



# Church of Scotland (Properties and Investments) Order Confirmation Act 1994

## 1994 CHAPTER v

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Church of Scotland (Properties and Investments). [26th May 1994]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Confirmation of Order in Schedule**

The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed.

### **2 Short title**

This Act may be cited as the Church of Scotland (Properties and Investments) Order Confirmation Act 1994.

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## SCHEDULE

### CHURCH OF SCOTLAND (PROPERTIES AND INVESTMENTS)

Provisional Order to alter the constitution of and to confer further powers on the Church of Scotland Trust; to incorporate the Church of Scotland Investors Trust and to transfer certain moveable property and to authorise the transfer of other property to such trust; to transfer certain heritable property and to authorise the transfer of other property to the Church of Scotland General Trustees; to confer further powers on the Church of Scotland General Trustees; and for other purposes.

Whereas the general work of the Church of Scotland (hereinafter referred to as “the Church”) beyond the local spheres of kirk sessions and presbyteries is directed and controlled by the General Assembly of the Church:

And whereas The Church of Scotland General Trustees (hereinafter referred to as “the General Trustees”) were incorporated by the Church of Scotland (General Trustees) Order 1921 to hold the properties belonging to the Church and described in the Schedule thereto for the same ends, uses and purposes as those for which they were held by the several trustees or persons by whom they were held previously:

And whereas The Church of Scotland Trust (hereinafter referred to as “the Trust”) was incorporated by the Church of Scotland Trust Order 1932 (hereinafter referred to as “the Order of 1932”) to hold the properties belonging to the Church and described in the Schedule thereto for the same ends, uses and purposes as those for which they were held by the several trustees or persons by whom they were held previously:

And whereas by the Order of 1932 the Trust was also authorised to accept and hold such other properties as any organisation or minister of any congregation of the Church might desire to transfer to the Trust:

And whereas the Trust holds assets which fall broadly into three categories, that is to say:—

- (1) moveable property which largely comprises the assets of funds known as the general investment fund, the income fund, the deposit fund, the main pension fund, the contributors’ pension fund and the special investment account of the Church;
- (2) heritable or real property in the United Kingdom being mainly the functional properties and superiorities of the boards and committees of the General Assembly of the Church; and
- (3) heritable or real property outside the United Kingdom being mainly churches in Europe and in the Americas and foreign mission properties in Asia, Africa and elsewhere:

And whereas the arrangements whereby some assets of the Church are held by the General Trustees and other assets are held by the Trust have become anomalous and inconvenient for the good management and efficient administration of the heritable property and moveable property belonging to the Church:

And whereas it is expedient to alter the constitution of and to confer further powers on the Trust:

And whereas it is expedient to establish a new statutory body with modern and appropriate powers of management and administration to hold all the moveable property (as in this Order defined) now held by the Trust and any other property which it is authorised by this Order to hold:

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And whereas it is expedient to transfer to the General Trustees the heritable properties in Scotland now vested in the Trust and to authorise other property to be transferred to the General Trustees:

And whereas it is expedient for the new body to provide investment services to the Church and to bodies within or connected with the Church:

And whereas it is expedient that the new body should be able to act as trustee of certain church property and that other trustees should be authorised to transfer their trusteeships to the new body:

And whereas it is expedient to confer further powers on the General Trustees:

And whereas for the benefit of the Church and with the support and approval of the General Assembly of the Church, the Trust has resolved to promote legislation to give effect to the proposed changes aforesaid:

And whereas the purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now, therefore, in pursuance of the powers contained in the said Act, the Secretary of State hereby orders as follows:—

## PART I

### PRELIMINARY

#### *Short title*

- 1 This Order may be cited as the Church of Scotland (Properties and Investments) Order 1994.

#### *Interpretation*

- 2 In this Order, unless the context otherwise requires—
- “the appointed day” means such day as may, under section 3 (Appointed day) of this Order, be appointed for the purposes of this Order;
  - “the Church” means the Church of Scotland as constituted by the union of the Church of Scotland and the United Free Church of Scotland on 2nd October 1929;
  - “the General Assembly” means the General Assembly of the Church;
  - “the General Trustees” means The Church of Scotland General Trustees incorporated by the Church of Scotland (General Trustees) Order 1921;
  - “heritable property” means an interest in land which conforms to the definition of an interest in land in section 28 of the Land Registration (Scotland) Act 1979 and wheresoever situated;
  - “the Investors Trust” means the body incorporated by section 13 (Incorporation) of this Order;
  - “moveable property” means personal property, investments, rights and interests of any nature whatever and wheresoever situated not included in the term “heritable property” and not a right or interest of any nature in corporeal moveable property, or in heritable property, in Asia or Africa vested in the Trust on the appointed day;

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“the Order of 1932” means the Church of Scotland Trust Order 1932; and  
 “the Trust” means The Church of Scotland Trust incorporated by the Order of 1932.

*Appointed day*

- 3 (1) The Trust may appoint a day to be the appointed day for the purposes of this Order.
- (2) Before the day so appointed the Trust shall publish in the Edinburgh Gazette notice of the day appointed, stating that it is the appointed day for the purposes of this Order.

**PART II**

CHURCH OF SCOTLAND TRUST

*Constitution*

- 4 On the appointed day the members of the Trust other than those named below shall go out of office and subject to the provisions of this Order the following 10 members of the Church shall be members of the Trust, viz:

Ronald Stanton Blakey M.A., B.D., M.Th.  
 Robert Bow M.A., LL.B.  
 William Donald Bruce Cameron C.A.  
 William Steven Carswell M.A., LL.B.  
 George Fraser Davidson C.A.  
 David Douglas McKinnon B.Sc., F.F.A., F.I.M.A.  
 David Mackay Nicolson C.A.  
 James Alan Walker Somerville W.S.  
 James Leslie Weatherhead M.A., LL.B., D.D.  
 John Christopher Wigglesworth M.B.E., B.Sc., Ph.D., B.D.

and they and the survivors of them and their successors in office and any additional members to be appointed as hereinafter provided (all hereinafter referred to as “members of the Trust”) shall continue to be a body corporate by the name of “The Church of Scotland Trust”.

*Qualification of members*

- 5 From the appointed day only a member of the Church shall be eligible to be a member of the Trust and if a person who is a member of the Trust ceases to be a member of the Church he shall thereupon cease to be a member of the Trust.

*Roll of members*

- 6 (1) The secretary and clerk of the Trust shall keep a roll of the members of the Trust and shall enter in it the names of the members of the Trust stated in section 4 (Constitution) of this Order in the same order as they appear in that section and the names of all persons who are appointed or co-opted as members of the Trust in terms of this Order in the order in which they are appointed or co-opted.

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- (2) When a person ceases to be a member of the Trust the secretary and clerk of the Trust shall amend the roll accordingly and when a person is re-appointed as a member of the Trust the secretary and clerk shall re-enter his name in the roll after the names of the other members of the Trust.

#### *Retirement of members*

- 7 (1) After the appointed day two members of the Trust other than the chairman and vice-chairman shall retire annually on 31st May each year but shall be eligible for re-appointment by the General Assembly as hereinafter provided.
- (2) The order in which the members of the Trust shall retire shall be the order in which their names appear in the roll of members of the Trust.

#### *Appointment and removal of members*

- 8 (1) The Trust shall report to the General Assembly all vacancies in the membership of the Trust and may nominate persons for appointment by the General Assembly to fill any vacancies.
- (2) The General Assembly shall appoint or re-appoint two persons to be members of the Trust in place of the two members of the Trust retiring in terms of this Order.
- (3) If a member of the Trust dies, resigns or becomes disqualified or is removed from office, the General Assembly shall have power to appoint another member of the Trust.
- (4) Subject to the provisions of subsection (6) of this section the General Assembly shall have power to appoint persons to be additional members of the Trust beyond the number specified in section 4 (Constitution) of this Order.
- (5) Subject to the provisions of subsection (6) of this section the Trust may at any time co-opt persons to be additional members of the Trust provided that any person so co-opted shall not remain a member of the Trust after the next meeting of the General Assembly unless his co-option is then ratified by the General Assembly.
- (6) The number of members of the Trust shall not exceed 20.
- (7) The General Assembly shall have power to remove any member of the Trust from office.

#### *Appointment of chairman and vice-chairman*

- 9 (1) The Trust shall whenever necessary appoint from among the members of the Trust a chairman and vice-chairman who shall hold office for a period of four years from the date of such appointment subject to such conditions as the General Assembly may from time to time determine and provided that the chairman and vice-chairman shall not remain chairman and vice-chairman respectively after the meeting of the General Assembly next following their appointment unless their appointment is then ratified by the General Assembly.
- (2) The General Assembly shall have power to renew or extend such appointments or either of them for a period not exceeding four years.

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### *Quorum*

- 10 In subsection (3) of section 14 (Meetings of Trust) of the Order of 1932, the word “three” shall be substituted for the word “five”.

### *Powers in relation to certain trusteeships*

- 11 (1) In this and the next section, “trust” means any trust of any kind whether public or private, inter vivos, contractual or mortis causa, including, without prejudice to the foregoing generality, executorship, administration, agency, factorship, curatory, receivership, guardianship, management and membership of a committee; and “trustee” and “co-trustee” shall be construed accordingly.
- (2) The Trust may act, decline to act or resign from acting as trustee of any trust.
- (3) In addition and without prejudice to such other powers and privileges as it may enjoy the Trust may, in, for and during the performance of any trusteeship accepted by it—
- (a) charge the trust for acting as trustee;
  - (b) retain any share of brokerage or commission paid to it;
  - (c) retain remuneration paid in respect of its officers appointed as directors of a company whose shares or debentures are held in the trust;
  - (d) vest any assets of the trust in any person or corporate body as its nominee;
  - (e) insure the assets of the trust for such value and against such risks as it shall at its absolute discretion decide and charge the premiums against the capital or the income of the trust;
  - (f) carry on for such period as it thinks fit, or wind up when it thinks fit, any business held in the trust;
  - (g) refrain from intervention in the management or conduct of the business of any company in which it has an interest, whether or not representing or conferring exclusive or majority control, provided that it has no reason to believe that such management and conduct by the directors is not in accordance with their fiduciary obligations, and in particular refrain from exercising any powers to require the payment of dividends or other distributions to the members of the company;
  - (h) acquire, deal with and turn to account life or other policies of insurance or similar assets and reversionary or deferred property or rights of any description, whether by way of investment or otherwise;
  - (i) make loans from the trust to any beneficiary without requiring security and grant securities or guarantees on behalf of any beneficiary;
  - (j) allocate or set apart funds in which a beneficiary may have a particular interest;
  - (k) pay and satisfy in whole or in part any legacy or share of the trust by transferring or setting apart any investments or other assets at such values as it may decide;
  - (l) pay and make over in whole or in part any funds or other assets due or advanced to or on account of any beneficiary under legal disability or incapacity by reason of nonage to his or her legal guardian or to any person or persons de facto acting or willing to act as such, whether legally holding or entitled to that office or not, the acknowledgment of the recipient being a sufficient discharge;
  - (m) accept the receipt of a responsible official of any body (incorporated or unincorporated) which is a beneficiary of the trust;

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- (n) decide in all cases the apportionment of receipts, allowances, payments and charges as between one beneficiary and another;
  - (o) employ or appoint to any office in connection with the trust any person or otherwise transact in any manner and free of any restriction with any co-trustee and allow any person so employed or appointed reasonable remuneration for services other than as a trustee;
  - (p) act on the opinion or advice of or information obtained from a duly qualified professional person without liability; and
  - (q) delegate any decision relating to investment of any funds of the trust to any other person, firm, corporation or other body.
- (4) In addition and without prejudice to such other privileges and immunities as it may enjoy the Trust shall not be liable for the acts or omissions of any co-trustee.

#### *Scottish trusts*

- 12 In the case of a trust of which the Trust is a trustee and which is governed by the laws of Scotland—
- (1) notwithstanding its receipt of remuneration, the Trust shall have all the powers of a trustee, gratuitous or otherwise, including the power to resign office; and
  - (2) where the Trust is not the sole trustee, a quorum shall be—
    - (a) one trustee, if there are two trustees; and
    - (b) a majority of the trustees resident in Great Britain if there are more than two trustees: Provided that in all cases such quorum shall include the Trust.

### **PART III**

#### **CHURCH OF SCOTLAND INVESTORS TRUST**

#### *Incorporation*

- 13 Subject to the provisions of this Order the following 14 members of the Church viz:
- Alan Archibald Aitchison
  - Charles Morrison Burnet
  - Rupert Gavin Burnett B.Com., C.A., F.C.M.A.
  - William Donald Bruce Cameron C.A.
  - Thomas Young Darling M.A., F.I.C.E., A.C.I.I.
  - John Brian Michael Dick A.C.I.B.
  - Donald Mackenzie Fortune C.A.
  - David Jeffrey Kirkpatrick F.F.A.
  - Thomas Macgill
  - David Douglas McKinnon B.Sc., F.F.A., F.I.M.A.
  - Andrew David Monteath O.B.E., T.D., C.A.
  - Robert Weir Spittal F.F.A., A.I.A.
  - Cecil Henry Stout O.B.E., Ph.D., B.Com., I.P.F.A.
  - Gerrard Webster Tait

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and the survivors of them and their successors in office and any additional members to be nominated and appointed as hereinafter provided (all hereinafter referred to as “members of the Investors Trust”) shall be and are hereby incorporated by the name of “The Church of Scotland Investors Trust” and by that name shall be a body corporate.

#### *Qualification of members*

- 14 Only a member of the Church shall be eligible to be a member of the Investors Trust and if a person who is a member of the Investors Trust ceases to be a member of the Church he shall thereupon cease to be a member of the Investors Trust.

#### *Roll of members*

- 15 (1) The secretary of the Investors Trust shall keep a roll of the members of the Investors Trust and shall enter in it the names of the members of the Investors Trust stated in section 13 (Incorporation) of this Order in the same order as they appear in that section and the names of all persons who are appointed or co-opted as members of the Investors Trust in terms of this Order in the order in which they are appointed or co-opted.
- (2) When a person ceases to be a member of the Investors Trust the secretary of the Investors Trust shall amend the roll accordingly and when a person is re-appointed as a member of the Investors Trust the secretary shall re-enter his name in the roll after the names of the other members of the Investors Trust.

#### *Retirement of members*

- 16 (1) Three members of the Investors Trust other than the chairman and vice-chairman shall retire annually on 31st May each year but shall be eligible for reappointment by the General Assembly as hereinafter provided.
- (2) The order in which the members of the Investors Trust named in section 13 (Incorporation) of this Order shall retire shall be the order in which their names appear in that section and the order in which any other members of the Investors Trust to be appointed hereafter shall retire shall be the order in which they are entered as a member of the Investors Trust on the roll of members of the Investors Trust after the date of their appointment.

#### *Appointment and removal of members*

- 17 (1) The Investors Trust shall report to the General Assembly all vacancies in its membership and may nominate persons for appointment by the General Assembly to fill any vacancies.
- (2) The General Assembly shall appoint or reappoint three persons to be members of the Investors Trust in place of the three members of the Investors Trust retiring in terms of this Order.
- (3) If a member of the Investors Trust dies, resigns or becomes disqualified or is removed from office, the General Assembly shall have power to appoint another member of the Investors Trust.



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- (4) Subject to the provisions of subsection (6) of this section, the General Assembly shall have power to appoint persons to be additional members of the Investors Trust beyond the number specified in section 13 (Incorporation) of this Order.
- (5) Subject to the provisions of subsection (6) of this section, the Investors Trust may at any time co-opt persons to be additional members of the Investors Trust provided that any person so co-opted shall not remain a member of the Investors Trust after the next meeting of the General Assembly unless his co-option is then ratified by the General Assembly.
- (6) The number of members of the Investors Trust shall not exceed 20.
- (7) The General Assembly shall have power to remove any member of the Investors Trust from office.

#### *Appointment of chairman and vice-chairman*

- 18 (1) The Investors Trust shall whenever necessary appoint from among the members of the Investors Trust a chairman and vice-chairman who shall hold office for a period of four years from the date of such appointment subject to such conditions as the General Assembly may from time to time determine and provided that the chairman and vice-chairman shall not remain chairman and vice-chairman respectively after the meeting of the General Assembly next following their appointment unless their appointment is then ratified by the General Assembly.
- (2) The General Assembly shall have power to renew or extend such appointments or either of them for a period not exceeding four years.

#### *Treasurer*

- 19 (1) The general treasurer of the Church shall ex officio be the treasurer of the Investors Trust.
- (2) In the event of a vacancy in the office of general treasurer of the Church, the Investors Trust shall appoint for its own purposes an interim treasurer to fill the vacancy who shall vacate office immediately upon a general treasurer of the Church being appointed.

#### *Secretary*

- 20 The Investors Trust shall appoint a secretary who shall keep minutes of all meetings of the Investors Trust and also a record of all deeds and documents to which the seal of the Investors Trust has been affixed.

#### *Meetings of Investors Trust*

- 21 (1) The secretary of the Investors Trust, whom failing the treasurer, shall call all meetings of the Investors Trust and shall also call a meeting of the Investors Trust upon being requested in writing to do so by no fewer than five members of the Investors Trust.
- (2) Not less than five days' notice shall be given for a meeting of the Investors Trust.

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- (3) At all meetings of the Investors Trust three shall be a quorum and any meeting at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions exercisable by the Investors Trust.
- (4) In the absence of the chairman and vice-chairman from any meeting of the Investors Trust those members of the Investors Trust who are present shall appoint a chairman for the meeting.
- (5) The chairman presiding at any meeting of the Investors Trust shall in the event of an equality of votes have a casting vote in addition to his deliberative vote.

#### PART IV

##### TRANSFERS TO INVESTORS TRUST AND TO GENERAL TRUSTEES, ETC.

###### *Transfers to Investors Trust*

- 22 (1) Subject to the provisions of this Order, all moveable property vested in and held by the Trust immediately before the appointed day shall, by virtue of this Order and without the necessity of any other instrument of transfer, on that day be transferred to and vest in the Investors Trust.
- (2) The production of a copy of the Act confirming this Order shall be sufficient warrant to the registrar, directors or other officials of any corporation, firm, company, authority or concern as well out of Scotland as in Scotland to enter the Investors Trust upon the register thereof as proprietor or holder of the moveable property transferred to and vested in the Investors Trust by subsection (1) of this section without the production of any particular assignation, conveyance or transfer thereof and to grant and issue to the Investors Trust a certificate or other writing as evidence of the title of the Investors Trust to such moveable property:
 

Provided that in the case of any moveable property which is only transferable in a particular manner prescribed by or under an Act of Parliament or by or under the constitution or rules of any particular corporation, firm, company or concern such moveable property shall be transferred to and vested in the Investors Trust in the prescribed manner.
- (3) In addition to the moveable property transferred to and vested in the Investors Trust by virtue of subsection (1) of this section, the Investors Trust may hold any heritable property or moveable property held at the commencement of this Order or subsequently acquired—
  - (a) by or on behalf of the Church, or any court of the Church or board or committee of the General Assembly or any association, fund or scheme of the Church or by or on behalf of any congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church; or
  - (b) by any trustee or body of trustees for behoof of or in connection with the Church or any court of the Church, board or committee of the General Assembly, association, fund or scheme of the Church or any congregation, financial board of a congregation, ecclesiastical body or organisation of the Church under any settlement or deed of trust, gift or appointment whether granted inter vivos or mortis causa.

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- (4) The moveable property transferred to and vested in the Investors Trust by virtue of subsection (1) of this section and any property held by it by virtue of subsection (3) of this section shall be held by the Investors Trust for the same ends, uses and purposes as those for which they were held by the Trust or for which they are or may hereafter be held or acquired by or on behalf of the Church or any court of the Church, board or committee of the General Assembly, association, fund or scheme of the Church or by any congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church or by a trustee or body of trustees as aforesaid prior to their being so transferred to the Investors Trust, where such ends, uses and purposes are expressed or defined and, failing such expression or definition, subject to the directions of the court of the Church, board or committee of the General Assembly, association, fund or scheme of the Church or the congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church or trustee or body of trustees as aforesaid on whose behalf they were held or, failing such directions, then, with the exception of any property held by them by virtue of subsection (3) (b) of this section, subject to the directions of the General Assembly.

#### *Transfers to General Trustees*

- 23 (1) In this section “title sheet” means a title sheet of an interest in land under section 6 of the Land Registration (Scotland) Act 1979.
- (2) Subject to the provisions of this Order all heritable property in Scotland vested in and held by the Trust immediately before the appointed day shall, by virtue of this Order, on that day be transferred to and vest in the General Trustees and all rights, obligations, claims and demands relative to the said heritable property including all accrued rents, income or interest and all arrears of rents, income or interest shall by virtue of this Order be deemed and taken to be validly transferred to and vested in the General Trustees.
- (3) For the purpose of enabling the General Trustees if thought fit to complete a title to any heritable property in Scotland or to any part thereof by—
- (a) expediting a notarial instrument or notice of title and recording the same in the appropriate division of the General Register of Sasines or by obtaining or granting a conveyance, assignation or transfer of such property and recording the same in like manner; or
  - (b) registering an interest in land in the Land Register of Scotland; or
  - (c) registering such amendment as is necessary to the title sheet of an interest in land registered in the Land Register of Scotland, this Order shall be deemed to be and may be used as a general disposition or assignation as the case may be of such heritable property in favour of the General Trustees.
- (4) In addition to the property transferred to the General Trustees by virtue of subsection (2) of this section, the General Trustees may hold any heritable property or moveable property held at the commencement of this Order or subsequently acquired —
- (a) by or on behalf of the Church or any presbytery of the Church, or any board or committee of the General Assembly or any association, fund or scheme of the Church; or
  - (b) by any trustee or body of trustees for behoof of or in connection with the Church or any court of the Church, board or committee of the General Assembly, association, fund or scheme of the Church or any congregation,

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financial board of a congregation, ecclesiastical body or organisation of the Church under any settlement or deed of trust, gift or appointment, whether granted inter vivos or mortis causa.

- (5) The property transferred to and vested in the General Trustees by virtue of subsection (2) of this section and any property held by them by virtue of subsection (4) of this section shall be held by the General Trustees for the same ends, uses and purposes as those for which they were held by the Trust or for which they are or may hereafter be held or acquired by the Church or any presbytery of the Church, or any board or committee of the General Assembly or any association, fund or scheme of the Church, or by a trustee or body of trustees as aforesaid, prior to their being so transferred to the General Trustees where such ends, uses and purposes are expressed or defined and, failing such expression or definition, subject to the directions of the presbytery, board or committee, association, fund or scheme of the Church, or trustee or body of trustees as aforesaid, on whose behalf they were held or, failing such directions, then, with the exception of any property held by them by virtue of subsection (4) (b) of this section, subject to the directions of the General Assembly.

*Transfer of interests in heritable and other property*

- 24 (1) For the avoidance of doubt it is hereby declared that the transfer and vesting of any property to and in the Investors Trust or the General Trustees by virtue of this Order shall not—
- (a) in relation to property in England and Wales constitute a purchase or creation of an interest in land for the purposes of section 30 (2) of the Landlord and Tenant Act 1954; or
  - (b) constitute an assignation, assignment, transfer, devolution, parting with possession or other disposition of property or of an interest in property for the purposes of any provision relating to assignation, assignment, transfer, devolution, parting with possession or other disposition contained in any deed or other instrument or document concerning that property or that interest; or
  - (c) operate as a breach of covenant or condition against alienation; or
  - (d) give rise to any forfeiture or irritancy; or
  - (e) invalidate or discharge any contract or security; or
  - (f) operate so as to merge any leasehold interest (being the interest of the lessee of land under a lease or the interest of the sublessee of land under a sublease) in the interest of the immediate landlord under the lease or sublease.

*Certain trusteeships not to pass with trust property*

- 25 The powers, responsibilities and duties of any trustee or body of trustees (including where acting in that capacity the Trust) in relation to property held for behoof of or in connection with the Church or any court of the Church, board or committee of the General Assembly, association, fund or scheme of the Church or any congregation, financial board of a congregation, ecclesiastical body or organisation of the Church under any settlement or deed of trust, gift or appointment, whether granted inter vivos or mortis causa, shall continue to be exercisable and performed by the trustee or body of trustees for the time being of that settlement or deed of trust, gift or appointment notwithstanding any transfer to and vesting of such property in the Investors Trust or the General Trustees by virtue of section 22 or 23 of this Order.

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*Continuation of byelaws and regulations*

- 26 On and after the appointed day all byelaws and regulations made by the General Assembly in respect of any heritable property and moveable property held by the Trust shall, until altered or revoked, continue to apply and have effect with respect to that property to the same extent and effect as if this Order had not been passed and shall be operated in relation to that property by the Investors Trust or the General Trustees as the case may be as if any references to the Trust in such byelaws and regulations were references to the Investors Trust or to the General Trustees.

*Investors Trust and General Trustees may receive gifts, bequests, etc., on behalf of Church*

- 27 In the event of the Church, or any court of the Church or any board or committee of the General Assembly or any association, fund or scheme of the Church or any congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church being or becoming entitled to any gift, legacy or bequest or to payment of any capital sum, or to payment of the income of any capital sum, or any annuity or annual payment it shall be competent for the Investors Trust or the General Trustees to receive such gift, legacy or bequest or such capital sum or such income, annuity or annual payment on behalf of the Church or such court, board, committee, association, fund or scheme, or such congregation, financial board of a congregation or such other ecclesiastical body or organisation of the Church as the case may be and by the hand of the treasurer or the secretary of the Investors Trust or the treasurer or the clerk of the General Trustees to grant a receipt, discharge or other writing therefor and a receipt, discharge or other writing so granted in favour of any person or persons paying or transferring to the Investors Trust or the General Trustees any such gift, legacy or bequest or making payment of such capital sum or of such income, annuity or annual payment shall be a full and complete discharge to such person or persons who shall have no concern with the application of such gift, legacy or bequest or capital sum or of such income, annuity or annual payment.

*Trustees to be entitled to transfer to Investors Trust property or funds held for behoof of Church, etc*

- 28 (1) This section applies where a trustee or body of trustees shall hold any property or funds for behoof of or in connection with the Church or any court of the Church or any board or committee of the General Assembly or any association, fund or scheme of the Church or any congregation, financial board of a congregation, ecclesiastical body or organisation of the Church under any settlement or deed of trust, gift or appointment, whether granted *inter vivos* or *mortis causa*.
- (2) Where a trustee or body of trustees acting for the time being under such a settlement or deed of trust, gift or appointment shall desire to be relieved of the trust thereby constituted or created or of the whole or a part of the property or funds of such trust it shall be competent for such trustee or body of trustees, unless expressly prohibited by the terms of such settlement or deed of trust, gift or appointment, to denude himself or themselves of such trust, property or funds and to pay or transfer and convey the whole property or funds held thereunder or comprising such part to and in favour of the Investors Trust to be held by the Investors Trust for the same ends, uses and purposes as such property or funds was or were held prior to the date of such payment or transfer and conveyance.
- (3) Upon payment or transfer and conveyance under subsection (2) of this section being completed, the trustee or body of trustees making the same shall be fully exonerated,

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released and discharged of the trust constituted or created by such settlement or deed of trust, gift or appointment as aforesaid by any receipt, discharge, release or other writing to be granted by the Investors Trust under their hand and seal to and in favour of such trustee or trustees in respect of any property or funds paid, transferred or conveyed by him or them as aforesaid.

- (4) Notwithstanding anything contained in any such settlement or deed of trust, gift or appointment, whether granted *inter vivos* or *mortis causa*, any such trustee or body of trustees (including the Investors Trust consequent upon its assumption of trusteeship of any trust in terms of subsection (2) of this section) may from time to time contribute the whole or any part of the property or funds held as aforesaid to any fund for the time being held or maintained by the Investors Trust under the provisions of section 32 (Power to categorise, etc., and appropriate, etc., property) of this Order.
- (5) In the administration of any trust, the whole or any part of the property or funds of which has been contributed to any fund of the Investors Trust, all sums distributed from that fund as income shall be treated as income of the trust, and all sums distributed on withdrawal from or on the winding up of that fund shall, unless specifically designated by the General Assembly as income, be treated as capital of the trust.
- (6) The contribution to or deposit in a fund of the Investors Trust of the whole or any part of any property or funds to which this section is applicable shall for all purposes be an authorised investment of such assets.

*Power to transfer property from one body to another*

- 29 The General Trustees, the Trust and the Investors Trust shall have power to transfer heritable property and moveable property to each other provided that any property so transferred shall, after any such transfer, be held for the same ends, uses and purposes as those for which they had been held prior to such transfer.

## PART V

### POWERS OF INVESTMENT, ETC.

*Powers of investment*

- 30 (1) The Investors Trust and the General Trustees may invest the whole or any part of the funds belonging to or held by them from time to time (including, in the case of the Investors Trust, the whole or any part of the property and funds held by it in terms of subsection (2) of section 28 of this Order)—
- (a) in the purchase, or upon the security, of any heritable property or moveable property and whether involving liability or not (but not involving unlimited liability) and whether producing income or not as the Investors Trust or the General Trustees shall in their discretion think fit; or
  - (b) in depositing the whole or any part of the said funds with any bank, company, building society, authority or institution of any kind in any part of the world either at interest or otherwise and for such time and upon such terms in all respects as the Investors Trust or the General Trustees shall in their discretion think fit.

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- (2) In addition to investing in moveable property as aforesaid, the Investors Trust and the General Trustees may for fees, commission or other consideration underwrite or sub-underwrite the issue or disposal of any securities in which they may invest.

*Power to appoint managers*

- 31 The Investors Trust and the General Trustees may, upon such terms and conditions as they think fit, appoint investment or other managers (either from among their own number or otherwise) to manage any heritable property or moveable property held by them or held on their behalf.

*Power to categorise, etc., and appropriate, etc., property*

- 32 Subject to the provisions of this Order and of any byelaws and regulations governing the same made by the General Assembly, the Investors Trust may—
- (1) categorise, classify, place in different funds, divide, consolidate or place in a common fund or pool any property held by them or held on their behalf by reference to its type, its origin, its amount, the purposes for which or the trusts upon which it is held, the duration for which it is expected to be held, the investment objectives relative thereto or to such other criteria and for such purposes and subject to such conditions as they think fit; and
- (2) appropriate, allocate or attribute, either actually or notionally, and in whole or in part, any property held by them or held on their behalf, or any share or interest in such property, to any trustee or body of trustees or to any trust fund or to any court, board, committee, association, fund or scheme of the Church or to any congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church for which or for whom they hold property in such manner and subject to such conditions as they think fit.

*Additional powers as to heritable property*

- 33 (1) In this section “development” includes the carrying out of building, engineering, mining or other operations in, on, over or under heritable property or the making of any change in the use of any such property.
- (2) In relation to heritable property, the Investors Trust and the General Trustees may exercise all the powers of development, improvement and management which could be exercised by an absolute owner holding the property beneficially.

## PART VI

### MISCELLANEOUS

*Investors Trust and General Trustees entitled to sue for and recover property or funds, etc*

- 34 The Investors Trust and the General Trustees shall, without prejudice to any antecedent or existing right and title of the General Trustees or of the Trust or of the Investors Trust as regards any property or funds now or hereby vested or hereafter becoming vested in them, be entitled on behalf of the Church or of any court of the Church or any board or committee of the General Assembly or of any

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association, fund or scheme of the Church or of any congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church to sue for and recover all property or funds to which the Church or such court, board or committee, association, fund, scheme of the Church, congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church as the case may be may be entitled and also to enforce, compromise, settle or refer to arbitration all or any claims relating to such property or funds at the instance of or against the Church or such court, board or committee, association, fund, scheme of the Church or congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church.

#### *Execution of deeds*

- 35 (1) For any purpose other than those mentioned in subsection (2) below a document is validly executed by the Investors Trust if it is signed on its behalf by a member of the Investors Trust or its treasurer or secretary or by a person authorised to sign the document on its behalf.
- (2) For the purposes of any enactment or rule of law relating to the authentication of documents under the law of Scotland, a document is validly executed by the Investors Trust if it is sealed with the seal of the Investors Trust and subscribed on its behalf by—
- (a) two of the members of the Investors Trust; or
  - (b) a member and either the treasurer or the secretary of the Investors Trust, and such execution shall be equally binding and effectual whether attested by witnesses or not.
- (3) A document which bears to be executed by the Investors Trust in accordance with subsection (2) above is, in relation to such execution, a probative document.

#### *Power to appoint nominees*

- 36 The Investors Trust and the General Trustees may authorise that any property belonging to or held by them be held in the name or names of any other person or persons as nominees for them.

#### *Power to delegate collection and distribution of income*

- 37 The Investors Trust may grant all powers of attorney, mandates or other authorities necessary for the collection and distribution of income from the heritable property and moveable property for the time being held by it.

#### *Costs of management and administration*

- 38 All costs, charges and expenses incurred by the Investors Trust in managing and administering its affairs shall form a first charge upon the income of the trust funds and estate held and administered under or by virtue of the provisions of this Order except in so far as the same may in the discretion of the Investors Trust form a proper charge against any special or separate fund, property or estate forming part of such trust funds and estate or in so far as such costs, charges and expenses shall be provided by the General Assembly.



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*Questions or disputes referred to board of practice and procedure*

- 39 In the event of any question or dispute arising—
- (1) between the Investors Trust and any court of the Church (other than the General Assembly), any board or committee of the General Assembly, association, fund or scheme of the Church or any congregation, financial board of a congregation or other ecclesiastical body or organisation of the Church, or
  - (2) between the General Trustees and any presbytery of the Church, board or committee of the General Assembly, association, fund or scheme of the Church, on whose behalf heritable property or moveable property is held by the Investors Trust or by the General Trustees respectively, the same shall be referred to the board of practice and procedure of the General Assembly or to any special committee who may be appointed by the said board of practice and procedure or by the General Assembly for the purpose and the decision of the board of practice and procedure or of such special committee, if and when so appointed, shall be final and binding on all parties unless an appeal against such decision shall, within 21 days from the date of such decision, be taken or intimated by any party or parties concerned to the General Assembly.

*Investors Trust to be immune from liability*

- 40 The Investors Trust shall not be liable for the acts, receipts, neglects, defaults or frauds of any member of the Investors Trust or of any treasurer, secretary, clerk, law agent or other agent, officer or servant of the Investors Trust or for any loss or expense resulting through any depreciation or loss arising upon any heritable property or moveable property taken or held by the Investors Trust or through the insufficiency or deficiency of title of or to any heritable property or moveable property.

*Byelaws and regulations*

- 41 It shall be lawful for the General Assembly from time to time to make byelaws and regulations to be observed by the Investors Trust in the discharge of its duties and functions under this Order.

*Amendment of Companies Act 1985*

- 42 (1) Section 209 (interests to be disregarded) of the Companies Act 1985 shall be read and have effect as if, in subsection (10), for paragraph (b) there were substituted the following paragraph:—
- “(b) an interest of the Church of Scotland General Trustees, the Church of Scotland Trust or the Church of Scotland Investors Trust in shares held by them or of any other person in shares held by those Trustees or Trusts otherwise than as simple trustees;”.
- (2) Paragraph 12 of Schedule 13 to the Companies Act 1985 shall be read and have effect as if for paragraph (a) there were substituted the following paragraph:—
- “(a) of the Church of Scotland General Trustees, the Church of Scotland Trust or the Church of Scotland Investors Trust in shares or debentures held by them;”, and as if in paragraph (b) for the words “that Trust” there were substituted the words “those Trusts”. Accordingly there shall be added at the end of the note to that paragraph—

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“and “the Church of Scotland Investors Trust” is the body incorporated by Part III of the Order confirmed by the Church of Scotland (Properties and Investments) Order Confirmation Act 1994”.

#### *Repeals*

- 43 The enactments referred to in the first and second columns of the Schedule to this Order are hereby repealed to the extent specified in the third column of that Schedule.

#### *Costs of Order*

- 44 The costs, charges and expenses of and in connection with the preparation, obtaining and confirming of this Order shall be paid out of the funds of the Church.

### SCHEDULE

Section 43.

#### REPEALS

Chapter (1)	Short title (2)	Extent of repeal (3)
11 & 12 Geo. 5 c. cxxv.	Church of Scotland (General Trustees) Order Confirmation Act 1921.	Sections 17, 18 and 20 of the Order scheduled thereto.
22 & 23 Geo. 5 c. xxi.	Church of Scotland Trust Order Confirmation Act 1932.	Sections 4, 5, 6, 7 and 8 of the Order scheduled thereto.