



2001 CHAPTER 14

PART II

INVESTMENT

General power of investment

3.—(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) A person invests in a loan secured on land if he has rights under any contract under which—

- (a) one person provides another with credit, and
 - (b) the obligation of the borrower to repay is secured on land.
- (5) “Credit” includes any cash loan or other financial accommodation.
- (6) “Cash” includes money in any form.

Standard investment criteria

4.—(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.

Advice

5.—(1) Before exercising any power of investment, whether arising under this Part or otherwise, a trustee must (unless the exception 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 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.

Restriction or exclusion of this Part, etc.

- 6.** The general power of investment is—
- (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.

Existing trusts and statutory powers

7.—(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(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 under section 3(2) of the Trustee Investments Act 1961 (c. 62) as a power to invest under that Act, or
- (b) confers power to invest under that Act,

is to be treated as conferring the general power of investment on a trustee.

Status: This is the original version (as it was originally enacted).

(4) This subsection applies to a person who is not a trustee but has a statutory power of making investments which is or includes power (however expressed)

—

(a) to make the same investments as are authorised by the Trustee Investments Act 1961 (c. 62); or

(b) to invest in any manner in which a trustee is for the time being authorised by law to invest trust funds.

(5) Sections 3 to 5 shall (with the necessary modifications) apply in relation to a person to whom subsection (4) applies if he were a trustee.

(6) A person to whom subsection (4) applies may acquire land as an investment.

(7) In subsection (4) “statutory power” means a power conferred by or under Northern Ireland legislation passed or made before the commencement of this section, other than a provision amended by Schedule 2.