

## SCHEDULES

### SCHEDULE 2

Section 40.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### PART I

###### THE TRUSTEE INVESTMENTS ACT 1961 AND THE CHARITIES ACT 1993

###### *The Trustee Investments Act 1961 (c. 62)*

- 1 (1) Sections 1, 2, 5, 6, 12, 13 and 15 shall cease to have effect, except in so far as they are applied by or under any other enactment.
- (2) Section 3 and Schedules 2 and 3 shall cease to have effect, except in so far as they relate to a trustee having a power of investment conferred on him under an enactment—
- (a) which was passed before the passing of the 1961 Act, and
  - (b) which is not amended by this Schedule.
- (3) Omit—
- (a) sections 8 and 9,
  - (b) paragraph 1(1) of Schedule 4, and
  - (c) section 16(1), in so far as it relates to paragraph 1(1) of Schedule 4.

###### *The Charities Act 1993 (c. 10)*

- 2 (1) Omit sections 70 and 71.
- (2) In section 86(2) in paragraph (a)—
- (a) omit “70”, and
  - (b) at the end insert “or”.
- (3) Omit section 86(2)(b).

##### PART II

###### OTHER PUBLIC GENERAL ACTS

###### *The Places of Worship Sites Act 1873 (c. 50)*

- 3 In section 2 (payment of purchase money, etc.) for “shall be invested upon such securities or investments as would for the time being be authorised by statute or the Court of Chancery” substitute “shall be invested under the general power of investment in section 3 of the Trustee Act 2000”.

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*The Technical and Industrial Institutions Act 1892 (c. 29)*

4 In section 9 (investment powers relating to proceeds of sale of land acquired under the Act) for subsection (5) substitute—

“(5) Money arising by sale may, until reinvested in the purchase of land, be invested—

- (a) in the names of the governing body, in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act), or
- (b) under the general power of investment in section 3 of that Act, by trustees for the governing body or by a person authorised by the trustees under that Act to invest as an agent of the trustees.

(6) Any profits from investments under subsection (5) shall be invested in the same way and added to capital until the capital is reinvested in the purchase of land.”

*The Duchy of Cornwall Management Act 1893 (c. 20)*

5 The 1893 Act is hereby repealed.

*The Duchy of Lancaster Act 1920 (c. 51)*

6 In section 1 (extension of powers of investment of funds of Duchy of Lancaster) for “in any of the investments specified in paragraph (a) of section one of the Trustees Act 1893 and any enactment amending or extending that paragraph” substitute “under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act)”.

*The Settled Land Act 1925 (c. 18)*

7 In section 21 (absolute owners subject to certain interests to have the powers of tenant for life), in subsection (1)(d) for “income thereof” substitute “resultant profits”.

8 In section 39 (regulations respecting sales), in subsection (2), in the proviso, for the words from “accumulate” to the end of the subsection substitute “accumulate the profits from the capital money by investing them and any resulting profits under the general power of investment in section 3 of the Trustee Act 2000 and shall add the accumulations to capital.”

9 In section 73 (modes of investment or application), in subsection (1) for paragraph (i) substitute—

“(i) In investment in securities either under the general power of investment in section 3 of the Trustee Act 2000 or under a power to invest conferred on the trustees of the settlement by the settlement;”.

10 (1) In section 75 (regulations respecting investment, devolution, and income of securities etc.), for subsection (2) substitute—

“(2) Subject to Part IV of the Trustee Act 2000, to section 75A of this Act and to the following provisions of this section—

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- (a) the investment or other application by the trustees shall be made according to the discretion of the trustees, but subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement, and
- (b) any investment shall be in the names or under the control of the trustees.”

(2) For subsection (4) of that section substitute—

“(4) The trustees, in exercising their power to invest or apply capital money, shall—

- (a) so far as practicable, consult the tenant for life; and
- (b) so far as consistent with the general interest of the settlement, give effect to his wishes.

(4A) Any investment or other application of capital money under the direction of the court shall not during the subsistence of the beneficial interest of the tenant for life be altered without his consent.

(4B) The trustees may not under section 11 of the Trustee Act 2000 authorise a person to exercise their functions with respect to the investment or application of capital money on terms that prevent them from complying with subsection (4) of this section.

(4C) A person who is authorised under section 11 of the Trustee Act 2000 to exercise any of their functions with respect to the investment or application of capital money is not subject to subsection (4) of this section.”

(3) Nothing in this paragraph affects the operation of section 75 in relation to directions of the tenant for life given, but not acted upon by the trustees, before the commencement of this paragraph.

11 After section 75 insert—

**“75A Power to accept charge as security for part payment for land sold**

(1) Where—

- (a) land subject to the settlement is sold by the tenant for life or statutory owner, for an estate in fee simple or a term having at least five hundred years to run, and
- (b) the proceeds of sale are liable to be invested,

the tenant for life or statutory owner may, with the consent of the trustees of the settlement, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a charge by way of legal mortgage of the land sold, with or without the security of any other property.

(2) If any buildings are comprised in the property secured by the charge, the charge must contain a covenant by the mortgagor to keep them insured for their full value against loss or damage due to any event.

(3) A person exercising the power under subsection (1) of this section, or giving consent for the purposes of that subsection—

- (a) is not required to comply with section 5 of the Trustee Act 2000 before giving his consent, and

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- (b) is not liable for any loss incurred merely because the security is insufficient at the date of the charge.
- (4) The power under subsection (1) of this section is exercisable subject to the consent of any person whose consent to a change of investment is required by the instrument, if any, creating the trust.
- (5) Where the sale referred to in subsection (1) of this section is made under the order of the court, the power under that subsection applies only if and as far as the court may by order direct.”
- 12 Omit section 96 (protection of each trustee individually).
- 13 In section 98 (protection of trustees in particular cases), omit subsections (1) and (2).
- 14 Omit section 100 (trustees' reimbursements).
- 15 In section 102 (management of land during minority or pending contingency), in subsection (2) for paragraph (e) substitute—  
“(e) to insure against risks of loss or damage due to any event under section 19 of the Trustee Act 1925;”.
- 16 (1) In section 104 (powers of tenant for life not assignable etc.)—  
(a) in subsection (3)(b) omit “authorised by statute for the investment of trust money”, and  
(b) in subsection (4)(b) for the words from “no investment” to “trust money;” substitute “the consent of the assignee shall be required to an investment of capital money for the time being affected by the assignment in investments other than securities, and to any application of such capital money;”.
- (2) Sub-paragraph (1) applies to the determination on or after the commencement of that sub-paragraph of whether an assignee’s consent is required to the investment or application of capital money.
- 17 In section 107 (tenant for life deemed to be in the position and to have the duties and liabilities of a trustee, etc.) after subsection (1) insert—  
“(1A) The following provisions apply to the tenant for life as they apply to the trustees of the settlement—  
(a) sections 11, 13 to 15 and 21 to 23 of the Trustee Act 2000 (power to employ agents subject to certain restrictions),  
(b) section 32 of that Act (remuneration and expenses of agents etc.),  
(c) section 19 of the Trustee Act 1925 (power to insure), and  
(d) in so far as they relate to the provisions mentioned in paragraphs (a) and (c), Part I of, and Schedule 1 to, the Trustee Act 2000 (the duty of care).”
- The Trustee Act 1925 (c. 19)*
- 18 Omit Part I (investments).
- 19 In section 14 (power of trustees to give receipts) in subsection (1) after “securities,” insert “investments”.

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- 20 In section 15 (power to compound liabilities), for “in good faith” substitute “if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act 2000”.
- 21 Omit section 21 (deposit of documents for safe custody).
- 22 In section 22 (reversionary interests, valuations, and audit)—
- (a) in subsection (1), for “in good faith” substitute “if they have discharged the duty of care set out in section 1(1) of the Trustee Act 2000”, and
  - (b) in subsection (3), omit “in good faith” and at the end insert “if the trustees have discharged the duty of care set out in section 1(1) of the Trustee Act 2000”.
- 23 Omit section 23 (power to employ agents).
- 24 Omit section 30 (implied indemnity of trustees).
- 25 In section 31(2) (power to invest income during minority) for “in the way of compound interest by investing the same and the resulting income thereof” substitute “by investing it, and any profits from so investing it”.

*The Land Registration Act 1925 (c. 21)*

- 26 In section 94(1) (registered land subject to a trust to be registered in the names of the trustees), at the end insert “or in the name of a nominee appointed under section 16 of the Trustee Act 2000”.

*The Administration of Estates Act 1925 (c. 23)*

- 27 In section 33, in subsection (3) (investment during minority of beneficiary or the subsistence of a life interest) for the words from “in any investments for the time being authorised by statute” to the end of the subsection substitute “under the Trustee Act 2000.”
- 28 In section 39 (powers of management) after subsection (1) insert—
- “(1A) Subsection (1) of this section is without prejudice to the powers conferred on personal representatives by the Trustee Act 2000.”

*The Universities and College Estates Act 1925 (c. 24)*

- 29 In section 26 (modes of application of capital money) in subsection (1) for paragraph (i) substitute—
- “(i) In investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act);”.

*The Regimental Charitable Funds Act 1935 (c. 11)*

- 30 In section 2(1) (application of funds held on account of regimental charitable funds)
- (a) in paragraph (a) for “in some manner” to “trusts” substitute “under the general power of investment in section 3 of the Trustee Act 2000”;
  - (b) in paragraph (b) after “the income” insert “or the other profits”.

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*The Agricultural Marketing Act 1958 (c. 47)*

- 31 (1) In section 16 (investment of surplus funds of boards) for paragraph (a) substitute—
- “(a) the moneys of the board not for the time being required by them for the purposes of their functions are not, except with the approval of the Minister, invested otherwise than in investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act); and”.
- (2) Any scheme made under the 1958 Act and in effect before the day on which sub-paragraph (1) comes into force shall be treated, in relation to the making of investments on and after that day, as including provision permitting investment by the board in accordance with section 16(a) of the 1958 Act as amended by sub-paragraph (1).

*The Horticulture Act 1960 (c. 22)*

- 32 In section 13 (miscellaneous financial powers of organisations promoting home-grown produce) for subsection (3) substitute—
- “(3) A relevant organisation may invest any of its surplus money which is not for the time being required for any other purpose in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act)”.

*The House of Commons Members' Fund Act 1962 (c. 53)*

- 33 (1) In section 1 (powers of investment of trustees of House of Commons Members' Fund) —
- (a) in subsection (2) omit “Subject to the following provisions of this section”;
- (b) omit subsections (3) to (5).
- (2) In section 2 (interpretation etc.) omit subsection (1).

*The Betting, Gaming and Lotteries Act 1963 (c. 2)*

- 34 In section 25(1) (general powers and duties of the Horserace Betting Levy Board) for paragraph (e) substitute—
- “(e) to make such other investments as—
- (i) they judge desirable for the proper conduct of their affairs, and
- (ii) a trustee would be able to make under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act);”.

*The Cereals Marketing Act 1965 (c. 14)*

- 35 (1) In section 18, in subsection (2) (Home-Grown Cereals Authority's power to invest reserve funds) for “in accordance with the next following subsection” substitute “in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).”
- (2) Omit section 18(3).

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*The Agriculture Act 1967 (c. 22)*

- 36 (1) In section 18, in subsection (2) (Meat and Livestock Commission’s power to invest reserve fund) for “in accordance with the next following subsection” substitute “in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).”
- (2) Omit section 18(3).

*The Solicitors Act 1974 (c. 47)*

- 37 In Schedule 2, for paragraph 3 (power of Law Society to invest) substitute—
- “3 The Society may invest any money which forms part of the fund in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).”

*The Policyholders Protection Act 1975 (c. 75)*

- 38 In Schedule 1, in paragraph 7, for sub-paragraph (1) (power of Policyholders Protection Board to invest) substitute—
- “(1) The Board may invest any funds held by them which appear to them to be surplus to their requirements for the time being—
- (a) in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act); or
- (b) in any investment approved for the purpose by the Treasury.”

*The National Heritage Act 1980 (c. 17)*

- 39 In section 6 for subsection (3) (powers of investment of Trustees of National Heritage Memorial Fund) substitute—
- “(3) The Trustees may invest any sums to which subsection (2) does not apply in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).”

*The Licensing (Alcohol Education and Research) Act 1981 (c. 28)*

- 40 In section 7 (powers of investment of Alcohol Education and Research Council) for subsection (5) substitute—
- “(5) Any sums in the Fund which are not immediately required for any other purpose may be invested by the Council in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).”

*The Fisheries Act 1981 (c. 29)*

- 41 For section 10 (powers of investment of Sea Fish Industry Authority) substitute—

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**“10 Investment of reserve funds**

Any money of the Authority which is not immediately required for any other purpose may be invested by the Authority in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act)”.

*The Duchy of Cornwall Management Act 1982 (c. 47)*

42 For section 1 (powers of investment of Duchy property) substitute—

**“1 Powers of investment of Duchy property**

The power of investment conferred by the Duchy of Cornwall Management Act 1863 includes power to invest in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).”

43 In—

- (a) section 6(3) (Duchy of Cornwall Management Acts extended in relation to banking), and
- (b) section 11(2) (collective citation of Duchy of Cornwall Management Acts), for “Duchy of Cornwall Management Acts 1868 to 1893” substitute “Duchy of Cornwall Management Acts 1863 to 1868”.

*The Administration of Justice Act 1982 (c. 53)*

44 In section 42 (common investment schemes) in subsection (6) for paragraph (a) substitute—

- “(a) he may invest trust money in shares in the fund without obtaining and considering advice on whether to make such an investment; and”.

*The Trusts of Land and Appointment of Trustees Act 1996 (c. 47)*

45 (1) In section 6 (general powers of trustees), in subsection (3) for “purchase a legal estate in any land in England and Wales” substitute “acquire land under the power conferred by section 8 of the Trustee Act 2000.”

(2) Omit subsection (4) of that section.

(3) After subsection (8) of that section insert—

- “(9) The duty of care under section 1 of the Trustee Act 2000 applies to trustees of land when exercising the powers conferred by this section.”

46 In section 9 (delegation by trustees) omit subsection (8).

47 After section 9 insert—

**“9A Duties of trustees in connection with delegation etc**

- (1) The duty of care under section 1 of the Trustee Act 2000 applies to trustees of land in deciding whether to delegate any of their functions under section 9.



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- (2) Subsection (3) applies if the trustees of land—
    - (a) delegate any of their functions under section 9, and
    - (b) the delegation is not irrevocable.
  - (3) While the delegation continues, the trustees—
    - (a) must keep the delegation under review,
    - (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.
  - (4) “Power of intervention” includes—
    - (a) a power to give directions to the beneficiary;
    - (b) a power to revoke the delegation.
  - (5) The duty of care under section 1 of the 2000 Act applies to trustees in carrying out any duty under subsection (3).
  - (6) A trustee of land is not liable for any act or default of the beneficiary, or beneficiaries, unless the trustee fails to comply with the duty of care in deciding to delegate any of the trustees' functions under section 9 or in carrying out any duty under subsection (3).
  - (7) Neither this section nor the repeal of section 9(8) by the Trustee Act 2000 affects the operation after the commencement of this section of any delegation effected before that commencement.”
- 48 Omit section 17(1) (application of section 6(3) in relation to trustees of proceeds of sale of land).
- 49 In Schedule 3 (consequential amendments) omit paragraph 3(4) (amendment of section 19(1) and (2) of Trustee Act 1925).

### PART III

#### MEASURES

##### *The Ecclesiastical Dilapidations Measure 1923 (No.3)*

- 50 In section 52, in subsection (5) (investment of sums held in relation to repair of chancels)—
- (a) for “in any investment permitted by law for the investment of trust funds, and the yearly income resulting therefrom shall be applied,” substitute “in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000, and the annual profits from the investments shall be applied”; and
  - (b) in paragraph (iii) for “any residue of the said income not applied as aforesaid in any year” substitute “any residue of the profits from the investments not applied in any year.”

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*The Diocesan Stipends Funds Measure 1953 (No.2)*

51 In section 4 (application of moneys credited to capital accounts) in subsection (1) for paragraph (bc) substitute—

“(bc) investment in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act);”.

*The Church Funds Investment Measure 1958 (No.1)*

52 In the Schedule, in paragraph 21 (range of investments of deposit fund) for paragraphs (a) to (d) of sub-paragraph (1) substitute—

“(aa) In any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act);”.

*The Clergy Pensions Measure 1961 (No.3)*

53 (1) In section 32 (investment powers of Board), in subsection (1), for paragraph (a) substitute—

“(a) in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act);”.

(2) Omit subsection (3) of that section.

*The Repair of Benefice Buildings Measure 1972 (No.2)*

54 In section 17, in subsection (2) (diocesan parsonages fund’s power of investment), for “who shall have the same powers of investment as trustees of trust funds:” substitute “who shall have the same power as trustees to invest in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).”

*The Pastoral Measure 1983 (No.1)*

55 In section 44, for subsection (6) (Redundant Churches Fund’s power of investment) substitute—

“(6) The powers to invest any such sums are—

- (a) power to invest in investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act); and
- (b) power to invest in the investments referred to in paragraph 21(1)(e) and (f) of the Schedule to the Church Funds Investment Measure 1958.”

*The Church of England (Pensions) Measure 1988 (No.4)*

56 Omit section 14(b) (amendment of section 32(3) of the Clergy Pensions Measure 1961).

*The Cathedrals Measure 1999 (No.1)*

- 57 In section 16 (cathedral moneys: investment powers, etc.), in subsection (1)—
- (a) for paragraph (c) substitute—
    - “(c) power to invest in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act),”, and
  - (b) omit the words from “and the powers” to the end of the subsection.