ expenses**

- (1) A trustee —
- (a) is entitled to be reimbursed from the trust funds, or
  - (b) may pay out of the trust funds,
- expenses properly incurred by him when acting on behalf of the trust.
- (2) This section applies to a trustee who has been authorised under a power conferred by Part 4 or any other statutory provision, or by the trust instrument, —
- (a) to exercise functions as an agent of the trustees, or
  - (b) to act as a nominee or custodian,
- as it applies to any other trustee.

### 32 Remuneration and expenses of agents, nominees and custodians

- (1) This section applies if, under a power conferred by Part 4 or any other statutory provision, or by the trust instrument, a person other than a trustee has been —
  - (a) authorised to exercise functions as an agent of the trustees, or
  - (b) appointed to act as a nominee or custodian.
- (2) The trustees may remunerate the agent, nominee or custodian out of the trust funds for services if —
  - (a) he is engaged on terms entitling him to be remunerated for those services, and
  - (b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.
- (3) The trustees may reimburse the agent, nominee or custodian out of the trust funds for any expenses properly incurred by him in exercising functions as an agent, nominee or custodian.

### 33 Application

- (1) Subject to subsection (2), sections 28, 29, 31 and 32 apply in relation to services provided to or on behalf of, or (as the case may be) expenses incurred on or after their commencement on behalf of, trusts whenever created.
- (2) Nothing in section 28 or 29 is to be treated as affecting the operation of —
  - (a) section 4 of the *Wills Act 1985*, or
  - (b) section 41(1) of the *Administration of Estates Act 1990*,in relation to any death occurring before the commencement of section 28 or (as the case may be) section 29.

## PART 6 – MISCELLANEOUS AND SUPPLEMENTARY

### 34 Power to insure

- (1) [Substitutes section 17 of the *Trustee Act 1961*.]
- (2) [Amends section 18(1) of the *Trustee Act 1961* by deleting the words “whether by fire or otherwise”.]
- (3) The amendments made by this section apply in relation to trusts whether created before or after its commencement.

### 35 Personal representatives

- (1) Subject to the following provisions of this section, this Act applies in relation to a personal representative administering an estate according to the law as it applies to a trustee carrying out a trust for beneficiaries.
- (2) For this purpose this Act is to be read with the appropriate modifications and in particular —
  - (a) references to the trust instrument are to be read as references to the will,
  - (b) references to a beneficiary or to beneficiaries, apart from the reference to a beneficiary in section 8(1)(b), are to be read as references to a person or the persons interested in the due administration of the estate, and
  - (c) the reference to a beneficiary in section 8(1)(b) is to be read as a reference to a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.
- (3) Remuneration to which a personal representative is entitled under section 28 or 29 is to be treated as an administration expense for the purposes of sections 39 and 41(1) of the *Administration of Estates Act 1990*.
- (4) Nothing in subsection (3) is to be treated as affecting the operation of the said sections 39 and 41(1) in relation to any death occurring before the commencement of this section.

### 36 Pension schemes

- (1) In this section “pension scheme” means an occupational pension scheme (within the meaning of the *Pension Schemes Act 1993* (an Act of Parliament), as it has effect in the Island) established under a trust and subject to the law of the Island.
- (2) Part 1 does not apply to the trustees of any pension scheme in so far as it imposes a duty of care in relation to —
  - (a) the functions described in paragraphs 1 and 2 of Schedule 1, or
  - (b) the functions described in paragraph 3 of that Schedule to the extent that they relate to trustees —
    - (i) authorising a person to exercise their functions with respect to investment, or
    - (ii) appointing a person to act as their nominee or custodian.
- (3) Nothing in Part 2 or 3 applies to the trustees of any pension scheme.
- (4) Part 4 applies to the trustees of a pension scheme subject to the restrictions in subsections (5) to (8).
- (5) The trustees of a pension scheme may not under Part 4 authorise any person to exercise any functions relating to investment as their agent.

- (6) The trustees of a pension scheme may not under Part 4 authorise a person who is —
- (a) an employer in relation to the scheme, or
  - (b) connected with or an associate of such an employer,
- to exercise any of their functions as their agent.
- (7) For the purposes of subsection (6) —
- (a) “employer”, in relation to a scheme, means the employer of persons in the description or category of employment to which the scheme relates;
  - (b) section 54 of the *Insurance Act 2008* applies for the purpose of determining whether a person is connected with or an associate of an employer.<sup>3</sup>
- (8) Sections 16 to 20 do not apply to the trustees of a pension scheme.

### 37 Authorised unit trusts

- (1) Parts 2 to 4 do not apply to trustees of authorised unit trusts.
- (2) In this section —
- “authorised unit trust” means a unit trust scheme which is an authorised scheme for the purposes of the *Collective Investment Schemes Act 2008*;<sup>4</sup>
- “unit trust scheme” has the same meaning as in that Act.

### 38

[Amends section 1 of the *Perpetuities and Accumulations Act 1968* as follows: paragraph (a) substitutes in subsection (1) the expression “that specified in subsection (1A)” for the word “eighty”; and paragraph (b) inserts subsection (1A).]

### 39 Interpretation

- (1) In this Act —
- “asset” includes any right or interest;
- “charitable trust” means a trust under which property is held for charitable purposes according to the law of the Island;
- “custodian trustee” means a trustee whose duties principally relate to the holding of property, the management of which is the responsibility of other trustees;
- “personal representative” has the same meaning as in the *Trustee Act 1961*;

“**settled land**” means land which is settled land for the purposes of the *Settled Land Act 1891*, except land which is deemed to be settled land by virtue of section 53 of that Act;

“**trust corporation**” has the same meaning as in the *Trustee Act 1961*;

“**trust funds**” means income or capital funds of the trust.

(2) In this Act the expressions listed below are defined or otherwise explained by the provisions indicated –

asset management functions	section 15(5)
custodian	section 17(2)
the duty of care	section 1(2)
the general power of investment	section 3(2)
lay trustee	section 28(5)
power of intervention	section 22(4)
the standard investment criteria	section 4(3)
trustee acting in a professional capacity	section 28(5)
trust instrument	sections 6(2) and 35(2)(a)

#### **40 Minor and consequential amendments etc**

- (1) The enactments specified in Schedule 2 are amended in accordance with that Schedule.
- (2) The transitional provisions and savings in Schedule 3 shall have effect.
- (3) The enactments specified in Schedule 4 are repealed to the extent specified in column 3 of that Schedule.

#### **41 Power to amend other Acts**

- (1) The Council of Ministers may by order make such amendments of any statutory provision as appear to it appropriate in consequence of or in connection with Part 2 or 3.
- (2) An order under subsection (1) shall not have effect unless it is approved by Tynwald.

#### **42 Short title and commencement**

- (1) This Act may be cited as the Trustee Act 2001.
- (2) This Act, except sections 38 and 41 and this section, shall come into force on such day or days as the Council of Ministers may by order appoint.<sup>5</sup>
- (3) An order under subsection (2) may contain such transitional provisions and savings as the Council of Ministers considers appropriate in connection with the order.



## SCHEDULE 1

### APPLICATION OF DUTY OF CARE

#### Section 2

##### *Investment*

1. The duty of care applies to a trustee —
  - (a) when exercising the general power of investment or any other power of investment, however conferred;
  - (b) when carrying out a duty to which he is subject under section 4 or 5.

##### *Acquisition of land*

2. The duty of care applies to a trustee —
  - (a) when exercising the power under section 8 to acquire land;
  - (b) when exercising any other power to acquire land, however conferred;
  - (c) when exercising any power in relation to land acquired under a power mentioned in sub-paragraph (a) or (b).

##### *Agents, nominees and custodians*

3. (1) The duty of care applies to a trustee —
  - (a) when entering into arrangements under which a person is authorised under section 11 to exercise functions as an agent;
  - (b) when entering into arrangements under which a person is appointed under section 16 to act as a nominee;
  - (c) when entering into arrangements under which a person is appointed under section 17 or 18 to act as a custodian;
  - (d) when entering into arrangements under which, under any other power, however conferred, a person is authorised to exercise functions as an agent or is appointed to act as a nominee or custodian;
  - (e) when carrying out his duties under section 22 (review of agent, nominee or custodian, etc.).
- (2) For the purposes of sub-paragraph (1), entering into arrangements under which a person is authorised to exercise functions or is appointed to act as a nominee or custodian includes, in particular —
  - (a) selecting the person who is to act,

- (b) determining any terms on which he is to act, and
- (c) if the person is being authorised to exercise asset management functions, the preparation of a policy statement under section 15.

*Compounding of liabilities*

4. The duty of care applies to a trustee —
- (a) when exercising the power under section 13 of the Trustee Act 1961 to do any of the things referred to in that section;
  - (b) when exercising any corresponding power, however conferred.

*Insurance*

5. The duty of care applies to a trustee —
- (a) when exercising the power under section 17 of the Trustee Act 1961 to insure property;
  - (b) when exercising any corresponding power, however conferred.

*Reversionary interests, valuations and audit*

6. The duty of care applies to a trustee —
- (a) when exercising the power under section 20(1) or (3) of the Trustee Act 1961 to do any of the things referred to there;
  - (b) when exercising any corresponding power, however conferred.

*Exclusion of duty of care*

7. The duty of care does not apply if or in so far as it appears from the trust instrument that the duty is not meant to apply.

## SCHEDULE 2

### MINOR AND CONSEQUENTIAL AMENDMENTS

Section 40(1)

[Sch 2 amends the following Acts —

Settled Land Act 1891 q.v.

Industrial and Building Societies Act 1892 q.v.

Noble's Hospital Act 1909 q.v.

Trustee Act 1961 q.v.

Charities Act 1962 q.v.

Administration of Estates Act 1990 q.v.

Church Act 1992 q.v.]



*Settled Land Act 1891*

1. (3) Nothing in sub-paragraph (2)Ed.- Substitution of s18(2) and (4) and insertion of subss (4A) to (4C).\* affects the operation of section 18 in relation to directions of the tenant for life given, but not acted upon by the trustees, before the commencement of this paragraph.

**SCHEDULE 3****TRANSITIONAL PROVISIONS AND SAVINGS**

## Section 40(2).

1. Where, immediately before the day on which Part 4 comes into force, a banker or banking company holds any bearer securities deposited with him or it under section 4(1) of the Trustee Act 1961, he or it shall be treated as if he or it had been appointed as custodian of the securities under section 18.

2. The repeal of section 5 of the Trustee Act 1961 does not affect the operation of that section in relation to loans or investments made before the coming into force of that repeal.

3. The repeal of section 6 of the Trustee Act 1961 does not affect the operation of that section in relation to any advance of trust money made before the coming into force of that repeal.

4. Where, immediately before the day on which Part 4 comes into force, a banker or banking company holds any documents deposited with him or it under section 19 of the Trustee Act 1961, he or it shall be treated as if he or it had been appointed as custodian of the documents under section 17.

5. Where, immediately before the day on which Part 4 comes into force, a person has been appointed to act as or be an agent or attorney under section 21(1) or (3) of the Trustee Act 1961 (general power to employ agents etc.), he shall be treated as if he had been authorised to exercise functions as an agent under section 11 (and, if appropriate, as if he had also been appointed under Part 4 to act as a custodian or nominee).

6. The repeal of section 21(2) of the Trustee Act 1961 does not affect any appointment made before that repeal comes into operation.

7. (1) A trustee shall not be liable for breach of trust merely because he continues to hold an investment acquired by virtue of —

- (a) paragraph 14 of Part II of Schedule 1 to the Trustee Investments Act 1961 (an Act of Parliament) (perpetual rent-charges etc.), or
- (b) section 3(2) of the Tithe Act 1985 (tithe redemption charge).

(2) A person who —

- (a) is not a trustee,
- (b) before the commencement of Part 2 had powers to invest in the investments described in a provision referred to in subparagraph (1), and
- (c) on that commencement acquired the general power of investment, shall not be treated as exceeding his powers of investment merely because he continues to hold an investment acquired by virtue of that provision.

## SCHEDULE 4

### ENACTMENTS REPEALED

#### Section 40(3)

[Sch 4 repeals the following Act wholly —

Trustees Act 1865

and the following Acts in part —

Settled Land Act 1891

Trustee Act 1961

Isle of Man Loans Act 1974

Tithe Act 1985.]

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> Subs (3) amended by Financial Services Act 2008 Sch 6.

<sup>2</sup> Subs (7) substituted by Financial Services Act 2008 Sch 6.

<sup>3</sup> Para (b) amended by Insurance Act 2008 Sch 8.

<sup>4</sup> Definition of “authorised unit trust” amended by Collective Investment Schemes Act 2008 Sch 6.

<sup>5</sup> ADO (whole Act except ss 38, 41 and 42) 1/9/2001 (SD434/01).