



# Trustee Act 2000

## 2000 CHAPTER 29

### PART VI

#### MISCELLANEOUS AND SUPPLEMENTARY

#### **34 Power to insure.**

(1) For section 19 of the <sup>M1</sup>Trustee Act 1925 (power to insure) substitute—

**“19 Power to insure.**

- (1) A trustee may—
  - (a) insure any property which is subject to the trust against risks of loss or damage due to any event, and
  - (b) pay the premiums out of the trust funds.
- (2) In the case of property held on a bare trust, the power to insure is subject to any direction given by the beneficiary or each of the beneficiaries—
  - (a) that any property specified in the direction is not to be insured;
  - (b) that any property specified in the direction is not to be insured except on such conditions as may be so specified.
- (3) Property is held on a bare trust if it is held on trust for—
  - (a) a beneficiary who is of full age and capacity and absolutely entitled to the property subject to the trust, or
  - (b) beneficiaries each of whom is of full age and capacity and who (taken together) are absolutely entitled to the property subject to the trust.
- (4) If a direction under subsection (2) of this section is given, the power to insure, so far as it is subject to the direction, ceases to be a delegable function for the purposes of section 11 of the Trustee Act 2000 (power to employ agents).
- (5) In this section “trust funds” means any income or capital funds of the trust.”

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- (2) In section 20(1) of the <sup>M2</sup>Trustee Act 1925 (application of insurance money) omit “whether by fire or otherwise”.
- (3) The amendments made by this section apply in relation to trusts whether created before or after its commencement.

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**Marginal Citations**

- M1** 1925 c. 19.  
**M2** 1925 c. 19.

**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—
- references to the trust instrument are to be read as references to the will,
  - 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
  - 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—
- section 34(3) of the <sup>M3</sup>Administration of Estates Act 1925 (order in which estate to be paid out), and
  - any provision giving reasonable administration expenses priority over the preferential debts listed in Schedule 6 to the <sup>M4</sup>Insolvency Act 1986.
- (4) Nothing in subsection (3) is to be treated as affecting the operation of the provisions mentioned in paragraphs (a) and (b) of that subsection in relation to any death occurring before the commencement of this section.

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**Marginal Citations**

- M3** 1925 c. 23.  
**M4** 19876 c. 45.

**36 Pension schemes.**

- (1) In this section “pension scheme” means an occupational pension scheme (within the meaning of the <sup>M5</sup>Pension Schemes Act 1993) established under a trust and subject to the law of England and Wales.
- (2) Part I does not apply in so far as it imposes a duty of care in relation to—
- the functions described in paragraphs 1 and 2 of Schedule 1, or

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- (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 II or III applies to the trustees of any pension scheme.
- (4) Part IV 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 IV authorise any person to exercise any functions relating to investment as their agent.
- (6) The trustees of a pension scheme may not under Part IV 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, has the same meaning as in the <sup>M6</sup>Pensions Act 1995;
  - (b) sections 249 and 435 of the <sup>M7</sup>Insolvency Act 1986 apply for the purpose of determining whether a person is connected with or an associate of an employer.
- (8) Sections 16 to 20 (powers to appoint nominees and custodians) do not apply to the trustees of a pension scheme.

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**Marginal Citations**

- M5** 1993 c. 48.
- M6** 1995 c. 26.
- M7** 1986 c. 45.

**37 Authorised unit trusts.**

- (1) Parts II to IV do not apply to trustees of authorised unit trusts.
- (2) “Authorised unit trust” means a unit trust scheme in the case of which an order under section 78 of the <sup>M8</sup>Financial Services Act 1986 is in force.

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**Marginal Citations**

- M8** 1986 c. 60.

**38 Common investment schemes for charities etc.**

Parts II to IV do not apply to—

- (a) trustees managing a fund under a common investment scheme made, or having effect as if made, under [<sup>F1</sup>section 96 of the Charities Act 2011], other than such a fund the trusts of which provide that property is not to be transferred

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- to the fund except by or on behalf of a charity the trustees of which are the trustees appointed to manage the fund, or
- (b) trustees managing a fund under a common deposit scheme made, or having effect as if made, under [F2section 100] of that Act.

#### Textual Amendments

- F1** Words in s. 38(a) substituted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, Sch. 7 para. 89(a) (with s. 20(2), Sch. 8)
- F2** Words in s. 38(b) substituted (14.3.2012) by Charities Act 2011 (c. 25), s. 355, Sch. 7 para. 89(b) (with s. 20(2), Sch. 8)

### 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 and “charitable purposes” [F3has the meaning given by section 11 of the Charities Act 2011];
- “custodian trustee” has the same meaning as in the M9Public Trustee Act 1906;
- “enactment” includes any provision of a Measure of the Church Assembly or of the General Synod of the Church of England;
- “exempt charity” has the same meaning as in [F4the Charities Act 2011 ];
- “functions” includes powers and duties;
- “legal mortgage” has the same meaning as in the M10Law of Property Act 1925;
- “personal representative” has the same meaning as in the M11Trustee Act 1925;
- “settled land” has the same meaning as in the M12Settled Land Act 1925;
- “trust corporation” has the same meaning as in the M13Trustee Act 1925;
- “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—

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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(6)
power of intervention	section 22(4)
the standard investment criteria	section 4(3)
subordinate legislation	section 6(3)
trustee acting in a professional capacity	section 28(5)

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trust instrument

sections 6(2) and 35(2)(a)

#### Textual Amendments

- F3** Words in s. 39(1) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\), s. 355, Sch. 7 para. 90\(a\)](#) (with s. 20(2), Sch. 8)
- F4** Words in s. 39(1) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\), s. 355, Sch. 7 para. 90\(b\)](#) (with s. 20(2), Sch. 8)

#### Marginal Citations

- M9** 1906 c. 55.  
**M10** 1925 c. 20.  
**M11** 1925 c. 19.  
**M12** 1925 c. 18.  
**M13** 1925 c. 19.

#### 40 Minor and consequential amendments etc.

- (1) Schedule 2 (minor and consequential amendments) shall have effect.
- (2) Schedule 3 (transitional provisions and savings) shall have effect.
- (3) Schedule 4 (repeals) shall have effect.

#### 41 Power to amend other Acts.

- (1) A Minister of the Crown may by order make such amendments of any Act, including an Act extending to places outside England and Wales, as appear to him appropriate in consequence of or in connection with Part II or III.
- (2) Before exercising the power under subsection (1) in relation to a local, personal or private Act, the Minister must consult any person who appears to him to be affected by any proposed amendment.
- (3) An order under this section may—
  - (a) contain such transitional provisions and savings as the Minister thinks fit;
  - (b) make different provision for different purposes.
- (4) The power to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) “Minister of the Crown” has the same meaning as in the Ministers of the <sup>M14</sup>Crown Act 1975.

#### Marginal Citations

- M14** 1975 c. 26.

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## **42 Commencement and extent.**

- (1) Section 41, this section and section 43 shall come into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument; and different days may be so appointed for different purposes.
- (3) An order under subsection (2) may contain such transitional provisions and savings as the Lord Chancellor considers appropriate in connection with the order.
- (4) Subject to section 41(1) and subsection (5), this Act extends to England and Wales only.
- (5) An amendment or repeal in Part II or III of Schedule 2 or Part II of Schedule 4 has the same extent as the provision amended or repealed.

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### **Subordinate Legislation Made**

**P1** [S. 42\(2\)](#) power fully exercised: 1.2.2001 appointed by [S.I. 2001/49](#), [art. 2](#)

## **43 Short title.**

This Act may be cited as the Trustee Act 2000.

**Changes to legislation:**

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