

**ELIZABETH II**



**1977 CHAPTER ix**

An Act to provide for the administration as a charitable trust of the Number 1 Trust held by The Fidelity Trust Limited as trustee; to revise the objects of the trust and provide for the appointment of new trustees; and for other purposes. [22nd July 1977]

**W**HEREAS—

(1) The Fidelity Trust Limited (in this Act referred to as “the Company”) was incorporated on 28th September, 1908 under the Companies Acts 1862 to 1907 as a company empowered by its Memorandum of Association to accept and hold any real or personal property as trustee, to administer any trust, to exercise all powers, rights and discretions incidental thereto, and to act as trustees, agents, managers or receivers of real or personal property and generally to act as trustee upon such terms as it may deem proper. Its general powers include power to do all things incidental or conducive to the attainment of the specified objects of the Company:

(2) By a Declaration of Trust dated 26th March, 1909 (in this Act referred to as "the Trust Deed") the Company declared that it would hold certain real and personal property upon discretionary trusts, subject to a power of appointment (therein and in this Act referred to as "the overriding power") exercisable by deed by the persons specified in the Third Schedule to the Trust Deed and therein referred to as "the Beneficiaries," or the survivors of those persons, at any time before 26th March, 1930, so long as any five of those persons lived, and that, subject to any such appointment, it would, on the termination of the said period for the exercise of the overriding power, divide the said property among such of those persons as should then be living in equal shares:

(3) From time to time after the execution of the Trust Deed other real and personal property was given or bequeathed to the Company by various persons (who, together with the donors of the real and personal property described in the Trust Deed, are in this Act referred to as "the Donors") to the intent that the Company should hold them upon the trusts declared by the Trust Deed or by the various resolutions hereinafter referred to and apply them in accordance with the wishes of the Donors for the purposes specified by them:

(4) The property described in the Trust Deed and the said other property, together with further real and personal property representing it and the income of the said property, form part of a fund administered by the Company, such fund being known, and in this Act referred to, as "the Number 1 Trust Fund":

(5) The Trust Deed was executed with the express intention that the property held on trust should be and remain private property wholly unfettered and free from any trust, whether charitable, spiritual, educational, ecclesiastical, perpetual or of a public nature or otherwise, other than the trusts thereby declared as private trusts, with a view to the persons specified as the Beneficiaries under those private trusts holding the property donated to them and applying it in accordance with the expressed intentions of the Donors but without the creation of any trust for that purpose:

(6) By a Deed Poll of Appointment dated 10th December, 1913 (in this Act referred to as "the 1913 Appointment") a majority of the persons specified as the Beneficiaries in the Trust Deed, in exercise of the overriding power, appointed that, notwithstanding anything to the contrary in the Trust Deed and without prejudice to the validity of any deed thereafter purporting to be an appointment under the said overriding power, the overriding power should thenceforth be exercised by

resolution of a majority of the survivors of those persons: it was further declared by the 1913 Appointment that any such resolution should have the same force and effect according to its tenor as though it were a deed duly executed by a majority of the survivors of those persons:

(7) By a Resolution dated 10th July, 1914 (in this Act referred to as "the 1914 Resolution") expressed to be made in pursuance of the 1913 Appointment with the object and intent that the 1914 Resolution should have effect as an appointment in exercise of the overriding power, a majority of the survivors of the persons specified as the Beneficiaries in the Trust Deed resolved that, as from the date of the 1914 Resolution, the Company should hold the Trust Fund for a period of twenty-one years, upon trust for the survivors of those persons on trusts and subject to an overriding power of appointment similar or identical to the trusts and the overriding power contained in the Trust Deed:

(8) On various dates between 1917 and 1962 (namely, on 30th November, 1917, 12th June, 1922, 25th June, 1929, 27th April, 1938, 23rd July, 1945, 28th April, 1950 and 7th May, 1962) resolutions were passed in terms similar or identical to the 1914 Resolution, such resolutions being expressed to be passed in exercise of the overriding power of appointment contained in each and every next preceding resolution:

(9) By each such resolution the persons named in a schedule to the next preceding resolution, or a majority of the survivors of them, specified persons as the Beneficiaries and determined that the Company should hold the Number 1 Trust Fund on trusts and subject to any overriding power of appointment similar or identical to the trusts and the overriding power of appointment contained in the 1914 Resolution:

(10) In 1967, following a decision of the High Court of Justice (Chancery Division) in 1954 (*in re Churston Settled Estates, Freemantle and Another v. Churston (Baron) and Others*) that a power of appointment general in scope but exercisable jointly by two or more persons was to be treated for the purpose of the rule against perpetuities as a special power exercisable only within the permitted period, questions were raised as to the construction of the Trust Deed and as to the possible invalidity of the 1913 Appointment, the 1914 Resolution and each of the subsequent resolutions:

(11) Because the questions so raised affected the beneficial interests under the trusts upon which the property comprised in the Number 1 Trust Fund was held, the Company issued on 15th August, 1973 an Originating Summons in the High Court

of Justice (Chancery Division) directed to the persons named therein as defendants, seeking the determination of certain matters specified in the said summons for the purpose of resolving the said questions:

(12) Having regard to the rule of law determined by the said decision of the High Court in 1954 and subsequently followed by the High Court in 1973 in another case (re Earl of Coventry's Indentures, *Smith and Others v. Earl of Coventry and Others*) reported in 1974, it is accepted by or on behalf of all the parties to the action initiated by the Company that there is a strong probability that the 1914 Resolution and the successive resolutions would be found to be invalid so that the property originally held under the Trust Deed might remain subject to the trusts therein declared and the capital might vest in such of the therein-named Beneficiaries as were living on 26th March, 1930. The said parties are further advised that the nature and objects of the trusts, if any, affecting property subject to the purported trusts of the several resolutions are obscure but may fall to be determined as if each successive resolution was effective to declare trusts of property which vested in the Company as part of the Number 1 Trust Fund between the date of each such resolution and the date of the next following resolution:

(13) In these circumstances it was directed by an order of the High Court of Justice (Chancery Division) made by Mr. Justice Templeman on 7th December, 1976 that the Company should be at liberty to promote a Private Bill so as to secure that the Number 1 Trust Fund may be applied in the manner in and for the various purposes for which it has hitherto been applied in accordance with the wishes (so far as ascertainable and still capable of being put into effect) of the Donors (so far as those purposes are charitable) and, failing such purposes or to the extent that such purposes are not charitable, then for other charitable purposes connected with the Church of England (as defined in the Statutes of the Woodard Corporation) and that the Bill should contain such further or other provisions as the Company might be advised were appropriate and reasonable:

(14) It is expedient that the questions as to the validity of the Trust Deed, the 1913 Appointment, the 1914 Resolution and each of the subsequent resolutions should be resolved, that provision be made whereby the Number 1 Trust Fund may be administered in accordance with the general intentions of the Donors of the property comprised in the Fund and that the other provisions in this Act contained should be enacted:

(15) The purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it 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. This Act may be cited as the Fidelity Trust Act 1977. Short title.
2. In this Act, unless the subject or context otherwise requires— Interpretation.

“ the Company ” means The Fidelity Trust Limited;

“ the Donors ” means the various persons who gave or bequeathed the real and personal property described in the Trust Deed and the property subsequently vested in the Company to be held on the trusts declared in the Trust Deed;

“ the Number 1 Trust Fund ” means the property described in the Trust Deed, the other property administered in accordance with the terms thereof, the further property given or bequeathed by the Donors and any property from time to time representing the same and the income of any such property;

“ the 1913 Appointment ” means the Deed Poll of Appointment dated 10th December, 1913 and made by the twenty persons whose names were subscribed thereto as appointors under the powers conferred by the Trust Deed;

“ the 1914 Resolution ” means the Resolution dated 10th July, 1914 and made pursuant to the powers conferred by the Trust Deed and the 1913 Appointment;

“ the overriding power ” means the power of appointment exercisable by deed by the persons specified in the Third Schedule to the Trust Deed;

“ the seven resolutions ” means the seven hereinbefore recited resolutions passed on 30th November, 1917, 12th June, 1922, 25th June, 1929, 27th April, 1938, 23rd July, 1945, 28th April, 1950 and 7th May, 1962;

“ the Trust Deed ” means the Deed of Declaration of Trust dated 26th March, 1909 and made by John Athelstan Lawrie Riley contemporaneously with a Conveyance made between the said John Athelstan Lawrie Riley of the one part and the Company of the other part.

Validation  
of trust.

3. Notwithstanding any enactment or rule of law to the contrary, the Trust Deed, the 1913 Appointment, the 1914 Resolution and each of the seven resolutions are hereby validated and confirmed and, subject as provided in this Act, shall be deemed as from the respective dates thereof to have had full legal effect according to the tenor thereof.

Declaration  
of charitable  
trusts.

4.—(1) As from the passing of this Act the Number 1 Trust Fund shall be held upon trust to apply the capital and income thereof—

- (a) for the purposes (whether specified by the Donors or not) which accord with the wishes (so far as ascertainable and still capable of being put into effect) of the Donors (so far as those purposes are charitable) so that the same may be applied in the manner in and for the various charitable purposes for which the Number 1 Trust Fund has hitherto been applied;
- (b) subject to the provisions of paragraph (a) above, for such other charitable purposes, being purposes connected with the Church of England as defined in the Statutes of the Woodard Corporation dated 31st August, 1974 and set out in the schedule to this Act, as the trustees for the time being of the Number 1 Trust Fund may from time to time determine:

(2) As from the passing of this Act the Company shall have power to pay or apply (subject to the payment, as directed by the High Court of Justice in the proceedings referred to in recital (13) to this Act, of the costs, charges and expenses of such proceedings and of the costs, charges and expenses payable under section 7 (Costs of Act) of this Act) the income of the Number 1 Trust Fund in accordance with the trusts declared in subsection (1) of this section until such time as new trustees are appointed under the provisions of section 5 (Appointment of new trustees) of this Act.

Appointment  
of new  
trustees.

5.—(1) (a) Notwithstanding anything in the Trust Deed, the 1913 Appointment, the 1914 Resolution and the seven resolutions to the contrary, the power of appointment of new trustees of the Number 1 Trust Fund by the therein-named Beneficiaries shall be exercisable at a meeting held for that purpose within three months from the passing of this Act.

(b) At such meeting there shall be appointed no more than five trustees of the Number 1 Trust Fund who shall thereafter act in place of the therein-mentioned Beneficiaries for all purposes connected with the Number 1 Trust Fund and exercise all the powers of such Beneficiaries in addition to all other powers by this Act or any other enactment or rule of law conferred upon them as trustees.

(2) In the event of any difficulty arising over the making of any appointment under subsection (1) of this section or the making of any subsequent appointment of a trustee of the Number 1 Trust Fund, the Commissary General for the time being of the Diocese of Canterbury may appoint as such trustee any person whom he considers appropriate and may, whenever there is in the opinion of the said Commissary General no trustee capable of exercising his office, from time to time appoint any person to be a trustee thereof, whether for the purpose of filling a vacancy or as an additional trustee.

(3) The affairs and property of the Number 1 Trust Fund shall continue to be managed and administered by the Company as trustee in accordance with the provisions of the Trust Deed as having effect under this Act until such time as new trustees are appointed under the provisions of subsection (1) of this section.

6. Nothing in this Act shall prejudice or affect any jurisdiction of the High Court or of the Charity Commissioners over the charity to which this Act relates and its endowment.

Saving for jurisdiction of High Court and Charity Commissioners.

7. All costs, charges and expenses of and incidental to the preparing and applying for and obtaining and passing of this Act and the carrying the same into effect or otherwise in relation thereto shall be paid by the Company out of the funds of the Number 1 Trust Fund and primarily out of income (including accumulated income).

Costs of Act.

**SCHEDULE****DEFINITION OF CHURCH OF ENGLAND**

The Church of England means the integral part of Christ's One Holy Catholic and Apostolic Church now in communion with the See of Canterbury which, whether established by law or not, shall continue its present apostolic constitution and succession of ministry, and shall retain the doctrinal standards of the Church of England as now so established, whether in the same form or order of words or not but substantially such as are set forth in and implied by the general and special services, catechism and rubrics of the Prayer Book and ordinal of that Church at this date, but so that in case the Church of England shall be disestablished and any dispute shall arise as to what are the doctrinal standards so set forth or implied the same shall for the purposes of this definition be deemed to mean the doctrinal standards of the whole Catholic Church of Christ referred to in the Prayer Book, the same being determined by reference to the dogmatic decrees of the Councils accepted as ecumenical by and to the general tradition of the said whole Catholic Church prior to the Great Schism between East and West in the year 1054.

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# Fidelity Trust Act 1977

## CHAPTER ix

### ARRANGEMENT OF SECTIONS

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SCHEDULE—Definition of Church of England.