



# Trusts (Scotland) Act 1921

## 1921 CHAPTER 58 11 and 12 Geo 5

### 4 General powers of trustees.

- (1) In all trusts the trustees shall have power to do the following acts, where such acts are not at variance with the terms or purposes of the trust, and such acts when done shall be as effectual as if such powers had been contained in the trust deed, viz.:—
- (a) To sell the trust estate or any part thereof, heritable as well as moveable.
  - <sup>F1</sup>(b) .....
  - (c) To grant leases of any duration (including mineral leases) of the heritable estate or any part thereof and to remove tenants.
  - (d) To borrow money on the security of the trust estate or any part thereof, heritable as well as moveable.
  - (e) To excamb any part of the trust estate which is heritable.
  - <sup>F2</sup>(ea) To make any kind of investment of the trust estate (including an investment in heritable property).
  - (eb) To acquire heritable property for any other reason.]
  - <sup>F3</sup>(ee) .....
  - (f) To appoint factors and law agents and to pay them suitable remuneration.
  - (g) To discharge trustees who have resigned and the representatives of trustees who have died.
  - (h) To uplift, discharge, or assign debts due to the trust estate.
  - (i) To compromise or to submit and refer all claims connected with the trust estate.
  - (j) To refrain from doing diligence for the recovery of any debt due to the truster which the trustees may reasonably deem irrecoverable.
  - (k) To grant all deeds necessary for carrying into effect the powers vested in the trustees.
  - (l) To pay debts due by the truster or by the trust estate without requiring the creditors to constitute such debts where the trustees are satisfied that the debts are proper debts of the trust.
  - (m) To make abatement or reduction, either temporary or permanent, of the rent, lordship, royalty, or other consideration stipulated in any lease of land, houses,

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*Changes to legislation: There are currently no known outstanding effects for the Trusts (Scotland) Act 1921, Section 4. (See end of Document for details)*

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tenements, minerals, metals, or other subjects, and to accept renunciations of leases of any such subjects.

- (n) To apply the whole or any part of trust funds which the trustees are empowered or directed by the trust deed to invest in the purchase of heritable property in the payment or redemption of any debt or burden affecting heritable property which may be destined to the same series of heirs and subject to the same conditions as are by the trust deed made applicable to heritable property directed to be purchased.

[<sup>F4</sup>(o) to concur, in respect of any securities of a company (being securities comprised in the trust estate), in any scheme or arrangement—

- (i) for the reconstruction of the company.
- (ii) for the sale of all or any part of the property and undertaking of the company to another company.
- (iii) for the acquisition of the securities of the company, or of control thereof, by another company,
- (iv) for the amalgamation of the company with another company, or
- (v) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if the trustees were entitled to such securities beneficially; to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of, or in exchange for, all or any of the first mentioned securities; and to retain any securities so accepted as aforesaid for any period for which the trustees could have properly retained the original securities;]

[<sup>F4</sup>(p) to exercise, to such extent as the trustees think fit, any conditional or preferential right to subscribe for any securities in a company (being a right offered to them in respect of any holding in the company), to apply capital money of the trust estate in payment of the consideration, and to retain any such securities for which they have subscribed for any period for which they have power to retain the holding in respect of which the right to subscribe for the securities was offered (but subject to any conditions subject to which they have that power); to renounce, to such extent as they think fit, any such right; or to assign, to such extent as they think fit and for the best consideration that can reasonably be obtained, the benefit of such right or the title thereto to any person, including any beneficiary under the trust.]

[<sup>F5</sup>(1A) The power to act under subsection (1)(ea) or (eb) above is subject to any restriction or exclusion imposed by or under any enactment.

(1B) The power to act under subsection (1)(ea) or (eb) above is not conferred on any trustees who are—

- (a) the trustees of a pension scheme,
- (b) the trustees of an authorised unit trust, or
- (c) trustees under any other trust who are entitled by or under any other enactment to make investments of the trust estate.

(1C) No term relating to the powers of a trustee contained in a trust deed executed before 3rd August 1961 is to be treated as restricting or excluding the power to act under subsection (1)(ea) above.

(1D) No term restricting the powers of investment of a trustee to those conferred by the Trustee Investments Act 1961 (c. 62) contained in a trust deed executed on or after

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3rd August 1961 is to be treated as restricting or excluding the power to act under subsection (1)(ea) above.

(1E) The reference in subsection (1D) above to a trustee does not include a reference to a trustee under a trust constituted by a private or local Act of Parliament or a private Act of the Scottish Parliament; and “trust deed” shall be construed accordingly.

(1F) In this section—

“authorised unit trust” means a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 (c. 8) is in force,

“enactment” has the same meaning as in the Scotland Act 1998 (c. 46),

“pension scheme” means an occupational pension scheme (within the meaning of the Pension Schemes Act 1993 (c. 48)) established under a trust and subject to the law of Scotland. ]

(2) This section shall apply to acts done before as well as after the passing of this Act, but shall not apply so as to affect any question relating to an act enumerated in head (a), (b), (c), (d), or (e) of this section which may, at the passing of this Act, be the subject of a depending action.

#### Textual Amendments

- F1** S. 4(1)(b) repealed (28.11.2004) by 2000 asp 5, ss. 71, 76(2), 77(2), Sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2005/456, art. 2
- F2** S. 4(1)(ea)(eb) inserted (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), ss. 93(2)(a), 107(2); S.S.I. 2005/644, art. 2(1), Sch.
- F3** S. 4(1)(ee) repealed (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), ss. 93(2)(b), 107(2); S.S.I. 2005/644, art. 2(1), Sch.
- F4** S. 4(1)(o)(p) added by Trustee Investments Act 1961 (c. 62), s. 10
- F5** S. 4(01A)-(01F) inserted (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), ss. 93(3), 107(2); S.S.I. 2005/644, art. 2(1), Sch.

#### Modifications etc. (not altering text)

- C1** S. 4 extended by National Parks and Access to the Countryside Act 1949 (c. 97), s. 16(5)(b), Forestry Act 1967 (c. 10), s. 5(4), Sch. 2 para. 4(2), Countryside (Scotland) Act 1967 (c. 86), s. 13(5) and Agriculture Act 1970 (c. 40), s. 33(3)
- C2** S. 4 extended by Ancient Monuments and Archaeological Areas Act 1979 (c. 46, SIF 3), s. 18(5); by Countryside (Scotland) Act 1981 (c. 44, SIF 46:1), s. 9(6); S. 4 extended (30.10.1994) by S.I. 1994/2716, reg. 86(6)

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