

ELIZABETH II



1987 CHAPTER iii

An Act to confirm a Provisional Order under the Private
Legislation Procedure (Scotland) Act 1936, relating to
The Advocates' Widows' and Orphans' Fund.
[2nd March 1987]

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 1936 c. 52.
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. The Provisional Order contained in the Schedule hereunto
annexed is hereby confirmed. Confirmation
of Order in
Schedule.
2. This Act may be cited as the Advocates' Widows' and
Orphans' Fund Order Confirmation Act 1987. Short title.

SCHEDULE

Advocates' Widows' and
Orphans' Fund

Provisional Order to make provision for certain changes in the administration of the Advocates' Widows' and Orphans' Fund; and for purposes connected therewith.

1830 c. xli.

Whereas pursuant to the Advocates' Widows' Fund Act 1830 a fund (hereinafter called "the fund") was established for the benefit of widows of members of the Faculty of Advocates in Scotland:

1968 c. xliv.

And whereas following a number of amendments the fund is maintained as a fund for the benefit of widows, widowers and orphans of members of the Faculty in pursuance of the Advocates' Widows' and Orphans' Fund Order 1968:

And whereas the Faculty are of the opinion that the administration of the fund could be better served by arrangements more suited to the present time and that certain changes should be made for which purpose a trust known as the 1985 Trust has been created and established:

And whereas it is expedient that the fund should be closed to all further contributors and that provision should be made for existing annuitants and that moneys belonging to the fund should be distributed as in this Order provided:

And whereas it is expedient that other provisions contained in this Order should be enacted:

1936 c. 52.

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 last-mentioned Act the Secretary of State orders as follows:—

1. This Order may be cited as the Advocates' Widows' and Orphans' Fund Order 1986. Short title.

2. In this Order unless there be something in the subject or context repugnant to such construction the following words and expressions shall have the meanings hereby assigned to them, namely:— Interpretation.

“annuitant” means a person in receipt of an annuity from the fund;

“commencement of this Order” means the date of the Act confirming this Order.

“contributor” means a contributor to the fund whether or not he has commuted his obligations under the Order of 1968;

“deferred annuity” means, in relation to any contributor, an annuity commencing on the death of that contributor and payable during the life of his widow;

“existing” means existing immediately before the commencement of this Order;

“Faculty” means the Faculty of Advocates in Scotland;

“faculty funds” means the faculty funds within the meaning of the 1976 scheme;

“fund” means the Advocates' Widows' and Orphans' Fund as maintained in pursuance of the Order of 1968;

“Order of 1968” means the Advocates' Widows' and Orphans' Fund Order 1968; 1968 c. xliv.

“the 1976 scheme” means the scheme approved and adopted at the meeting of the Faculty held on 14th January 1976 and set out in Schedule 1 to this Order with the exception of the now obsolete list of investments set out in the schedule thereto;

“the 1985 Trust” means the trust scheme set out in Schedule 2 to this Order;

“trustees” means the trustees of the fund;

“widow” includes widower; and cognate expressions shall be construed accordingly.

3. As from the commencement of this Order no person shall be admitted as a contributor to the fund and the trustees shall accept no contributions from contributors: Cessation of entry to fund, etc.

Provided that nothing in this section shall prejudice the right of the trustees under section 7 (Contributions in arrear) of the Order of 1968 to recover from or in respect of any contributor any taxes or contributions outstanding at the commencement of this Order together with any sums due and payable by way of interest and expenses.

4. As from the commencement of this Order for the purposes of paragraph 2 of the Schedule to the Order of 1968 “contributor” includes any person who is a contributor or a member of the Faculty. Meetings of contributors.

Existing annuitants.

5.—(1) Not later than six months after the commencement of this Order the trustees shall out of moneys forming part of the fund purchase from a life assurance company being a member of the Association of British Insurers and hold in respect of each existing annuitant an annuity which shall be 1.85 times the amount of that annuitant's existing annuity and shall provide in addition for an increase of 5 per cent. per annum in such annuity and shall pay the income arising therefrom to that annuitant during his life.

(2) Forthwith upon the purchase of an annuity under the foregoing subsection the trustees shall give notice in writing thereof to the annuitant in respect of whom the purchase was made and as from the date of such notice such annuitant shall cease to be entitled to any payment under his existing annuity.

Deferred annuities.

6.—(1) Not later than six months after the commencement of this Order the trustees shall out of moneys forming part of the fund purchase from a life assurance company being a member of the Association of British Insurers and hold in respect of each contributor to whom this section applies a deferred annuity and shall pay the income arising therefrom to his widow during her life from the date of his death.

(2) This section applies to each contributor who at the commencement of this Order—

- (a) is in practice as an advocate or holding full-time judicial or shrieval office and has been a contributor for 30 years or more; or
- (b) is neither in practice as an advocate nor in full-time judicial or shrieval office and has been a contributor for five years or more.

(3) A deferred annuity purchased in respect of any contributor in pursuance of subsection (1) of this section shall be of such amount as his widow would have been entitled to had she been an existing annuitant in terms of section 5 of this Order and shall provide in addition for an increase of 5 per cent. per annum in such annuity to be paid from the date of death of that contributor:

Provided that in respect of each contributor in respect of whom a deferred annuity has been purchased in pursuance of paragraph (b) of subsection (2) of this section, the amount of the annuity shall be of the same proportion, in relation to the annuity to which his widow would have been entitled under paragraph (a) of subsection (2) of this section, as the number of years during which he has been a contributor bears to 30 years.

Payments by trustees.

7. Upon fulfilment of their obligations under sections 5 and 6 of this Order the trustees may out of moneys forming part of the fund make the following payments:—

- (a) £500,000 to the trustees of the 1985 Trust for the purposes of that trust; and
- (b) £500,000 to the Faculty as part of the faculty funds held for the purposes of the 1976 scheme.

8.—(1) After they have fulfilled all their obligations under sections 5 and 6 of this Order or otherwise the trustees may at any time and from time to time in their absolute discretion invest the residue of the fund or any part thereof remaining in their hands (not being moneys forming part of any annuity or deferred annuity purchased by them) or pay the same or any part thereof to the trustees of the 1985 Trust.

Further payments by trustees.

(2) Upon the death of the last annuitant and provided that at that date no person may yet come to be an annuitant or upon it subsequently appearing that no person may yet come to be an annuitant the trustees shall transfer to the trustees of the 1985 Trust such residue of moneys, if any, forming part of the fund as then remains in their hands.

9. A receipt from the trustees of the 1985 Trust or from the treasurer of the Faculty as the case may be in respect of payments made by the trustees under sections 7 and 8 of this Order shall be a good and sufficient discharge to the trustees in respect of such payments; and a receipt by the trustees of the 1985 Trust when the residue of moneys forming part of the fund is transferred under this Order shall be a complete exoneration and discharge of the trustees in respect of their remaining actings under the Order of 1968 and this Order.

Discharge of trustees.

10. Where any provision of the Order of 1968 is inconsistent with a provision of this Order it shall to that extent cease to have effect and the relative provision of this Order shall prevail.

Provisions of Order to prevail.

11.—(1) Upon completion of the transfer of the residue of the fund in pursuance of section 8 of this Order or upon the death of the last annuitant whichever shall be the later and upon a resolution being passed to that effect by the trustees the fund shall come to an end and be determined and upon that dissolution of the fund the Order of 1968 shall be repealed.

Fund to be dissolved.

(2) Notice of the passing of such resolution and of the date therein specified shall, as soon as may be after the passing thereof, be advertised in the Edinburgh Gazette.

12. The enactments mentioned in Schedule 3 to this Order (being provisions which are spent or are no longer of practical utility) are hereby repealed.

Repeals.

13. The costs, charges and expenses of and incidental to preparing for, obtaining and confirming this Order incurred by the trustees shall be paid by the trustees out of the fund.

Costs of Order.

SCHEDULES**SCHEDULE 1****THE 1976 SCHEME**

Considering that the assets which have been and are held on behalf of the Faculty are held for the purposes hereinafter declared and that it is expedient that this be set forth and that the form of the Faculty Accounts should distinguish between these assets and moneys held for the Members of the Faculty, the Faculty resolve as follows:—

1. All property heritable and moveable presently held on behalf of the Faculty shall be divided into two parts, the first to be held as "the Faculty Funds" and the second to be held as "the Members' Funds". From the time of division these funds shall be treated as distinct from one another and shall form the subject of separate accounts in the Books of the Faculty.

2. The property presently held by the Faculty and listed in the Schedule hereto and the proceeds thereof, if sold, shall continue to be held by the Faculty as part of the Faculty Funds; the balance of the property presently held by the Faculty shall belong to the Members' Funds. Any property hereafter donated or bequeathed to the Faculty expressly or impliedly for any of the purposes mentioned in the following paragraph shall be held by the Faculty as part of the Faculty Funds.

3. The Faculty Funds shall be held by the Faculty in such manner and under such conditions as the Faculty may in its sole discretion determine for the following purposes:

- (1) The provision and maintenance of the Advocates' Library as the National Law Library of Scotland in accordance with the traditions of that Library and in particular as provided for in the National Library of Scotland Act 1925 and of such other law libraries as may be required to facilitate access by the public to qualified and independent advice on the law of Scotland and for the efficient administration of the Courts and of inferior tribunals.
- (2) The maintenance of the College of Justice in Scotland.
- (3) The provision of facilities for the training and examination of persons in the law of Scotland and for the maintenance in the public interest of proper standards of professional conduct among members of Faculty.
- (4) The furtherance of the sound development and administration of the law in Scotland including the provision of accommodation in reasonable proximity to the Courts or elsewhere in which the public may obtain advice on that law.
- (5) The preservation of buildings, books, manuscripts, papers, paintings and other objects of importance to the history of the law and its administration in Scotland, and making reasonable provision for the examination by the public of such buildings, books, manuscripts, papers, paintings and objects.

- (6) Such other purposes ancillary to the foregoing as are charitable purposes within the meaning of the Taxes Acts.

SCH. 1
—cont.

In administering the Faculty Funds the Faculty shall have the same powers of investment and administration as if they were beneficial owners thereof, but the Faculty shall not pay or apply these funds for the private benefit of any member of Faculty except upon the terms stated in the following paragraph.

The Faculty may allow members of Faculty the use of facilities provided or maintained by the Faculty out of the Faculty Funds only upon payment to the Faculty Funds either by a member of Faculty or by Faculty Services Limited or by the Faculty on behalf of its members out of the Members' Funds or by one or more of these of a sum which shall be determined as the reasonable value of the use of the said facilities by the members of Faculty and approved as such by the Faculty auditors who shall be members of the Institute of Chartered Accountants in Scotland.

If the said purposes become in the opinion of the Faculty at any time incapable of being further fulfilled the Faculty shall thereafter hold the Faculty Funds for such purposes which are charitable purposes within the meaning of the Taxes Acts as the Faculty may determine or, if it seems expedient for the Faculty to do so, the Faculty Funds may be conveyed to be used for such purposes as are charitable purposes within the meaning of the Taxes Acts as the Faculty may determine.

All Faculty rates and other payments received by the Faculty from its members in consequence of resolutions of Faculty and all Entry Money paid by Intrans advocates shall be credited to the Members' Funds and shall be used for the purpose of defraying the expense of providing facilities to members of Faculty. Any credit balance of the income of the Members' Funds may if the Faculty so decide be transferred to the Faculty Funds. In no circumstances shall there be any repayment by the Faculty Funds to the Members' Funds of any sum so transferred.

The Faculty auditors are empowered to make any apportionment of income or expenses which shall be required between the Faculty Funds and the Members' Funds.

This Scheme shall come into effect on the date on which it is approved by the Faculty.

In this Scheme "the Faculty" means the Faculty of Advocates and "the Faculty auditors" means the person or persons appointed by the Faculty as the Faculty auditors.

SCHEDULE 2

THE 1985 TRUST

We, William David Prosser, Queen's Counsel, Dean of the Faculty of Advocates, Alan Charles Macpherson Johnston, Queen's Counsel, Treasurer of the Faculty of Advocates and Nigel Murray Paton Morrison, Advocate, Clerk of the Faculty of Advocates, considering that it has been resolved by the Faculty of Advocates that a Trust should be established to be called The Faculty of Advocates 1985 Charitable Trust for the purposes hereinafter set forth and that we the said William David Prosser, Alan Charles Macpherson Johnston and Nigel Murray Paton Morrison have been appointed by the said Faculty of Advocates to execute this Deed of Trust do therefore hereby appoint The Right Honourable James Peter Hymers Mackay, Baron Mackay of Clashfern, Charles Kemp Davidson, commonly called the Honourable Lord Davidson, Sir Frederick William Fitzgerald O'Brien, Queen's Counsel, Sheriff Principal of Lothian and Borders, John Alastair Cameron, Queen's Counsel, Vice-Dean of Faculty, Colin Neil McEachran, Queen's Counsel, Leona June Dorrian, Advocate and James Walker McNeill, Advocate and such other person or persons as may hereafter be assumed into the Trust hereby created and the survivors and survivor of them, the major number of them accepting and surviving and resident in Great Britain being a quorum as Trustees and Trustee for the purposes aftermentioned (said Trustees for the time being acting under this deed being hereinafter called "the Trustees") and we do hereby pay and make over to the Trustees the sum of one hundred pounds (£100), which sum and all other money investments and other assets heritable and moveable which may be received by the Trustees whether by way of subscription, bequest, donation or otherwise for the purposes of the Trust (hereinafter called "the Trust Fund") shall be administered by the Trustees always in trust for the following charitable purposes, videlicet:

(First) The Trustees shall pay, apply or make over the whole free annual income of the Trust Fund, or such part thereof as they shall in their own absolute discretion think fit, to for or among or for the benefit of any one or more of such widows, widowers, children or former dependants of deceased members of the Faculty of Advocates as are by reason of poverty, indigence, illness, disability or age in need of relief or support, but that for the purpose of such relief or support and not otherwise;

(Second) If and insofar as there shall in any year be a balance of the free annual income of the Trust Fund remaining after exercise of the purposes and powers contained in Purpose (First) hereof, the Trustees shall pay, apply or make over the said balance, or such part thereof as they shall in their own absolute discretion think fit, to for or among or for the benefit of any one or more of (a) any living members of the Faculty of Advocates who by reason of disability, illness or age are permanently incapacitated from practice as such members, and by reason thereof are in need of relief or support, and (b) any wife, husband, child or other dependant of such living members incapacitated as aforesaid who is by reason thereof in need of relief or support, but that always, under either (a) or (b) aforesaid for the purpose of such relief or support and not otherwise;

(Third) If and insofar as there shall in any year be any part of the free annual income of the Trust Fund remaining after exercise of the purposes and powers contained in Purposes (First) and (Second) hereof, the Trustees shall retain the said part (together with any such part retained from the free annual income of any preceding year) as a Retained Income Fund; and they shall hold the said Retained Income Fund and pay, apply or make over the same for the like purposes and in the like manner, and subject to the same powers and discretions, as are set forth in Purposes (First) and (Second) hereof, and that in relation to any succeeding year;

SCH. 2
—cont.

(Fourth) If at any time after the expiry of three years complete from the date hereof it appears to the Trustees that the Retained Income Fund is of such a size that there is no reasonable prospect of the said Fund or some part thereof being required, in addition to the free annual income of the Trust Fund, in any future year or years for the purposes set forth in Purposes (First) and (Second) hereof, the Trustees may by written Minute in their own absolute discretion resolve that the said Fund, or such part thereof, shall cease to be held as or as part of the Retained Income Fund for the aforementioned purposes, but shall from the date of such Minute be held for the like purposes and in the like manner in all respects and subject to the like powers and discretions, as are hereinafter set forth in relation to the capital of the Trust Fund;

(Fifth) The Trustees shall hold the capital of the Trust Fund (including such part if any of the Retained Income Fund as shall in terms of Purpose (Fourth) hereof have been made the subject of a Minute thereunder and thereby ceased to be held as or as part of the said fund for the purposes aforementioned) for the like purposes as are hereinbefore set forth in relation to income by Purpose (First) hereof, with power to the Trustees in their own absolute discretion at any time or from time to time to pay, apply or make over the said capital or any part thereof to for among or for the benefit of such one or more of the persons mentioned in the said Purpose (First) as are for the reasons there specified in need of relief or support, but that for the purposes of such relief or support and not otherwise:

Provided however always that if at any time after the expiry of three years complete from the date hereof it appears to the Trustees that the said need is being and will in future according to their best judgment be sufficiently relieved by exercise of the powers hereinbefore contained in relation to income, the Retained Income Fund or capital notwithstanding diminution of the capital of the Trust Fund in terms of this proviso, the Trustees shall have power in their own absolute discretion at any time or from time to time to pay apply or make over the said capital or any part thereof to for or among or for the benefit of such one or more of the persons mentioned in Purpose (Second) hereof as are for the reasons there specified in need of relief or support and not otherwise;

(Sixth) If and insofar as at any time after the expiry of three years from the date hereof it appears to the Trustees that the capital of the Trust Fund is of such size that there is no reasonable prospect of the said Fund or some part thereof being required either as a source of income or for payment or application as capital in any future year or

SCH. 2
—cont.

years for the purposes hereinbefore set forth or any of them, the Trustees may by written Minute in their own absolute discretion resolve that the said Fund, or such part thereof, shall cease to be held as or as part of the Fund held hereunder for the said purposes, but shall from the date of such Minute be held by them for, and shall accordingly be paid, applied and made over by them to for or among or for the benefit of such charitable institutions, trusts, funds or other recipients (having powers and purposes which are charitable only) as the Trustees in their own absolute discretion shall at any time and from time to time select and determine and the said Fund, or such part thereof shall from the date of such Minute or Minutes be held, paid, applied and made over to for among or for the benefit of such charitable institutions, trusts, funds or other recipients (having such powers and purposes only) accordingly.

And it is hereby declared that the Trustees shall have power to apply the whole or part or parts of the capital or income of the Trust Fund for the foregoing charitable purposes set forth in Purposes (First), (Second), (Third), (Fourth) and (Fifth) in such manner as they shall in their sole discretion think fit but subject always to the said needs of any beneficiary at any time and without prejudice to the generality of the foregoing it is declared, that the Trustees may assist beneficiaries in any of the following ways:—

- (1) by making weekly or other periodical allowances;
- (2) by making grants and loans with or without interest, of such amounts and subject to such conditions as the Trustees shall from time to time decide;
- (3) by making grants or allowances for the purposes of medical treatment and care; or
- (4) by paying subscriptions and making donations to institutions responsible for the care of beneficiaries;

And it is further declared that the Trustees shall have power in carrying out the purposes hereof:—

- (a) to pay from the Trust Fund all proper charges and expenses necessary for the constitution and administration of the Trust;
- (b) to retain any property or asset of whatsoever nature from time to time comprised in the Trust Fund in its original state of investment for such time as the Trustees in their absolute discretion think fit and to realise the same on such terms as the Trustees shall think proper;
- (c) to invest any property or assets of whatsoever nature at any time forming part of the Trust Fund in all respects as if the Trustees were beneficially entitled thereto as individuals all which property or assets may be taken in the name of the Dean of Faculty and his successors in office *ex officio* for the time being;
- (d) to retain all or any of the income of the Trust Fund for such period or periods as may from time to time be permitted by law instead of paying or applying the same as it accrues or arises to the Trustees;

- (e) to borrow any money required for all and any of the purposes of the Trusts hereby constituted and in connection with any such borrowing to assign or convey in security any part or parts of the Trust Fund of whatsoever nature and that upon such terms and conditions as the Trustees shall think proper;
- (f) to employ stockbrokers, solicitors, factors and other professional persons and to pay any such person or persons the remuneration appropriate for his or her services;
- (g) to appoint Committees of their own number and any other person or persons whom they may in their sole and absolute discretion think fit to whom they may delegate any part or parts of the business of the Trust;
- (h) to lay down rules in regard to the signature of deeds, transfers, agreements, cheques, receipts and other writings for the purpose of securing the safe and convenient transaction of the financial business of the Trust;

SCH. 2
—cont.

And it is hereby provided that the Trustees shall not be responsible for errors or omissions nor for the loss of capital or income but only for wilful default, and it is an inherent condition of the Trust hereby constituted that the Trustees shall be absolutely free of any liability or responsibility in connection with any of the investments which they may make or hold from time to time in virtue of the powers of investments or holding conferred upon them;

And we consent to registration hereof in the Books of Council and Session for preservation.

IN WITNESS WHEREOF these presents are subscribed by us at Edinburgh on the Thirtieth day of October Nineteen hundred and Eighty five before these witnesses Mrs. Moira Burnett Paton and Mrs. Mary Norris Rodger, both Secretaries at Parliament House, Edinburgh.

We the Trustees appointed under the foregoing Deed of Trust hereby accept office as Trustees under the said Deed of Trust: IN WITNESS WHEREOF these presents are subscribed by us as Trustees foresaid at Edinburgh as follows:— by us the said John Alastair Cameron, Colin Neil McEachran, Leona June Dorrian and James Walker McNeill on the Thirty first day of October Nineteen hundred and Eighty five before these witnesses James McGouldrick and Christine Mary Ferguson (subscribing by her usual signature "Christine Ferguson") both Advocates' Clerks at Parliament House, Edinburgh; by me the said Charles Kemp Davidson, The Honourable Lord Davidson, on the First day of November in the year last mentioned before these witnesses Mrs. Moira Burnett Paton and Mrs. Mary Norris Rodger, both Secretaries at Parliament House, Edinburgh; by me the said Sir Frederick William Fitzgerald O'Brien on the Sixth day of the month and year last mentioned before these witnesses Neil Macvicar and Ronald David Ireland (subscribing by his usual signature "Ronald Ireland") both Sheriffs at Edinburgh Sheriff Court, Edinburgh; and by me the said James Peter Hymers Mackay, Baron Mackay of Clashfern, on the Ninth day of the month and year last mentioned before these witnesses William Adam Wilson, Professor, of Two Great Stuart Street, Edinburgh and Gordon Iain Wilson Shiach, Sheriff, of Ten Ainslie Place, Edinburgh.

SCHEDULE 3

ENACTMENTS REPEALED

Chapter xlv Advocates' Widows' and Orphans' Fund Order
1968—

- Section 4 (Contributor's annual contributions and provision
for redemption);
Section 5 (Marriage tax and equalising tax);
Section 6 (Production of evidence of birth and marriage);
Section 8 (Funds vested in trustees) subsection 2 (b), (c) and
(d);
Section 18 (Payments to orphans);
Section 24 (Power to alter annuities, etc. on actuarial report);
Section 25 (As to alteration in rates of annuities, etc.).

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