



## **THE CAYMAN ISLANDS LAW REFORM COMMISSION**



**FINAL REPORT**

**SETTLED LAND ACT**

**10 MARCH, 2025**



## **THE CAYMAN ISLANDS LAW REFORM COMMISSION**

|                                       |                                                         |
|---------------------------------------|---------------------------------------------------------|
| <b>Chairman</b>                       | <b>Mr. Hector Robinson, KC</b>                          |
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## **ACKNOWLEDGEMENTS**

The Law Reform Commission extends thanks to all stakeholders and the general public for the valued contributions leading to the conclusion of this Final Report.

# **FINAL REPORT**

## **SETTLED LAND ACT**

### **INTRODUCTION**

In accordance with section 12 of the *Law Reform Commission Act (2019 Revision)*, the Law Reform Commission (the “Commission”) submits for the consideration of the Honourable Attorney General its Final Report entitled “**Settled Land Act**”.

This Final Report contains recommendations which seek to respond to issues that relate to the *Settled Land Act (1998 Revision)* and is supported by the proposed *Settled Land (Amendment) Bill, 2025* (Appendix 1).

### **BACKGROUND**

1. On 1<sup>st</sup> July, 2021, the Commission resolved to consider whether the *Settled Land Act (1998 Revision)* (the “SLA”) should be retained in the Cayman Islands. This followed an initial consideration of the history and purpose of the Act.
2. The Commission conducted a comprehensive review of the development of the SLA and its current application with a view to determining whether reform is necessary and, if so, the shape that reform should take.

### **RESEARCH AND CONSULTATION PROCESS**

3. The research of the Commission included an examination of –
  - (a) the development of the SLA;
  - (b) reforms undertaken in the United Kingdom and other jurisdictions; and
  - (c) difficulties with the application of the SLA.

4. The research findings of the Commission resulted in the formulation, for public consultation, of a Discussion Paper titled “**Settled Land Act**”. The Paper is attached as Appendix 2.
5. The Discussion Paper was subsequently published for public comment and forwarded to the following institutional stakeholders –
  - Office of the Governor;
  - Judicial Administration;
  - Members of Parliament;
  - Ministry of District Administration and Lands;
  - Registrar of Lands and Survey;
  - Ministry of Planning, Agriculture, Housing and Infrastructure;
  - Portfolio of Legal Affairs;
  - Office of the Ombudsman;
  - Truman Bodden Law School;
  - Cayman Islands Legal Practitioners Association;
  - Cayman Islands Association of Mediators and Arbitrators;
  - Cayman Islands Bankers Association;
  - Cayman Islands Chamber of Commerce;
  - Cayman Islands Real Estate Brokers Association;
  - Cayman Society of Architects, Surveyors and Engineers;
  - Cayman Islands Civil Service Association;
  - Society of Trusts and Estates Practitioners Cayman Islands; and
  - Cayman National Cultural Foundation.
6. Stakeholders and members of the general public were invited to respond to the issues and questions identified in the Discussion Paper. The consultation period for the Discussion Paper commenced on 1<sup>st</sup> September, 2023 and concluded on 1<sup>st</sup> December, 2023.

## **DISCUSSION PAPER - AREAS OF EXAMINATION**

### **History and purpose of settlements**

7. The Commission noted that the strict settlement began as a form of trust in the English common law that restricted the sale or inheritance of an estate in real property and prevented the property from being sold, devised by will, or otherwise alienated by the tenant for life. This allowed the landed gentry to keep their estates intact in the family in an indefinite and pre-ordained chain of succession. However, the strict settlement often left

the tenant for life wealthy in land but heavily in debt. Often, the estate did not generate sufficient income for its upkeep and the payment of annuities to other family members. With the rise of the merchant class, the trust for sale developed, in which trustees were directed to sell trust property and hold the proceeds on trust. In addition to providing a simple way of dividing trust property among beneficiaries, the trustees could also be given the power to postpone the sale. This ensured the land could be sold in favourable market conditions.

8. The United Kingdom attempted to address the difficulties associated with strict settlements via a series of Acts between 1882 and 1925 (the “Settled Land Acts”). The Settled Land Acts gave the tenant for life statutory powers to deal with land to render it marketable, including the power to sell the fee simple interest in the land. The 1925 Act had the effect of vesting the legal estate in the land in the tenant for life, in order to facilitate conveyancing by enabling a single person to deal with the land. This rendered the tenant for life both a trustee and a beneficiary of the estate. To protect the interests of the other beneficiaries of the estate, the 1925 Act provided for trustees of the settlement to be appointed, with powers to ensure the tenant for life dealt with the land appropriately.
9. The Commission summarised the findings of the Law Commission of England and Wales in reviewing the system created by the Settled Land Acts. The Law Commission identified three key issues with the scheme –
  - (a) the Settled Land Acts removed many of the differences between the strict settlement and the trust for sale, making it difficult to justify the continuing existence of two systems;
  - (b) the 1925 Act was so phrased that any instrument creating successive interests in land was deemed to be a settlement unless a trust for sale was expressly adopted, resulting in the inadvertent application of the Act when trusts of land were created without proper advice; and
  - (c) the extensive powers of the tenant for life, combined with their position as both a trustee and the principal beneficiary of the estate, created a risk that the person



entitled to the remainder of the estate could inherit an estate that is significantly diminished in value.

10. The Law Commission made a number of recommendations that resulted in the enactment of the *Trusts of Land and Appointment of Trustees Act 1996*, which introduced a unitary system of trusts of land. Subject to some minor exceptions, it became impossible to create new settlements. The trust of land is based on the trust for sale, with the trustees holding the legal estate in the land and having powers of disposition and management.

### **The Cayman Islands legislative scheme**

11. The Commission outlined the key provisions of the SLA, which is based on the original *Settled Land Act 1882* of the United Kingdom. The Commission also identified some of the difficulties created by the scheme. The SLA gives the tenant for life the power to sell, exchange, lease and mortgage land that is the subject of a settlement. It also deems the tenant to have the duties and liabilities of a trustee.
12. The Commission noted that the problems that afflicted the United Kingdom regime are replicated in the Cayman Islands legislation, particularly as it carries the risk of inadvertent settlements being created, with the associated problems for beneficiaries and purchasers. In addition, the Cayman Islands statutory scheme has complexities not present in the pre-1997 United Kingdom scheme. Under the SLA, the tenant does not hold the legal estate in the land. As was the case in the United Kingdom prior to 1925, the tenant for life has power to deal with the land, but does not own it. However, section 123 of the *Registered Land Act (2018 Revision)* (the “RLA”) allows the tenant for life under a settlement to be registered as the proprietor of the land. While the United Kingdom amended its legislation in 1925 so that the settled land was vested in the tenant for life as trustee, the Cayman Islands has not followed suit.

### **Reforms in other jurisdictions**

13. In addition to the reforms in the United Kingdom, the Commission examined reforms in other Commonwealth jurisdictions. The Commission noted that Ireland implemented a statutory scheme of trusts of land, similar to that of the United Kingdom, in 2009. The Northern Ireland Law Commission recommended the same. Only three of the eight

Australian states and territories retain a scheme to govern settled land outside of general trust law.

### **Options examined for reform**

14. The Discussion Paper outlined two options for reform in the Cayman Islands –

**Option 1.** Amend the SLA so that no future settlements can be created. Existing settlements would be preserved, and the SLA would continue to apply to those settlements.

**Option 2.** Repeal the SLA. A transitional period of 1 year would be provided for any existing settlements to be converted into a trust to be governed by the *Trusts Act (2021 Revision)*.

15. In addition, the Discussion Paper outlined potential amendments to the *Trusts Act (2021 Revision)* to govern trusts of land, being any trust of property that includes land, with the exception of settled land in existence before commencement of the amendments. The new scheme of trusts of land would be modelled on the *Trusts of Land and Appointment of Trustees Act 1996* of the United Kingdom.

### **PUBLIC AND STAKEHOLDER RESPONSES TO THE DISCUSSION PAPER**

16. Only one submission was received in response to the Discussion Paper, from Professor Simon Cooper of the Truman Bodden Law School. Professor Cooper noted that the policy rationale of the SLA remains relevant, in that it ensures that land remains marketable and capable of being sold, leased, mortgaged and improved, despite the attempts of landowners to tie up the land in fetters. Professor Cooper noted the difficulties of integrating the SLA scheme into the registration system under the RLA. He also highlighted some of the advantages of the *Trusts of Land and Appointment of Trustees Act 1996* (United Kingdom), particularly in limiting the potential for conflict of interest noted in the Discussion Paper by ensuring that the beneficiary's power to deal with land is subject to a power of attorney which can be revoked. However, Professor Cooper also noted that adopting a new regime for trusts of land to deal with successive interests will replace the current dual regime with

a different dual regime (of trusts that cover successive interests in land and other trusts). Further, Professor Cooper outlined a number of difficulties associated with the United Kingdom legislation, particularly as it relates to land held on trust for minors and lifetime occupation rights. A summary of the submission can be found in Appendix 3.

## **RECOMMENDATIONS FOR REFORM**

17. The Commission considered the submission emerging from the consultation process and the legislative approaches adopted in other jurisdictions. The Commission confirms its preliminary view that a unitary system of trusts would simplify the statutory regime and provide the flexibility to facilitate trusts tailored to suit the requirements of each particular case. The Commission finds the current regime to be particularly problematic in the significant risk of settlements being created inadvertently, subjecting them to the application of the SLA unintentionally. In addition, the interaction between the SLA and the RLA is unsatisfactory and overly complex.
18. The Commission notes that the SLA was designed to ensure that tenants for life have the capacity to deal with land to ensure its upkeep. However, the current SLA also creates a risk of the tenant for life failing to exercise their powers responsibly and leaving successors with a diminished estate. This risk is particularly acute where the tenant exercises their power of sale and, due to the terms or timing of the sale, achieves a low price. The successor may not discover the sale until after the tenant's death, at which point no effective remedy may be available. While the SLA deems the tenant for life to have the duties and liabilities of a trustee, it is unclear whether there is any practical likelihood that the tenant's dealings with the land can be effectively monitored to ensure they exercise their powers in the interests of all parties entitled under the settlement. Conversely, a trust instrument granting a right to lifetime occupation can be an effective means for governing how the land is dealt with during the period of occupation.
19. The Commission acknowledges the concerns raised by Professor Cooper regarding modelling new provisions of the *Trusts Act (2021 Revision)* on the *Trusts of Land and Appointment of Trustees Act 1996* (United Kingdom). Having reviewed the *Trusts Act (2021 Revision)* further, the Commission considers the existing regulatory structure for

trusts to be adequate. Where the *Trusts Act (2021 Revision)* is silent on a matter, the common law applies. As such, the Commission does not recommend any amendments to the *Trusts Act (2021 Revision)* at this time.

20. The Commission holds the view that the limited utility of the SLA in the modern Cayman Islands context does not outweigh the difficulties associated with it. As such, the Commission recommends that it should not be possible to create new settlements under the Act. However, the Commission notes that there are some existing settlements and accepts that the SLA should be preserved so far as it applies to them. As such, the Commission recommends amending the SLA so that no future settlements can be created. All future life interests in land should be governed by the instrument that creates them, the *Trusts Act (2021 Revision)*, and the general law.

### **PROPOSED LEGISLATIVE FRAMEWORK**

21. The proposed *Settled Land (Amendment) Bill, 2025* would amend the SLA to specify that the Act applies only to existing settlements and no new settlements may be created. However, the amendments specify that the SLA continues to apply to instruments executed to amend existing settlements (which may themselves fall within the definition of “settlement”). As such, these amendments would have no impact on existing settlements currently operating under the SLA.

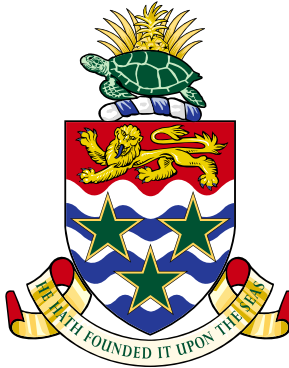
### **CONCLUSION**

22. The Commission recommends for consideration the *Settled Land (Amendment) Bill, 2025*.

## **APPENDIX 1**

### **SETTLED LAND (AMENDMENT) BILL, 2025**

**CAYMAN ISLANDS**



# **SETTLED LAND (AMENDMENT) BILL, 2025**

**A BILL FOR AN ACT TO AMEND THE SETTLED LAND ACT (1998 REVISION) TO  
PREVENT THE CREATION OF NEW SETTLEMENTS; AND FOR INCIDENTAL AND  
CONNECTED PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Ministry of District Administration and Lands (DAL)

## CAYMAN ISLANDS

**SETTLED LAND (AMENDMENT) BILL, 2025**

**A BILL FOR AN ACT TO AMEND THE SETTLED LAND ACT (1998 REVISION) TO PREVENT THE CREATION OF NEW SETTLEMENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**Short title**

1. This Act may be cited as the Settled Land (Amendment) Act, 2025.

**Insertion of new section 2A to the Settled Land Act (1998 Revision) – no new settlements**

2. The *Settled Land Act (1998 Revision)* is amended by inserting after section 2 the following section —

**“No new settlements**

- 2A. (1) In this section, “**amendment date**” means the date the *Settled Land (Amendment) Act, 2025* commences.
- (2) From the amendment date, this Act applies only to settlements created before the amendment date and no new settlements may be created.
- (3) An instrument executed on or after the amendment date that would, but for this section —





## **APPENDIX 2**

### **DISCUSSION PAPER – SETTLED LAND ACT**



## **THE CAYMAN ISLANDS LAW REFORM COMMISSION**



**DISCUSSION PAPER**  
**SETTLED LAND ACT**  
**1 SEPTEMBER, 2023**

## **THE CAYMAN ISLANDS LAW REFORM COMMISSION**

|                                   |                                                         |
|-----------------------------------|---------------------------------------------------------|
| <b>Chairman</b>                   | <b>Mr. Hector Robinson, KC</b>                          |
| <b>Commissioners</b>              | <b>Hon. Justice Alexander Henderson, KC, (retd.)</b>    |
|                                   | <b>Mr. Vaughan Carter, Attorney-at-Law</b>              |
|                                   | <b>Mr. Abraham Thoppil, Attorney-at-Law</b>             |
|                                   | <b>Ms. Reshma Sharma, KC, Solicitor General</b>         |
|                                   | <b>Mr. Simon Davis, Director of Public Prosecutions</b> |
| <b>Director</b>                   | <b>Mr. José Griffith, Attorney-at-Law</b>               |
| <b>Senior Legislative Counsel</b> | <b>Ms. Catriona Steele, Attorney-at-Law</b>             |
| <b>Paralegal</b>                  | <b>Ms. Felicia Connor</b>                               |
| <b>Administrative Secretary</b>   | <b>Ms. Milicia Bodden</b>                               |

## **CAYMAN ISLANDS LAW REFORM COMMISSION**

### **Public Submissions**

Stakeholders and members of the general public are invited to comment on the issues identified in this Discussion Paper and, in particular, to submit their views on the recommendations presented for discussion.

The Paper may be viewed on the following website: [www.lrc.gov.ky](http://www.lrc.gov.ky) or [www.gov.ky](http://www.gov.ky) or a copy may be collected from the Offices of the Law Reform Commission.

Submissions should be forwarded no later than **1<sup>st</sup> December 2023** to the Director of the Law Reform Commission, 4<sup>th</sup> Floor Government Administration Building, Portfolio of Legal Affairs, 133 Elgin Avenue, George Town, Grand Cayman, P.O. Box 136, Grand Cayman KY1-9000 either electronically to **[cilawreform@gov.ky](mailto:cilawreform@gov.ky)**, or in writing, by post or hand-delivered.

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## ABBREVIATIONS

|                    |                                     |
|--------------------|-------------------------------------|
| 1882 SLA           | Settled Land Act 1882 (UK)          |
| 1884 SLA           | Settled Land Act 1884 (UK)          |
| 1925 LPA           | Law of Property Act 1925 (UK)       |
| 1925 SLA           | Settled Land Act 1925 (UK)          |
| Cayman Islands RLA | Registered Land Act (2018 Revision) |
| Cayman Islands SLA | Settled Land Act (1998 Revision)    |

## **1 INTRODUCTION**

- 1.1 The *Settled Land Act* (1998 Revision) is a little known Act with its roots in a form of trust developed to protect hereditary landholdings under the English common law. It provides a mechanism for creating successive interests in land that is rarely used today. However, the continued operation of the Act has implications for the modern system of land trusts and land registration in the Cayman Islands that might not be readily apparent.
- 1.2 This Paper will outline the history of the *Settled Land Act* (1998 Revision) with reference to the core concepts of the strict settlement and the trust for sale. The Paper will trace the development of the law in the United Kingdom and examine recent reforms. It will outline the existing Cayman Islands legislative regime relevant to settled land and trusts, and identify the difficulties with the current system. The Paper will then briefly examine reforms (and attempts at reform) in other jurisdictions. Finally, the Paper will propose a model for reform in the Cayman Islands.

## **2 HISTORICAL CONTEXT**

### **2.1 Strict settlements and trusts for sale**

- 2.1.1 The strict settlement began as a form of trust in the English common law that restricted the sale or inheritance of an estate in real property and prevented the property from being sold, devised by will, or otherwise alienated by the tenant for life. Instead, the estate would pass to an heir determined by the settlement deed. A simple form of a strict settlement would see land granted to A for life, with the remainder granted to A's eldest son, and so on.<sup>1</sup> The strict settlement allowed the landed gentry to keep their estates intact in the family, in an indefinite and pre-ordained chain of succession.<sup>2</sup> The purpose of the strict settlement was not only to preserve wealth, but also the prestige, influence and political power associated with substantial landholding.<sup>3</sup>

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<sup>1</sup> Megarry and Wade, *The Law of Real Property* (8<sup>th</sup> ed, Sweet & Maxwell, 2012), at 395.

<sup>2</sup> Cheshire and Burn, *Modern Law of Real Property* (18<sup>th</sup> ed, Oxford University Press, 2011), at 585-589.

<sup>3</sup> Butt, *Land Law* (3<sup>rd</sup> ed, Law Book Co of Australasia, 1996), at 207-211.

2.1.2 As the merchant class rose in prominence and wealth during the 19<sup>th</sup> century, another form of trust developed and gained popularity – the trust for sale. This form of trust directed the trustees to sell the trust property and hold the proceeds on trust. In addition to providing a simple way of dividing property among the beneficiaries, the trustees could also be given the power to postpone the sale. This ensured the land could be sold in favourable market conditions. The object of a trust for sale was not to preserve a landholding, but to use land as a fund to support the beneficiaries.<sup>4</sup>

## 2.2 The Settled Land Acts of 1882-1925

2.2.1 The strict settlement often left the tenant for life wealthy in land but heavily in debt. For example, while the estate passed to a single heir, the settlement deed would often require annuities, chargeable on the estate, to be paid to other family members. Often, the estate did not generate sufficient income for its upkeep and the payment of annuities. The tenant for life was unable to sell any part of the land, offer it as security for a loan in order to meet these financial obligations or develop the estate to increase its income, unless sanctioned by a private Act of Parliament. The beneficial owner (the tenant for life) of the property only held a life interest in it, the legal owners being the trustees of the settlement, with the remainder passing intact to the next successor or heir.<sup>5</sup>

2.2.2 The solution adopted by the United Kingdom with the *Settled Land Act 1882* (the “1882 SLA”) was to give increased powers of disposition and management to the tenant for life. The Act achieved this by giving the tenant for life statutory powers to deal with the land that far exceeded the powers previously available under the common law:

‘The general scheme of the *Settled Land Act 1882* was to give the tenant for life under the settlement wide powers of dealing with the land free from the trusts of the settlement without the consent of the other beneficiaries, or application to the court, just as if he were the owner in fee simple. The rights of beneficiaries were protected in the case of a sale by shifting the settlement from the land to the purchase-money, which had to be paid to the trustees or into the court. The purchaser would have no concern with the trusts of the

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<sup>4</sup> Butt, at 207-211.

<sup>5</sup> Cheshire and Burn, at 585-589.



settlement...Wide powers of sale, exchange, leasing, mortgaging and otherwise dealing with the land were given to the tenant for life or other limited owner in possession. In exercising those powers, the tenant for life was deemed to be in the position of a trustee and was required to “have regard to the interests of all parties entitled under the settlement”.<sup>6</sup>

- 2.2.3 In addition to providing powers to tenants for life under strict settlements, the 1882 SLA had the effect of conferring these powers on the life beneficiary of a trust for sale, rather than on the trustees. This was rectified in part by the *Settled Land Act 1884* (the “1884 SLA”), which restored the trustees’ power of sale, but did not restore other powers of management such as the power to lease the land – an important tool if the sale of the land were postponed.<sup>7</sup> The next attempt to resolve the difficulties created by the 1882 and 1884 SLAs came with the *Settled Land Act 1925* (the “1925 SLA”).
- 2.2.4 The 1925 SLA, along with the *Law of Property Act 1925* (the “1925 LPA”), made a number of key changes to the statutory regime governing settlements and trusts for sale. Importantly, land subject to a trust for sale no longer constituted a settlement for the purposes of the 1925 SLA.<sup>8</sup> Trusts for sale were instead governed by the 1925 LPA, with the trustees holding all powers to deal with the land.
- 2.2.5 While the tenant for life held statutory powers to deal with land subject to a settlement under the 1882 and 1884 SLAs, the 1925 SLA had the effect of vesting the legal estate in the land in the tenant for life.<sup>9</sup> The purpose of this change was to facilitate conveyancing by enabling a single person to deal with the land. It rendered the tenant for life not only a trustee of statutory powers to deal with the land, but also a trustee of the legal estate. This created an inherent conflict of interest, as the tenant for life became both a trustee and a beneficiary of the estate.<sup>10</sup> To protect the interests of the other beneficiaries of the estate, the 1925 SLA provided for trustees of the settlement to be appointed. Although the trustees

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<sup>6</sup> Megarry and Wade, at 395-396.

<sup>7</sup> Megarry and Wade, at 398.

<sup>8</sup> Settled Land Act 1925 (UK) (SLA 1925 (UK)), s 1(7).

<sup>9</sup> SLA 1925 (UK), s 4(2).

<sup>10</sup> Megarry and Wade, at 400-401.

of the settlement do not hold legal title to the land, the 1925 SLA confers powers on the trustees to ensure the tenant for life deals with the land appropriately.<sup>11</sup>

### **3 UNITED KINGDOM REFORM**

#### **3.1 Problems with the Settled Land Act 1925**

3.1.1 In October 1984, the Law Commission (England and Wales) began reviewing the law relating to trusts of land, and in October 1985 published a working paper containing a range of proposals for reform.<sup>12</sup> The report identified a number of problems with the system created by the 1925 Act. The key issues are summarised below.

##### *(a) Dual system*

The 1925 SLA, together with the 1925 LPA, codified a dual system for creating successive interests in land – either as settled land or as interests behind a trust for sale. Originally, the two systems performed different functions. The strict settlement was intended to keep land within the ownership of a particular family. The trust for sale was used either where a sale was actually intended, or where the land concerned was intended to be an investment with the tenant for life being paid the income from it.

The legislative reforms carried out between 1882 and 1925 had the effect of removing many of the differences between the two systems. In either system the land could be sold, so the strict settlement was no longer an effective method of keeping land in the family. The remaining differences centred on who was empowered to make decisions with respect to the land, making it difficult to justify the continuing existence of two systems.<sup>13</sup>

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<sup>11</sup> George and Layard, *Thompson's Modern Land Law* (7<sup>th</sup> ed, Oxford University Press, 2019), at 219.

<sup>12</sup> Law Commission (England and Wales), *Trusts of Land* (Law Com Working Paper No. 94, 1985).

<sup>13</sup> Law Com Working Paper No. 94, at 4-5.

(b) *Inadvertent settlements*

The 1925 legislation was so phrased that any instrument creating successive interests in land was deemed to be a settlement unless a trust for sale was expressly adopted. This resulted in the inadvertent application of the Act when trusts of land were created without proper advice (such as when a will was drafted without advice). Inadvertent settlements arose not through failure to decide which was required, but through failure to create a valid trust for sale. In other cases, settlements were created inadvertently because a right of residence was conferred on a person for his or her lifetime. It was not entirely clear that the conferral of such a right was intended to be sufficient to bring the land within the *Settled Land Act 1925*, but the courts treated such land as settled land, giving such a person all the powers of disposition and management of a tenant for life.<sup>14</sup>

(c) *Conflict of interest*

The position of the tenant for life as both a trustee and the principal beneficiary created an inherent conflict of interest. While it is quite usual for a trustee to also be a beneficiary, in the case of land falling under the 1925 SLA, the tenant's powers to deal with the land were extensive. The courts were reluctant to intervene if the tenant allowed the estate to become derelict, unless there was evidence that the tenant refused to exercise his or her statutory powers. As a result, a person entitled to the remainder of the estate may inherit an estate that is diminished in value and have no remedy. Similarly, the interests of a person entitled to the remainder may be adversely affected by a sale of the settled land at a low price. Again, they may have no effective remedy as they may not discover the sale until years after it took place and, even if they could establish a breach of trust, the tenant for life may be dead and his or her estate may not be worth suing.<sup>15</sup>

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<sup>14</sup> Law Com Working Paper No. 94, at 5-6.

<sup>15</sup> Law Com Working Paper No. 94, at 11.

## 3.2 Recommendations of the Law Commission

3.2.1 In June 1989, the Law Commission made a series of recommendations for reform of the law relating to trusts of land.<sup>16</sup> The recommendations relevant to the 1925 SLA are summarised below.

1. The Commission recommended that the dual system of trusts for sale and strict settlements be replaced by a new system placing trusts of land on a footing similar to that of trusts of personalty. Trustees would hold the legal estate on trust with a power to sell and a power to retain the land and would be able to convey the legal estate free of equitable interests. This recommendation aimed to address the problems created by the complexity of the dual system.
2. The Commission recommended that it should no longer be possible to create settlements under the 1925 SLA and all successive interests should fall under the new system. Existing settlements would not be affected.
3. The Commission recommended that there be no special formalities for creating a trust, only that the trust be properly constituted within the terms of general trust law. The new system should apply to all trusts of land (whenever created and whether express, implied or constructive), with the exception of existing settlements under the 1925 SLA. This recommendation aimed to resolve the identified problem of settlements being created inadvertently. In addition, the Commission recommended that land newly acquired by an existing settlement, or which would continue to be settled land only by virtue of a new instrument, should be held under the new system.
4. The Commission recommended that an attempt to create an entailed interest in land should operate as a grant of a fee simple absolute (unless the grantor's interest is equitable only, in which case the attempt would take effect as a declaration of trust). It should no longer be possible to create entailed interests in any property.<sup>17</sup>

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<sup>16</sup> Law Commission (England and Wales), *Trusts of Land* (Law Com No. 181, 1989).

<sup>17</sup> Law Com No. 181, at 27-29.

### 3.3 Trusts of Land and Appointment of Trustees Act 1996 (UK)

- 3.3.1 The United Kingdom Parliament legislated to give effect to the recommendations of the Law Commission with the passage of the *Trusts of Land and Appointment of Trustees Act 1996*, which commenced on 1 January 1997. In addition to its substantive provisions, which created a new system of trusts, the Act amended the 1925 SLA and numerous related statutes.
- 3.3.2 The Act removed the division between settlements and trusts for sale and introduced a unitary system of trusts of land. The Act defined a “trust of land” to mean any trust of property which consists of or includes land, whether express, implied, resulting or constructive, and whether created before or after the commencement of the Act.<sup>18</sup> This meant that trusts for sale in existence on 1 January 1997 automatically became trusts of land. Subject to two exceptions (land which was settled land under the 1925 SLA before 1 January 1997 and statutory universities and colleges land), after 1 January 1997 it became impossible to create any new settled land under the 1925 SLA.<sup>19</sup> The only new settlements that can now be created for the purposes of that Act are settlements created as a result of an alteration in, or a person becoming entitled under, a settlement that was already in existence or derived from such a settlement.<sup>20</sup> Importantly, the problem of settlements being created inadvertently was addressed by stipulating that a new settlement can only be created for the purposes of the 1925 SLA if the instrument creating the settlement expressly says so.<sup>21</sup>
- 3.3.3 The trust of land introduced by the *Trusts of Land and Appointment of Trustees Act 1996* is based on the trust for sale. The trustees of land hold the legal estate to the land and have all the powers of disposition and management of an absolute owner.<sup>22</sup> In exercising these powers, the trustees must have regard to the rights of the beneficiaries of the trust, and

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<sup>18</sup> Trusts of Land and Appointment of Trustees Act 1996 (UK) (TALATA 1996), s 1.

<sup>19</sup> TALATA 1996, ss 1(3), 2. Statutory universities and colleges land is land to which the Universities and Colleges Estates Act 1925 applies.

<sup>20</sup> TALATA 1996, s 2(2).

<sup>21</sup> TALATA 1996, s 2(3).

<sup>22</sup> TALATA 1996, s 6.

cannot contravene any enactment or rule of law or equity.<sup>23</sup> They are also required to consult the beneficiaries of the trust (other than minors) and, so far as consistent with the general interest of the trust, give effect to the wishes of the majority of beneficiaries.<sup>24</sup> The Act also provides that:

*‘In the case of every trust for sale of land created by a disposition there is to be implied, despite any provision to the contrary made by the disposition, a power for the trustees to postpone sale of the land...’* (emphasis added).<sup>25</sup>

- 3.3.4 The reforms introduced with the *Trusts of Land and Appointment of Trustees Act 1996* addressed a number of difficulties that existed in relation to settled land and trusts for sale. By introducing a unitary regime of trusts of land, much of the complexity that plagued the previous system was removed. The Act also improved protections for beneficiaries and purchasers of land subject to a trust, as well as removing the conflict of interest inherent in the position of tenants for life as both beneficiaries and trustees.

## **4 CAYMAN ISLANDS LEGISLATION**

### **4.1 Settled Land Act (1998 Revision), Registered Land Act (1998 Revision) and Trusts Act (2021 Revision)**

- 4.1.1 The Cayman Islands enacted its own Settled Land Act on 1 January 1964. The Cayman Islands Act was modelled on the 1882 SLA of the United Kingdom.
- 4.1.2 The definition of “settlement” in section 2(2) of the Cayman Islands *Settled Land Act* (1998 Revision) (the “Cayman Islands SLA”) contains the same core requirements for the creation of a settlement:

*‘Any deed, will or agreement for a settlement or other agreement, covenant to surrender, Act of the United Kingdom, law of the Islands or other instrument, or any number of instruments, under or by virtue of which instrument or instruments, any land, or any estate*

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<sup>23</sup> TALATA 1996, s 6(5) and (6).

<sup>24</sup> TALATA 1996, s 11.

<sup>25</sup> TALATA 1996, s 4(1).

*or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Law a settlement, and is in this Law referred to as a settlement, or as the settlement, as the case requires.’*

- 4.1.3 The Act gives the tenant for life the power to sell, exchange, lease and mortgage land that is the subject of a settlement. In doing so, the tenant must have regard to the interests of all parties entitled under the settlement, and is deemed to have the duties of a trustee.<sup>26</sup> However, the legal estate in the land is not vested in the tenant for life. As was the case in the United Kingdom prior to 1925, the tenant for life has power to deal with the land, but does not own it.
- 4.1.4 The *Registered Land Act* (2018 Revision) (the “Cayman Islands RLA”) expressly preserves the Cayman Islands SLA in its application to registered land, allowing the tenant for life to be registered as proprietor of the land:

**123. *Application of Settled Land Act (1998 Revision)***

- (1) *The Settled Land Act (1998 Revision) shall, with necessary adaptations and modifications, apply to any land or lease registered under this Law and the person who is for the time being the tenant for life under a settlement may be registered as the proprietor of such land or lease.*
- (2) *An instrument creating a settlement, or a certified copy thereof, may be deposited with the Registrar for safe custody, but such instrument or copy shall not form part of the register or be deemed to be registered.*

- 4.1.5 In addition to preserving the Cayman Islands SLA, the Cayman Islands RLA also created a regime for statutory leases that allows for a lease for life. Section 44 provides:

*‘Subject to this and any other law, the proprietor of land may lease the land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite may be terminated by the lessor or the lessee, and subject to such conditions as he may think fit...’*

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<sup>26</sup> Settled Land Act (1998 Revision), ss 3, 5, 8, 20, 21 and 58.

Further, section 46 of the Cayman Islands RLA requires a lease for life to be registered:

*‘A lease for a specified period exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years, shall be in the prescribed form, and shall be completed by —*

- (a) opening a register in respect of the lease in the name of the lessee;*
- (b) filing the lease; and*
- (c) noting the lease in the incumbrances section of the register of the lessor’s land or lease.’*

4.1.6 The Cayman Islands RLA also provides for the registration of dealings in land subject to trusts:

#### **121. Trusts**

- (1) A person acquiring land, a lease or charge in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, shall be registered with the addition of the words “as trustee”, but the Register shall not enter particulars of any trust in the register.*
- (2) Any instrument which declares or is deemed to declare any trust, or a certified copy thereof, may be deposited with the Registrar for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.*
- (3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trusts, but for the purpose of any registered dealings he shall be deemed to be the absolute proprietor thereof, and no person dealing in good faith for valuable consideration shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Law.*



## **122. Survivor of trustees**

*Whenever two or more proprietors are registered jointly as trustees and the survivor of such proprietors would not be entitled to exercise alone the powers which are vested in them, the Registrar shall enter a restriction to that effect.*

- 4.1.7 The *Trusts Act* (2021 Revision) governs trusts generally in the Cayman Islands. It provides for the appointment and discharge of trustees, the powers of trustees and the variation of trusts, among other things. The Act defines “trust for sale”, in relation to land, as:

*‘an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale’.*<sup>27</sup>

The Act also provides that the power to postpone sale is implied in every trust for sale of land unless a contrary intention appears.<sup>28</sup> This contrasts with the equivalent provision in the *Trusts of Land and Appointment of Trustees Act 1996* (UK), which stipulates that the power to postpone the sale is implied despite any provision to the contrary made by the disposition.<sup>29</sup>

## **4.2 Problems with the existing regime for life interests**

- 4.2.1 As was the case with the United Kingdom legislation, it seems that the original purpose of the Cayman Islands SLA is outdated at best. It is questionable whether it was ever appropriate to the local context. In addition, the problems that afflicted the United Kingdom regime are replicated in the Cayman Islands legislation – it is overly complex and carries the risk of inadvertent settlements being created, with the associated problems for beneficiaries and purchasers.
- 4.2.2 However, the Cayman Islands legislation is beset with difficulties of its own. It can be contended that the grant of a right to exclusive possession of land for life would fall under both the statutory lease regime of the Cayman Islands RLA and the Cayman Islands SLA, owing to the definition of “lease” in the Cayman Islands RLA and the definition of

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<sup>27</sup> Trusts Act (2021 Revision), s 2.

<sup>28</sup> Trusts Act (2021 Revision), s 17(1).

<sup>29</sup> TALATA, s 4(1).

“settlement” in the Cayman Islands SLA.<sup>30</sup> This would result in two systems governing exclusive possession for life, with little clarity regarding how the two systems interact. Cooper poses the following scenario:

‘Imagine A grants the right of exclusive possession to B for life, with implicit reversion to A....[T]hat creates a statutory lease for life. The recipient, B, could therefore, compel the grantor to formalise it in the appropriate prescribed land registry form, and the recipient could then procure the opening of a new leasehold register with himself as proprietor of the lease. Could the Settled Land Law regime then be superimposed on the statutory lease? The creation of a lease for life has the consequences that the land “stands limited to persons by way of succession”; and that has been achieved by a “deed, will or agreement for a settlement...., or other instrument.” There is consequently a settlement and [the] Settled Land Law is therefore engaged. The lessee for life is beneficially entitled to possession of the settled land, and therefore comprises the tenant for life. The statutory exclusion in the Settled Land Law of a tenant for years in rent does not apply here, since the lease for life is not a tenancy for years.

The Settled Land Law statutory powers are then conferred on the lessee as tenant for life of the settlement: he has power, amongst others, to sell the “settled land” – meaning the lessor’s land over which the lease was created. Section 123 of the Registered Land Law then provides for this to be embodied on the register by enabling the tenant for life to be registered as the proprietor of the settled land, thus leaving the lessee for life as both registered lessee and registered lessor. Although this result might be surprising, it encapsulates the policy of the Settled Land Law. The lessee for life not only protects his own interest by registration, but also ensures that his statutory powers of sale under the Settled Land Law are confirmed by registration as proprietor in the superior register for the settled land.’<sup>31</sup>

- 4.2.3 Leaving aside the scenario above, the interaction between the provisions of the Cayman Islands RLA and the Cayman Islands SLA leads to some incongruous outcomes. The Cayman Islands SLA does not vest settled land in the tenant for life. It confers powers to deal with the land and deems the tenant to have the duties and liabilities of a trustee, but the tenant does not hold the legal estate. However, section 123 of the Cayman Islands RLA

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<sup>30</sup> Cooper, “Lifetime Occupation Rights”, (2009) 34 West Indian Law Journal 59, at 71.

<sup>31</sup> Cooper, at 72-73.

allows the tenant for life to be registered as proprietor of the land even though the land is not vested in the tenant under the Cayman Islands SLA.<sup>32</sup> The position in the Cayman Islands can be contrasted with the position under the United Kingdom regime. Under the 1925 SLA, the settled land was vested in the tenant for life as trustee, allowing the tenant to be registered as the proprietor of the land.

## **5 REFORM IN OTHER JURISDICTIONS**

### **5.1 Ireland**

5.1.1 Beginning in 2003, the Law Reform Commission of Ireland conducted an extensive project for the reform and modernisation of land law and conveyancing. As part of this project, the Commission examined the settled land regime governed by the Settled Land Acts of 1882-1890. Under this regime, there were three methods of creating settlements:

1. settling the land in a succession of interests without the use of a trust (a strict settlement);
2. settling the land on trustees who are required to hold the land for beneficiaries without an obligation to sell the land (a holding trust); and
3. settling the land on trustees with an obligation to sell it, but power to postpone the sale (a trust for sale).

5.1.2 The Commission recommended abolishing this scheme and replacing it with a single statutory scheme similar to that implemented in England and Wales by the *Trusts of Land and Appointment of Trustees Act 1996* (UK). The land subject to a trust would be vested in the trustees, who would hold full powers to deal with the land, subject to any restrictions specified in the trust instrument.<sup>33</sup> The recommended scheme was implemented with the enactment of the *Land and Conveyancing Law Reform Act 2009*.

### **5.2 Northern Ireland**

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<sup>32</sup> Cooper, at 76.

<sup>33</sup> Law Reform Commission of Ireland, *Reform and Modernisation of Land Law and Conveyancing Law* (Consultation Paper No. 34, 2004) at 66-67.

5.2.1 The Northern Ireland Law Commission examined the system of trusts embodied in the Settled Land Acts of 1882-1890, which apply in Northern Ireland. The Commission recommended adopting a unitary trust of land scheme similar to that introduced in England and Wales by the *Trusts of Land and Appointment of Trustees Act 1996* (UK) and to Ireland by the *Land and Conveyancing Law Reform Act 2009*.<sup>34</sup> The Commission supported its recommendation by publishing the *Land Law Reform Bill (Northern Ireland)*. The Commission's recommendations and its draft Bill have not yet been progressed by the government.

### 5.3 Australia

5.3.1 Of the eight Australian states and territories, only three retain a scheme to govern settled land outside of general trust legislation – Victoria, South Australia and Tasmania.<sup>35</sup> Queensland and Western Australia have replaced settled land legislation (which was based on the English 1882 SLA) with provisions governing successive interests in general trust legislation.<sup>36</sup> The Victorian Law Reform Commission conducted a review of property legislation in 2010. The Commission recommended replacing the dual trust scheme constituted by trust for sale provisions in the *Property Law Act 1958* and the settlement scheme in the *Settled Land Act 1958* with a single more flexible statutory trust regime.<sup>37</sup> Those recommendations have not yet been implemented.

### 5.4 Canada

5.4.1 The former Ontario Law Reform Commission conducted extensive projects examining trust law and land law more generally in the 1980s and 1990s.<sup>38</sup> Among the statutes examined was the *Settled Estates Act*,<sup>39</sup> which was based on the English *Settled Estates Act 1877*. The Commission took the view that there is no justification for a dual system for trusts for sale and settlements. Instead, a new statutory trust should be created that would

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<sup>34</sup> Northern Ireland Law Commission, *Land Law* (NILC 8, 2010), at 32.

<sup>35</sup> *Settled Land Act 1958* (Vic); *Settled Estates Act 1880* (SA); *Settled Land Act 1884* (Tas).

<sup>36</sup> *Trustees Act 1962* (WA); *Trusts Act 1973* (Qld).

<sup>37</sup> Victorian Law Reform Commission, *Review of the Property Law Act 1958* (Final Report, 2010), at 75-78.

<sup>38</sup> Ontario Law Reform Commission, *Report on the Law of Trusts* (1984); Ontario Law Reform Commission, *Report on Basic Principles of Land Law* (1996).

<sup>39</sup> R.S.O. 1990, c. S.7.

be subject to general trust law, with trustees holding the full range of powers to sell, retain and manage trust property.<sup>40</sup> The Commission recommended that there should be a trust whenever successive interests in land are created. If an express trust is not created, a statutory trust should apply.<sup>41</sup> The recommendations of the Commission were not implemented and the *Settled Estates Act* remains in force.

## **6 RECOMMENDATIONS FOR REFORM**

6.1 The Commission considers the current state of the law relating to successive interests in land to be unsatisfactory in a number of respects:

1. There is no apparent justification for retaining a dual system of trusts and settlements. A unitary system of statutory trusts would simplify the statutory regime and provide the flexibility to facilitate trusts of land tailored to suit the requirements of each particular case.
2. The existing regime carries significant risk of settlements being created inadvertently, subjecting them to the application of the Cayman Islands SLA unintentionally.
3. The Cayman Islands SLA and the Cayman Islands RLA do not interact in a logical fashion. The overlap between the two Acts creates the potential for highly problematic outcomes. One such potential outcome is that the grant of a right to exclusive possession of land for life falls under both the statutory lease regime of the Cayman Islands RLA and the Cayman Islands SLA, allowing a lessee for life to be both registered lessee and registered lessor.
4. Section 123 of the Cayman Islands RLA allows the tenant for life of settled land to be registered as proprietor of the land even though the land is not vested in the tenant under the Cayman Islands SLA.

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<sup>40</sup> Ontario Law Reform Commission (1996), at 56-57.

<sup>41</sup> Ontario Law Reform Commission (1996), at 47.

6.2 The Commission recommends creating a unitary system of statutory trusts of land, similar to that introduced in the United Kingdom by the *Trusts of Land and Appointment of Trustees Act 1996*. The key features of this regime would be as follows:

1. The *Trusts Act* (2021 Revision) should be amended to incorporate new provisions governing trusts of land.
2. A “trust of land” should be defined to mean any trust of property which consists of or includes land, whether express, implied, resulting or constructive, and whether created before or after the commencement of the new scheme, with the exception of settled land in existence before commencement.
3. The new provisions should specify that the trustees of land have all the powers of disposition and management of the land of an absolute owner. In exercising these powers, the trustees should be required to have regard to the rights of the beneficiaries of the trust. They should also be required to consult the beneficiaries of the trust (other than minors) and, so far as consistent with the general interest of the trust, give effect to the wishes of the majority of beneficiaries.
4. The new provisions should allow for a beneficiary to be given the right to occupy land, and include provisions protecting the beneficiary given that right, but also allowing the trustees to ensure the land is preserved. For example, trustees should be empowered to impose reasonable conditions on the beneficiary’s right to occupy the land, such as conditions requiring the beneficiary to pay expenses related to the land or assume other obligations in relation to the land.
5. It should no longer be possible to create settlements under the Cayman Islands SLA. The Commission offers two options for consideration in relation to the Cayman Islands SLA.

#### *Option 1*

The Cayman Islands SLA would not be repealed, but would be amended so that no future settlements can be created. Existing settlements would be preserved, and the Cayman Islands SLA would continue to apply to those settlements. All future life

interests in land would be created under a trust of land, and would be governed by the new provisions of the *Trusts Act* (2021 Revision).

### Option 2

The Cayman Islands SLA would be repealed. A transitional period of 1 year would be provided for any existing settlements to be converted into a trust of land, which would be governed by the new provisions of the *Trusts Act* (2021 Revision).

6. Regardless of whether the Cayman Islands SLA is repealed, section 123(1) of the Cayman Islands RLA should be repealed. If the Cayman Islands SLA is not repealed, this would remove the danger of the overlap between the two Acts leading to problematic outcomes, and would mean the tenant for life under a settlement could no longer be registered as proprietor of settled land. The tenant for life would still have the power to convey the land under section 23 of the Cayman Islands SLA.

## **7 CONCLUSION**

- 7.1 The recommendations for reform outlined in this Discussion Paper provide the basis for consultation to determine the best option for reform in the Cayman Islands. The Commission invites submissions on the issues identified in this Paper and the recommendations and options presented in Part 6.

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- Ontario Law Reform Commission, *Report on the Law of Trusts* (1984)
- Victorian Law Reform Commission, *Review of the Property Law Act 1958* (Final Report, 2010)

### Legislation

#### *Cayman Islands*

- Registered Land Act (2018 Revision)
- Settled Land Act (1998 Revision)
- Trusts Act (2021 Revision)

#### *United Kingdom*

- Law of Property Act 1925
- Settled Land Act 1882
- Settled Land Act 1884
- Settled Land Act 1925
- Trusts of Land and Appointment of Trustees Act 1996



*Ireland*

Land and Conveyancing Law Reform Act 2009

*Australia*

Settled Estates Act 1880 (SA)

Settled Land Act 1884 (Tas)

Settled Land Act 1958 (Vic)

Trusts Act 1973 (Qld)

Trustees Act 1962 (WA)

*Canada*

Settled Estates Act R.S.O. 1990, c. S.7

# **APPENDIX**

## **Relevant Legislation**

**Settled Land Act (1998 Revision)**

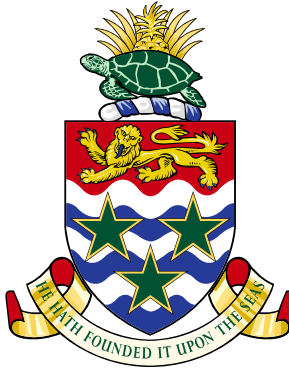
**Registered Land Act (2018 Revision)**

**Trusts Act (2021 Revision)**

**Settled Land Act 1925 (UK)**

**Trusts of Land and Appointment of Trustees Act 1996 (UK)**

## **CAYMAN ISLANDS**



# **SETTLED LAND LAW**

**(1998 Revision)**

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## CAYMAN ISLANDS



## SETTLED LAND LAW

(1998 Revision)

## PART I - Introductory

## Short title

1. This Law may be cited as the *Settled Land Law (1998 Revision)*.

## Definitions and interpretation

2. (1) In this Law —

“**building purposes**” include the erecting and the improving of, the adding to and the repairing of buildings; and a

“**building lease**” is a lease for any building purpose or purposes connected therewith;

“**Court**” means the Grand Court;

“**income**” includes rents and profits;

“**land**” includes incorporeal hereditaments, also an undivided share in land;

“**mines and minerals**” mean mines and minerals whether already opened or in work or not, and include all minerals and substances (other than such minerals, mineral oil and substances as may be vested in the Crown) in, on or under the land, obtainable by underground or by surface working; and “**mining purposes**” include the sinking and searching for, winning, working, getting, making

merchtable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals, in or under the settled land or any other land, and the erection of buildings and the execution of engineering and other works suitable for those purposes;

“**mining lease**” is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes;

“**possession**” includes receipt of income;

“**Record Office**” means the office of the Public Recorder;

“**rent**” includes yearly or other rent, and toll, duty, royalty or other reservation, by the acre or the ton or otherwise; and, in relation to rent, “**payment**” includes delivery; and “**fine**” includes premium or fore-gift, and any payment, consideration or benefit in the nature of a fine, premium or fore-gift;

“**securities**” include stocks, funds, and shares; and

“**will**” includes codicil and other testamentary instrument, and a writing in the nature of a will.

- (2) Any deed, will or agreement for a settlement or other agreement, covenant to surrender, Act of the United Kingdom, law of the Islands or other instrument, or any number of instruments, under or by virtue of which instrument or instruments, any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Law a settlement, and is in this Law referred to as a settlement, or as the settlement, as the case requires.
- (3) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator’s heir, is for purposes of this Law an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.
- (4) Land and any estate or interest therein, which is the subject of a settlement, is for purposes of this Law settled land, and is, in relation to the settlement, referred to in this Law as the settled land.
- (5) The determination of the question whether land is settled land, for purposes of this Law or not, is governed by the state of facts and the limitations of the settlement, at the time of the settlement taking effect.
- (6) Whoever is, for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Law the tenant for life of that land and the tenant for life under that settlement.
- (7) If, in any case, there are two or more persons so entitled as tenants in common, as joint tenants or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Law.



- (8) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.
- (9) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Law, are for purposes of this Law trustees of the settlement.
- (10) Capital money arising under this Law and receivable for the trusts and purposes of the settlement is in this Law referred to as capital money arising under this Law.

## **PART II - Sale, Exchange and Partition**

### **Powers of tenant for life to sell, etc.**

#### **3. A tenant for life —**

- (a) may sell the settled land or any part thereof, or any easement, right or privilege of any kind, over or in relation to the same;
- (b) may make an exchange of the settled land or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and
- (c) where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

### **Exchanges**

- 4. On any exchange or partition any easement, right or privilege of any kind may be reserved or may be granted over or in relation to the settled land or any part thereof. or other land or an easement, right or privilege of any kind may be given or taken in exchange or on partition for land or for any other easement, right or privilege of any kind.

### **Powers of tenant for life**

- 5. A tenant for life may make any conveyance which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by such predecessor would have been valid as against his successors in title.

**Regulations respecting sale, exchange and partition**

6. (1) Every sale shall be made at the best price that can reasonably be obtained.
- (2) Every exchange and partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.
- (3) A sale may be made in one lot or in several lots, and either by auction or private contract.
- (4) On a sale the tenant for life may fix reserve biddings and buy in at an auction.
- (5) A sale, exchange or partition may be made subject to any stipulation respecting title, evidence of title or other things.
- (6) On a sale, exchange or partition, any restriction or reservation with respect to building on or other user of land or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the Law permits, by covenant, conditions or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.
- (7) Settled land in the Islands shall not be given in exchange for land out of the Islands.

**Transfer of incumbrances on land sold, etc.**

7. Where on a sale, exchange or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

**PART III - Leases****Power for tenant for life to lease for ordinary, building or mining purposes**

8. A tenant for life may lease the settled land, or any part thereof, or any easement, right or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding —
- (a) in case of a building lease, ninety-nine years;
  - (b) in case of a mining lease, sixty years; and
  - (c) in case of any other lease, twenty-one years.



## **Leases**

9. A lease for a term not exceeding twenty-one years at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life —
- (a) notwithstanding that there may be no trustees of the settlement for the purposes of this Law; and
  - (b) by writing under hand only, containing an agreement instead of a covenant by the lessee for payment of rent in cases where the term does not extend beyond three years from the date of the writing.

## **Regulations respecting leases generally**

10. (1) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.
- (2) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.
- (3) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.
- (4) Every lease shall be executed by the lessor and the lessee, and shall be recorded in the Record Office within six months of its execution.
- (5) A statement, contained in a lease or in an indorsement thereof, signed by the tenant for life, respecting any matter of fact, or of calculation under this Law in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

## **Regulations respecting building leases**

11. (1) Every building lease shall be made partly in consideration of the lessee, some person by whose direction the lease is granted or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorised by this Law, for or in connection with building purposes.
- (2) A peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.
- (3) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner, save that —
- (a) the annual rent reserved by any lease shall not be less than one dollar;

- (b) the total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Law, ought to be reserved in respect of the whole land for the time being leased; and
- (c) the rent reserved by any lease shall not exceed twenty per cent part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

### **Regulations respecting mining leases**

#### **12. (1) In a mining lease —**

- (a) the rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away or disposed of, in or from the settled land or any other land or by or according to any facilities given in that behalf; and
  - (b) a fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.
- (2) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorised by this Law for or in connection with mining purposes.

### **Variation of building or mining lease according to circumstances of district**

#### **13. (1) Where it is shown to the Court with respect to the district in which any settled land is situate, either —**

- (a) that it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Law, or in perpetuity; or
- (b) that it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Law, or except in perpetuity,

the Court may, if it thinks fit, authorise generally the tenant for life to make, from time to time, leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorise the tenant for life to make any such lease or grant in any particular case.



- (2) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Law, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

### **Effect of grant for building purposes**

- 14.** (1) Where on a grant for building purposes by a tenant for life, the land is expressed to be conveyed in fee simple with or subject to a reservation thereof of a perpetual rent or rent-charge, the reservation shall operate to create a rent-charge in fee simple issuing out of the land conveyed and having incidental thereto all powers and remedies for recovery thereof conferred by subsections (2) to (6) and the rent-charge so created shall go and remain to the uses of the trusts and subject to the powers and provisions which, immediately before the conveyance, were subsisting with respect to the land out of which it is reserved.
- (2) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent-charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.
- (3) If, at any time, the annual sum, or any part thereof, is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum, all arrears thereof and all costs and expenses occasioned by non-payment thereof, may be fully paid.
- (4) If, at any time, the annual sum, or any part thereof, is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.
- (5) In the like case the person entitled to the annual charge whether taking possession or not, may also, by deed, demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste,

on trust by mortgage, sale or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

- (6) Subsections (2) to (5) apply only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

### **Part of mining rent to be set aside as capital**

- 15.** Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be, from time to time, set aside, as capital money arising under this Law, part of the rent as follows, namely, where the tenant for life is impeachable for waste in respect of minerals, seventy-five per cent of the rent, and otherwise twenty-five per cent thereof, and in every such case the residue of the rent shall go as rents and profits.

### **Leasing powers for special objects**

- 16.** The leasing power of a tenant for life extends to the making of —
- (a) a lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title;
  - (b) a lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
  - (c) a lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Law or otherwise, as the case may require.

### **Surrender and new grant of leases**

- 17.** (1) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Law or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.





- (2) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.
- (3) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.
- (4) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.
- (5) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.
- (6) Every new or other lease shall be in conformity with this Law.

## **PART IV - Sales, Leases and other Dispositions**

### **Dedication for streets, open spaces, etc.**

- 18.** On or in connection with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof —
- (a) may cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens or other open spaces, for the use gratuitously or on payment, of the public or of individuals, with sewers, drains, water-courses, fencing, paving or other works necessary or proper in connection therewith; and
  - (b) may provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement or other trustees, any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
  - (c) may execute any general or other deed necessary or proper for giving effect to this section (which deed shall be recorded in the Record Office), and thereby declare the mode, terms and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

**Separate dealing with surface and minerals with or without way-leaves, etc.**

19. (1) A sale, exchange, partition or mining lease may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, way-leaves or rights of way, rights of water and drainage, and other powers, easements, rights and privileges for or incident to or connected with mining purposes, in relation to the settled land or any part thereof, or any other land.
- (2) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

**Mortgage for equality money, etc.**

20. Where money is required for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled lands or otherwise, and the money raised shall be capital money arising under this Law.

**Raising of money**

21. (1) Where money is required for the purpose of discharging an incumbrance on the settled land or part thereof, the tenant for life may raise the money so required and also the amount properly required for payment of the costs of the transaction on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or any part thereof or otherwise, and the money so raised shall be capital money for that purpose and may be paid or applied accordingly.
- (2) An incumbrance for the purpose of subsection (1) shall not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.

**Concurrence in exercise of powers as to undivided shares**

22. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur in any manner and to any extent necessary or proper for any purpose of this Law, with any person entitled to or having power or right of disposition of or over another undivided share.



**Completion of sale, lease, etc., by conveyance**

- 23.** (1) On a sale, exchange, partition, lease, mortgage or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged or charged, or intended so to be, including leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement or for any less estate or interest to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage or charge.
- (2) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Law, is effectual to pass the land conveyed, or the easements, rights or privileges created, discharged from all the limitations, powers and provisions of the settlement, and from all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of —
- (a) all estates, interest and charges having priority to the settlement;
  - (b) all such other, if any, estates, interests and charges as have been conveyed or created for securing money actually raised at the date of the deed; and
  - (c) all leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, by any of his predecessors in title or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successor's in title of the tenant for life.
- (3) Conveyances executed under this Law shall be recorded in the Record Office within six months of their execution.

**PART V - Investment or other Application of Capital Trust Money****Capital money under Law; investment, etc., by trustees of Court**

- 24.** (1) A fine received on the grant of a lease under any power conferred by this Law is to be deemed capital money arising under this Law.
- (2) Capital money arising under this Law, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes namely —

- (a) in investment on Government securities of Great Britain or of the Islands, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, or on the security of the bonds, mortgages or debentures, or in the purchase of the debenture stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities;
- (b) in discharge, purchase or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of property tax, Crown rent, chief rent or quit rent charged on or payable out of the settled land;
- (c) in payment for any improvement authorised by this Law;
- (d) in payment for equality of exchange or partition of settled land;
- (e) in purchase of the reversion or freehold in fee of any part of the settled land, being leasehold and held for years or life, or years determinable on life;
- (f) in purchase of land in fee simple or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land;
- (g) in purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right or privilege convenient to be held with the settled land for mining or other purposes; in payment to any person becoming absolutely entitled or empowered to give an absolute discharge; in payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Law; in any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

**Regulations respecting investment, devolution and income of securities, etc.**

- 25.** (1) Capital money arising under this Law shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.
- (2) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and, in default thereof, according to the



discretion of the trustees, but in the last mentioned case 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 any investment shall be in the names or under the control of the trustees.

- (3) The investment or other application under the direction of the Court shall be made on the application of the tenant for life or of the trustees.
- (4) Any investment or other application shall not, during the life of the tenant for life, be altered without his consent.
- (5) Capital money arising under this Law while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission and devolution, be considered as land, and the same shall be held for and go to the same person successively, in the same manner and for and on the same estates, interests and trusts as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.
- (6) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.
- (7) Those securities may be converted into money, which shall be capital money arising under this Law.

### **Investment in land in the Islands**

- 26.** Capital money arising under this Law from settled land in the Islands shall not be applied in the purchase of land out of the Islands, unless the settlement expressly authorises the same.

### **Settlement of land purchased, taken in exchange, etc.**

- 27.** (1) Land acquired by purchase, in exchange or on partition, shall be made subject to the settlement in manner directed in this section.
- (2) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.
- (3) Leasehold land shall be conveyed to and vested in the trustees of the settlement, on trusts and subject to powers and provisions corresponding as nearly as the law and circumstances permit, with the uses, trusts, powers and provisions to, on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, in tail male or in tail female, and who dies under the age of twenty-one

years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

- (4) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, any part thereof or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange or partition.
- (5) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to such charge.
- (6) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.
- (7) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights and privileges over and in relation to land.

### **Dealings as between tenant for life and the estate**

- 28.** Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement shall stand in the place of and represent the tenant for life, and shall, in addition to their powers as trustees, have all the powers of the tenant for life for the purpose of reference to negotiating and completing the transaction.

## **PART VI - Improvements**

### **Description of improvements authorised by law**

- 29.** Improvements authorised by this Law are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes, namely —
- (a) drainage, including the straightening, widening or deepening of drains, streams and water-courses;



- (b) irrigation and warping;
- (c) drains, pipes and machinery for supply and distribution of sewage as manure;
- (d) embanking or weiring from a river or lake, or from the sea or a tidal water;
- (e) groynes; sea walls; defences against water;
- (f) inclosing; straightening of fences; re-division of fields;
- (g) reclamation; dry warping;
- (h) farm and plantation roads; private roads, roads or streets in villages or towns;
- (i) clearing; trenching; planting;
- (j) cottages for labourers, farm and plantation servants, and artisans, employed on the settled land or not;
- (k) plantation buildings, farm houses, offices and outbuildings and other buildings, for plantation and farm purposes;
- (l) saw-mills, scutch-mills, sugar mills, coffee mills and other mills, water-wheels, engine-houses and kilns, which will increase the value of the settled land for agricultural purposes or as sugar and rum works or coffee or other works, or as woodland or otherwise;
- (m) reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices and other works and machinery for supply and distribution of water for agricultural, manufacturing or other purposes, or for domestic or other consumption;
- (n) tramways, railways, canals and docks;
- (o) jetties, piers and landing places on rivers, lakes, the sea or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes and of minerals and of things required for mining purposes;
- (p) markets and market-places;
- (q) streets, roads, paths, squares, gardens or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land;
- (r) sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making and other works necessary or proper in connection with any of the objects aforesaid;
- (s) trial pits for mines, and other preliminary works necessary or proper in connection with development of mines;
- (t) reconstruction, enlargement or improvement of any of those works;

- (u) bridges;
- (v) additions to or alterations in buildings reasonably necessary or proper to enable the same to be let; and
- (w) erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money shall be expended than the amount received for the buildings taken and the site thereof.

### **Approval by Court of scheme for improvement and payment thereon**

- 30.** (1) Where the tenant for life is desirous that capital money arising under this Law shall be applied in or towards payment for any improvement authorised by this Law, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.
- (2) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on —
- (a) a certificate of a competent engineer, practical surveyor or builder nominated by the trustees and approved of by the Court, certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or
  - (b) an order of the Court directing or authorising the trustees to so apply a specified portion of the capital money.
- (3) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of a competent engineer or able practical surveyor or builder, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

### **Concurrence in improvements**

- 31.** The tenant for life may join or concur with any other person interested in executing any improvement authorised by this Law, or in contributing to the cost thereof.





**Obligation on tenant for life and successors to maintain, insure, etc.**

- 32.** (1) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Court in any case may order, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Law, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Court may order.
- (2) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Law.
- (3) The tenant for life, and each of his successors as aforesaid, shall, from time to time, if required by the Court on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder or otherwise, report to the Court the state of every improvement executed under this Law, and the fact and particulars of fire insurance, if any, by filing in the Court a suggestion thereof.
- (4) The Court may vary any certificate made under this section, in such manner or to such extent as circumstances appear to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.
- (5) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder or reversion shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

**Payment out of Court of capital money**

- 33.** All or any part of any capital money paid into Court may, if the Court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of this Law.

**Court may order payment for improvements executed**

- 34.** The Court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by this Law notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by this Law.

**Protection as regards waste in execution and repair of improvements**

- 35.** The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may, from time to time, enter on the settled land, and, without impeachment of waste by any remainder man or reversioner thereon execute any improvement authorised by this Law, or inspect, maintain and repair the same, and, for the purposes thereof, on the settled land, do, make and use all acts, works and conveniences proper for the execution, maintenance, repair and use thereof, and get and work freestone, limestone, clay, sand and other substances and make tramways and other ways and burn and make bricks, tiles and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

**What included**

- 36.** Improvement of or to land shall include the —

- (a) drainage of land, and the straightening, widening, deepening or otherwise improving the drains, streams and watercourses of any kind;
- (b) irrigation and warping of land;
- (c) embanking and weiring of land from the sea or tidal waters, or from lakes, rivers or streams, in a permanent manner;
- (d) inclosing of lands, the making of dividing fences and the straightening of fences and re-division of fields and the surveying and running of lines;
- (e) reclamation of land, including all operations necessary thereto;
- (f) making of permanent plantation and farm roads and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate;
- (g) clearing of land;
- (h) erection of labourers' cottages, plantation and farmhouses, and other buildings required for plantation and farm purposes, and the improvement of and addition to labourers' cottages, works, houses and other buildings for plantation and farm purposes already erected so as such improvements or additions are of a permanent nature;
- (i) planting for shelter;
- (j) constructing or erecting of any engine-houses, stills, waterwheels, sugar, coffee, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, watercourses, bridges, weirs, sluices, floodgates or hatches, which will increase the value of any lands for agricultural purposes, or for the manufacture of agricultural products;
- (k) construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle,



sheep and other agricultural stock and produce, and of lime, manure and other articles and things for agricultural purposes:

Provided that the Court shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof; and

- (l) the execution of all such works as in the judgment of the Court may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.

## **PART VII - Contracts**

### **Power of tenant for life to enter into contracts**

**37.** (1) A tenant for life may —

- (a) contract to make any sale, exchange, partition, mortgage or charge;
  - (b) vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Law; and any such consideration, if paid in money, shall be capital money arising under the Law;
  - (c) contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Law;
  - (d) accept a surrender of a contract for lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted;
  - (e) enter into a contract for or relating to the execution of any improvement authorised by this Law, and may vary or rescind the same; and
  - (f) in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Law, and may vary or rescind the same.
- (2) Every contract shall be binding on, enure for the benefit of the settled land and be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any successor in the like case and manner, if any, as if it had been made by himself.

- (3) The Court may, on the application of the tenant for life, of any such successor or of any person interested in any contract give directions respecting the enforcing, carrying into effect, varying or rescinding thereof.
- (4) Any preliminary contract under this Law for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease or the benefit thereof.

## **PART VIII - Miscellaneous Provisions**

### **Application of money in Court under other laws**

- 38.** Where, under any Law public, local, personal or private, money is in Court, or is paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorised by the law under which the money is in Court, that money may be invested or applied as capital money arising under this Law, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and notwithstanding anything in this Law according to the same procedure, as if the modes of investment or application authorised by this Law were authorised by the law under which the money is in Court.

### **Application of money in hands of trustees under powers of settlement**

- 39.** Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing wherewith as the trustees have independently of this Law, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Law.

### **Application of money paid for lease or reversion**

- 40.** Where capital money arising under this Law is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate or interest, the trustees of the settlement or the Court, as the case may be, and, in the case of the Court, on the application of any party interested in that money, may, notwithstanding anything in this Law, require and cause the same to be laid out, invested, accumulated and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money, the like benefit therefrom as they might lawfully have had from the lease, estate, interest or reversion in respect whereof the money was paid, or as near thereto as may be.



**Cutting and sale of timber and part of proceeds to be set aside**

- 41.** (1) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant or life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.
- (2) Seventy-five per cent of the net proceeds of the sale shall be set aside as and be capital money arising under this Law, and the other twenty-five per cent shall go as rents and profits.

**Proceeding for protection or recovery of land settled or claimed to be settled**

- 42.** The Court may, if it thinks fit, approve of any action, defence, petition to the Legislature, legislative opposition or other proceeding taken or proposed to be taken for protection of settled land or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

**Heirlooms**

- 43.** (1) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.
- (2) The money arising by the sale shall be capital money arising under this Law, and shall be paid, invested, applied and otherwise dealt with in like manner in all respects as by this Law directed with respect to other capital money arising under this Law, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.
- (3) A sale or purchase of chattels under this section shall not be made without an order of the Court.

## **PART IX - Trustees**

### **Appointment of trustees by Court**

44. (1) If, at any time, there are no trustees of a settlement within the definition in this Law, or where in any other case it is expedient, for purposes of this Law, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder or otherwise, or, in the case of an infant, of his testamentary or other guardian or next friend, appoint fit persons to be trustees under the settlement for purposes of this Law.
- (2) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall, for the purposes of this Law, become and be the trustees or trustee of the settlement.

### **Trustees for the purposes of this Law**

45. Where there are for the time being no trustees of the settlement within the meaning and for the purposes of this Law, then the following persons shall, for the purposes of this Law, be deemed trustees of the settlement, namely —
- (a) the persons, if any, who are for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power to consent or to approve of the exercise of such power of sale, or, if there be no such persons; then
  - (b) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land to be sold, or with power to consent to or approve of the exercise of such future power of sale, and whether the power or trust takes effect in all events or not.

### **Number of trustees to act**

46. (1) Notwithstanding anything in this Law, capital money arising under this Law shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorises the receipt of capital trust money of the settlement by one trustee.
- (2) Subject thereto, the provisions of this Law referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.



**Trustees' receipts**

47. The receipt or direction in writing of or by the trustees of the settlement, or where one trustee is empowered to act, of or by that trustee, or of or by the personal representatives of the last surviving or continuing trustee, for or relating to any money or securities, paid or transferred to or by the direction of the trustees, trustee or representatives, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Law, or that no more than is wanted is raised.

**Protection of each trustee individually**

48. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker or other person, or for the insufficiency or deficiency of any sureties, or for any loss not happening through his own wilful default.

**Protection of trustees generally**

49. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking or doing any such application, action, proceeding or thing, as they might make, bring, take or do; and in case of purchase of land with capital money arising under this Law, or of an exchange, partition or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition or lease, or answerable as regards any price, consideration or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition or lease.

**Trustees' reimbursement**

50. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

**Reference of differences to Court**

- 51.** If, at any time, a difference arises between a tenant for life and the trustees of the settlement respecting the exercise of any of the powers of this Law, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference and respecting the costs of the application as the Court thinks fit.

**Notice to trustees**

- 52.** (1) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage or charge shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the Islands, and shall give like notice to the attorney-at-law for the trustees, if any such attorney-at-law is known to the tenant for life, by posting a registered letter containing the notice, addressed to the attorney-at-law at his place of business in the Islands, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage or charge, or of a contract for the same. The notice by this section required may be a notice of a general intention in that behalf.
- (2) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.
- (3) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.
- (4) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him, from time to time, with reference to sales, exchanges, partitions or leases effected, or in progress, or immediately intended.
- (5) Any trustee, by writing under his hand, may waive notice either in any particular case, or generally, and may accept less than one months' notice.

**PART X - Court and Procedure****Regulations respecting payments into Court, applications, etc.**

- 53.** (1) All matters within the jurisdiction of the Court under this Law shall be subject to the laws regulating the Court, and to the practice of the Court.
- (2) Payment of money into Court effectually exonerates therefrom the person making the payment.
- (3) Every application to the Court shall be by petition, or by summons at Chambers.





- (4) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.
- (5) On any application, notice shall be served on such persons, if any, as the Court thinks fit.
- (6) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.
- (7) General Rules for purposes of this Law shall be deemed Rules of Court within section 19 of the *Grand Court Law (1995 Revision)*, and may be made accordingly.

### **Payment of costs out of settled property**

- 54.** Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Law, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money or investments or by means of a sale of part of the settled land in respect whereof the costs, charges or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

## **PART XI - Restrictions, Savings and General Provisions**

### **Powers not assignable; contract not to exercise powers void**

- 55.** (1) The powers under this Law of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.
- (2) A contract by a tenant for life not to exercise any of his powers under this Law is void.
- (3) This section shall operate without prejudice to the rights of any person being an assignee for value by instrument duly recorded in the Record Office of the estate

or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained without fine, and in other respects are in conformity with this Law.

- (4) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Law; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.
- (5) Every instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement shall be deemed one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within the meaning or operation of this section.
- (6) Subsection (5) shall apply and have effect with respect to every disposition unless inconsistent with the nature or terms of such disposition.

### **Prohibition or limitation against exercise of powers void**

56. (1) If in a settlement, will, assurance or other instrument a provision is inserted purporting or attempting, by way of direction, declaration or otherwise, to forbid a tenant for life to exercise any power under this Law, or attempting, or tending, or intended, by a limitation, gift or disposition over of settled land, or by a limitation, gift or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Law, that provision, as far as it purports, or attempts or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.
- (2) For the purposes of subsection (1) an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

### **Provision against forfeiture**

57. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Law shall not occasion a forfeiture.



**Tenant for life trustee for all parties interested**

- 58.** A tenant for life shall, in exercising any power under this Law, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

**General protection of purchasers, etc.**

- 59.** On a sale, exchange, partition, lease, mortgage or charge, a purchaser, lessee, mortgagee or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Law.

**Exercise of powers, limitation of provisions, etc.**

- 60.** (1) Powers and authorities conferred by this Law on a tenant for life, trustees or the Court are exercisable from time to time.
- (2) Where a power of sale, exchange, partition, leasing, mortgaging, charging or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make and do all deeds, instruments and things necessary or proper in that behalf.
- (3) Where any provision in this Law refers to sale, purchase, exchange, partition, leasing or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts and transactions under this Law.

**Saving for other powers**

- 61.** (1) Nothing in this Law shall take away, abridge or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction or otherwise; and the powers given by this Law are cumulative.
- (2) In case of conflict between a settlement and this Law, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Law, this Law shall prevail; and notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Law, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Law.

- (3) If a question arises, or a doubt is entertained, respecting any matter within subsection (1), the Court may, on the application of the trustees of the settlement, the tenant for life or any other person interested, give its decision, opinion, advice or direction thereon.

### **Additional or larger powers by settlement**

- 62.** (1) Nothing in this Law shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Law.
- (2) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Law, operate and be exercisable in the like manner, and with all the like incidents, effects and consequences, as if they were conferred by this Law, unless a contrary intention is expressed in the settlement.

## **PART XII - Limited Owners Generally**

### **Enumeration of other limited owners to have powers of tenant for life**

- 63.** (1) The following persons shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Law, as if each of them were a tenant for life as defined in this Law —
- (a) a tenant in tail, including a tenant in tail who is by statute restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Law shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament or by the Legislature of the Islands in consideration of public services;
  - (b) a tenant in fee simple, with an executory limitation, gift or disposition over, on failure of his issue, or in any other event;
  - (c) a person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Law shall bind the Crown;
  - (d) a tenant for years determinable on life, not holding merely under a lease at a rent;
  - (e) a tenant for the life of another, not holding merely under a lease at a rent;
  - (f) a tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over, or is subject



- to a trust for accumulation of income for payment of debts or other purpose;
- (g) a tenant in tail after possibility of issue extinct;
  - (h) a tenant by the curtsy, which is to be deemed for the purposes of this Law an estate arising under a settlement made by his wife;
  - (i) a person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, until sale of the land or until forfeiture of his interest therein on bankruptcy or other event.
- (2) In every such case the provisions of this Law referring to a tenant for life, either as conferring powers on him or otherwise, to a settlement and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.
- (3) In any such case any reference in this Law to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

## **PART XIII - Infants, Married Women and Lunatics**

### **Infant absolutely entitled to be tenant for life**

- 64.** Where a person who is, in his own right, seised of or entitled in possession to land, is an infant, then for purposes of this Law the land is settled land, and the infant shall be deemed tenant for life thereof.

### **Tenant for life, infant**

- 65.** Where a tenant for life, or a person having the powers of a tenant for life under this Law, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Law, the powers of a tenant for life under this Law may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

### **Married woman, how to be affected**

- 66.** (1) The foregoing provisions of this Law apply to a married woman of full age, whether or not she is entitled to her estate or interest for her own benefit, and she, without her husband, may exercise the powers of a tenant for life under this Law.
- (2) A restraint on anticipation in a settlement shall not prevent the exercise by her of any power under this Law.

**Tenant for life, lunatic**

67. Where a tenant for life, or a person having the powers of a tenant for life under this Law, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Court, exercise the powers of a tenant for life under this Law, and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

**PART XIV - Settlement by Way of Trusts for Sale****Provision for case of trust to sell and re-invest in land**

68. (1) Any land, or any estate or interest in land, which under or by virtue of any deed, will or agreement, covenant to surrender, statute or other instrument or any number of instruments is subject to a trust or direction for sale of that land, estate or interest, and for the application or disposal of the money to arise from the sale, the income of that money, the income of the land until sale or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being, under the settlement, trustees for sale of the settled land, or having power of consent to, approval of or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Law are for purposes of this Law trustees of the settlement.
- (2) In every such case the provisions of this Law referring to a tenant for life, to a settlement and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except that —
- (a) any reference in this Law to the predecessors or successors in title of the tenant for life, the remaindermen or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, the income of that money or the income of the land, until sale (as the case may require);



- (b) capital money arising under this Law from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised by this Law, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement;
  - (c) capital money arising under this Law from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly; and
  - (d) land of whatever tenure acquired under this Law by purchase, in exchange or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.
- (3) In the case of a settlement within the meaning of this section, any consent not required by the terms of the settlement is not by force of anything contained in this Law to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement.
- (4) In the case of every other settlement, not within the meaning of this section, where two or more persons together constitute the tenant for life for the purposes of this Law, then notwithstanding anything contained in section 61(2), requiring the consent of all those persons, the consent of one only of those persons is by force of that section to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exercisable for any purpose provided for in this Law.
- (5) With respect to the powers conferred by this section the following provisions are to have effect —
- (a) those powers are not to be exercised without the leave of the Court;

- (b) the Court may, by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given;
- (c) the Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order;
- (d) so long as an order under this section is in force neither the trustees of the settlement, nor any person other than a person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave is by the order given, to exercise a power conferred by this Law;
- (e) an order under this section shall be recorded in the Record Office;
- (f) any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until the order is duly recorded as aforesaid;
- (g) an application to the Court under this section may be made by the tenant for life, or by the persons who together constitute the tenant for life, within the meaning of this section;
- (h) an application to rescind or vary an order, or to make any new or further order under this section may be made also by the trustees of the settlement or by any person beneficially interested under the settlement; and
- (i) the person or persons to whom leave is given by an order under this section shall be deemed the proper person or persons to exercise the powers conferred by this section, and shall have, and may exercise, those powers accordingly.

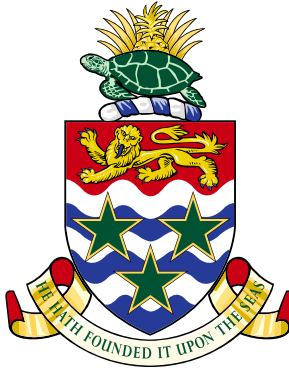
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**Carmena H. Parsons**  
*Clerk of Executive Council*





**CAYMAN ISLANDS**



# **REGISTERED LAND LAW**

**(2018 Revision)**

**Supplement No. 4 published with Extraordinary Gazette No. 25 of 27th March, 2018.**

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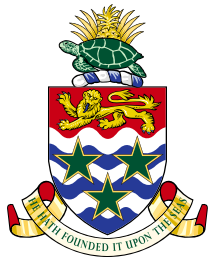
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CAYMAN ISLANDS



REGISTERED LAND LAW  
(2018 Revision)

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## CAYMAN ISLANDS



# REGISTERED LAND LAW

(2018 Revision)

## PART I - Introductory

### Short title

1. This Law may be cited as the *Registered Land Law (2018 Revision)*.

### Definitions

2. In this Law —

“**application book**” means the application book kept under section 4 (d);

“**base parcel**” means the parcel in relation to which a volumetric plan has been registered;

“**charge**” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a sub-charge and the instrument creating a charge;

“**chargee**” means the proprietor of a charge;

“**chargor**” means the proprietor of charged land or of a charged lease or charge;

“**court**”, save as is otherwise expressly provided, means the Grand Court;

“**dealing**” includes disposition and transmission;

“**disposition**” means any act *inter vivos* by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge;

“**easement**” means a right attached to a parcel of land which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;

“**to file**” means to place in relative parcel file;

“**guardian**” means any person responsible for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“**instrument**” includes any deed, judgment, decree, order or other document requiring or capable of registration under this Law;

“**interest in land**” includes absolute ownership of land;

“**land**” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

“**Land Register**” means the Land Register compiled under Division 2 of Part II;

“**lease**” means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for a lease;

“**lessee**” means the holder of a lease;

“**lessor**” means the proprietor of leased land;

“**licence**” means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

“**parcel**” means an area of land separately delineated on the Registry Map and given a number;

“**periodic tenancy**” means a tenancy from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

“**personal representative**” means executor of the will or administrator of the estate;

“**profit**” means the right to go on the land of another and take a particular substance from that land, whether the soil or products of the soil;

“**proprietor**” means the person registered under this Law as the owner of land or a lease or a charge;

“**the register**” means the leaf of the Land Register kept in respect of a parcel of land or of a registered lease;



“**to register**” means to make an entry, note or record in the register under this Law, and “**registered**”, “**unregistered**” and “**registration**” bear a corresponding meaning;

“**Registrar**” means the Registrar of Lands appointed under section 5;

“**registration section**” means a registration section established under section 14;

“**registry**” means the land registry established under section 4;

“**Registry Map**” means the map or series of maps referred to in section 14;

“**transfer**” means the passing of land, a lease or a charge by act of the parties and not by operation of law, and also the instrument by which such passing is effected, but does not include an agreement to transfer;

“**transmission**” means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;

“**trustee**” includes personal representative; and

“**valuable consideration**” includes marriage, but does not include a nominal consideration;

“**volumetric parcel**” means a parcel shown as such on a volumetric plan; and

“**volumetric plan**” means a plan that defines land using three-dimensionally located points to identify the position, shape and dimensions of each bounding surface and may contain one or more volumetric parcels consisting of or including volumetric space.

### Reconciliation with other laws

3. Except as otherwise provided in this Law, no other law and no practice or procedure relating to land shall apply to land registered under this Law so far as it is inconsistent with this Law:

Provided that, except where a contrary intention appears, nothing in this Law shall be construed as permitting any dealing which is forbidden by express provisions of any other law or as overriding any other law requiring the consent or approval of any authority to any dealing.

## **PART II - Organisation and Administration**

### **Division 1 - Land Registries and Officers**

#### **The land registry**

4. There shall be established and maintained at Grand Cayman a land registry in which there shall be kept —
- (a) a register, to be known as the Land Register, in accordance with Division 2 of this Part;
  - (b) a map to be known as the Registry Map, in accordance with Division 3 of this Part;
  - (c) parcel files containing the instruments which support subsisting entries in the Land Register and any filed plans and documents;
  - (d) a book, to be known as the application book, in which shall be kept a record of all applications numbered consecutively in the order in which they are made at the registry;
  - (e) an index, in alphabetical order, of the names of the proprietors of land, leases and charges showing the numbers of the parcels in which they are interested; and
  - (f) a register and a file of powers of attorney.

#### **Registrar**

5. (1) The Governor shall appoint a Registrar of Lands, who shall be responsible for administering the land registry in accordance with this Law and as many Assistant Registrars of Lands as may from time to time appear desirable.
- (2) The Registrar, without divesting himself of any of his own powers or duties may, in writing, authorise an Assistant Registrar to exercise and perform any of such powers and duties and may at any time, in writing, vary or revoke such authorisation.

#### **General powers of Registrar**

6. The Registrar may exercise the following powers in addition to any other powers conferred on him by this Law, that is to say he may —
- (a) require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;
  - (b) summon any person to appear and give any information or explanation respecting land, a lease or a charge or any instrument, certificate or other document or plan relating to the land, lease or charge in question, and such person shall appear and give such information or explanation;



- (c) refuse to proceed with any registration if any instrument certificate, or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Law is not performed;
- (d) administer oaths or take a declaration in lieu thereof, and may require that any proceedings, information or explanation shall be verified on oath or by statutory declaration; and
- (e) order that the costs, charges and expenses incurred by him or by any person in connection with any investigation or hearing held by him for the purposes of this Law shall be borne and paid by such person in such manner and in such proportions as he may think fit, and the amount of such costs, charges and expenses as shall have been incurred by the Registrar shall be deemed to be a fee to which sections 157 and 158 apply.

### **Indemnity of officers**

7. The Registrar shall not, nor shall any other officer of the registry, be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers of this Law, or any regulations made hereunder.

### **Seal of registry**

8. The registry shall have a seal, and every instrument purporting to bear the imprint of such seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the Registrar.

## **Division 2 - The Land Register**

### **The Land Register**

9. (1) The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the *Land Adjudication Law (1997 Revision)* and a register in respect of each lease required by this Law to be registered.
- (2) Each register shall show whether the land is private land or Crown land and, in respect of private land, whether the title is absolute or provisional, and shall be divided into three sections as follows —
- (a) the property section, containing a brief description of the land or lease, together with particulars of its appurtenances and, where the title is provisional, of the information recorded in the adjudication record under section 16(1)(d) of the *Land Adjudication Law (1997 Revision)* and a reference to the Registry Map and filed plan, if any;

- (b) the proprietorship section, containing the name and, where possible, address of the proprietor and a note of any inhibition, caution or restriction affecting his right of disposition; and
  - (c) the incumbrances section, containing a note of every incumbrance and every right adversely affecting the land or lease.
- (3) No entry shall be required, in the proprietorship section, of land which is described as Crown land.

### **Compilation of the Land Register**

- 10.** Whenever an adjudication record has become final under section 22 of the *Land Adjudication Law (1997 Revision)* and the Adjudicator has delivered the adjudication record to the Registrar, the Registrar shall prepare a register for each parcel shown in the adjudication record and for any lease required to be registered, and shall register therein any of the particulars on the adjudication record which requires registration.

### **Manner of registration**

- 11.** (1) The first registration of any parcel shall be effected by the preparation of a register in accordance with section 9 and the signing by the Registrar of the particulars of the ownership and the particulars of incumbrances, if any, appearing thereon.
- (2) Every subsequent registration shall be effected by an entry in the register in such form as the Registrar may from time to time direct, and by the cancellation of the entry, if any, which it replaces.

### **Cancellation of obsolete entries**

- 12.** The Registrar may cancel any entry in the register which he is satisfied has ceased to have any effect.

### **New editions of Register**

- 13.** The Registrar may, at any time, open a new edition of a register showing only subsisting entries and omitting therefrom all entries that have ceased to have any effect.



### **Division 3 - Map, Parcels and Boundaries**

#### **Registry Map**

- 14.** (1) The Registry Map shall be compiled from the demarcation maps made under the *Land Adjudication Law (1997 Revision)* and shall be divided into registration sections which, so far as is possible, shall have the same boundaries and names as the adjudication sections; the registration sections, where the adjudication sections are so divided, shall be divided into blocks which shall be given the same letters or numbers or combinations of letters and numbers as are given on the demarcation maps.
- (2) The parcels in each registration section or block shall be numbered consecutively following the numbering in the adjudication proceedings, and the name of the registration section and the number or letter of the block (if any) and the number of the parcel shall together be a sufficient reference to any parcel.
- (3) The Registrar may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.
- (4) A plan may be filed in respect of a particular parcel to augment the information available from the Registry Map, and the filing of the plan shall be noted in the register.

#### **Correction of the Registry Map and new editions**

- 15.** (1) The Registrar may cause to be made a survey of any land for the purposes of this Law and, after informing every person affected thereby, may cause the Registry Map to be corrected as a result of such survey.
- (2) The Registrar may, at any time, direct the preparation of a new Registry Map or any part thereof, and there may be omitted therefrom any matter which the Registrar considers obsolete.

#### **Mutation**

- 16.** (1) On the application of a proprietor of land, and subject to the agreement of all persons affected thereby, the Registrar may order the alteration of the Registry Map, but no such alteration shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form, and the mutation form shall be filed.
- (2) Whenever the boundary of a parcel is altered on the Registry Map, the parcel number shall be cancelled and the parcel shall be given a new number.

**General boundaries**

- 17.** (1) Except where, under section 18, it is noted in the register that the boundaries of a parcel have been fixed, the Registry Map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.
- (2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.
- (3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the Registry Map and in the register and shall file such plan or description as may be necessary to record his decision.
- (4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.
- (5) Except where, as aforesaid, it is noted in the register that the boundaries of a parcel have been fixed, the court or the Registrar may, in proceedings concerning the parcel, receive such evidence as to its boundaries and situation as it or he thinks fit.

**Fixed boundaries**

- 18.** (1) If the Registrar, in his discretion, considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.
- (2) The Registrar shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the parcel.

**Maintenance of boundary features**

- 19.** (1) Every proprietor of land shall maintain in good order any feature which demarcate his boundaries, whether established pursuant to the requirements of any other law or pursuant to an order of the Registrar or of the proprietor's own accord.
- (2) The Registrar may, in writing, order the demarcation within a specified time of any boundary in such permanent manner as he may direct, and whoever, fails to





comply with such an order is guilty of an offence and liable on summary conviction to a fine of fifty dollars.

- (3) The Registrar may, in writing, order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary, and any proprietor so ordered to be responsible who allows the boundary feature or any part of it to fall into disrepair or to be destroyed or removed is guilty of an offence and liable on summary conviction to a fine of fifty dollars.

### **Interference with boundary features**

20. (1) Whoever wilfully defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorised to do so by the Registrar is guilty of an offence and liable on summary conviction to a fine of two hundred dollars or to imprisonment for six months.
- (2) Any person convicted of such an offence, whether or not any penalty therefor is imposed upon him is liable to pay the cost of restoring the boundary feature, and such cost shall be recoverable as a civil debt by any person responsible under section 19 for the maintenance of the feature.

### **Combinations and subdivisions**

21. (1) Where contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine those parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.
- (2) Upon the application of the proprietor of a parcel for the division of his parcel into two or more parcels, the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the divisions, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that —

- (i) nothing shall be done under this section which would be inconsistent with this or any other law;
- (ii) subject to the consent of the lessee, no parcel which is subject to a lease shall be subdivided so as to subdivide the land comprised in such a lease; and
- (iii) where a proprietor is subdividing his parcel for the purpose of building development, the Registrar may require him to submit a plan of the proposed subdivisions prepared by a surveyor authorised under the *Land Surveyors Law (Revised)* and certified by the appropriate

authority as conforming with the requirements of any planning law for the time being in force.

- (3) Upon the application by a proprietor of a parcel for the division of his parcel into a base parcel and one or more volumetric parcels, in accordance with a volumetric plan, the Registrar shall —
- (a) file the volumetric plan and assign it a volumetric plan number;
  - (b) open a new register in respect of each volumetric parcel shown on the volumetric plan; and
  - (c) in respect of the register relating to the base parcel, note in the encumbrances section, the easements in favour of the volumetric parcels that have been opened:

Provided that —

- (i) nothing shall be done under this section which would be inconsistent with this or any other law;
- (ii) subject to the consent of the lessee, no parcel which is subject to a lease shall be subdivided so as to subdivide the land comprised in such a lease; and
- (iii) where a proprietor is subdividing his parcel for the purpose of a building development, the Registrar may require him to submit an authenticated survey plan of the proposed subdivisions prepared by a surveyor authorised under the *Land Surveyors Law (1996 Revision)* and certified by the appropriate authority as conforming with the requirements of any planning law for the time being in force.

### Division of land for estate purposes

**21A.** (1) Upon an application by the —

- (a) personal representative of an estate;
- (b) beneficiary of an estate; or
- (c) proprietors (where the parcel was previously transferred by a personal representative to persons entitled under a will or on intestacy),

for the division of a parcel into two or more parcels, the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the divisions and recording in the new registers all subsisting entries appearing in the closed register.

- (2) An application under subsection (1) shall be accompanied by a plan prepared by a surveyor authorised under the *Land Surveyors Law (1996 Revision)*.
- (3) For the avoidance of doubt, where a division of a parcel has been effected under this section, any application for development purposes in relation to any of the



new parcels shall be subject to the requirements of any planning law for the time being in force.

- (4) Cabinet may make regulations prescribing anything necessary or convenient for giving effect to the purposes of this section.

### **Reparcellation**

- 22.** (1) The Registrar may, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in such parcels is registered, and of any cautioner, cancel the registers relating to such parcels and prepare new registers in accordance with the revised layout:

Provided that, where in the opinion of the Registrar a proposed reparcellation involves substantial changes of ownership which should be effected by transfers without invoking this section, he may in his discretion refuse to effect such reparcellation.

- (2) Upon any such reparcellation, the new parcels shall, notwithstanding section 37, vest in the persons in whose names they are registered.

## **Division 3A - Volumetric Plans and Volumetric Parcels**

### **A volumetric parcel is land**

- 22A.** (1) A volumetric parcel shall be deemed for the purposes of sections 23 and 24 of this Law to be a parcel and for all purposes to be land and any volumetric parcel created may devolve or be dealt with in the same manner and form as any other land, the title of which is registered under this Law.
- (2) The right to structural support and access shall be implied, subject to any express provision in a covenant registered against the title, in favour of every volumetric parcel.

### **Volumetric plan can only be registered to one parcel**

- 22B.** One or more volumetric plans may be filed in relation to a parcel but a volumetric plan shall not be filed in relation to more than one parcel.

### **Title to remain in proprietor of base parcel**

- 22C.** The title to the land, other than the land contained in the volumetric parcel, shall remain in the proprietor of the base parcel.

**Cancellation of a volumetric plan**

- 22D.**(1) Where the base parcel and all the volumetric parcels of a volumetric plan are in common ownership, the proprietor of the base parcel and volumetric parcels may apply in the prescribed form to the Registrar for that volumetric plan to be cancelled.
- (2) If the Registrar is satisfied that an application is in order, the Registrar shall —
- (a) note in the Registers in respect of the volumetric parcels, that the volumetric parcels are closed;
  - (b) note in the Register in respect of the base parcel —
    - (i) that title to the land comprised in the closed volumetric parcels reverts to the base parcel;
    - (ii) in the encumbrances section, the cancellation of any easements in favour of the volumetric parcels; and
    - (iii) that the Register for the base parcel is closed; and
  - (c) open a new Register in respect of the combined volumetric parcels and base parcel.

**PART III - Effect Of Registration****Effect of registration with absolute title**

- 23.** Subject to section 27, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever but subject —
- (a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the register; and
  - (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register:

Provided that —

- (i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee; and
- (ii) the registration of any person under this Law shall not confer on him any right to any mineral oils unless the same are expressly referred to in the register.



**Effect of registration with provisional title**

24. Subject to section 27, the registration of any person as the proprietor with a provisional title of a parcel shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of that proprietor arising before such date or under such instrument or in such other manner as is specified in the register of that parcel; but save as aforesaid, such registration shall have the same effect as the registration of a person with absolute title.

**Effect of registration of a lease**

25. Subject to section 27, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease:

Provided that if the title of the lessor is a provisional title the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

**Effect of registration as Crown land**

26. The registration of land as Crown land shall, subject to any registered Crown land incumbrances, enable the Governor by a disposition registered under this Law, to dispose of such land in accordance with section 9 of the *Governor (Vesting of Lands) Law (2005 Revision)*.

**Voluntary transfer**

27. Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it and subject also to the *Bankruptcy Law (1997 Revision)* and to the winding-up provisions of the *Companies Law (2018 Revision)*, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

**Overriding interests**

28. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register —
- (a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Law;
  - (b) natural rights of light, air, water and support;
  - (c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other law;

- (d) leases or agreements for leases for a term not exceeding two years, and periodic tenancies within the meaning of section 2;
- (e) any unpaid moneys which, without reference to registration under this Law, are expressly declared by any law to be a charge upon land;
- (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;
- (g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed; and
- (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any law:

Provided that the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.

### **Conversion of provisional into absolute title**

- 29.** (1) Any proprietor registered with a provisional title or any interested person may, at any time, apply to the Registrar to be registered or to have the proprietor registered, as the case may be, with an absolute title.
- (2) If the applicant satisfies the Registrar that —
- (a) the qualification to which the provisional title is subject has ceased to be of effect; or
  - (b) a period of time has elapsed since the date of first registration with a provisional title, which when added to the period from which the possession of the proprietor shall be considered to have begun exceeds twelve years and there is no effective qualification to which the provisional title is subject,
- the Registrar shall make an order for the registration of the proprietor with absolute title after such advertisement as the Registrar may think fit.
- (3) On the making of any such order the Registrar shall substitute in the register the words “absolute title” for the words “provisional title” and the title of the proprietor shall thereupon become absolute.

### **Entries to constitute actual notice**

- 30.** Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register relating to the land, lease or charge.



## PART IV - Certificates and searches

### Land certificates and certificates of lease

- 31.** (1) The Registrar shall, if requested by any proprietor of land or a lease where no land certificate or certificate of lease has been issued, issue to him a land certificate or a certificate of lease, as the case may be, in the prescribed form showing all subsisting entries in the Register affecting that land or lease:

Provided that —

- (i) only one such certificate shall be issued in respect of each parcel of land or lease; and
  - (ii) no certificate of lease shall be issued unless the lease is for a certain period exceeding twenty five years.
- (2) A land certificate or certificate of lease shall be only *prima facie* evidence of the matters shown therein, and the land or lease shall be subject to all entries in the register whether they are shown on the certificate or not.
- (3) When there is more than one proprietor, the proprietors shall agree among themselves as to who shall receive the certificate, and failing agreement the certificate shall be filed in the registry.
- (4) The date of issue of a land certificate or certificate of lease shall be noted in the register.

### Production of certificates

- 32.** (1) If a land certificate or a certificate of lease has been issued, then, unless it is filed in the registry, or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and a note of such registration shall be made on the certificate.
- (2) If the disposition is a transfer, the certificate, if produced, shall be destroyed, and a new certificate issued to the new proprietor.
- (3) If the disposition is a charge, the certificate, if any, shall be filed in the registry.

### Dispositions of leases and charges

- 33.** On the registration of any disposition of a lease or charge, the duplicate and triplicate of the lease or charge shall be produced to the Registrar, who shall note particulars of the disposition on the filed lease or charge and on the duplicate and triplicate thereof unless the Registrar is satisfied that they cannot be produced.

**Lost or destroyed certificates**

- 34.** (1) If a land certificate or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new certificate, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate.
- (2) The Registrar may require a statutory declaration that the certificate has been lost or destroyed.
- (3) If satisfied with the evidence as to the loss or destruction of the certificate the Registrar may, after the publication of such notice as he may think fit, cancel the previous certificate and issue a new certificate in the name of the proprietor.
- (4) If after the issue of a new certificate the previous certificate is found, it shall be delivered to the Registrar for destruction.

**Searches and copies**

- 35.** (1) Any person, on application in the prescribed form and on payment of the prescribed fee, may inspect during official hours of business any register and any sheet of the Registry Map or any filed instrument or plan.
- (2) Any person, on application in the prescribed form and on payment of the prescribed fee, shall be entitled to a certified copy of any register or part of the Registry Map or any instrument or plan filed in the registry.
- (3) Any person on application in the prescribed form and on payment of the prescribed fee, may require an official search in respect of any parcel, and the Registrar shall issue a certificate of official search setting forth particulars of the subsisting entries in the register of that parcel.

**Evidence**

- 36.** (1) A certified copy of the register or part of the Registry Map or any instrument or plan filed in the registry shall be admissible in evidence in all actions and matters and between all persons or parties, to the same extent as the original, and a signature on any such certified copy purporting to be the signature of the Registrar shall be presumed to be the signature of the Registrar until the contrary is proved.
- (2) No legal practitioner, trustee, personal representative or other person in a fiduciary position shall be answerable in respect of any loss occasioned by the inaccuracy of any such certified copy as is referred to in subsection (1).
- (3) No process for compelling the production of the register, or of the Registry Map, or of any filed instrument or plan, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.





## PART V – Dispositions

### Division 1 - General

#### Subsequent dealings

- 37.** (1) No land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Law shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge.
- (2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him lawfully authorised:
- Provided that such an action shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract —
- (a) has in part performance of the contract, taken possession of the property or any part thereof; or
  - (b) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.

#### Protection of persons dealing in registered land

- 38.** (1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or in any way concerned —
- (a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered;
  - (b) to see to the application of any consideration or any part thereof; or
  - (c) to search any register kept under the *Public Recorder Law (2010 Revision)* or the *Registration (Land) Law (1996 Revision)*.
- (2) Where the proprietor of land, a lease or a charge is a trustee he shall, in dealing therewith, be deemed to be absolute proprietor thereof, and no disposition by such trustee to a *bona fide* purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

**Time for registration**

- 39.** (1) All instruments shall be presented for registration within forty-five days of the signature of the first, or the only, named party therein.
- (2) Where an instrument is presented for registration after the period specified in subsection (1), there shall be payable, in addition to the registration fee, the late registration fee.
- (3) The late registration fee referred to in subsection (2) shall be —
- (a) an amount equal to the registration fee; and
  - (b) payable in respect of each period of forty-five days following the end of the period referred to in subsection (1).

**Power to compel registration**

- 40.** (1) If he is satisfied that any person, through his wilful default, has failed to register any instrument which is registerable under this Law, the Registrar may, by notice in writing, order such person to present such instrument for registration, and thereupon the registration fee and any additional fee payable under section 39 shall become due and payable whether the instrument is presented for registration or not.
- (2) Whoever fails to comply with an order of the Registrar under subsection (1) within one month of the service of the notice is guilty of an offence and liable on summary conviction to a fine of fifty dollars.

**Priority of registered interests**

- 41.** (1) Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed:
- Provided that where an instrument is prepared in the registry it shall be deemed to have been presented on the date on which application for its preparation was made to the Registrar.
- (2) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of the office on that day, and instruments so sent out received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.
- (3) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested thereunder.



**Stay of registration**

- 42.** (1) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for an official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.
- (2) If, within the suspension period, a properly executed instrument affecting the proposed dealing is presented for registration, such instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or other entry for which application for registration may have been made during the suspension period.
- (3) Subject to subsection (2), any instrument or document for which application for registration is made during the suspension period other than that affecting the proposed dealing shall be dealt with in the same manner, have the same priority and be as effectual as if no stay of registration had been obtained.

**Merger of registered interests**

- 43.** Where, upon the registration of a dealing, the interest of —
- (a) lessor and lessee;
  - (b) chargor and chargee; or
  - (c) the proprietor of a parcel which is burdened with an easement, profit or restrictive agreement and the proprietor of a parcel which benefits therefrom,
- vest in the same proprietor, such interests shall not merge unless a surrender or discharge is registered or the parcels are combined or there is a declaration of merger, which may be contained in the instrument evidencing the dealing.

**Division 2 - Leases****Leases**

- 44.** Subject to this and any other law, the proprietor of land may lease the land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite may be terminated by the lessor or the lessee, and subject to such conditions as he may think fit:

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.



**Periodic tenancies**

45. (1) Where in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to have created a periodic tenancy.
- (2) Where the proprietor of land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.
- (3) The period of a periodic tenancy created by subsection (2) shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall subject to any other law, be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

**Registration of leases**

46. A lease for a specified period exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years, shall be in the prescribed form, and shall be completed by —
- (a) opening a register in respect of the lease in the name of the lessee;
  - (b) filing the lease; and
  - (c) noting the lease in the incumbrances section of the register of the lessor's land or lease.

**Lessor's consent to dealing with lease**

47. Upon the registration of a lease containing an agreement, express or implied, by the lessee that he will not transfer, sub-let, charge or part with possession of the land leased or any part thereof without the written consent of the lessor, the agreement shall be noted in the register of the lease and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with section 107, has been produced to the Registrar.

**Lease of charged land**

48. Where any land is subject to a charge, no lease of such land shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 107, unless the charge expressly dispenses with the necessity for such consent.

**Duration of leases**

49. (1) Where the period of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.



- (2) Where no day of commencement is named, the period commences on the date of execution of the lease, and that day is excluded in computing that period.
- (3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

### **Future leases**

- 50.** (1) A lease may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the lease is executed but shall be of no effect unless it is registered.
- (2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

### **Holding over**

- 51.** (1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the termination of the lease he shall, in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease so far as those conditions are appropriate to a periodic tenancy.
- (2) For the purposes of this section, the acceptance of rent in respect of any period after the termination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

### **Agreements implied in leases on part of lessor**

- 52.** Save as otherwise expressly provided in the lease, there shall be implied, in every lease, agreements by the lessor with the lessee binding the lessor —
- (a) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall and may peaceably and quietly possess and enjoy the leased premises during the period of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through him;
  - (b) not to use or permit to be used any adjoining or neighbouring land of which he is the proprietor or lessee in any way which would render the leased premises unfit or materially less fit for the purpose for which they were leased;
  - (c) where part only of a building is leased, to keep the roof, main walls and main drains, and the common passages and common installations, in repair;

- (d) where any dwelling house, flat or room is leased furnished, that such house, flat or room is fit for habitation at the commencement of the tenancy; and
- (e) that if, at any time, the leased premises or any part thereof are destroyed or damaged by fire, earthquake, hurricane, flood, civil commotion or accident not attributable to the negligence of the lessee, his servants or his licensees, so as to render the leased premises or any part thereof wholly or partially unfit for occupation or use, the rent or a just proportion thereof according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased premises have again been rendered fit for occupation and use; but that if the leased premises have not been so rendered for occupation and use within six months of their destruction or damage as aforesaid, the lessee may at his option, and on giving one month's written notice of his intention so to do, terminate the lease.

### **Agreements implied in leases on part of lessee**

**53.** Save as otherwise expressly provided in the lease, there shall be implied, in every lease, agreements by the lessee with the lessor binding the lessee —

- (a) to pay the rent reserved by the lease at the times and in the manner therein specified;
- (b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease unless the same are payable exclusively by the lessor by virtue of any written law;
- (c) in the case of agricultural land, to farm the same in accordance with the rules of good husbandry and to yield up the land at the end of the term in good heart;
- (d) except where part only of a building is leased, or where a dwelling house is leased furnished, to keep all buildings comprised in the lease and all boundary marks in repair;
- (e) where part only of a building is leased, or where a dwelling house is leased furnished, to keep the leased premises, except the roof, main walls and main drains, and the common passages and common installations in repair;
- (f) where the lease is of furnished premises, to keep the furniture in as good condition as it was at the commencement of the period, fair wear and tear only excepted, and to replace such articles as are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed or damaged;
- (g) to permit the lessor or his agent, with or without workmen or others, at all convenient times and after reasonable notice, to enter on the leased premises and examine their condition;



- (h) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice; and
- (i) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, but such consent shall not be unreasonably withheld.

### **Meaning of “in repair”**

**54.** Where an agreement is contained or implied in any lease to keep a building or a particular part of a building in repair, it shall, in the absence of an express provision to the contrary mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

### **Lessor’s right of forfeiture and effect of forfeiture of subleases**

- 55.** (1) Subject to section 57 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee —
- (a) commits any breach of, or omits to perform any agreement or condition on his part expressed or implied in the lease;
  - (b) is adjudicated bankrupt; or
  - (c) being a company, goes into liquidation.
- (2) The right of forfeiture may be —
- (a) exercised, where neither the lessee or any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
  - (b) enforced by action in the court.
- (3) The right of forfeiture shall be taken to have been waived if —
- (a) the lessor accepts rent which has become due since the breach of agreement or condition which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and
  - (b) the lessor is or should by reasonable diligence have become aware of the commission of the breach:

Provided that the acceptance of rent after the lessor has commenced an action in the court under subsection (2) shall not operate as a waiver.



- (4) The forfeiture of a lease shall terminate every sublease and every other interest appearing in the register relating to that lease, but —
  - (a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or
  - (b) where the court grants relief against the forfeiture under section 57, every such sublease and other interest shall be deemed not to have terminated.

### **Notice before forfeiture**

**56.** Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease whether expressed or implied, until the lessor has served on the lessee a notice —

- (a) specifying the particular breach complained of;
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and
- (c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter if it is capable of remedy, and to make reasonable compensation in money.

### **Relief against forfeiture**

**57. (1)** A lessee upon whom a notice has been served under section 56, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

- (2) The court on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

- (3) For the purpose of this section a lease limited to continue as long only as the lessee abstains from committing a breach of agreement or condition shall be and take effect as a lease to continue for any longer term for which it could subsist, but terminable by a provision for re-entry on such breach.





- (4) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

### **Variation and extension of leases**

- 58.** Subject to section 56, the agreements and conditions contained or implied in any registered lease may be varied, negatived or added to, and the period of any registered lease may from time to time be extended, by an instrument executed by the lessor and the lessee for the time being and registered before the expiration of the then current term of the lease.

### **Substitution of leases**

- 59.** Where, upon presentation of a lease for registration, the Registrar is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, he shall cancel the registration of the prior lease and register the new lease subject to the incumbrances registered against the prior lease.

### **Subleases**

- 60.** (1) Subject to any provision in his lease affecting his right to do so, the proprietor of a registered lease may, by a sublease in the prescribed form, sublease for any period which is less than the remainder of the period of his lease.
- (2) Save as otherwise expressly provided, the provisions of this Law affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.
- (3) If a lease is terminated by operation of law or under any law relating to bankruptcy or liquidation proceedings, such termination shall terminate the sublease.
- (4) In addition to the agreements specified by this Law to be implied in leases, there shall be implied in every sublease under this Law an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.
- (5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

### **Surrender of leases**

- 61.** (1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner —

- (a) an instrument shall be prepared in the prescribed form, or else the word “surrendered” shall be inscribed on the lease or on the duplicate or triplicate thereof;
  - (b) the instrument or inscription shall then be executed by the lessor and lessee;
  - (c) the Registrar shall then cancel the registration of the lease; and
  - (d) the instrument or inscribed lease shall then be filed,
- and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the lessee shall cease.
- (2) No lease which is subject to a charge or sublease shall be surrendered without the consent in writing of the proprietor of the charge or sublease.

### **Determination of leases**

**62. (1)** Where —

- (a) the period of a lease has expired;
- (b) an event upon which a lease is expressed to terminate has happened;
- (c) a lessor has lawfully re-entered; or
- (d) a notice duly given to terminate the lease has expired, and the lessor has recovered possession of the land leased,

the lease and every other interest appearing on any register relating to the lease shall thereupon terminate, and the lessor may apply in writing to the Registrar to cancel the registration.

- (2) An application under this section shall be supported by such evidence of the matters giving rise to the termination and the recovery of possession by the lessor as the Registrar may require and the Registrar on being satisfied on the matters set forth in the application shall cancel the registration of the lease.

### **Voluntary registration of leases**

**63.** Where application is made to the Registrar to register any lease which is not compulsorily registrable under this Law but which is capable of registration, the Registrar shall not register such lease unless —

- (a) it is in the prescribed form, or in such form as the Registrar may approve; and
- (b) in the case of a sublease, every lease superior to that sublease complies with paragraph (a) and is registered in priority to the sublease.



## Division 3 - Charges

### Form and effect of charges

- 64.** (1) A proprietor may, by an instrument in the prescribed form, charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition, and the instrument shall, contain a special acknowledgement that the chargor understands the effect of section 72, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, by one of the persons attesting the affixation of the common seal.
- (2) A date for the repayment of the money secured by a charge may be specified in the charge instrument and, where no such date is specified or repayment is not demanded by the chargee on the date specified, the money shall be deemed to be repayable three months after the service of a demand in writing by the chargee.
- (3) The charge shall be completed by its registration as an incumbrance and registration of the person in whose favour it is created as its proprietor and by filing the instrument.
- (4) A charge shall not operate as a transfer but shall have effect as security only.
- (5) There shall be included, in an instrument of charge securing the fulfilment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to section 76, of the money which may arise on the exercise by the chargee of his power of sale, either by setting aside the proceeds of sale or part thereof and investing it to make future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest, or otherwise.

### Second or subsequent charges

- 65.** A proprietor whose land, lease or charge is subject to a charge may create a second or subsequent charge in the same manner as the first charge and the same provisions shall apply thereto, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged.

### Presumption that money paid is interest

- 66.** If any question arises whether any payment made by the chargor is in respect of principal or interest, such payment shall be presumed to be in respect of interest to the extent of all interest which is due and payable at the date of payment.



**Agreements implied in charges**

**67.** There shall be implied in every charge, unless the contrary is expressed therein, agreements by the chargor with the chargee binding the charger —

- (a) to pay the principal money on the day therein appointed and, so long as the principal money or any part thereof remains unpaid, to pay interest thereon, or on so much thereof as for the time being remains unpaid, at the rate and on the days and in manner therein specified;
- (b) to pay all rates, taxes and other outgoings which are at any time payable on the charged property;
- (c) to repair and keep in repair all buildings and other improvements upon the charged land or comprised in the charged lease and to permit the chargee or his agent, at all reasonable times and after reasonable notice to the chargor, to enter the land and examine the state and condition of such buildings and improvements;
- (d) to insure and keep insured all buildings upon the charged land or comprised in the charged lease against loss or damage by fire or hurricane in the joint names of the chargor and chargee with insurers approved by the chargee to the full value thereof;
- (e) in the case of a charge of agricultural land, to farm the land in accordance with the rules of good husbandry;
- (f) in the case of a charge of land or of a lease, not to lease the charged land or any part thereof, or sublease the whole or any part of the land comprised in the charged lease, for any period longer than one year without the previous consent in writing of the chargee, but such consent shall not be unreasonably withheld;
- (g) not to transfer the land, lease or charge charged or any part thereof without the previous written consent of the chargee but such consent shall not be unreasonably withheld;
- (h) in the case of a charge of a lease, during the continuance of the charge to pay the rent reserved by the lease and observe and perform the agreements and conditions thereof, and to keep the chargee indemnified against all proceedings, expenses and claims on account of the non-payment of the said rent or any part thereof, or the breach or non-observance of the said agreements and conditions or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;
- (i) where the charge is a second or subsequent charge, that the chargor will pay the interest from time to time accruing due on each prior charge when it becomes due, and will, at the proper time, repay the principal money due on each prior charge; and



- (j) where the chargor fails to comply with any of the agreements implied by paragraphs (b), (c), (d), (e), (h) and (i) that the chargee may spend such money as is necessary to remedy the breach, and may add the amount so spent to the principal money, and that thereupon the amount shall be deemed for all purposes to be part of the principal money secured by the charge.

### **Chargee's consent to transfer**

- 68.** Where a charge contains an agreement, express or implied, by the chargor with the chargee that he will not transfer the land, lease or charge charged or any part thereof without the written consent of the chargee, the agreement shall be noted in the register and no transfer by the chargor shall be registered until the written consent of the chargee, verified in accordance with section 107, has been produced to the Registrar.

### **Variation of charges**

- 69.** The amount secured, the method of repayment, the rate of interest or the term of the charge may be varied by the registration of an instrument of variation executed by the parties of the charge, but no such variation shall affect the rights of the proprietor of any subsequent charge, unless he has consented to the variation in writing on the instrument of variation.

### **Right of redemption**

- 70.** (1) Subject to this section, a chargor, on payment of all money due and owing under the charge at the time of payment or on fulfilment of any condition secured thereby and on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on him by section 72, may redeem the charged land, lease or charge at any time before it has been sold under section 75, and any agreement or provision which purports to deprive the chargor of this right of redemption shall be void; and, for the purposes of this subsection land, a lease or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.
- (2) If the chargor wishes to redeem the charged land, lease or charge before the date for repayment specified in the charge, he shall be entitled to do so on payment to the chargee, in addition to any other money then due or owing under the charge, of interest on the principal sum secured thereby for the unexpired portion of the term of the charge.
- (3) If the chargor seeks to redeem the charged land, lease or charge after the date specified in the charge or where no such date is specified, he shall give the chargee three months notice of his intention to redeem the charge or shall pay him three months' interest in lieu thereof.
- (4) If at any time the chargor is entitled and desires to repay the money secured by the charge, and the chargee is absent or cannot be found, or the Registrar is



satisfied that the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Registrar in trust for the person entitled thereto, and thereupon the obligations of the chargor under the charge shall cease, and the Registrar shall cancel the registration of the charge and shall pay the amount deposited to the chargee if the chargee applies for it within six years of the date of deposit, and if the amount is not so paid it shall be paid into the Treasury and be appropriated to the general revenue of the Islands.

### **Right of third party to transfer of charge**

- 71.** On his tendering to the chargee such sums as would have been payable to the chargee if the chargor had sought to redeem the charge under section 70 any of the following persons, that is to say —
- (a) any person, other than the chargor, who has an interest in the land, lease or charge charged;
  - (b) any surety for the payment of the amount secured by the charge; or
  - (c) any creditor of the chargor who has obtained a decree for sale of the charged land, lease or charge,
- may require the chargee to transfer the charge to him.

### **Chargee's remedies**

- 72.** (1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement as the case may be.
- (2) If the chargor does not comply within three months of the date of service, with a notice served on him under subsection (1), the chargee may —
- (a) appoint a receiver of the income of the charged property; or
  - (b) sell the charged property:
- Provided that a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply, within three months of the date of service, with a further notice served on him under subsection (1).
- (3) The chargee shall be entitled to sue for the money secured by the charge only —
- (a) where the chargor is bound to repay the same;
  - (b) where, by any cause other than the wrongful act of the chargor or chargee the charged property is wholly or partially destroyed or the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity of providing further security which will render the whole security sufficient, and the chargor has failed to provide such security; or



- (c) where the chargee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the chargor:

Provided that —

- (i) in the case specified in paragraph (a) —

- (A) a transferee from the chargor shall not be liable to be sued for the money unless he has agreed with the chargee to pay the same; and
- (B) no action shall be commenced until a notice served in accordance with subsection (1) has expired;

and

- (ii) the court may, at its discretion, stay a suit brought under paragraph (a) or (b), notwithstanding any agreement to the contrary, until the chargee has exhausted all his other remedies against the charged property.

### **Appointment, powers, remuneration and duties of receiver**

- 73.** (1) The appointment of a receiver under the powers conferred by section 72 shall be in writing signed by the chargee and a copy thereof filed with the Registrar.
- (2) A receiver may be removed at any time and a new receiver appointed in writing signed by the chargee and a copy thereof filed with the registrar.
- (3) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which he is appointed; and the chargor shall be solely responsible for the receiver's acts and defaults unless the charge otherwise provides.
- (4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name of the chargor, and to give effectual receipts accordingly for the same.
- (5) A person paying money to the receiver shall not be concerned to inquire into the validity of the receiver's appointment.
- (6) Subject to subsection (8), the receiver shall be entitled to retain out of any money received by him all costs, charges and expenses incurred by him as receiver, and, for his remuneration, a commission at such rate, not exceeding five per cent of the gross amount of all moneys received, as is specified in his appointment, or if no rate is so specified at the rate of five percent of that gross amount, or such other rate as the chargor and the chargee and other chargees, if any, agree or the court thinks fit to allow on application made by the receiver for that purpose.
- (7) The receiver shall apply insurance money in making good the loss or damage in respect of which the money is received.

- (8) Subject to subsection (7), the receiver shall apply all money received by him in the following order of priority —
- (a) in discharge of all rents, rates, taxes and outgoings whatever affecting the charged property;
  - (b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge in right whereof he is receiver;
  - (c) in payment of his commission, costs, charges and expenses and of the premiums on fire, life and other insurance, if any, properly payable under the charge instrument or under this Law and the cost of executing necessary or proper repairs directed in writing by the chargee;
  - (d) in payment of the interest accruing due in respect of any principal money due under the charge; and
  - (e) in or towards the discharge of the money secured by the charge, if so directed in writing by the chargee,
- and shall pay the residue, if any, of the money received by him to the person who, but for the appointment of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the charged property.

### **Chargee's powers of leasing**

- 74.** (1) The proprietor of a charge on land or a lease who has appointed a receiver under the powers conferred on him by section 72 shall, in the absence of any express provision to the contrary contained in the charge, have power, subject to this and any other law —
- (a) to grant leases in respect of the charged land or the land comprised in the charged lease or any part or parts thereof; and
  - (b) to accept a surrender of any lease so granted and of any lease created by the chargor,
- and may, for such purposes, execute in the place of the chargor any instrument required to effect such lease or surrender.
- (2) Every lease granted by a chargee shall —
- (a) be made to take effect in possession not later than twelve months after its date;
  - (b) reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case but without a fine or premium being obtained;
  - (c) be for a term not exceeding twenty-one years; and





- (d) contain a declaration by the chargee that he has appointed a receiver with the date of appointment.

### **Power of sale**

- 75.** (1) A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor, and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by public auction for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the chargee thinks fit, with power to buy in at the auction and to resell by public auction without being answerable for any loss occasioned thereby.
- (2) Where the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee shall become entitled to recover possession of the land upon a bid being accepted at the auction sale.
- (3) A transfer by a chargee, in exercise of his power of sale, shall be made in the prescribed form, and the Registrar may accept it as sufficient evidence that the power has been duly exercised, and any person suffering damage by an irregular exercise of the power shall have his remedy in damages only against the person exercising the power.
- (4) Upon registration of such transfer, the interest of the chargor as described therein shall pass to and vest in the transferee freed and discharged from all liability on account of the charge, or on account of any other incumbrance to which the charge has priority (other than a lease, easement or profit subsisting at the time the charge was effected or to which the chargee has consented in writing).
- (5) A chargee in exercising his power of sale shall have the same powers and rights in regard to easements and restrictive agreements as are conferred upon a proprietor by sections 93 and 94.

### **Application of purchase money**

- 76.** The purchase money received by a chargee who has exercised his power of sale, after discharge of any prior incumbrances to which the sale is not made subject or after payment into court of a sum sufficient to meet any such prior incumbrances, shall be applied —
- (a) first, in payment of all costs and expenses properly incurred and incidental to the sale or any attempted sale;
  - (b) secondly, in accordance with any express provision in the charge (as required by section 64) for disposing of such money and in the absence of any such express provision, in discharge of the money due to the chargee at the date of the sale; and
  - (c) thirdly, in payment of any subsequent charges in the order of their priority,



and the residue of the money so received shall be paid to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

### **Variation of powers**

- 77.** The provisions of sections 70 (2) and (3), 72, 73, 74 and 75 may, in their application to a charge, be varied or added to in the charge:

Provided that any such variation or addition shall not be acted upon unless the court, having regard to the proceedings and conduct of the parties and to the circumstances of the case, so orders.

### **No right of entry into possession or foreclosure**

- 78.** For the avoidance of doubt, it is hereby declared that the chargee shall not be entitled to foreclose, nor to enter into possession of the charged land or the land comprised in a charged lease or to receive the rents and profits thereof by reason only that default has been made in the payment of the principal sum or of any interest or other periodical payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge.

### **Discharge of charge**

- 79.** (1) A discharge, whether of the whole or of a part of a charge, shall be made by an instrument in the prescribed form, or (if of the whole) the word “Discharged” may be endorsed on the charge, duplicate or triplicate and endorsement executed by the chargee and dated.
- (2) A discharge shall be completed by cancellation in the register of the charge, or part thereof as the case may require, and filing the instrument of discharge, or the endorsed charge.

### **Satisfaction of charges**

- 80.** Upon proof to the satisfaction of the Registrar —

- (a) that all money due under a charge has been paid to the chargee or by his direction; or
- (b) that there has occurred the event or circumstances upon which, in accordance with the provisions of any charge, the money thereby secured ceases to be payable and that no money is owing under the charge,

the Registrar shall order the charge to be cancelled in the register, and thereupon the land, lease or charge shall cease to be subject to the charge.



**Tacking and further advances**

- 81.** (1) Provision may be made in the charge for a chargee to make further advances or give credit to the chargor on a current or continuing account, but, unless that provision is noted in the register, further advances shall not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.
- (2) Except as provided in this section, there is no right to tack.

**Consolidation**

- 82.** A chargee has no right to consolidate his charge with any other charge unless the right is expressly reserved in the charges or in one of them and is noted in the register against all the charges so consolidated.

**Division 4 - Transfers****Transfer**

- 83.** (1) A proprietor, by an instrument in the prescribed form, may transfer his land, lease or charge to any person with or without consideration.
- (2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.
- (3) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

**Transfer to take effect immediately**

- 84.** A transfer to take effect on the happening of any event or on the fulfilment of any condition or at any future time shall not be capable of registration.

**Conditions repugnant to interest transferred**

- 85.** (1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest transferred shall be void.
- (2) Any condition or limitation made in relation to a transfer which purports to determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen shall be void.
- (3) Except as provided in sections 92 to 98 inclusive, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

**Transfer of part**

- 86.** No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

**Transfer of leases**

- 87.** On the transfer of a lease, unless the contrary is expressed in the transfer there shall be implied —
- (a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and
  - (b) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

**Effect of transfer on agreements in leases**

- 88.** A transferee from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease:

Provided that nothing in this section shall affect rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in the lease which occurred before transfer.

**Transfer subject to charge**

- 89.** Save as otherwise expressly provided in the instrument in every transfer of land or a lease subject to a charge, there shall be implied an agreement by the transferee with the transferor to pay the interest secured by the charge at the rate and at the times and in the manner specified in the charge and to keep the transferor indemnified against the principal sum secured by the charge and from and against all liability in respect of any agreements on the part of the transferor therein contained or implied.

**Transfer subject to lease**

- 90.** A transfer of land which is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section —
- (a) affects the validity of any payment of rent made by the lessee to the transferor; or
  - (b) renders the lessee liable, on account of his failure to pay rent to the transferee, for any breach of agreement to pay rent,



before notice of the transfer is given to the lessee by the transferee or transferor.

### **Transfer of unregistered leases**

- 91.** A transfer of a lease of registered land which lease does not require registration, and is not so registered, shall not itself require registration, but if application is made to the Registrar to register such transfer, he shall not do so unless the transfer is in the prescribed form and the lease and prior transfers or other dealings therewith have been registered.

## **Division 5 - Easements, Positive and Restrictive Covenants, Profits and Licences**

### **Easements**

- 92.** (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.
- (2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by him, or reserve an easement for the benefit of land retained by him.
- (3) The instrument creating the easement shall specify clearly —
- (a) the nature of the easement, the period for which it is granted and, any conditions, limitations or restrictions intended to affect its enjoyment;
  - (b) the land burdened by the easement and, if required by the Registrar, the particular part thereof so burdened; and
  - (c) the land which enjoys the benefit of the easement,
- and shall, if required by the Registrar, include a plan sufficient in the Registrar's estimation to define the easement.
- (4) The grant or reservation of the easement shall be completed by its registration as an incumbrance in the register of the land burdened and in the property section of the land which benefits, and by filing the instrument.
- (5) An easement granted by the proprietor of a lease shall be capable of existing only during the subsistence of the lease.

### **Positive and restrictive covenants**

- 93.** (1) A covenant may be —
- (a) a positive covenant; or
  - (b) a restrictive covenant,

and if registered under this Law is enforceable against the covenantor and the covenantor's successor in title by the owner or occupier of land benefitting from the covenant.

- (2) Where an instrument, other than a lease or charge, contains a restrictive covenant by one proprietor restricting the building on or the user or other enjoyment of his land for the benefit of the proprietor of other land, and such instrument is presented to the Registrar, the Registrar shall note the restrictive covenant in the encumbrances section of the register of the land or lease burdened by the restrictive covenant, either by entering particulars of the restrictive covenant or by referring to the instrument containing the restrictive covenant and the Registrar shall file the instrument.
- (3) Where an instrument, other than a lease or charge, contains a positive covenant by one proprietor mandating the building on or the user or other enjoyment of his land or other obligation for the benefit of the proprietor of other land, and the instrument is presented to the Registrar, the Registrar shall note the positive covenant in the encumbrances section of the register of the land or lease burdened by the positive covenant and in the property section of the land which benefits from the positive covenant, either by entering particulars of the positive covenant or by referring to the instrument containing the positive covenant and the Registrar shall file the instrument.
- (4) Unless it is noted in the register, a positive or restrictive covenant is not binding on any person acquiring the land or lease.
- (5) Insofar as a positive or restrictive covenant is capable of taking effect, not only the proprietors themselves but also their respective successors in title shall be entitled to the benefit and subject to the burden of the covenant respectively, unless the instrument otherwise provides.
- (6) A positive covenant shall not prevent a person from —
  - (a) registering an interest under this Law;
  - (b) exercising the person's rights under a registered interest; or
  - (c) releasing or surrendering a registered interest.
- (7) A proprietor of two or more parcels may enter into a positive or restrictive covenant with himself.
- (8) Registration of a positive covenant has effect only in relation to a positive covenant registered after the coming into force of the *Registered Lands (Amendment) Law, 2017 [Law 36 of 2017]*.

## Profits

- 94.** (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit.



- (2) The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed and —
  - (a) whether it is to be enjoyed in gross, or as appurtenant to other land or a lease; and
  - (b) whether it is to be enjoyed by the grantee exclusively or by him in common with the grantor.
- (3) The grant of a profit shall be completed —
  - (a) by its registration as an incumbrance in the register of the land or lease which it affects;
  - (b) where it is appurtenant to other land or a lease, by its registration in the property section of the register of the land or lease to which it is appurtenant; and
  - (c) by filing the instrument.
- (4) A profit which is not appurtenant to land may be dealt with as though it were land.
- (5) A profit granted by the proprietor of a lease shall be capable of subsisting only during the subsistence of a lease.

### **Release and extinguishment of easements, profits, positive or restrictive covenants**

- 95.** (1) Upon presentation of a duly executed release in the prescribed form the registration of the easement, profit, positive or restrictive covenants shall be cancelled, and the easement, profit, positive or restrictive covenants shall thereupon be extinguished.
- (2) On application of any person affected thereby, the Registrar may, after such advertisement as he may direct, cancel the registration of an easement, profit, positive or restrictive covenants upon proof to his satisfaction that —
- (a) the period of time for which it was intended to subsist has expired;
  - (b) the event upon which it was intended to terminate has occurred; or
  - (c) it has been abandoned.

### **Discharge and modification of easements, profits, positive or restrictive covenants**

- 96.** (1) The court shall have power, on the application of any person interested in land affected by an easement, profit, positive or restrictive covenants by order wholly or partially to extinguish or modify any such easement, profit, positive or restrictive covenants (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order), on being satisfied that —

- (a) by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material, the easement, profit, positive or restrictive covenants ought to be held to be obsolete;
  - (b) the continued existence of the easement, profit, positive or restrictive covenants impedes the reasonable user of the land for public or private purposes without securing practical benefits to other persons or, as the case may be, will unless modified so impede such user to a different extent, from that which could reasonably have been foreseen by the original parties to the easement, profit, positive or restrictive covenant at the time of its creation; or
  - (c) the proposed discharge or modification will not injure the person entitled to the benefit of the easement, profit, positive or restrictive covenants.
- (2) Notwithstanding subsection (1), nothing prevents modification of an easement, profit, positive or restrictive covenant by agreement between the persons interested in, or affected by, the benefitted and burdened land.

### Natural rights

97. Nothing in this Law shall be construed as derogating from the natural right to support, light, air or access to a highway appertaining to any land nor from such ancillary rights as are necessary for effective enjoyment of an easement.

### Licences

98. (1) Without prejudice to section 127, a licence is not capable of registration.
- (2) A licence relating to the use or enjoyment of land is ineffective against a *bona fide* purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section.

## Division 5A - Dedication Of Land For Public Use

### Dedication of land for public use

- 98A.(1) A proprietor of land may, by an instrument in the prescribed form, dedicate his land for public use.
- (2) The instrument creating the dedication shall specify clearly —
- (a) the nature of the dedication, the public use for which the land is dedicated, the period for which it is made (if any) and any conditions, limitations or restrictions intended to affect the enjoyment of the land; and
  - (b) the land burdened by the dedication and, if required by the Registrar, the particular part thereof so burdened.





- (3) The dedication of land for public use shall be completed by its registration as an encumbrance in the register of the land burdened and by filing the instrument.

### **Crown may dedicate land for road**

**98B.** Subject to any other law, the Crown, through the Governor, may dedicate Crown land for public use as a road.

### **Land vest in the Crown**

**98C.** Where land has been dedicated for public use under this Law that land vests in, or remains vested in, the proprietor of the land.

### **Discharge and modification of a dedication**

**98D.** The court shall have power, on the application of any person interested in land affected by a dedication, by order, to wholly or partially extinguish or modify a dedication (with or without payments by the applicant of compensation to any person suffering loss in consequence of the order).

### **Meaning of public use**

**98E.** For the purposes of this Division “public use” includes use as a public road, use for beach access or use for any other public purpose specified by Cabinet.

## **Division 6 - Co-proprietorship and Partition**

### **Registration of more than one proprietor**

- 99.** (1) Every instrument made in favour of two or more persons, and the registration giving effect to it, shall show —
- (a) whether such persons are joint proprietors or proprietors in common; and
  - (b) where they are proprietors in common, the share of each proprietor.
- (2) The Governor may for any registration section prescribe either —
- (a) the maximum number (whether one or a greater number) of persons who are allowed to be registered in the same register as proprietors; or
  - (b) the maximum denominator of the vulgar fraction which expresses the share of any proprietor,
- or both of them, and no dealing shall be registered if its effect would be that that number or that denominator, as the case may be, would be exceeded.

### **Characteristics of joint proprietorship and severance thereof**

- 100.** (1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently —
- (a) dispositions may be made only by all the joint proprietors; and

- (b) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.
- (2) For avoidance of doubt, it is hereby declared that —
  - (a) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and
  - (b) a joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors.
- (3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument.

### **Characteristics of proprietorship in common**

- 101.** (1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.
- (2) No proprietor in common shall deal with his undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld.

### **Partition of land owned in common**

- 102.** (1) An application for the partition of the land owned in common may be made in the prescribed form to the Registrar by —
- (a) any one or more of the proprietors; or
  - (b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree,
- and subject to this and any other law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar shall effect the partition of the land in accordance with any agreement of the proprietors in common, or, in the absence of agreement, in such manner as the Registrar may order.
- (2) Partition shall be completed by closing the register of the parcel partitioned and opening registers in respect of the new parcels created by the partition and filing the agreement or order.



**When Registrar may order sale**

- 103.** (1) Where for any reason the land sought to be partitioned is incapable of partition or the partition would adversely affect the proper use of the land, and a demand is made by the applicant or one or more of the other proprietors in common that the land or any share or shares in the land be sold, the Registrar shall, in default of any agreement between the proprietors in common, value the land and the shares of the proprietors in common and order the sale of the land or the separation and sale of such shares by public auction or make such other order for the disposal of the application as he thinks fit.
- (2) A proprietor in common shall be entitled to purchase the land or any share so offered for sale, either at the auction or at any time by private treaty.

**Procedure where share is small**

- 104.** (1) Where the land sought to be partitioned is capable of partition generally, but the resulting share of any particular proprietor in common would be less in area than any minimum prescribed by or under any written law, the Registrar shall add such share to the share of any other proprietor or distribute such share amongst two or more other proprietors in such manner and in such proportions as, in default of agreement, he thinks fit.
- (2) Where the Registrar proceeds in accordance with subsection (1), he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share by each proprietor who has received an addition to his share the value of such addition.
- (3) Where any sum is payable under subsection (2) by any proprietor in common to any other proprietor in common, the Registrar may order that such sum be secured by way of charge on the share of the person liable to pay it.

## **PART VI - Instruments and Agents**

**Form of instruments**

- 105.** (1) Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits.
- (2) Leases and charges shall be presented for registration in triplicate.
- (3) Instruments shall contain a true statement of the amount or value of the purchase price, loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.

## Execution of instruments

- 106.** (1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument:

Provided that the Registrar may dispense with execution by any particular party (other than the donee under a disposition by way of gift) where he considers that such execution is unnecessary.

- (2) Subject to section 119(2), an instrument shall be deemed to have been executed only —
- (a) by a natural person, if signed by him; or
  - (b) by a corporation —
    - (i) if sealed with the common seal of the corporation, affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation; or
    - (ii) in the case of a corporation not required by law to have a common seal, if signed by such persons as are authorised in that behalf by any law or by the statute or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, evidence of which appointment has been produced to the satisfaction of the Registrar.

## Verification of execution

- 107.** (1) Subject to subsection (3), a person signing an instrument by way of execution shall appear before the Registrar or such public officer or other person as is prescribed and, unless he is known to the Registrar or such public officer or other person, shall be accompanied by a credible witness for the purpose of establishing his identity.
- (2) The Registrar, public officer or other person shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed the instrument, and shall complete thereon a certificate in the prescribed form as to these matters and to the effect that the person concerned signed the instrument before him in the appropriate place or places upon it.
- (3) An instrument which is required to be executed by or on behalf of the Crown shall be deemed to be executed when it has been signed by the Governor.
- (4) The Registrar may dispense with verification under this section —
- (a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or



- (b) in cases in which to his knowledge the document has been properly executed,  
and shall record on the document his reasons for dispensing with the appearance of the parties.
- (5) No instrument executed out of the Islands shall be registered unless it has endorsed thereon or attached thereto a certificate in the prescribed form completed —
  - (a) if the instrument was executed in the Commonwealth, by a Judge, magistrate, justice of the peace, notary public, commissioner for oaths or administrative officer; or
  - (b) if the instrument was executed in a foreign country, by a British consular officer or pro-consul, notary public or such other person or class of persons as the Governor may determine.

### Stamps

**108.** No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped.

### Disposal of instruments

- 109.** Subject to subsection (2) and section 112(2), all instruments accepted by the Registrar shall be retained in the registry for as long as they support a current entry in the register and for six years thereafter.
- (2) When a lease or charge is registered, particulars of registration shall be noted on the duplicate and triplicate thereof, and the duplicate and triplicate shall be returned to the person who presented them.
  - (3) Six years or more after an entry in the register has been superseded or has ceased to have any effect, the Registrar may destroy any instrument which supported the entry.

### Minors

- 110.** (1) For the avoidance of doubt, it is hereby declared that the name of a person under the age of eighteen years may be entered in the register either on first registration or as a transferee or on transmission.
- (2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his knowledge a minor is registered, the Registrar shall enter a restriction accordingly.
  - (3) Where a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, such disposition may not be set aside only on the grounds of minority.

**Agents and persons under disability**

- 111.** (1) Except as provided in subsection (3), no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorised in that behalf by a power of attorney executed and verified in accordance with sections 106 and 107.
- (2) The original of such power of attorney or, with the consent of the Registrar, a copy thereof certified by the Registrar shall be filed.
- (3) Where any person who, if not under a disability, might have made any application, done any act or been a party to any proceeding under this law or under any rules made thereunder is a minor, a person of unsound mind or a person under any other disability, the guardian of such person, or if there is no such guardian a person appointed under some written law to represent that person, may make any application, do any act and be party to any proceeding on behalf of that person, and shall generally represent that person for the purposes of this Law.
- (4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability, the Registrar shall satisfy himself that the person claiming to be the guardian is entitled to execute the document or require the production of the appointment of the person so appointed, and shall file a note of the explanation which satisfied him or a copy of the appointment, as the case may be.

**Gift to person under disability**

- 112.** A person under a disability who has been registered as proprietor of land, a lease or a charge acquired by him by way of gift may, within six months after he ceases to be under a disability, repudiate the gift if he has not already disposed of the subject-matter thereof, but no such repudiation shall be effective until —
- (a) he has transferred the land, lease or charge to the donor who shall be bound to accept it; and
- (b) the transfer has been registered.

**Power of attorney**

- 113.** (1) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, such power of attorney shall be entered in the register of powers of attorney and the original or, with the consent of the Registrar, a copy thereof certified by the Registrar shall be filed in the file of powers of attorney.
- (2) Every such power of attorney shall be in the prescribed form or such other form as the Registrar may, in any particular case, approve and shall be executed and verified in accordance with sections 106 and 107.



- (3) The donor of a power of attorney filed in accordance with subsection (1) may, at any time, give notice to the Registrar in the prescribed form that the power has been revoked and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power and the notice shall be filed in the file of powers of attorney.
- (4) Any interested person may give notice in writing to the Registrar that a power of attorney which has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.
- (5) Subsections (3) and (4) do not apply to a power of attorney given for valuable consideration during any time which it is, by virtue of the terms thereof, irrevocable.
- (6) If, owing to the length of time since the execution of a power of attorney or for any other reason, the Registrar considers it desirable, he may require evidence that the power has not been revoked, and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.
- (7) The *Powers of Attorney Law (1996 Revision)* has no application to powers of attorney made under this section.

### **Effect of registered power of attorney**

- 114.** (1) A power of attorney which has been registered under section 113 and of which no notice of revocation has been registered under that section shall be deemed to be subsisting as regards any person acquiring any interest in land affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.
- (2) Any person making any payment or doing any act in good faith in pursuance of a power of attorney registered under section 113 shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act.

## **PART VII - Transmissions And Trusts**

### **Transmission on death of joint proprietor**

**115.** If one, or two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.

### **Transmission on death of sole proprietor or proprietor in common**

- 116.** (1) If a sole proprietor or a proprietor in common dies, his personal representative on application to the Registrar in the prescribed form and on production to him of the grant shall be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after his name of the words “as executor of the will of \_\_\_\_\_ deceased” or “as administrator of the estate of \_\_\_\_\_ deceased”, as the case may be.
- (2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission —
- (a) any transfer by the personal representative; and
  - (b) any surrender of a lease or discharge of a charge by the personal representative.
- (3) In this section —
- “grant” means the grant of probate of the will or the grant of letters of administration of the estate of the deceased proprietor.

### **Effect of transmission by death**

- 117.** (1) Subject to any restriction on his power of disposing of the land, lease or charge contained in his appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing he shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Law on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.
- (2) The registration of any person as aforesaid shall relate back to and take effect from the date of the death of the proprietor.





**Transmission on bankruptcy**

- 118.** (1) A trustee in bankruptcy shall, upon production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor, in his place, and a copy of the order shall be filed in the registry.
- (2) A trustee in bankruptcy shall be described in the register as “trustee of the property of \_\_\_\_\_ a bankrupt”.
- (3) The trustee in bankruptcy shall hold any land, lease or charge of which he is registered as proprietor subject to any restrictions contained in any law relating to bankruptcy or in any order of court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same, but for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy shall have all the rights and be subject to all the limitations conferred or imposed by this or any other law on a proprietor who has acquired land, a lease or charge for valuable consideration.

**Liquidation**

- 119.** (1) Where a company is being wound up, the liquidator shall produce to the Registrar any resolution or order appointing him liquidator, and the Registrar shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and shall file the copy of the resolution or order.
- (2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1), shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with section 107.

**Transmission by compulsory acquisition or judgment of court**

- 120.** Where the Crown or any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he may require, register the Crown or the person entitled as the proprietor.

**Trusts**

- 121.** (1) A person acquiring land, a lease or charge in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, shall be registered with the addition of the words “as trustee”, but the Register shall not enter particulars of any trust in the register.
- (2) Any instrument which declares or is deemed to declare any trust, or a certified copy thereof, may be deposited with the Registrar for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.
- (3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trusts, but for the purpose of any registered dealings he shall be deemed to be the absolute proprietor thereof, and no person dealing in good faith for valuable consideration shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Law.

**Survivor of trustees**

- 122.** Whenever two or more proprietors are registered jointly as trustees and the survivor of such proprietors would not be entitled to exercise alone the powers which are vested in them, the Registrar shall enter a restriction to that effect.

**Application of Settled Land Law (1998 Revision)**

- 123.** (1) The *Settled Land Law (1998 Revision)* shall, with necessary adaptations and modifications, apply to any land or lease registered under this Law and the person who is for the time being the tenant for life under a settlement may be registered as the proprietor of such land or lease.
- (2) An instrument creating a settlement, or a certified copy thereof, may be deposited with the Registrar for safe custody, but such instrument or copy shall not form part of the register or be deemed to be registered.

**PART VIII - Restraints on Disposition - Division 1-Inhibitions****Power of court to inhibit registered dealings**

- 124.** (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.
- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar, who shall register



it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.

### **Effect of inhibition**

**125.** So long as an inhibition remains registered, no instrument which is inconsistent with it shall be registered.

### **Cancellation of inhibition**

**126.** The registration of an inhibition shall be cancelled only —

- (a) on the expiration of the time limited by the inhibition;
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event specified in the inhibition;
- (c) on the land, lease or charge being sold by the chargee, unless such sale is itself inhibited; or
- (d) by order of the court.

## **Division 2 - Cautions**

### **Lodging of cautions**

**127. (1)** Any person who —

- (a) claims any unregisterable interest whatsoever in land, a lease or a charge;
- (b) is entitled to a licence;
- (c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge; or
- (d) being a bank, has advanced money on a current account to the proprietor of land, a lease or charge,

may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.

(2) A caution may either —

- (a) forbid the registration of dispositions and the making of entries altogether; or
- (b) forbid the registration of dispositions and the making of entries to the extent therein expressed.

(3) A caution shall be in the prescribed form and shall state the interest claimed by the cautioner, and the Registrar may require the cautioner to support it by a statutory declaration.

(4) The Registrar may refuse a caution which he considers unnecessary.

- (5) Subject to this section, the caution shall be registered in the appropriate register.

### **Notice and effect of caution**

- 128.** (1) The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.
- (2) So long as a caution remains registered no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court.

### **Withdrawal and removal of caution**

- 129.** (1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.
- (2) (a) The Registrar may, on the application of any person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice.
- (b) If, at the expiration of the time stated, the cautioner has not objected, the Registrar may remove the caution.
- (c) If the cautioner objects to the removal of the caution, he shall notify the Registrar in writing of his objection within the time specified in the notice, and the Registrar, after giving the parties an opportunity of being heard, shall make such order as he thinks fit and may, in the order, make provision for the payment of costs.
- (3) On registration of a transfer by a chargee in exercise of his powers of sale under section 75, the Registrar shall remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.
- (4) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the cautioner previously incurred under section 131 shall not be affected by the cancellation.

### **Second caution in respect of same matter**

- 130.** The Registrar may refuse to accept a further caution by the same person or anyone on his behalf in relation to the same matter as a previous caution.

### **Wrongful cautions**

- 131.** Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable in an action for damages, at the suit of any person who has thereby sustained damage, to pay compensation to such person.



## Division 3 - Restrictions

### Restrictions

- 132.** (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.
- (2) A restriction may be expressed to endure —
- (a) for a particular period;
  - (b) until the occurrence of a particular event; or
  - (c) until the making of a further order, and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.
- (3) The Registrar shall order a restriction to be entered in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.

### Notice and effect of restriction

- 133.** (1) Upon the entry of a restriction the Registrar shall give notice thereof in writing to the proprietor affected thereby.
- (2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.

### Removal and variation of restrictions

- 134.** (1) The Registrar may, at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.
- (2) Upon the application of a proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

## PART IX - Prescription

### Acquisition of title by possession

**135.** The *Limitation Law (1996 Revision)* shall apply to registered land in the same manner and to the same extent as it applies to land not registered, except that where, if the land were not registered, the estate, right or interest of the owner therein would be extinguished, such estate, right or interest shall not be extinguished but shall be deemed to be held by the proprietor for the time being in trust for the person who, by virtue of the said law, has acquired title against any proprietor, but without prejudice to the rights and interests of any other person interested in the land whose right or interest is not extinguished by the said law.

### Application to register title acquired by possession

**136.** Any person claiming to have acquired a title to registered land by virtue of the *Limitation Law (1996 Revision)* may apply to the Registrar to be registered as proprietor thereof.

### Procedure on application

- 137.** (1) On application by any person for registration as proprietor under section 135, the application shall be advertised by the Registrar at the expense of the applicant in such manner as the Registrar may direct.
- (2) The Registrar shall give notice of any such application to the proprietor of the land affected and to any other persons who may, in his opinion, be affected thereby.
- (3) After one month has elapsed from the date of giving notice under subsection (2), the Registrar, on being satisfied as to the applicant's title, may allow the application and register him as proprietor of the land claimed, either with absolute or provisional title, as the case may require, but without prejudice to any interests protected by any entry on the register which may not have been extinguished under the *Limitation Law (1996 Revision)*.
- (4) The proprietor or the applicant or any other persons interested, may apply to the court for the determination of any question arising under this section or sections 136 and 137.

### Acquisition of easements and profits by prescription

**138.** (1) Subject to the *Prescription Law (1997 Revision)* easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment thereof for a period of twenty years:

Provided that no easement or profit shall be so acquired unless the proprietor of the land burdened by such easement or profit is, or by reasonable diligence might have been, aware of such enjoyment and might by his own efforts have prevented it.



- (2) Where any person claims to have acquired an easement or profit by virtue of subsection (1) he may apply to the Registrar for the registration thereof, and the Registrar, on being satisfied as to the claim and subject to such notices, advertisement and conditions as the Registrar may direct, shall register the easement or profit as an incumbrance on the register of the land affected and, in the case of an easement, in the property register of the land which benefits.

## PART X - Rectification and Indemnity

### Rectification by Registrar

- 139.** (1) The Registrar may rectify the register or any instrument presented for registration —
- (a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
  - (b) where any person has acquired an interest in land by prescription under Part IX;
  - (c) in any case and at any time, with the consent of all persons interested; and
  - (d) where, upon resurvey, a dimension or area shown in the register or Registry Map is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his intention so to rectify.
- (2) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

### Rectification by court 1997 Revision

- 140.** (1) Subject to the *Land Adjudication Law (1997 Revision)* and to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

### Right of indemnity

- 141.** (1) Subject to this and any law relating to the limitation of actions, any person suffering damage by reason of —



- (a) any rectification of the register under this Law;
- (b) any mistake or omission in the register which cannot be rectified under this Law, other than a mistake or omission in a first registration; or
- (c) error in a certificate of official search issued by the Registrar or in a copy of or extract from the register or in a copy of or extract from any document or plan, certified under this Law,

shall be entitled to be indemnified by the Government out of moneys provided by the Legislative Assembly.

- (2) No indemnity shall be payable under this Law to any person who has himself caused or substantially contributed to the damage by his fraud or negligence, or who derives title (otherwise than under a registered disposition made *bona fide* for valuable consideration) from a person who so caused or substantially contributed to the damage.

### **Amount of indemnity**

**142.** Where an indemnity is awarded in respect of the loss of any interest in land, it shall not exceed —

- (a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or
- (b) where the register is rectified, the value of the interest immediately before the time of rectification.

### **Procedure for claiming indemnity**

**143.** The Registrar may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, if so, award indemnity, and may add thereto any costs and expenses properly incurred in relation to the matter.

### **Recovery of indemnity**

**144.** Where any moneys are paid by way of indemnity under this Part, the Governor shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and to enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.





**Errors in survey**

- 145.** (1) As between the Government and a proprietor no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area of measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the Registry Map.
- (2) As between a proprietor and any person from or through whom he acquired the land, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the register or on the Registry Map, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

**PART XI - Decisions of Registrar and Appeals****Power of Registrar to state case**

- 146.** Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Law, the Registrar may, and shall if required to do so by an aggrieved party, state a case for the opinion of the court; and thereupon the court shall give its opinion which shall be binding upon the Registrar.

**Appeals**

- 147.** (1) The Governor or any person aggrieved by a decision, direction, order, determination or award of the Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Registrar in the prescribed form of his intention to appeal to the court against the decision, direction, order, determination or award.
- (2) On receipt of a notice of appeal, the Registrar shall prepare and send to the court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.
- (3) On the hearing of the appeal, the appellant, the Registrar and any other person who, in the opinion of the court, is affected by the appeal may, subject to any rules of court, appear and be heard in person or by a legal practitioner.
- (4) The court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Registrar.
- (5) The costs of the appeal shall be in the discretion of the court.
- (6) The Governor or any person aggrieved by an order of the court, may appeal to the Court of Appeal within such time and in such manner as may be regulated



by the law and rules of court for time being in force relating to appeals in civil cases.

### **Effect of appeal on disposition**

- 148.** (1) An appeal to the court shall not affect a disposition for valuable consideration made in good faith and registered before delivery of notice of the appeal to the Registrar.
- (2) A note that an appeal is pending shall be made in the register affected by the appeal and any disposition shall be subject to such notice.

### **Appeal Rules**

- 149.** The Chief Justice may make rules of court for regulating applications and appeals to the court under this Law, and for the fees to be paid in respect thereof.

## **PART XII - Application of Existing Laws**

### **Cesser of application of Registration (Land) Law**

- 150.** Without prejudice to any thing done or established thereunder, the *Registration (Land) Law (1996 Revision)* shall cease to apply to any parcel of land, lease or charge registered under this Law.

### **Cesser of application of Public Recorder Law**

- 151.** The *Public Recorder Law (2010 Revision)* shall have no application in respect of any document evidencing any transaction registrable under this Law in respect of any parcel of land, lease or charge registered under this Law.

## **PART XIII - Miscellaneous**

### **Addresses**

- 152.** Any person who, under this Law, submits a caution or any instrument for registration, or is the proprietor of any land, lease or charge, shall furnish to the Registrar, in writing, a postal address within the Islands for service and shall notify him in writing of any change in that address:

Provided that the Registrar may, in his discretion, dispense with this requirement in regard to any particular registration or kind of registration.

### **Service of notices**

- 153.** A notice under this Law shall be deemed to have been served on or given to any person if —



- (a) served on him personally;
- (b) served on an attorney holding a power of attorney whereunder such attorney is authorised to accept such service;
- (c) sent by registered post to him at his last known postal address in the Islands or elsewhere and a receipt purporting to have been signed by him has been received in return; or
- (d) service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land affected and by publishing it in three consecutive issues of the Gazette.

### **Prohibition on certain foreign bodies corporate holding land**

**154.** Notwithstanding that it may be empowered to do so under the law of any other jurisdiction or by its memorandum of association (by whatsoever name so called) a body corporate (by whatsoever name so called) which is not —

- (a) an existing company, as defined in section 2(1) of the *Companies Law (2018 Revision)*;
- (b) formed and registered under the *Companies Law (2018 Revision)*; or
- (c) registered as a foreign company under Part IX of the *Companies Law (2018 Revision)*,

has no power to be registered as a proprietor or in any other manner to hold land in the Islands.

### **Meaning of “opportunity of being heard”**

**155. (1)** Where, by this Law, a thing is to be or may be done after giving a person an opportunity of being heard, that person shall be deemed to have been given such an opportunity if —

- (a) he attends before the Registrar personally or by a legal practitioner or other agent, and is given such an opportunity;
- (b) he intimates, personally or by a legal practitioner or other agent, that he does not wish to be heard; or
- (c) he fails to attend pursuant to a notice in writing indicating the nature of the thing to be done and appointing a day and time not less than thirty days after service of the notice at which he will, if he attends before the Registrar be heard.

- (2) Where a person or legal practitioner or other agent on his behalf attends before the Registrar concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Registrar may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding a failure to attend, may, if he thinks fit, hear such person at any time.

- (3) Where by this Law all persons interested are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any subsisting entry in the register, appear to be so interested or affected are given such opportunity.

## Offences

### 156. (1) Whoever —

- (a) knowingly misleads or deceives any person authorised by or under this Law to require information in respect of any land or interest in land;
- (b) fraudulently issues or makes, or fraudulently procures the issue or making, of any certificate or other document, or any registration, or any erasure or alteration in any certificate or other document or in any register;
- (c) fraudulently uses, assists in fraudulent using or is privy to the fraudulent use of any instrument or form purporting to be issued or authorised by the Registrar; or
- (d) causes any defacement, obliteration, mutilation or unauthorised entry or alteration to be made on or in any register or filed instrument,

is guilty of an offence and liable to a fine of five thousand dollars and to imprisonment for three years.

- (2) Whoever, after the delivery to him of a summons to attend before the Registrar or to produce any document, neglects or refuses without reasonable cause to attend in accordance with the summons, or to produce any document which he is required by the summons to produce, or to answer upon oath or otherwise any question which is lawfully put to him by the Registrar under the powers conferred by this Law, is guilty of an offence and liable on summary conviction to a fine of fifty dollars.

## Fees

157. (1) There shall be payable in respect of land certificates, certificates of leases, searches, survey plans, printed forms and all other matters connected with registration, such fees as shall from time to time be prescribed and the Registrar may refuse registration until the fees are paid.
- (2) The Registrar may act notwithstanding that the prescribed fee or any part thereof has not been paid, but the unpaid fee or part of a fee shall be recorded in the register.
- (3) The Registrar may refuse to register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid.

## Recovery of fees and expenses

158. Unpaid fees or expenses incurred by the Registrar shall constitute a civil debt recoverable by the Registrar in the appropriate court.



**Enforcement of Registrar's orders for payment**

**159.** An order for the payment of a sum of money made by the Registrar under any power conferred by this Law shall be deemed to be an order of the court and shall be enforceable as such.

**Jurisdiction of courts**

**160.** Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or charge, registered under this Law, or to any interest in any such land, lease or charge, being an interest which is registered which is referred to in section 28 shall be tried by the court having jurisdiction having regard to the value of the suit.

**Rules**

**161.** The Cabinet may make rules generally to give effect to the purposes and provisions of this Law, and in particular, and without prejudice to the generality of the foregoing, for prescribing the forms to be used and the fees payable for anything to be done hereunder and for prescribing anything which under this Law may be prescribed.

**Saving of rights**

**162.** Nothing in this Law shall prejudice any of the interests, rights, powers and privileges conferred on the Crown or the Government by any other law.

**Law to bind Crown and Government**

**163.** Subject to section 162, this Law binds the Crown and the Government.

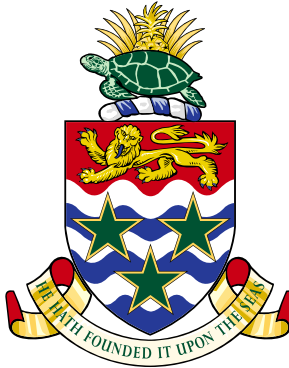
**How matters not provided for in Law to be decided**

**164.** Any matter not provided for in this or any other law in relation to land, leases and charges registered under this Law, and interests therein, shall be decided in accordance with the principles of justice, equity and good conscience.

**Publication in consolidated and revised form authorised by the Cabinet this 13th day of March, 2018.**

**Kim Bullings**  
*Clerk of the Cabinet*

**CAYMAN ISLANDS**



# **TRUSTS ACT**

**(2021 Revision)**

**Supplement No. 3 published with Legislation Gazette No. 19 of 26th February, 2021.**

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*Note (not forming part of this Act): This revision replaces the 2020 Revision which should now be discarded.*





**CAYMAN ISLANDS****TRUSTS ACT****(2021 Revision)****Arrangement of Sections**

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## CAYMAN ISLANDS



# TRUSTS ACT

(2021 Revision)

## PART I - Preliminary

### Short title

1. This Act may be cited as the *Trusts Act (2021 Revision)*.

### Definitions

2. In this Act —

“**authorised investments**” means investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

“**commencement date**” means the 18th February, 1967;

“**contingent right**” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

“**convey**” and “**conveyance**” as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or other transferring or disposing of land whereof that person is seised or possessed, or wherein that person is entitled to a contingent right, either for that person’s whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;



“**Court**” means the Grand Court of the Cayman Islands;

“**exempted trust**” means a trust registered as an exempted trust under Part VI;

“**hereditaments**” means real property which, under an intestacy, devolves on the next of kin;

“**income**” includes rents and profits;

“**land**” includes land of any tenure, houses and other buildings, mines and minerals, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over, or derived from land, and also an undivided share in land;

“**mines and minerals**”, in the definition of “**land**”, includes any strata or seam of minerals or substances in or under any land and powers of working and winning the same;

“**mortgage**” and “**mortgagee**” include a charge or chargee by way of mortgage and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

“**new trustee**” includes an additional trustee;

“**pay**” and “**payment**”, as applied in relation to stocks and securities and in connection with the expression “**into court**”, include the deposit or transfer of the same in or into court;

“**personal representative**” means the executor or administrator for the time being of a deceased person;

“**possessed**” applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

“**possession**” includes receipt of rents and profits or the right to receive the same, if any;

“**property**” includes real and personal property, and any estate, share and interest in any property, real or personal, and any debt, thing in action and other right or interest, whether in possession or not;

“**rights**” include estates and interests;

“**sale**” includes an exchange;

“**securities**” includes stocks, funds and shares and, so far as relates to payments into court, has the same meaning as in the enactments relating to funds in court;

“**securities payable to bearer**” include securities transferable by delivery or by delivery and endorsement;

“**stock**” includes fully paid up shares and, so far as relates to vesting orders made by the Court under this Act, includes any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;



“**transfer**”, in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;

“**trust**” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions “**trust**” and “**trustee**” extend to implied and constructive trusts, to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of a personal representative;

“**trustee**” where the context admits, includes a personal representative;

“**trust corporation**” means a body corporate licensed to conduct trust business, with or without restriction, under the *Banks and Trust Companies Act (2021 Revision)* or registered under that Act as a controlled subsidiary or a private trust company;

“**trust for sale**”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale;

“**trustees for sale**” mean the persons (including a personal representative) holding land on trust for sale; and

“**trust litigation**” means litigation invoking the inherent jurisdiction of the Court in relation to the administration of trusts.

## PART II - Appointment and Discharge of Trustees

### Limitation on the number of trustees

3. (1) Where, at the commencement date, there are more than four trustees of a settlement of land, or more than four trustees holding land on trust for sale, no new trustees shall (except where, as a result of the appointment, the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.
- (2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement date —
- (a) the number of trustees shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy; and
- (b) the number of trustees shall not be increased beyond four.

- (3) Subsections (1) and (2) apply to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply —
  - (a) in the case of land vested in trustees for charitable, ecclesiastical or public purposes; or
  - (b) where the net proceeds of the sale of the land are held for like purposes.

#### **Power of appointing new or additional trustees**

4. (1) Where a trustee, either original or substituted and whether appointed by the Court or otherwise, is dead, desires to be discharged from all or any of the trusts or powers reposed in or conferred on that trustee, refuses or is unfit to act therein is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Act on the number of trustees —
- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or
  - (b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustee or trustees for the time being, or the personal representatives of the last surviving or continuing trustee,
- may, by deed, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, desiring to be discharged, refusing or being unfit or being incapable or being an infant, as aforesaid.
- (2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or trustees may be appointed in the place of the trustee who is removed, as if that person were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and this section shall apply accordingly, but subject to the restrictions imposed on the number of trustees.
  - (3) Where a corporation, being a trustee, is or has been dissolved, either before or after the commencement date, then, for the purposes of this section, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.
  - (4) The power of appointment given by subsection (1) or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee, who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.



- (5) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the Court or otherwise, then —
- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
  - (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,
- may, by deed, appoint another person or persons to be an additional trustee or trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.
- (6) Every new trustee appointed under this section as well before as after all the trust property becomes by law, assurance or otherwise, vested in that trustee, shall have the same powers, authorities and discretions, and may in all respects act as if that person had been originally appointed a trustee by the instrument, if any, creating the trust.
- (7) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relating to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of this section.
- (8) Where a person of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in that person's place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the Court to make the appointment.

### **Power to appoint trustees of property belonging to infants or to persons out of the Islands**

5. (1) Where an infant or a person out of the Islands is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement date (in this subsection called “the deceased”) to a devise or legacy, to the residue of the estate of the deceased or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant or person out of the Islands, the personal representatives of the deceased may, by writing, appoint a trust corporation of two or more persons not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue or share for the infant or the person out of the Islands and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

- (2) On such appointment under subsection (1), the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any investment authorised by this Act.
- (3) Where a personal representative has, before the commencement date, retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which that person was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement date, that person shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

### **Supplemental provisions as to appointment of trustees**

6. On the appointment of a trustee for the whole or any part of trust property —
- (a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased;
  - (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed;
  - (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but (except if either (i) the trust was created before 11 May 1998 and the trustee has by deed executed by the trustee extended the *Trusts (Amendment) (Immediate Effect and Reserved Powers) Act, 1998 [Law 5 of 1998]* to the trust or (ii) the trust was created on or after 11 May 1998 and, in either case, either (iii) only one trustee was originally appointed or (iv) a contrary intention is expressed in, or evidenced by, the trust instrument) a trustee shall not be discharged from the trust unless there is either a trust corporation or at least two individuals to act as trustees to perform the trust; and
  - (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.



**Obligations of trustees**

- 6A.** (1) A trustee shall maintain and keep up to date, for such period and in such manner as may be prescribed, an accurate record of the identity and particulars of —
- (a) a settlor;
  - (b) a contributor to the trust;
  - (c) a beneficiary;
  - (d) a protector;
  - (e) an enforcer of the trust;
  - (f) a service provider to the trust, including any investment adviser, manager, accountant or tax adviser; and
  - (g) the person exercising ultimate effective control of the trust.
- (2) A trustee shall maintain and keep up to date, for such period and in such manner as may be prescribed, accounting records relating to the trust as may be prescribed.
- (3) Where a person acting in the capacity as a trustee of a trust forms a business relationship or enters into a one-off transaction with a person conducting relevant financial business as defined by section 2(1) of the *Proceeds of Crime Act (2020 Revision)*, the trustee shall —
- (a) before or at the time the business relationship is formed; or
  - (b) before or at the time the transaction is entered into,
- take reasonable steps to inform the person conducting relevant financial business as defined by section 2(1) of the *Proceeds of Crime Act (2020 Revision)* that the trustee is acting in the capacity as a trustee of the trust.

**Evidence as to a vacancy in a trust**

- 7.** (1) A statement, contained in any instrument coming into operation after the commencement date by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the Islands for more than twelve months, refuses, is unfit to act or is incapable of acting, or that that person is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.
- (2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration express or implied, consequent on the appointment, shall be valid.

**Retirement of trustee without new appointment**

8. (1) Where a trustee is desirous of being discharged from the trust, and after that person's discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid, by deed, declares that that person is desirous of being discharged from the trust, and if that person's co-trustees and such other person, if any, as is empowered to appoint trustees, by deed, consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act without any new trustee being appointed in that person's place.
- (2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.
- (3) Subject to section 113(2), the requirement under subsection (1) for there to be a trust corporation or at least two individuals to act as trustees to perform the trust does not apply if —
- (a) only one trustee was originally appointed; or
  - (b) a contrary intention is expressed in, or evidenced by, the trust instrument.

**Vesting of trust property in new or continuing trustees**

9. (1) Where, by a deed, a new trustee is appointed to perform any trust —
- (a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who, by virtue of the deed, become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and
  - (b) if the deed is made after the commencement date and does not contain such a declaration, the deed shall, subject to any express provisions to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.
- (2) Where, by a deed, a retiring trustee is discharged under the statutory power without a new trustee being appointed —
- (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates; and



- (b) if the deed is made after the commencement date and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interest and rights with respect to which a declaration could have been made.
- (3) An express vesting declaration whether made before or after the commencement date shall, notwithstanding that the estate, interest and right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provisions to the contrary contained in the deed of appointment or discharge) to vest in the persons referred to in subsections (1) and (2), as the case may require, such estates, interest and rights as are capable of being and ought to be vested in those persons.
- (4) This section does not extend —
  - (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
  - (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture; or
  - (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under a law.
- (5) In subsection (4) —  
“**lease**” includes an underlease and an agreement for a lease or underlease.

### **Power of Court to appoint new trustees**

- 10.** (1) The Court may, whenever it is expedient to appoint a new trustee or trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.
- (2) The Court may make an order appointing a new trustee in substitution for a trustee who is convicted of a felony or an indictable offence, is a person of unsound mind, is a bankrupt or is a corporation which is in liquidation or has been dissolved.
- (3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing



trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

- (4) Nothing in this section gives power to appoint an executor or administrator.

### **Power to authorise remuneration**

- 11.** Where the Court appoints a corporation to be a trustee either solely or jointly with another person, the Court may authorise the corporation to charge such remuneration for its services as trustee as the Court may think fit.

### **Powers of new trustee appointed by the Court**

- 12.** Every trustee appointed by the Court shall, as well before as after the trust property becomes by law, assurance or otherwise, vested in that trustee, have the same powers, authorities and discretions, and may in all respects act as if that person had been originally appointed a trustee by the instrument, if any, creating the trust.

## **PART III - Presumption of Lifetime Effect and Reserved Powers**

### **Presumption of immediate effect**

- 13.** (1) In construing the terms of any instrument stipulating the trusts and powers in and over the property, if the instrument is not expressed to be a will, testament or codicil and is not expressed to take effect only upon the death of the settlor, it shall be presumed that all such trusts (and in particular the duty of the trustees to the beneficiaries to administer the trust in accordance with its terms) and powers were intended by the settlor to take immediate effect upon the property being identified and vested in the trustee, save as otherwise expressly, or by necessary implication, provided in the instrument.
- (2) Subsection (1) shall apply notwithstanding —
- (a) that the trust may have been created in order to avoid the application upon the settlor's death of laws relating to wills, probate or succession;
  - (b) that during the lifetime of the settlor, beneficiaries of the trust may not be ascertainable;
  - (c) that beneficial interests may only vest in remainder or may remain contingent or subject to defeasance by the exercise of reserved powers or otherwise; or
  - (d) that the settlor may be one of the trustees.
- (3) Subsection (1) does not apply in the case of a declaration by a person constituting themselves the sole trustee of a property to which that person was beneficially entitled.



**Reserved powers**

- 14.** (1) The reservation or grant by a settlor of a trust of any or all of the following —
- (a) any power to revoke, vary or amend the trust instrument or any trusts or powers arising thereunder in whole or in part;
  - (b) a general or special power to appoint either income or capital or both of the trust property;
  - (c) any limited beneficial interest in the trust property;
  - (d) a power to act as a director or officer of any company wholly or partly owned by the trust;
  - (e) a power to give binding directions to the trustee in connection with the purchase, holding or sale of the trust property;
  - (f) a power to appoint, add or remove any trustee, protector or beneficiary;
  - (g) a power to change the governing law and the forum for administration of the trust; or
  - (h) a power to restrict the exercise of any powers or discretions of the trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the trust instrument,
- shall not invalidate the trust or affect the presumption under section 13(1).
- (2) In this Part —
- “**settlor**” has the meaning ascribed to that term in section 87.

**Indemnity of trustees**

- 15.** A trustee who has acted in compliance with, or as a result of an otherwise valid exercise of, any of the powers referred to in section 14(1) shall not be acting in breach of trust.

## **PART IV - Administration of Trusts - General Powers of Trustees**

**Power of trustees for sale to sell by auction or private contract**

- 16.** (1) Where a trust for sale or a power of sale of property is vested in a trustee, that person may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

- (2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical or made in any other way.

### **Power to postpone sale**

- 17.** (1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.
- (2) Where there is a power to postpone the sale then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor shall a purchaser of a legal estate be concerned in any case with any directions respecting the postponement of a sale.
- (3) Subsections (1) and (2) apply whether the trust for sale is created before, on or after the commencement date.
- (4) Where a disposition or settlement coming into operation after the commencement date contains a trust either to retain or sell land the same shall be construed as a trust to sell the land with power to postpone the sale.

### **Trust for sale of mortgaged property where right of redemption is barred**

- 18.** (1) Where any property, vested in trustees by way of security, becomes, by virtue of the statutes of limitation, an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale.
- (2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection operates without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.
- (3) This section does not affect the right of any person to require that, instead of a sale, the property shall be conveyed to that person or in accordance with that person's directions.

### **Power to sell subject to depreciatory conditions**

- 19.** (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.
- (2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory,



unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

- (3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.
- (4) This section applies to sales made before or after the commencement date.

### **Power of trustees to give receipts**

- 20.** (1) The receipt in writing of a trustee for any money, securities or other personal property or effects payable, transferable or deliverable to that person under any trust or power shall be a sufficient discharge to the person paying, transferring or delivering the same and shall effectually exonerate that person from seeing to the application or being answerable for any loss or misapplication thereof.
- (2) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

### **Power to compound liabilities**

- 21.** A personal representative or trustee may —

- (a) accept any property, real or personal, before the time at which it is made transferable or payable;
- (b) sever and apportion any blended trust funds or property;
- (c) pay or allow any debt or claim on any evidence that that personal representative or trustee think sufficient;
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed;
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust,

and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to that personal representative or trustee seem expedient, without being responsible for any loss occasioned by any act or thing so done by that personal representative or trustee in good faith.

### **Power to raise money by sale, mortgage or otherwise**

- 22.** (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.

- (2) Subsection (1) applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust.

### **Protection to purchasers and mortgagees dealing with trustees**

- 23.** No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

### **Validation of appointments if objects are excluded or take illusory shares**

- 23A.**(1) An appointment made in exercise of a power to appoint property among two or more objects is not invalid on the ground that —
- (a) an unsubstantial, illusory, or nominal share only is appointed to, or left unappointed to devolve upon, any one or more of the objects of the power; or
  - (b) an object of the power is altogether excluded because of the exercise.
- (2) Any such appointment is vital despite the fact that any one or more of the objects is not, because of the exercise or default of appointment, to take any share in the property.
- (3) This section does not affect a provision in the instrument creating the power declaring the amount of any share from which an object of the power is not to be excluded.

### **Devolution of power of trustees**

- 24.** (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivor or survivors of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) In subsection (2) —
- “**personal representative**” does not include an executor who has renounced or has not proved.



**Power to insure**

- 25.** (1) A trustee may insure, against loss or damage due to any event, any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding the value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.
- (2) Subsection (1) does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

**Application of insurance money where policy kept up under any trust, power or obligation**

- 26.** (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power, statutory or otherwise, or in performance of any covenant or of any obligation, statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.
- (2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use that person's best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into Court.
- (3) Any such money —
- (a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust; or
- (b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
- (4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the Court, in rebuilding, reinstating, replacing or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.
- (5) Nothing contained in this section shall prejudice or affect the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating or repairing the property lost or damaged, or the rights of any mortgagee, lessor or lessee, whether under any law or otherwise.

- (6) This section applies to policies effected either before, on or after the commencement date, but only to money received after such date.

### **Deposit of documents for safe custody**

- 27.** Trustees may deposit any documents held by them relating to the trust, or to trust property, with any banker, banking company or other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

### **Accounts and records**

- 27A.** (1) A trustee shall keep or cause to be kept accurate accounts and records (including underlying documentation) of the trustee's trusteeship appropriate to the trust and trust property.
- (2) All accounts and records required to be kept under subsection (1) shall be retained for a minimum period of five years from the date on which they are prepared.
- (3) A trustee who knowingly and wilfully contravenes subsection (1) or (2) shall be subject to a penalty of five thousand dollars.

### **Reversionary interests, valuations and audit**

- 28.** (1) Where trust property includes any share or interest in property not vested in the trustees, the proceeds of the sale of any such property or any other thing in action, the trustees on the same falling into possession or becoming payable or transferable may —
- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
  - (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
  - (c) allow any deductions for duties, costs, charges and expenses which they think proper or reasonable; and
  - (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,
- without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.
- (2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission —



- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or in which such share, interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested,

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share, interest or other thing in action on the same falling into possession.

- (3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time (by duly qualified agents), ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.
- (4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant and shall, for that purpose, produce such vouchers and give such information to the independent accountant as that person may require; and the costs of such examination or audit including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

### **Power to employ agents**

- 29.** (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether attorney-at-law, banker, stockbroker or other person to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.



- (2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in and executing and perfecting assurances of, or managing, cultivating or otherwise administering, any property subject to the trust or forming part of the testator's or intestate's estate in any place outside the Islands, or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.
- (3) Without prejudice to such general power of appointing agents, a trustee —
- (a) may appoint an attorney-at-law to be that person's agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the attorney-at-law to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
  - (b) shall not be chargeable with breach of trust by reason only of that person having made or concurred in making any such appointment; and the production of any such deed by the attorney-at-law shall have the same statutory validity and effect as if the person appointing the attorney-at-law had not been a trustee; and
  - (c) may appoint a banker or attorney-at-law to be that person's agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or attorney-at-law to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of that person having made or concurred in making such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which that person would have incurred if this Act had not been passed, in case that person permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or attorney-at-law for a period longer than is reasonably necessary to enable the banker or attorney-at-law, as the case may be, to pay or transfer the same to the trustee.

- (4) Subsection (3) applies whether the money or valuable consideration or property was or is received before or after the commencement date.



**Power to concur with others**

- 30.** Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representative may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in that trustee's or personal representative's own right or in a fiduciary capacity.

**Distribution of assets after notice by executor or administrator**

- 31.** Where an executor or administrator has given such or the like notices as, in the opinion of the court in which such executor or administrator is sought to be charged, would have been given by the Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time limited in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator has not had notice at the time of the distribution of the said assets or part thereof as the case may be; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

**Powers of Maintenance and Advancement, and Protective Trusts****Power to apply income for maintenance and to accumulate surplus income during a minority**

- 32.** (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property —
- (a) during the infancy of any such person, if that person's interest so long continues, the trustees may, at their sole discretion, pay to that person's parent or guardian, if any, or otherwise apply for or towards that person's maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is —
    - (i) any other fund applicable to the same purpose; or

- (ii) any person bound by law to provide for that person's maintenance or education; and
- (b) if such person on attaining the age of eighteen years has not a vested interest in such income, the trustees shall henceforth pay the income of that property and of any accretion thereto under subsection (2) to that person, until that person either attains a vested interest therein or dies, or until failure of that person's interest:

Provided that in deciding whether the whole or any part of the income of the property is, during a minority, to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and that person's requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for this purpose, then so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

- (2) During the infancy of any such person, if that person's interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations —
  - (a) if any such person —
    - (i) attains the age of eighteen years or marries under that age, and that person's interest in such income during that person's infancy or until that person's marriage is a vested interest, or
    - (ii) on attaining the age of eighteen years or on marriage under that age, becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest,

in trust for such person absolutely, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

- (b) in any other case, notwithstanding that such person had a vested interest in such income, as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom,

but the trustees may, at any time during the infancy of such person, if that person's interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.



- (3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five per cent per annum.
- (4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that, in any case, accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or that person's personal representatives absolutely.

### Power of advancement

- 33.** (1) Trustees may, at any time or times, pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may in their absolute discretion think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on that person attaining any specified age or on the occurrence of any other event, or subject to a gift over on that person's death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which that person belongs:

Provided that —

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property;
  - (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property, the money so paid or applied shall be brought into account as part of such share; and
  - (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.
- (2) Subsection (1) applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion, and such money or securities, or the proceeds of such sale, calling in and conversion are not by law or in equity considered as land.

## Protective trusts

- 34.** (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called “**the principal beneficiary**”) for the period of that person’s life or for any less period, then, during that period (in this section called “**trust period**”) the said income shall, without prejudice to any prior interest, be held on the following trusts —
- (a) upon trust for the principal beneficiary during the trust period or until that person, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period that person would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;
  - (b) if the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons —
    - (i) the principal beneficiary and that person’s spouse or civil partner, if any, and that person’s children or more remote issue, if any; or
    - (ii) if there is no spouse, civil partner or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if that person were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be, as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.
- (2) Subsection (1) does not apply to trusts coming into operation before the commencement date, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.
- (3) Nothing in this section operates to validate any trusts which would, if contained in the instrument creating the trust, be liable to be set aside.

## Investment of Trust Funds

### Authorised investments

- 35.** A trustee may invest any trust funds in that person’s hands, whether at the time in a state of investment or not —



- (a) in any securities in which trustees in England are for the time being authorised by the law of England to invest trust funds;
  - (b) in any securities the interest on which is for the time being guaranteed by the Government of the Islands, or in any public debentures issued under the authority of and guaranteed by any law in force in the Islands;
  - (c) upon freehold securities in the Islands by way of first mortgages thereon; or
  - (d) on first mortgage of leasehold property in the Islands held for an unexpired term of not less than sixty years at a peppercorn rent,
- and may also, from time to time, vary such investment.

### **Investment in bearer securities**

- 36.** (1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments:

Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by that person for safe custody and collection of income with a banker or banking company.

- (2) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of subsection (1) be deemed to be such an express prohibition as aforesaid.
- (3) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

### **Discretion of trustees**

- 37.** Every power conferred by sections 35 and 36 shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

### **Power to retain investment which has ceased to be authorised**

- 38.** A trustee shall not be liable for breach of trust by reason only of that person continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

### **Loans and investments by trustees not chargeable as breaches of trust**

- 39.** (1) A trustee lending money on the security of any property on which that person can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court —

- (a) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom that person reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere;
  - (b) that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report; and
  - (c) that the loan was made under the advice of the surveyor or valuer expressed in the report.
- (2) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property that person has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require if, in the opinion of the Court, the title accepted be such as a person acting with prudence and caution would have accepted.
- (3) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement date.

### **Liability for loss by reason of improper investment**

40. (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.
- (2) This section applies to investments made before as well as after the commencement date.

### **Powers supplementary to powers of investment**

41. (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.
- (2) On a sale of land for an estate in fee simple, trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a charge by way of first mortgage of the land sold, with or without the security of any other property, such charge or mortgage, if any buildings are comprised in the mortgage, to



contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value thereof. The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such charge or mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being sufficient at the date of the charge or mortgage.

- (3) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement —
- (a) for the reconstruction of the company;
  - (b) for the sale of all or any part of the property and undertaking of the company to another company;
  - (c) for the amalgamation of the company with another company; and
  - (d) 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 they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed, purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

- (4) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may, as to all or any of such securities, exercise such right and apply capital money subject to the trust in payment of the consideration, renounce such right or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

Provided that the consideration for any such assignment shall be held as capital money of the trust.

- (5) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.
- (6) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), is made under the order of the Court, the powers conferred by subsections (1) and (2) shall apply only if and as far as the Court may, by order, direct.



### **Power to deposit money at bank and to pay calls**

- 42.** (1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.
- (2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

## **Protection and Indemnity of Trustees**

### **Protection against liability in respect of rents and covenants**

- 43.** (1) Where a personal representative or trustee liable as such for —
- (a) any rent, covenant or agreement reserved by or contained in any lease;
  - (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent-charge; or
  - (c) any indemnity given in respect of any rent, covenant or agreement referred to in paragraph (a) or (b),

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee or other person entitled to call for a conveyance thereof, and thereafter —

- (i) that person may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant; and
  - (ii) notwithstanding such distribution, that person shall not be personally liable in respect of any subsequent claim under the said lease or grant.
- (2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.



(3) In this section —

“**grant**” applies to a grant whether the rent is created by limitation, grant, reservation or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant;

“**lease**” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; and

“**lessee**” and “**grantee**” include persons respectively deriving title under them.

### **Protection by means of advertisement**

44. (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale, or personal representatives, may give notice by advertisement in a local newspaper, and such other like notices, including notices elsewhere than in the Islands, as would, in any special case, have been directed by the Court in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than twenty-eight days, fixed in the notice, or where more than one notice is given, in the last of the notices, particulars of that person’s claim in respect of the property or any part thereof to which the notice relates.
- (2) At the expiration of the time fixed by the notice, the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person who may have received it.
- (3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

### **Protection in regard to notice**

45. A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if that person has obtained notice thereof merely by reason of that person acting or having acted for the purposes of another trust or estate.

**Exoneration of trustees in respect of certain powers of attorney**

- 46.** A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability, bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of that person so acting or paying:

Provided that —

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made; and
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as that person would have had against the trustee.

**Implied indemnity of trustees**

- 47.** (1) A trustee shall be chargeable only for money and securities actually received by that person notwithstanding that person signing any receipt for the sake of conformity, and shall be answerable and accountable only for that person's own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for any other loss, unless the same happens through that person's own wilful default.
- (2) A trustee may reimburse themselves or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

**Application to the Court for advice and directions**

- 48.** Any trustee or personal representative shall be at liberty, without the institution of suit, to apply to the Court for an opinion, advice or direction on any question respecting the management or administration of the trust money or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the Court shall think expedient; and the trustee or personal representative acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards that person's own responsibility, to have discharged that person's duty as such trustee or personal representative in the subject matter of the said application:

Provided, that this shall not indemnify any trustee or personal representative in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee or personal representative shall have been found to have committed any fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction, and the costs of such application as aforesaid shall be in the discretion of the Court.



**Form of application**

- 49.** Where any such application shall be made under section 48, a Judge may require the petitioner to attend that Judge by that petitioner's attorney-at-law either in Chambers or in Court, where that person deems it necessary to have the assistance of an attorney-at-law.

**Powers of the Court to Make Vesting and other Orders****Vesting orders of land**

- 50.** Where —

- (a) the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;
- (b) a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person —
  - (i) is under disability;
  - (ii) is out of the jurisdiction of the Court; or
  - (iii) cannot be found, or being a corporation, has been dissolved;
- (c) it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
- (d) it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (e) there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (f) a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a lease of the right, and has wilfully refused or neglected to convey the land or interest or increase the right for twenty-eight days after the date of the requirement; or
- (g) land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the Court to be expedient,

the Court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the Court may direct or releasing or disposing of the contingent right to such person as the Court may direct:

Provided that —

- (i) where the order is consequential on the appointment of a trustee, the land or interest therein shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and
- (ii) where the order relates to a trustee entitled or formerly entitled jointly with another person and such trustee is under disability or out of the jurisdiction of the Court or cannot be found or, being a corporation, has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the Court may appoint.

### **Orders as to contingent rights of unborn persons**

- 51.** Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the Court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

### **Vesting order in place of conveyance by infant mortgagee**

- 52.** Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the Court may make an order vesting, releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

### **Vesting order consequential on order for sale or mortgage of land**

- 53.** Where the Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the Court thinks fit in the purchaser, mortgagee or any other person.

### **Vesting order consequential on judgment for specific performance, etc.**

- 54.** Where a judgment is given for the specific performance of a contract concerning any interest in land, for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the Court may declare —
- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Act; or



- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during that person's lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act,

and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

### **Effect of vesting orders**

**55.** A vesting order under sections 50 to 54 shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect —

- (a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the Court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the Court directs,

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

### **Power to appoint person to convey**

**56.** In all cases where a vesting order can be made under sections 50 to 54, the Court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate section.

### **Vesting orders as to stock and things in action**

**57.** (1) Where —

- (a) the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;
- (b) a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person, to stock or to a thing in action —
  - (i) is under disability;
  - (ii) is out of the jurisdiction of the Court;
  - (iii) cannot be found, or, being a corporation, has been dissolved;

- (iv) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to that person by the person so entitled; or
- (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the Court for that purpose has been served on that trustee;
- (c) it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (d) stock is standing in the name of a deceased person whose personal representative is under disability; or
- (e) stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient,

the Court may make an order vesting the right to transfer or call for a transfer of stock, to receive the dividends or income thereof or to sue for or recover the thing in action in any such person as the Court may appoint:

Provided that where —

- (i) the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
  - (ii) the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in the last mentioned person either alone or jointly with any other person whom the Court may appoint.
- (2) In all cases where a vesting order can be made under subsection (1), the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.
  - (3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court, may transfer the stock to themselves or any other person, according to the order, and all companies shall obey every order under this section according to its tenor.
  - (4) After notice in writing of an order under this section it shall not be lawful for any company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.
  - (5) The Court may make declarations and give directions concerning the matter in which the right to transfer any stock or thing in action vested under this Act is to be exercised.



- (6) The provisions as to vesting orders shall apply to shares in ships registered under the Acts of Parliament or other law relating to merchant shipping as if they were stock.

### **Vesting orders of charity property**

- 58.** The powers conferred as to vesting orders may be exercised for vesting any interest in land, stock or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustees was made by instrument under a power or by the Court under its general or statutory jurisdiction.

### **Vesting orders in relation to infant's beneficial interests**

- 59.** Where an infant is beneficially entitled to any property the Court may, with a view to the application of the capital or income thereof for the maintenance, education or benefit of the infant, make an order —
- (a) appointing a person to convey such property; or
  - (b) in the case of stock or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, to receive the dividends or income thereof or to sue for and recover such thing in action, upon such terms as the Court may think fit.

### **Orders made upon certain allegation to be conclusive evidence**

- 60.** Where a vesting order is made as to any land founded on an allegation —
- (a) of the personal incapacity of a trustee or mortgagee;
  - (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved;
  - (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor;
  - (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
  - (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is that person's personal representative or the person interested,
- the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the Court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.



### Orders of Court to be registered

- 61.** In all cases where the Court shall, under this Act, make a vesting order, or any order having the effect of a conveyance or assignment of any land or interest therein, or having the effect of release or disposition of the contingent right of an unborn person, or class of unborn persons, in any land an office copy of such order shall be registered in the office of the Registrar of Lands, and such order shall take effect upon and from the time of the registration of such office copy.

### Registration of vesting order made by court in England Trustee Act, 1925 (UK)

- 62.** (1) Where the court in England has made a vesting order under the *Trustee Act, 1925* of the United Kingdom in respect of land or personal estate in the Islands, and the vesting order so made is produced to the Registrar of Lands for registration, such vesting order shall, on payment of a fee of two dollars, be registered in the office of the Registrar of Lands.
- (2) For the purposes of this section, a duplicate of a vesting order sealed with the seal of the court making the same or a copy thereof certified as correct by the officer having the custody of the original order, shall have the same effect as the original.
- (3) In this section —
- “**court**” has the same meaning as the court referred to in section 67 of the *Trustee Act, 1925 of the United Kingdom [UK Act]*.

### Power of Court to authorise dealings with trust property

- 63.** (1) Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court may, by order, confer upon the trustees, either generally or in any particular instance, the necessary power for that purpose, on such terms, and subject to such provision and conditions, if any, as the Court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.
- (2) The Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.
- (3) An application to the Court under this section may be made by the trustees or any of them, or by any person beneficially interested under the trust.



**Persons entitled to apply for orders**

- 64.** (1) An order under this Act for the appointment of a new trustee or concerning any interest in land, stock or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.
- (2) An order under this Act concerning any interest in land, stock or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

**Jurisdiction of Court to set aside mistaken exercise of fiduciary power**

- 64A.**(1) If the Court, in relation to the exercise of a fiduciary power, is satisfied by a person specified in subsection (5) that the conditions set out in subsection (2) have been met, the Court may —
- (a) set aside the exercise of the power, either in whole or in part, and either unconditionally or on such terms and subject to such conditions as the Court may think fit; and
  - (b) make such order, consequent upon the setting aside of the exercise of the power, as it thinks fit.
- (2) The conditions referred to in subsection (1) are that —
- (a) in the exercise of the power, the person who holds the power did not take into account one or more considerations (whether of fact, law or a combination of fact and law) that were relevant to the exercise of the power, or took into account one or more considerations that were irrelevant to the exercise of the power; and
  - (b) but for that person's failure to take into account one or more such relevant considerations or that person having taken into account one or more such irrelevant considerations, the person who holds the power —
    - (i) would not have exercised the power;
    - (ii) would have exercised the power, but on a different occasion to that on which it was exercised; or
    - (iii) would have exercised the power, but in a different manner to that in which it was exercised.
- (3) If and to the extent that the exercise of the power is set aside under this section, to that extent the exercise of the power shall be treated as never having occurred.
- (4) The conditions specified in subsection (2) may be satisfied without it being alleged or proved that in the exercise of the power, the person who holds the power, or any advisor to such person, acted in breach of trust or in breach of duty.

- (5) An application to the Court under this section may be made by —
- (a) the person who holds the power;
  - (b) where the power is conferred in respect of a trust or trust property, by any trustee of that trust, or by any person beneficially interested under that trust, or (in the case of a purpose trust) the enforcer;
  - (c) where the power is conferred in respect of a charitable trust or otherwise for a charitable purpose, the Attorney General; or
  - (d) with the leave of the Court, any other person.
- (6) No order may be made under subsection (1) which would prejudice a *bona fide* purchaser for value of any trust property without notice of the matters which allow the Court to set aside the exercise of a power over or in relation thereto.
- (7) In this section —
- “fiduciary power”** means any power that, when exercised, must be exercised for the benefit of or taking into account the interests of at least one person other than the person holding the power;
- “power”** includes a discretion as to how an obligation is performed; and
- “person holding the power”** includes any person, whether or not the trustee of a trust, on whom a power has been conferred, whether or not that power is exercisable by that person alone, and any person to whom the exercise of a power has been delegated.

### **Jurisdiction of Court to approve compromise**

**64B.** Where a compromise of trust litigation is proposed and the approval of the Court is required on behalf of any beneficiary, whether a party to the litigation or represented by a party to the litigation, the Court shall be entitled to approve the compromise if it is satisfied that the compromise is not to the detriment of such beneficiary notwithstanding that the Court is not satisfied that it is for that person’s benefit.

### **Power to give judgment in absence of a trustee**

**65.** Where in any action the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in the action, to serve that person with a process of the Court, and that that person cannot be found, the Court may hear and determine the action and give judgment therein against that person in that person’s character of a trustee as if that person had been duly served, or had entered an appearance in the action, and had also appeared by that person’s attorney-at-law at the hearing, but without prejudice to any interest that person may have in the matters in question in the action in any other character.



**Power to charge costs on trust estate**

- 66.** The Court may order the costs and expenses incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the Court may seem just.

**Power to relieve trustee from personal liability**

- 67.** If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust whether the transaction alleged to be a breach of trust occurred before or after the commencement date, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which that person committed such breach, then the court may relieve that person either wholly or partly from personal liability for the same.

**Power to make beneficiary indemnify for breach of trust**

- 68.** (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through that trustee.
- (2) This section applies to breaches of trust committed before as well as after the commencement date.

**Payment into Court****Payment into Court by trustees**

- 69.** (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court; and the same shall, subject to rules of court, be dealt with according to the order of the Court.
- (2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.
- (3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the Court may order the payment into court to be made by the majority without the concurrence of the other or others.

- (4) Where any such money or securities are deposited with any banker, broker or other depository, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.
- (5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

### **Charitable Purposes - Vesting**

#### **Real property transferred for religious, etc., purposes to vest in trustees and their successors**

- 70.** (1) Wherever freehold, leasehold or other landed property has been or is acquired —
- (a) by any congregation or society of persons associated for religious purposes;
  - (b) for the promotion of education;
  - (c) for any charitable purpose or any purpose concerned with or dependant on charity;
  - (d) as a chapel, meeting house or other place of religious worship;
  - (e) as a burial-ground or cemetery;
  - (f) as a hospital, poorhouse, asylum or other institution for a charitable purpose or any purpose concerned with or dependant on charity;
  - (g) as a dwelling-house and glebe for the minister of such congregation;
  - (h) as a school-house and schoolmaster's house and grounds;
  - (i) as a college, academy or seminary and grounds; or
  - (j) as a hall or rooms for the meeting or transaction of the business of such congregation or society, or for the furtherance of its objects,

and whenever the transfer, conveyance, assignment or other assurance of such property has been or may be taken to or in favour of a trustee or trustees, to be from time to time appointed, or of any party or parties named in such transfer, conveyance, assignment or other assurance, or subject to any trust for the congregation or society, or of the individuals composing the same, such transfer, conveyance, assignment or other assurance shall not only vest the freehold, leasehold or other property thereby conveyed or otherwise assured in the party or parties therein named, but shall also effectually vest such property in their successors in office for the time being, and the old continuing trustees, if any, jointly, or if there be no old continuing trustees, then wholly in such successors for the time being, who may be chosen and appointed in the manner provided



or referred to in or by such transfer, conveyance, assignment or other assurance, or in any separate deed or instrument declaring the trusts thereof; or if no mode of appointment be therein prescribed or referred to, or if the power of appointment be lapsed, then in such manner as shall be agreed upon by such congregation or society, upon such or the like trusts, and with, under and subject to the same powers and provisions as are contained or referred to in such transfer, conveyance, assignment or other assurance, or in any such separate deed or instrument, or upon which such property is held; and that without the necessity of any transfer, assignment, conveyance or other assurance whatsoever, and whether such formality shall or shall not have been prescribed in the original transfer, conveyance, assignment or other assurance, or in any such separate deed or instrument as aforesaid.

- (2) Subsection (1) shall not invalidate the appointment of a new trustee or trustees, or the transfer or transmission of the legal estate in any such property in the manner provided by law.
- (3) For the purpose of preserving evidence thereof, every such choice and appointment of a new trustee or trustees shall be made to appear by some deed under the hand and seal of the chairperson for the time being of the meeting at which such choice and appointment shall be made, and shall be executed in the presence of such meeting, and attested by two or more witnesses, and in the Form in the Schedule, or as near thereto as the circumstances will allow; and the same shall be received as evidence in all courts and proceedings and in the Land Register in the same manner, and on the like proof, as other transfers, deeds and conveyances, and shall be evidence of the truth of the several matters and things therein contained; and the same may be proved, recorded or registered in like manner as other deeds and instruments and such record shall enjoy all the privileges by law attached to the other instruments registerable or recordable in the Land Register under the *Registered Land Act (2018 Revision)*.

### **Charitable purposes**

- 71.** A trust shall not fail to qualify as a trust for charitable purposes only because those purposes may benefit the public or a section of the public outside the Islands.

## **PART V - Variation of Trusts**

### **Jurisdiction of Court to vary trusts**

- 72.** (1) Where property, whether real or personal, is held on trusts whensoever arising, under any will, settlement or other disposition, the Court may if it thinks fit, by order, approve on behalf of —

- (a) any person having, directly or indirectly an interest, whether vested or contingent, under the trusts who by reason of infancy or other incapacity is incapable of assenting;
- (b) any person (whether ascertained or not) who may have become entitled, directly or indirectly, to an interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this paragraph shall not include any person who would be of that description or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the Court;
- (c) any unborn person; or
- (d) any person in respect of any discretionary interest of that person under protective trusts where the interest of the principal beneficiary has not failed or determined,

any arrangement (by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that, except by virtue of paragraph (d), the Court shall not approve an arrangement on behalf of any person unless the carrying out thereof would not be to the detriment of that person.

- (2) In subsection (1) —
  - “**discretionary interest**” means an interest arising under the trust specified in paragraph (a) of section 34(1);
  - “**principal beneficiary**” has the same meaning as in section 34(1); and
  - “**protective trusts**” mean an interest specified in paragraphs (a) and (b) of section 34(1) or any like trusts.
- (3) Nothing in this section shall apply to trusts affecting property settled by any law of the Islands.

## PART VI - Exempted Trusts

### Registrar of Trusts to be appointed

- 73. The Cabinet shall appoint such person as it may, from time to time, think fit to be the Registrar of Trusts for the purpose of registering, controlling and otherwise dealing with exempted trusts in accordance with this Part.



**Registration of exempted trusts**

- 74.** (1) Where the Registrar of Trusts is satisfied that the beneficiaries under any trust do not and are not likely to include any person at any time resident or domiciled in the Islands (other than any object of a charitable trust or power) that person may, upon application made by the trustees at any time, register such trust as an exempted trust.
- (2) After the Registrar of Trusts has registered a trust as an exempted trust, it shall not cease to be an exempted trust by reason of the fact that any beneficiary is at any time resident or domiciled in the Islands but any such beneficiary shall nevertheless be subject to section 81(3).
- (3) The Registrar of Trusts may, if that person thinks fit, decline to approve for registration or to register any trust without giving any reason for so declining.
- (4) The Registrar of Trusts may, if that person thinks fit, (but subject to section 83) decline to consider any application under this section or any submission under section 82 unless the applicant procures from such of the beneficiaries then in existence and ascertained as the Registrar of Trusts may specify a declaration that that person is not and does not intend to become resident or domiciled in the Islands.

**Registrar of Trusts to share information**

- 74A.**(1) The Registrar of Trusts shall, upon request in writing by an entity under subsection (2), share any information required for the purpose of discharging any function or exercising any power under the following Acts —
- (a) the *Anti-Corruption Act (2019 Revision)*;
  - (b) the *Monetary Authority Act (2020 Revision)*;
  - (c) the *Proceeds of Crime Act (2020 Revision)*; or
  - (d) the *Tax Information Authority Act (2021 Revision)*.
- (2) For the purposes of this section, the following entities may request information from the Registrar of Trusts —
- (a) the Anti-Corruption Commission established under section 3 of the *Anti-Corruption Act (2019 Revision)*;
  - (b) the Cayman Islands Monetary Authority established under section 5 of the *Monetary Authority Act (2020 Revision)*;
  - (ba) the Customs and Border Control Service as established under section 3 of the *Customs and Border Control Act (2021 Revision)*;
  - (c) the Financial Crimes Unit of the Royal Cayman Islands Police Service;
  - (d) the Financial Reporting Authority, as defined under the *Proceeds of Crime Act (2020 Revision)*;



- (e) the Tax Information Authority, designated under section 4 of the *Tax Information Authority Act (2021 Revision)*; or
  - (f) a competent authority as defined under section 2(1) of the *Proceeds of Crime Act (2020 Revision)*.
- (3) Where a request for information is made under subsection (1), the information shall be provided within forty-eight hours of receipt of the request.
- (4) The recipient of any information shared by the Registrar of Trusts under this section shall —
- (a) use the information for the purpose for which it was shared or provided;
  - (b) retain the information for as long as is necessary to carry out the purpose for which it was shared or provided; and
  - (c) not disclose the information for any purpose other than the purpose for which it was shared or provided, without the prior consent of the Registrar of Trusts.

### **Power of authorised entity to request information**

**74B.**(1) Where an entity authorised to request information under section 74A has reasonable grounds to believe that a person who is —

- (a) a trustee; or
- (b) any other person exercising ultimate effective control of a trust established under this Act,

is acting, or carrying on a business, in contravention of any of the Acts referred to in section 74A(1), the entity may direct that person to provide such information in relation to the trust or its activities as may be required by the entity.

- (2) A person who knowingly fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and if the offence is a continuing one, to a fine of ten thousand dollars for each day or part of a day during which the offence continues, up to a maximum of fifty thousand dollars.

### **Certificate and registration fee**

**75.** Upon the registration of any trust as an exempted trust (or if the registration of a trust takes effect under section 82, then upon receipt of any draft document as there mentioned) the Registrar of Trusts shall issue to the trustees thereof a certificate to that effect and the trustees shall pay to the Registrar of Trusts a registration fee of five hundred dollars.



**Documents to be lodged**

76. (1) Trustees making application to the Registrar of Trusts for the registration of any trust under this Part shall lodge with the Registrar of Trusts all and any documents containing or recording the trusts, powers and provisions thereof together with a copy of such documents.
- (2) The Registrar shall retain in each case every such document and shall (if such be the case) certify that the copy is a true copy thereof and shall return the certified copy to the trustees.

**Accounts, minutes and information**

77. (1) The trustees shall, from time to time, furnish the Registrar of Trusts with such accounts, minutes and information relating to the trust as the Registrar may, from time to time, require.
- (2) The Registrar of Trusts shall keep and maintain a file containing every document lodged under section 76 together with all accounts, minutes and letters or other documents containing information furnished to that person which shall be open to inspection by any trustee of the trust or any person specifically so authorised by the provisions of the trust and by the Registrar of Trusts and shall not be open to inspection by any other person, but a person entitled to inspection of the file shall be entitled to take copies of the contents thereof and in the course of any proceedings to produce or (as the case may be) require the Registrar of Trusts to produce the file and the contents thereof in evidence, and the same shall be admissible as *prima facie* evidence of the facts and matters therein appearing.

**Annual fee**

78. In March of each year the trustees of every exempted trust shall pay to the revenues of the Islands an annual fee of five hundred dollars.

**Failure to comply with section 77 or 78**

79. Where the trustees of any exempted trust fail to comply with section 77 or 78 and receive written notice to this effect from the Registrar of Trusts, then if sections 77 and 78 have not been complied with within twenty-eight days (or such further period as the Registrar of Trusts may allow) of the receipt of such notice by the trustees, the Court may, upon application made by the Registrar of Trusts, remove any one or more of the trustees and appoint a trustee or trustees in that trustee's or those trustees' place and generally make such order (including any order as to costs, payment and reimbursement of any fee and of any costs) as the Court may think fit.

**Liability for false statements**

- 80.** A person who knowingly furnishes to the Registrar of Trusts any false declaration, document, account, minute or information or permits the same to be so furnished knowing it to be false commits an offence and is liable on summary conviction to a fine of one thousand dollars and to imprisonment for three months.

**Power to give undertaking as to tax liability**

- 81.** (1) The Financial Secretary may give an undertaking to the trustees of an exempted trust who make application therefor that no law which is hereafter enacted in the Islands imposing any tax or duty to be levied on income or on capital assets, gains or appreciation or any tax in the nature of estate duty or inheritance tax shall apply to any property comprised in or any income arising under such exempted trust or to the trustees or the beneficiaries thereof in respect of any such property or income.
- (2) Any such undertaking under subsection (1) may be for any period not exceeding fifty years from the date of the creation of the exempted trust and may be in such form as the Financial Secretary shall determine.
- (3) Notwithstanding subsections (1) and (2) and anything contained in any such undertaking, a beneficiary who is at any time resident or domiciled in the Islands shall be liable in and in respect of such time to all and any tax and duty as if such undertaking had never been given and nothing in this section shall be construed as exempting any other person resident or domiciled in the Islands from any law imposing any tax or duty referred to in this Act.
- (4) The Financial Secretary shall prepare and present to the Cabinet, a report of all applications made and granted pursuant to this section on a monthly basis.
- (5) The first report due to be prepared pursuant to subsection (4) shall be presented to Cabinet on the date specified by Cabinet by Order.

**Submission of trust before execution**

- 82.** Any person intending to create any trust otherwise than by will or codicil (or any person on that person's behalf) may submit to the Registrar of Trusts a draft of any document expressed to contain or record the trusts, powers and provisions thereof and any person intending to be a trustee thereof may apply to the Cabinet for an undertaking in accordance with section 81 whereupon the Registrar (on being satisfied in accordance with section 74) may approve the same for registration, and the Cabinet shall be at liberty to give such undertaking under section 81, and such registration and undertaking shall take effect and shall take effect only on the creation of the trust in accordance with such draft within twenty-eight days (or such further period as the Registrar of Trusts may allow) of such approval or the giving of such undertaking (whichever shall later occur) and the trustees shall nevertheless forthwith lodge with the Registrar the documents creating the trust in accordance with section 76.



**Exemption from section 74(4)**

- 83.** (1) Section 74(4) shall not apply upon any submission to the Registrar of Trusts in accordance with section 82 where the settlor (or any person on that person's behalf) shall, in writing, so request and where under the trusts, powers and provisions of the draft submitted income or capital (other than income or capital applicable for any charitable purpose) is to any extent liable to be or capable of being transferred, paid, applied or appointed to or for the benefit of one or more beneficiaries in consequence of the exercise (whether with or without the consent of any person) of any discretion conferred on any person (not being a discretion conferred on any beneficiary) but if the Registrar of Trusts shall approve the same and the settlor shall create a trust in accordance therewith and within the time specified in section 82, subsections (2) to (5) shall apply to such trust.
- (2) Where, but for subsection (3), any right or remedy in respect of the trust would be vested in anyone or more of the beneficiaries thereunder, the same shall be vested in and exercisable by the Registrar of Trusts and any sum or sums recovered by the Registrar of Trusts shall be paid to the trustees of the trust and the Registrar of Trusts in relation to the exercise of the said rights and remedies and the payments of sums recovered pursuant thereto shall be answerable to the Cabinet as *parens patriae* and to no other person.
- (3) No beneficiary shall, in relation to the trust fund or any income thereof, at any time have any right or remedy at law or in equity against the Crown, the Cabinet, the Registrar of Trusts or the trustees or any servant or agent of any of them and in particular —
- (a) no beneficiary shall be entitled to require any money or property subject to the trust or any income or capital of the trust fund to be paid, transferred, appropriated, applied or appointed in any way whatsoever;
  - (b) no beneficiary shall be entitled to be taken into consideration by the trustees or the Registrar of Trusts or to require the trustees or Registrar of Trusts to take that person into consideration in or about the exercise of any power, discretion or duty conferred upon them or any of them;
  - (c) no beneficiary shall have any rights or remedies in connection with or in relation to the administration of the trust fund, and accordingly no beneficiary shall be entitled to inspect any accounts, minutes or documents relating to the trust;
  - (d) no action brought by or at the suit of any beneficiary (whether alone or jointly with any other person) against any trustee or the Registrar of Trusts or in respect of the trust fund in any manner whatsoever shall be entertained by the Court; and
  - (e) in this subsection —

“**the trustees**” include any person in whom under or by virtue of the terms of the trust there is vested (whether in a fiduciary capacity or not) any power or duty whatsoever.

- (4) The trustees or any of them or the Registrar of Trusts are, at any time and from time to time, at liberty to apply to the Court in and about any matter affecting the trust and the Court shall, subject to subsection (5), give such directions and make such order (including any order as to costs) as may be just and in particular and without prejudice to the generality of the foregoing the trustees or any of them shall be at liberty to proceed against any trustee or person who has been a trustee of the trust in respect of any breach of trust.
- (5) Nothing in Part V applies to a trust exempted by this section.

### **Fees and expenses to be payable out of the trust fund**

84. The trustees of any exempted trust shall be entitled, except where the Court may in any case otherwise order, to be reimbursed out of the trust fund any fee payable or other expense incurred by them under this Part.

### **Termination of trust**

85. If the Registrar of Trusts is satisfied that no property remains subject to the trusts powers or provisions thereof that person shall so certify whereupon this Part shall cease to apply to such trust or any former trustees thereof and the file relating to such trust and its contents shall be destroyed.

### **Definitions in this Part**

86. (1) In this Part —

“**beneficiary**” means any person interested under a trust (whether or not that person is the principal beneficiary and notwithstanding that that person’s interest is liable to be affected or defeated by any exercise of any power vested in any person) and a person is deemed to be interested under a trust if any capital or income comprised in the trust is liable to be or capable of being transferred, paid, applied or appointed to that person or for that person’s benefit either pursuant to the terms of the trust or in consequence of an exercise of any power or discretion conferred on any person by such terms, but does not include any person by reason only that that person is remunerated or indemnified as a trustee or as the servant or agent of a trustee;

“**person domiciled in the Islands**” does not include a company incorporated in the Islands which is an exempted company or a non-resident company, as defined in section 2(1) of the *Companies Act (2021 Revision)*; and

“**trust**” means any settlement, declaration of trust or other similar disposition created *inter vivos* or by will (including codicil) and taking effect under the law in force in the Islands.



- (2) This Part applies in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.
- (3) Parts I to V and the rules of law and equity shall (subject to section 83(5)) apply to every exempted trust as they apply to any other trust save as expressly provided in this Part.

## PART VII - Trusts-Foreign Element

### Definitions in this Part

**87.** In this Part —

“**dispose**” and “**disposition**”, in relation to property, connote every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished;

“**formalities**”, in relation to a disposition of property, means the documentary and other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature, without regard to —

- (a) the fact that the particular disposition is made in trust;
- (b) the terms of the trust;
- (c) the circumstances of the parties to the disposition; or
- (d) any other particular circumstances,

but includes any special formalities required by reason that the party effecting the disposition is not of full age, is subject to a mental or bodily infirmity or is a corporation.

“**heirship right**” means any right, claim or interest in, against or to property of a person arising, accruing or existing in consequence of, or in anticipation of, that person’s death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property to such person;

“**personal relationship**” includes every form of relationship by blood or marriage, including former marriage, and in particular a personal relationship between two persons exists if —

- (a) one is the child of the other, natural or adopted (whether or not the adoption is recognised by law), legitimate or illegitimate;
- (b) one is married to the other (whether or not the marriage is recognised by law);

- (c) one cohabits with the other or so conducts themselves in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or husband and wife or civil partner; or
- (d) personal relationships exist between each of them and a third person, but no change in circumstances causes a personal relationship, once established, to terminate; and

“**settlor**”, in relation to a trust, means and includes each and every person who, directly or indirectly, on behalf of themselves or on behalf of any other or others, as owner or as the holder of a power in that behalf, disposes of property to be held in such trust or declares or otherwise creates such trust.

### Application of this Part

**88.** This Part applies to every trust and every disposition of property in trust made before, on or after the 31st May, 1987, whether such property is situate in the Islands or elsewhere.

### Governing law

- 89.** (1) In determining the governing law of a trust, regard is first to be had to the terms of the trust and to any evidence therein as to the intention of the parties; and the other circumstances of the trust are to be taken into account only if the terms of the trust fail to provide such evidence.
- (2) A term of the trust expressly selecting the laws of the Islands to govern the trust is valid, effective and conclusive regardless of any other circumstances.
- (3) A term of the trust that the laws of the Islands are to govern a particular aspect of the trust or that the Islands or the courts of the Islands are the forum for the administration of the trust or any like provision is conclusive evidence, subject to any contrary term of the trust, that the parties intended the laws of the Islands to be the governing law of the trust and is valid and effective accordingly.
- (4) If the terms of a trust so provide, the governing law of the trust may be changed to or from the laws of the Islands provided that —
- (a) in the case of a change to the laws of the Islands, such change is recognised by the governing law of the trust previously in effect; or
  - (b) in the case of a change from the laws of the Islands, the new governing law would recognise the validity of the trust and the respective interests of the beneficiaries.
- (5) A change in governing law shall not affect the legality or validity of, or render any person liable for, any thing done before the change.



**Matters determined by governing law**

**90.** All questions arising in regard to a trust which is for the time being governed by the laws of the Islands or in regard to any disposition of property upon the trusts thereof including questions as to —

- (a) the capacity of any settlor;
- (b) any aspect of the validity of the trust or disposition or the interpretation or effect thereof;
- (c) the administration of the trust, whether the administration be conducted in the Islands or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment and removal; or
- (d) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment, and the validity of any exercise thereof,

are to be determined according to the laws of the Islands, without reference to the laws of any other jurisdictions with which the trust or disposition may be connected:

Provided that this section —

- (i) does not validate any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor, nor does this section affect the recognition of foreign laws in determining whether the settlor is the owner of such property or the holder of such a power;
- (ii) takes effect subject to any express contrary term of the trust or disposition;
- (iii) does not, as regards the capacity of a corporation, affect the recognition of the laws of its place of incorporation;
- (iv) does not affect the recognition of foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property;
- (v) does not validate any trust or disposition of immovable property situate in a jurisdiction other than the Islands which is invalid according to the laws of such jurisdiction; and
- (vi) does not validate any testamentary trust or disposition which is invalid according to the laws of the testator's domicile.



### Exclusion of foreign law

- 91.** Subject to the same provisos as are set out in paragraphs (i) to (vi) of section 90, it is expressly declared that no trust governed by the laws of the Islands and no disposition of property to be held upon the trusts thereof is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned, nor is the trustee, any beneficiary or any other person to be subjected to any liability or deprived of any right, by reason that —
- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or
  - (b) the trust or disposition avoids or defeats rights, claims or interests conferred by foreign law upon any person by reason of a personal relationship to the settlor or any beneficiary (whether discretionary or otherwise) or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

### Heirship rights

- 92.** An heirship right conferred by foreign law in relation to the property of a living person shall not be recognised as —
- (a) affecting the ownership of immovable property in the Islands or movable property wherever situate for the purposes of paragraph (i) of section 90 or for any other purpose; or
  - (b) constituting an obligation or liability for the purposes of the *Fraudulent Dispositions Act (1996 Revision)* or for any other purpose.

### Foreign judgments

- 93.** A foreign judgment shall not be recognised, enforced or give rise to any estoppel insofar as it is inconsistent with section 91 or 92.

### Application of this Part

- 94.** (1) This Part does not render any person liable for any thing done before 31st May, 1987.
- (2) Sections 91, 92 and 93 apply to every trust and every disposition of property in trust made before, on or after the 7th August, 1995, whether such property is situate in the Islands or elsewhere.



## PART VIII - Special Trusts - Alternative Regime

### Definitions in this Part

95. (1) In this Part —

“**beneficiary**” means a person who will or may derive a benefit or advantage, directly or indirectly, from the execution of a special trust;

“**enforcer**” means a person who has standing to enforce a special trust;

“**ordinary**”, in reference to a trust or power, signifies that it is a trust or power which is not subject to this Part;

“**power**” includes an administrative power as well as a dispositive power;

“**special**”, in reference to a trust or power, signifies that it is a trust or power which is subject to this Part;

“**standing to enforce**” means the right or duty to bring an action for the enforcement of a special trust; and

“**trust**” includes a trust of a power, as well as a trust of property, and “trustee” has a correspondingly extended meaning.

- (2) In this Part, a power is said to be held in trust if granted or reserved subject to any duty, expressed or implied, qualified or unqualified, to exercise the power or to consider its exercise.
- (3) Except as provided in subsections (1) and (2), terms and expressions defined in section 2 have the same meanings in this Part.

### Application

96. (1) A trust or power is subject to this Part, and is described as special, if —

- (a) it is created by or on the terms of a written instrument, testamentary or *inter vivos*; and
- (b) the instrument contains a declaration to the effect that this Part is to apply.
- (2) If a trust or power is created by written instrument in exercise of a special power, and the instrument contains no declaration as to the application of this Part, this Part shall, subject to evidence of a contrary intention, be deemed to be intended to apply; and for the purpose of subsection (1) the instrument shall be deemed to contain a declaration to that effect.
- (3) A trust or power which does not meet the requirements of subsection (1), and is not deemed to do so by virtue of subsection (2), is an ordinary trust or power and is not subject to this Part.

### Ordinary trusts and powers

97. Nothing in this Part affects an ordinary trust or power directly or by inference.

## Existing law

**98.** The law relating to special trusts and powers is the same in every respect as the law relating to ordinary trusts and powers, save as provided in this Part.

## Objects

- 99.** (1) The objects of a special trust or power may be persons or purposes or both.
- (2) The persons may be of any number.
- (3) The purposes may be of any number or kind, charitable or non-charitable, provided that they are lawful and not contrary to public policy.

## Enforcers

- 100.** (1) A beneficiary of a special trust does not, as such, have standing to enforce the trust, or an enforceable right against a trustee or an enforcer, or an enforceable right to the trust property.
- (2) The only persons who have standing to enforce a special trust are such persons, whether or not beneficiaries, as are appointed to be enforcers —
- (a) by or pursuant to the terms of the trust; or
- (b) by order of the court.
- (3) A right or duty to enforce a trust is presumed, subject to evidence of a contrary intention, to extend to every trust which is created by or on the terms of the same instrument, or pursuant to a power so created.
- (4) The court may, on the application of a trustee or an enforcer, appoint an enforcer —
- (a) if the terms of the trust require the appointment of an enforcer but —
- (i) it is impossible to make the appointment without the court's assistance; or
- (ii) it is difficult or inexpedient to make the appointment without the court's assistance;
- (b) if an enforcer with a duty to enforce is unable, unwilling or unfit to do so; or
- (c) if there is no enforcer who is of full capacity and who —
- (i) is a beneficiary; or
- (ii) has a duty to enforce and is fit and willing to do so.
- (5) In the circumstances described in paragraph (c) of subsection (4), the trustee shall, within thirty days apply, to the court for the appointment of an enforcer, or for the administration of the special trust under the direction of the court, or for such other order as the court shall think fit and, if a trustee knowingly fails



to do so, that person commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

- (6) Subsections (1) to (5) do not affect —
  - (a) the enforcement, by a trustee, an enforcer or any other person involved in the administration of a trust, of a right to remuneration or indemnity; or
  - (b) the enforcement of a trustee's duties by a co-trustee or a successor trustee.
- (7) Section 83 does not apply to special trusts.

### **Duties of enforcers**

- 101.** (1) Standing to enforce a special trust may be granted or reserved as a right or as a duty.
- (2) Subject to evidence of a contrary intention, an enforcer is deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the trust.
  - (3) A trustee or another enforcer, or any person expressly authorised by the terms of the special trust has standing to bring an action for the enforcement of the duty, if any, of an enforcer.

### **Rights and remedies of enforcers**

- 102.** Subject to the terms of that person's appointment —
- (a) an enforcer has the same rights as a beneficiary of an ordinary trust —
    - (i) to bring administrative and other actions, and make applications to the court, concerning the trust; and
    - (ii) to be informed of the terms of the trust, to receive information concerning the trust and its administration from the trustee, and to inspect and take copies of trust documents;
  - (b) in the performance of that person's duties, if any, an enforcer has the rights of a trustee of an ordinary trust to protection and indemnity and to make applications to the court for an opinion, advice or direction or for relief from personal liability; and
  - (c) in the event of a breach of trust an enforcer has, on behalf of the trust, the same personal and proprietary remedies against the trustee and against third parties as a beneficiary of an ordinary trust.

### **Uncertainty**

- 103.** (1) Subject to subsection (4), a special trust is not rendered void by uncertainty as to its objects or mode of execution.
- (2) The terms of a special trust may give the trustee or any other person power to resolve an uncertainty as to its objects or mode of execution.

- (3) If a special trust has multiple objects and there is no allocation of the trust property between them, the trustee, subject to evidence of contrary intention, has discretion to allocate the trust property.
- (4) If an uncertainty as to the objects or mode of execution of a special trust cannot be resolved, or has not been resolved pursuant to the terms of the trust, the court —
  - (a) may resolve the uncertainty —
    - (i) by reforming the trust;
    - (ii) by settling a plan for its administration; or
    - (iii) in any other way which the court deems appropriate; or
  - (b) insofar as the objects of the trust are uncertain and the general intent of the trust cannot be found from the admissible evidence as a matter of probability, may declare the trust void.
- (5) This section applies to powers as to trusts.

### **Cy-près**

- 104.** (1) If the execution of a special trust in accordance with its terms is or becomes in whole or in part —
- (a) impossible or impracticable;
  - (b) unlawful or contrary to public policy; or
  - (c) obsolete in that, by reason of changed circumstances, it fails to achieve the general intent of the special trust,
- the trustee shall, unless the trust is reformed pursuant to its own terms, apply to the court to reform the trust *cy-près* or, if or insofar as the court is of the opinion that it cannot be reformed consistently with the general intent of the trust, the trustees shall dispose of the trust property as though the trust or the relevant part of it has failed.
- (2) Section 72 does not apply to special trusts.

### **Trust corporation**

- 105.** (1) Except as authorised by an order of the court, or permitted by or pursuant to this section —
- (a) the trustee of a special trust shall be, or include, a trust corporation; and
  - (b) the trustee shall keep in the Islands at the office of the trust corporation a documentary record of —
    - (i) the terms of the special trust;
    - (ii) the identity of the trustee and the enforcers;



- (iii) all settlements of the property upon the special trust and the identity of the settlors;
  - (iv) the property subject to the special trust at the end of each of its accounting years; and
  - (v) all distributions or applications of the trust property.
- (2) **Repealed** by section 6 of the *Trusts (Amendment) Act, 2019 [Law 4 of 2019]*.
- (3) The court may authorise non-compliance with subsection (1) on such terms as it thinks fit if it is satisfied that the execution of the trust will not be prejudiced.
- (4) A person who, in the Islands or elsewhere, knowingly administers a special trust while there is a breach of paragraph (a) of subsection (1), apart from —
  - (a) actions intended to bring the trust into compliance with paragraph (a) of subsection (1) as soon as possible; and
  - (b) actions intended to preserve the trust property pending compliance with paragraph (a) of subsection (1)
 commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for five years.
- (5) A trustee who knowingly fails to comply with paragraph (b) of subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.
- (6) This section does not apply to the holder of a power which is granted or reserved by the terms of a special trust to a person other than the trustee of the special trust, even though the power is held in trust.
- (7) This section does not apply (except as regards any antecedent offence) if the governing law of the trust has been changed from the law of the Islands.
- (8) The Cabinet may make regulations subject to affirmative resolution restricting the application of subsection (1).

## Theft

- 106.** (1) Section 239(1) of the *Penal Code (2019 Revision)* does not apply in relation to special trusts.
- (2) For the purpose of the *Penal Code (2019 Revision)* property held upon a special trust shall be regarded, as against the trustee of the property or of any power in relation to the trust, and against any enforcer of the trust, as belonging to others (except to the extent of the beneficial interest, if any, of the trustee or enforcer under the terms of the trust), and an intention on the part of any such trustee or enforcer to defeat the trust shall be regarded accordingly as an intention to deprive others of their property.

### Unlawful acceptance

**107.** A person who, as trustee, accepts a settlement of property upon a special trust without taking steps to ensure that the settlor, or the person making the settlement on that person's behalf, understands who will have standing to enforce the trust commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for five years.

### Foreign element

**108.** Part VI of this Act applies to special trusts but as though paragraph (b) of section 89(4) were repealed and the following substituted —

“(b) in the case of a change from the law of the Islands, the new governing law would recognise the validity of the trust (without any material effect on its objects) and the standing of the enforcers to enforce the trust.”.

### Land in the Islands

**109.** No land nor any interest in land in the Islands shall be subject, directly or indirectly, to a special trust, but a special trust may hold an interest in a company, partnership or other entity which holds land in the Islands, or an interest in such land for the purposes of its business.

## PART IX - General Provisions

### Saving and transitional provisions for Law as originally enacted

- 110.** (1) This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before or after the commencement date.
- (2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.
- (3) This Act does not affect the legality or validity of any thing done before the commencement date except as otherwise hereinbefore expressly provided.
- (4) **Repealed** by section 11 of the *Trusts (Amendment) Act, 2016 [Law 26 of 2016]*.



## Indemnity

**111.** This Act, and every order purporting to be made under it, is a complete indemnity to all persons for any acts done pursuant thereto, and it is not necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

## Rules

**111A.** The Rules Committee constituted under section 19 of the *Grand Court Act (2015 Revision)* may in accordance with that section —

- (a) make rules; and
- (b) prescribe fees and forms,  
for the purpose of giving effect to the provisions of this Act in relation to all matters relating to pleadings, practice and procedure in the Court.

## Regulations

- 111B.**(1) The Cabinet may make regulations for giving effect to the purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations made under this section may prescribe measures to be taken by a trustee in respect of any of the matters referred to in section 6A.
  - (3) A contravention of a provision of the Regulations constitutes an offence punishable with a fine of five thousand dollars.

# PART X – Other Transitional Provisions

## Transitional provisions for sections 13 to 15

**112.** Sections 13 to 15 only apply to a trust if —

- (a) the trust was created on or after the 11th May, 1998; or
- (b) the sections are or have been expressly extended to apply to the trust by a deed executed by its trustees.

## Transitional provisions for Trusts (Amendment) Act, 2016

- 113.** (1) This section applies to the amendments to this Act under the *Trusts (Amendment) Act, 2016 [Law 26 of 2016]*.
- (2) Section 8(3) only applies to a trust if —
    - (a) it was created on or after 11th May 1998; or
    - (b) section 8(3) is expressly extended to apply to the trust by a deed executed by its trustee.



- (3) The following apply, and are deemed to have always applied, to all trusts whenever created —
  - (a) the amendments to sections 14 and 71; and
  - (b) section 23A.
- (4) **Repealed** by section 8 of the *Trusts (Amendment) Act, 2019 [Law 4 of 2019]*.



## SCHEDULE

### Form of Appointment of New Trustees

#### *Appointments to be recorded*

Memorandum of the choice and appointment of new trustees of the (describe the chapel or other property)-----

situated at----- in the island of-----at a meeting duly convened and held for that purpose ( in the vestry of the said chapel) on the----- day of----- 20---.

*A.B. of etc., Chairperson.*

Names and descriptions of all the trustees on the (original constitution or last appointment) of Trustees made on the-----day of , 20---.

*A. B., of etc.*

*C. D., of etc.*

*E., F., of etc.*

*G. H., of etc.*

Names and descriptions of all the trustees in whom the said (chapel) and premises now become legally vested.

#### **First-old continuing trustees**

E. F. now of etc.

#### **Second-new trustees now chosen and appointed**

B. A., of etc.

B. B., of etc.

Dated this-----day of-----, 20---.

*W.S. (Seal)*

Signed, sealed, and delivered by the said W.S., as chairperson of the said meeting, at and in the presence of the said meeting, on the day and year aforesaid, in the presence of

C.D.

E.F.

**Publication in consolidated and revised form authorised by the Cabinet this 5th day  
of January, 2021.**

**Kim Bullings**  
*Clerk of the Cabinet*



## ENDNOTES

### Table of Legislation history:

| SL #    | Law #   | Legislation                                                         | Commencement | Gazette       |
|---------|---------|---------------------------------------------------------------------|--------------|---------------|
|         | 56/2020 | Citation of Acts of Parliament Act, 2020                            | 3-Dec-2020   | LG89/2020/s1  |
|         | 35/2020 | Civil Partnership Law, 2020                                         | 4-Sep-2020   | LG64/2020/s1  |
|         | 22/2020 | Trusts (Amendment) Law, 2020                                        | 22-May-2020  | LG39/2020/s6  |
|         |         | <b>Trusts Law (2020 Revision)</b>                                   | 16-Jan-2020  | LG6/2020/s11  |
|         | 18/2019 | Trusts (Amendment) (No. 2) Law, 2019                                | 8-Aug-2019   | LG28/2019/s9  |
| 26/2019 |         | Trusts (Amendment) Law, 2019 (Commencement) Order, 2019             | 6-Jun-2019   | LG20/2019/s2  |
|         | 4/2019  | Trusts (Amendment) Law, 2019                                        | 14-Jun-2019  | LG16/2019/s4  |
|         |         | <b>Trusts Law (2018 Revision)</b>                                   | 28-Mar-2018  | GE26/2018/s5  |
|         | 12/2017 | Trusts (Amendment) Law, 2017                                        | 5-Jun-2017   | G12/2017/s4   |
|         |         | <b>Trusts Law (2017 Revision)</b>                                   | 31-May-2017  | GE45/2017/s39 |
|         | 26/2016 | Trusts (Amendment) Law, 2016                                        | 23-Nov-2016  | GE93/2016/s4  |
|         |         | <b>Trusts Law (2011 Revision)</b>                                   | 21-Nov-2011  | G24/2011/s15  |
|         | 8/2011  | Trusts (Amendment) Law, 2011                                        | 15-Mar-2011  | GE23/2011/s4  |
|         |         | <b>Trusts Law (2009 Revision)</b>                                   | 3-Aug-2009   | G16/2009/s2   |
|         | 9/2008  | Trusts (Amendment) Law, 2008                                        | 7-Aug-2008   | GE21/2008/s2  |
|         |         | <b>Trusts Law (2007 Revision)</b>                                   | 20-Aug-2007  | G17/2009/s2   |
|         | 20/2006 | Trusts (Amendment) Law, 2006                                        | 2-Oct-2006   | G29/2006/s2   |
|         |         | <b>Trusts Law (2001 Revision)</b>                                   | 12-Mar-01    | G6/2001/s4    |
|         | 5/1998  | Trusts (Amendment) (Immediate Effect and Reserved Powers) Law, 1998 | 10-May-1998  | G10/1998/s3   |
|         |         | <b>Trusts Law (1998 Revision)</b>                                   | 13-Aug-1998  | G18/1998/s5   |
|         | 18/1997 | Special Trusts (Alternative Regime) Law, 1997                       | 11-Nov-1997  | G23/1997/s2   |
|         |         | <b>Trusts Law (1996 Revision)</b>                                   | 15-Apr-1996  | G8/1996/s3    |
|         | 7/1995  | Perpetuities Law, 1995 (part)                                       | 1-Aug-1995   | G15/1995/s4   |
|         | 6/1995  | Trusts (Foreign Element) (Amendment) Law, 1995                      | 7-Aug-1995   | G16/1995/s5   |
|         | 23/1991 | Fees (Miscellaneous Amendments) Law, 1991 (part)                    | 15-Jan-1992  | GE/1992/s1    |
|         | 17/1987 | Trusts (Foreign Element) Law, 1987                                  | 31-May-1987  | G13/1987/s15  |
|         | 18/1986 | Trusts (Amendment) Law, 1986                                        | 19-Jan-1987  | G2/1987/s2    |
|         | 8/1979  | Powers of Attorney Law, 1979 (part)                                 | 7-May-1979   | G10/1979/s12  |
|         |         | <b>Trustees' (Charitable Purposes) Vesting Law (Revised)</b>        | 4-Dec-1978   | G25/1978/s3   |
|         | 27/1977 | Age of Majority Law, 1977 (part)                                    | 19-Dec-1977  | G26/1977/s5   |

|  |          |                                             |             |                                               |
|--|----------|---------------------------------------------|-------------|-----------------------------------------------|
|  | 10/1971  | Trusts (Amendment) Law, 1971                | 29-Mar-1971 | GN62/1971                                     |
|  | 3/1971   | Trusts (Amendment) Law, 1970                | 8-Jan-1971  | GN2/1971                                      |
|  | 39/1967  | Trusts (Amendment) Law                      | 20-Dec-1967 | GN150/1967                                    |
|  | 6/1967   | Trusts Law                                  | 18-Feb-1967 | G24/1967                                      |
|  | Cap. 176 | Trustees' (Charitable Purposes) Vesting Law | 1-Jan-1964  | Revised Laws of the CI<br>(Vol III – p. 2127) |
|  | Cap. 175 | Trustees Law                                | 1-Jan-1964  | Revised Laws of the CI<br>(Vol III – p. 2125) |











(Price: \$15.20)





# Settled Land Act 1925

1925 CHAPTER 18 15 and 16 Geo 5

An Act to consolidate the enactments relating to settled land in England and Wales. [9th April 1925]

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## Modifications etc. (not altering text)

- C1** Powers of tenant for life and trustees of settlement under this Act conferred on trustees for sale by [Law of Property Act 1925 \(c. 20\), s. 28\(1\)](#) and [Forestry Act 1967 \(c. 10\), s. 5\(4\)](#), [Sch. 2 para. 1\(1\)-\(3\)](#); applied by [Land Registration Act 1925 \(c. 21\), ss. 40\(2\), 91\(1\)](#)
- C2** Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)
- C3** Act extended by [Local Land Charges Act 1975 \(c. 76, SIF 98:2\), ss. 11\(3\), 19\(2\)](#), by [Highways Act 1980 \(c. 66, SIF 59\), s. 87\(4\)\(a\)](#) and by [Patronage \(Benefices\) Measure 1986 \(No. 3, SIF 21:4\), ss. 33\(4\), 35\(1\)](#)
- C4** Act modified by [S.I. 1989/1379, art. 3\(6\)](#)
- C5** Act: Definition of "settlement" applied (25.9.1991) by [Land Compensation Act 1961 \(c. 33, SIF 28:1\), s. 27, Sch. 3](#) (as inserted 25.9.1991 by [Planning and Compensation Act 1991 \(c. 34, SIF:28:1\), s. 66, Schedule 14 para. 2](#)); [S.I. 1991/2067, art. 3](#)  
Act applied (1.11.1993) by [1993 c. 28, s. 34\(3\)\(a\)](#); [S.I. 1993/2134, arts.2,5](#)  
Act applied (30.10.1994) by [S.I. 1994/2716, reg. 86\(1\)\(b\)](#)  
Act excluded (1.1.1997) by [1996 c. 47, s.2 \(with ss. 24\(2\), 25\(4\)\(5\)\)](#); [S.I. 1996/2974, art. 2](#)

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## Commencement Information

- I1** Act wholly in force at 1.1.1926 by s. 120(2) (now repealed)

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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## PART I

### GENERAL PRELIMINARY PROVISIONS

#### *Settlements and Settled Land*

#### **1 What constitutes a settlement.**

- (1) Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, after the commencement of this Act, stands for the time being—

- (i) limited in trust for any persons by way of succession; or
- (ii) limited in trust for any person in possession—
  - (a) for an entailed interest whether or not capable of being barred or defeated;
  - (b) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;
  - (c) for a base or determinable fee <sup>F1</sup>(other than a fee which is a fee simple absolute by virtue of section 7 of the Law of Property Act 1925)] or any corresponding interest in leasehold land;
  - (d) being an infant, for an estate in fee simple or for a term of years absolute; or
- (iii) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event; or
- (iv) ..... <sup>F2</sup>
- (v) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any terms of years for securing or raising the same;

creates or is for the purposes of this Act a settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires:

Provided that, where land is the subject of a compound settlement, references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

- (2) Where an infant is beneficially entitled to land for an estate in fee simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement shall be deemed to have been made by the intestate, or by the person whose interest the infant has acquired.
- (3) An infant shall be deemed to be entitled in possession notwithstanding any subsisting right of dower (not assigned by metes and bounds) affecting the land, and such a right of dower shall be deemed to be an interest comprised in the subject of the settlement and coming to the dowress under or by virtue of the settlement.

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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Where dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be deemed a settlement made by the husband.

(4) An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.

(5) Where—

- (a) a settlement creates an entailed interest which is incapable of being barred or defeated, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land; or
- (b) the subject of a settlement is an entailed interest, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land;

the reversion or right of reverter upon the cesser of the interest so created or settled shall be deemed to be an interest comprised in the subject of the settlement, and limited by the settlement.

(6) Subsections (4) and (5) of this section bind the Crown.

[<sup>F3</sup>(7) This section does not apply to land held upon trust for sale.]

#### Textual Amendments

**F1** Words added (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(2)**(with ss. 24(2), 25(4)(5)); S.I. 1996/2974, **art. 2**

**F2** Ss. 1(1)(iv), 20(1)(x), 25(2) repealed by Married Women (Restraint upon Anticipation) Act 1949 (c. 78), s. 1, **Sch. 2**

**F3** S.1(7) added by Law of Property (Amendment) Act 1926 (c. 11), **Sch.**

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

**C6** S. 1 excluded (1.1.1997) by 1996 c. 47, **s. 5(2)**(with ss. 24(2), 25(4)(5)); S. I. 1996/2974, **art.2**

**C7** S. 1(1)(v) modified by Rentcharges Act 1977 (c. 30, SIF 98:1), **s. 2(3)**

## 2 What is settled land.

Land which is or is deemed to be the subject of a settlement is for the purposes of this Act settled land, and is in relation to the settlement referred to in this Act as the settled land.

## 3 Duration of settlements.

Land [<sup>F4</sup>which has been subject to a settlement which is a settlement for the purposes of this Act] shall be deemed for the purposes of this Act to remain and be settled land, and the settlement shall be deemed to be a subsisting settlement for the purposes of this Act so long as—

- (a) any limitation, charge, or power of charging under the settlement subsists, or is capable of being exercised; or

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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- (b) the person who, if of full age, would be entitled as beneficial owner to have that land vested in him for a legal estate is an infant.

#### Textual Amendments

- F4** Words in s. 3 substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(3)**(with ss. 24(2), 25(4)(5)); S.I. 1996/2974, **art.2**

## 4 Authorised method of settling land inter vivos.

- (1) Every settlement of a legal estate in land inter vivos shall, save as in this Act otherwise provided, be effected by two deeds, namely, a vesting deed and a trust instrument and if effected in any other way shall not operate to transfer or create a legal estate.
- (2) By the vesting deed the land shall be conveyed to the tenant for life or statutory owner (and if more than one as joint tenants) for the legal estate the subject of the intended settlement:

Provided that, where such legal estate is already vested in the tenant for life or statutory owner, it shall be sufficient, without any other conveyance, if the vesting deed declares that the land is vested in him for that estate.

- (3) The trust instrument shall—
  - (a) declare the trusts affecting the settled land;
  - (b) appoint or constitute trustees of the settlement;
  - (c) contain the power, if any, to appoint new trustees of the settlement;
  - (d) set out, either expressly or by reference, any powers intended to be conferred by the settlement in extension of those conferred by this Act;
  - (e) bear any ad valorem stamp duty which may be payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement.

## 5 Contents of vesting deeds.

- (1) Every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement (in this Act referred to as a “principal vesting deed”) shall contain the following statements and particulars, namely:—
  - (a) A description, either specific or general, of the settled land;
  - (b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land;
  - (c) The names of the persons who are the trustees of the settlement;
  - (d) Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life;
  - (e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.
- (2) The statements or particulars required by this section may be incorporated by reference to an existing vesting instrument, and, where there is a settlement subsisting at the commencement of this Act, by reference to that settlement and to any instrument

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a trust instrument nor by reference to a disentailing deed.

- (3) A principal vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.

## **6 Procedure in the case of settlements by will.**

Where a settlement is created by the will of an estate owner who dies after the commencement of this Act—

- (a) the will is for the purposes of this Act a trust instrument; and
- (b) the personal representatives of the testator shall hold the settled land on trust, if and when required so to do, to convey it to the person who, under the will, or by virtue of this Act, is the tenant for life or statutory owner, and, if more than one, as joint tenants.

## **7 Procedure on change of ownership.**

- (1) If, on the death of a tenant for life or statutory owner, or of the survivor of two or more tenants for life or statutory owners, in whom the settled land was vested, the land remains settled land, his personal representatives shall hold the settled land on trust, if and when required so to do, to convey it to the person who under the trust instrument or by virtue of this Act becomes the tenant for life or statutory owner and, if more than one, as joint tenants.
- (2) If a person by reason of attaining full age becomes a tenant for life for the purposes of this Act of settled land, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him.
- (3) If a person who, when of full age, will together with another person or other persons constitute the tenant for life for the purposes of this Act of settled land attains that age, he shall be entitled to require the tenant for life, trustees of the settlement, personal representatives or other persons in whom the settled land is vested to convey the land to him and the other person or persons who together with him constitute the tenant for life as joint tenants.
- (4) If by reason of forfeiture, surrender, or otherwise the estate owner of any settled land ceases to have the statutory powers of a tenant for life and the land remains settled land, he shall be bound forthwith to convey the settled land to the person who under the trust instrument, or by virtue of this Act, becomes the tenant for life or statutory owner and, if more than one, as joint tenants.
- (5) If any person of full age becomes absolutely entitled to the settled land (whether beneficially, or as personal representative, or as [<sup>F5</sup>trustee of land], or otherwise) free from all limitations, powers, and charges taking effect under the settlement, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him, and if more persons than one being of full age become so entitled to the settled land they shall be entitled to require such persons as aforesaid to convey the land to them as joint tenants.

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

#### Textual Amendments

- F5** Words in s. 7(5) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(4)**(with ss. 24(2), 25(4) (5)); **S.I. 1996/2974, art.2**

### **8 Mode and costs of conveyance, and saving of rights of personal representatives and equitable chargees.**

- (1) A conveyance by personal representatives under either of the last two preceding sections may be made by an assent in writing signed by them which shall operate as a conveyance.
- (2) Every conveyance under either of the last two preceding sections shall be made at the cost of the trust estate.
- (3) The obligations to convey settled land imposed by the last two preceding sections are subject and without prejudice—
  - (a) where the settlement is created by a will, to the rights and powers of the personal representatives for purposes of administration; and
  - (b) in any case, to the person on whom the obligation is imposed being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest therein from which he is accountable, and any interest and costs in respect of such duties, or that he is otherwise effectually indemnified against such duties, interest and costs.
- (4) Where the land is or remains settled land a conveyance under either of the last two preceding sections shall—
  - (a) if by deed, be a principal vesting deed; and
  - (b) if by an assent, be a vesting assent, which shall contain the like statements and particulars as are required by this Act in the case of a principal vesting deed.
- (5) Nothing contained in either of the last two preceding sections affects the right of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under either of those sections as may be required for giving effect to the obligations imposed on them by statute.
- (6) A conveyance under either of the last two preceding sections, if made by deed, may contain a reservation to the person conveying of a term of years absolute in the land conveyed, upon trusts for indemnifying him against any unpaid death duties in respect of the land conveyed or any interest therein, and any interest and costs in respect of such duties.
- (7) Nothing contained in either of the last two preceding sections affects any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under either of those sections.

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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## **9 Procedure in the case of settlements and of instruments deemed to be trust instruments.**

- (1) Each of the following settlements or instruments shall for the purposes of this Act be deemed to be a trust instrument, and any reference to a trust instrument contained in this Act shall apply thereto, namely:—
  - (i) An instrument executed, or, in case of a will, coming into operation, after the commencement of this Act which by virtue of this Act is deemed to be a settlement;
  - (ii) A settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act;
  - (iii) An instrument inter vivos intended to create a settlement of a legal estate in land which is executed after the commencement of this Act, and does not comply with the requirements of this Act with respect to the method of effecting such a settlement; and
  - (iv) A settlement made after the commencement of this Act (including a settlement by the will of a person who dies after such commencement) of any of the following interests—
    - (a) an equitable interest in land which is capable, when in possession, of subsisting at law; or
    - (b) an entailed interest; or
    - (c) a base or determinable fee or any corresponding interest in leasehold land,but only if and when the interest settled takes effect free from all equitable interests and powers under every prior settlement (if any).
- (2) As soon as practicable after a settlement, or an instrument which for the purposes of this Act is deemed to be a trust instrument, takes effect as such, the trustees of the settlement may, and on the request of the tenant for life or statutory owner shall, execute a principal vesting deed, containing the proper statements and particulars, declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named, being the tenant for life or statutory owner, and including themselves if they are the statutory owners, and such deed shall, unless the legal estate is already so vested, operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.
- (3) If there are no trustees of the settlement, then (in default of a person able and willing to appoint such trustees) an application under this Act shall be made to the court for the appointment of such trustees.
- (4) The provisions of the last preceding section with reference to a conveyance shall apply, so far as they are applicable, to a principal vesting deed under this section.

## **10 Procedure on acquisition of land to be made subject to a settlement.**

- (1) Where after the commencement of this Act land is acquired with capital money arising under this Act or in exchange for settled land, or a rentcharge is reserved on a grant of settled land, the land shall be conveyed to, and the rentcharge shall by virtue of this Act become vested in, the tenant for life or statutory owner, and such conveyance or grant is in this Act referred to as a subsidiary vesting deed:

Provided that, where an instrument is subsisting at the commencement of this Act, or is made or comes into operation after such commencement, by virtue of which any



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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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money or securities are liable under this Act, or the Acts which it replaces, or under a trust or direction contained in the instrument, to be invested in the purchase of land to be conveyed so as to become settled land, but at the commencement of this Act, or when such instrument is made or comes into operation after such commencement, as the case may be, there is no land in respect of which a principal vesting deed is capable of being executed, the first deed after the commencement of this Act by which any land is acquired as aforesaid shall be a principal vesting deed and shall be framed accordingly.

- (2) A subsidiary vesting deed executed on the acquisition of land to be made subject to a settlement shall contain the following statements and particulars, namely—
  - (a) particulars of the last or only principal vesting instrument affecting land subject to the settlement;
  - (b) a statement that the land conveyed is to be held upon and subject to the same trusts and powers as the land comprised in such last or only principal vesting instrument;
  - (c) the names of the persons who are the trustees of the settlement;
  - (d) the name of any person for the time being entitled to appoint new trustees of the settlement.
- (3) A subsidiary vesting deed reserving a rentcharge on a grant of settled land shall contain the following statements and particulars—
  - (a) a statement that the rentcharge is vested in the grantor and is subject to the settlement which, immediately before the grant, was subsisting with respect to the land out of which it was reserved;
  - (b) particulars of the last or only principal vesting instrument affecting such land.
- (4) A subsidiary vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.
- (5) The acquisition of the land shall not operate to increase or multiply charges or powers of charging.

## **11 As to contracts for the settlement of land.**

- (1) A contract made or other liability created or arising after the commencement of this Act for the settlement of land—
  - (i) by or on the part of an estate owner; or
  - (ii) by a person entitled to—
    - (a) an equitable interest which is capable when in possession of subsisting at law; or
    - (b) an entailed interest; or
    - (c) a base or determinable fee or any corresponding interest in leasehold land;

shall, but in cases under paragraph (ii) only if and when the interest of the person entitled takes effect free from all equitable interests and powers under every prior settlement, if any, be deemed an estate contract within the meaning of the <sup>M1</sup>Land Charges Act, 1925, and may be registered as a land charge accordingly, and effect shall be given thereto by a vesting deed and a trust instrument in accordance with this Act.

- (2) A contract made or other liability created or arising before the commencement of this Act to make a settlement of land shall be deemed to be sufficiently complied with

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if effect is given thereto by a vesting deed and a trust instrument in accordance with this Act.

#### Marginal Citations

M1 1925 c. 22.

## 12 Power to make vesting orders as to settled land.

(1) If—

- (a) any person who is bound under this Part of this Act to execute a conveyance, vesting deed or vesting assent or in whom settled land is wrongly vested refuses or neglects to execute the requisite conveyance, vesting deed or vesting assent within one month after demand in writing; or
- (b) any such person is outside the United Kingdom, or cannot be found, or it is not known whether he is alive or dead; or
- (c) for any reason the court is satisfied that the conveyance, vesting deed or vesting assent cannot be executed, or cannot be executed without undue delay or expense;

the court may, on the application of any person interested, make an order vesting the settled land in the tenant for life or statutory owner or person, if any, of full age absolutely entitled (whether beneficially or as personal representative or [<sup>F6</sup>trustee of land] or otherwise), and, if the land remains settled land, the provisions of this Act relating to a principal vesting deed or a subsidiary vesting deed, as the case may be, shall apply to any order so made and every such order shall contain the like statements and particulars.

- (2) No stamp duty shall be payable in respect of a vesting order made in place of a vesting or other assent.

#### Textual Amendments

F6 Words in s. 12(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), Sch. 3 para. 2(5)(with ss. 24(2), 25(4) (5)); S.I. 1996/2974, art.2

## 13 Dispositions not to take effect until vesting instrument is made.

Where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour, then until a vesting instrument is executed or made pursuant to this Act in respect of the settled land, any purported disposition thereof inter vivos by any person, other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument), shall not take effect except in favour of a purchaser of a legal estate [<sup>F7</sup>without notice of such tenant for life or statutory owner having become so entitled as aforesaid.] but, save as aforesaid, shall operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate shall not be concerned with such disposition unless the contract is registered as a land charge. [<sup>F8</sup>Nothing in this section affects the creation or transfer of a legal estate by virtue of an order of the court or the Minister or other competent authority.]

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

#### Textual Amendments

- F7** Words substituted by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)  
**F8** Proviso added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [s. 6](#)

### 14 Forfeiture and stamps.

- (1) Any vesting effected under the powers conferred by this Act in relation to settled land shall not operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.
- (2) Nothing in this Act shall operate to impose any stamp duty on a vesting or other assent.

### <sup>F9</sup>15 Examples of instruments.

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#### Textual Amendments

- F9** S. 15 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 12](#)

### *Enforcement of Equitable Interests and Powers against Estate Owner and discharge on termination of Settlement*

### 16 Enforcement of equitable interests and powers against estate owner.

- (1) All equitable interests and powers in or over settled land (whether created before or after the date of any vesting instrument affecting the legal estate) shall be enforceable against the estate owner in whom the settled land is vested (but in the case of personal representatives without prejudice to their rights and powers for purposes of administration) in manner following (that is to say):—
  - (i) The estate owner shall stand possessed of the settled land and the income thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or the income thereof of which he has notice according to their respective priorities;
  - (ii) Where any person of full age becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry taking effect, or on the ground that his interest ought no longer to be capable of being over-reached under the powers of this Act, the estate owner shall be bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled;
  - (iii) Where—
    - (a) any principal sum is required to be raised on the security of the settled land, by virtue of any trust, or by reason of the exercise of an equitable power affecting the settled land, or by any person or persons who under the settlement is or are entitled or together entitled to or has or have a general power of appointment over the settled land, whether

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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subject to any equitable charges or powers of charging subsisting under the settlement or not; or

- (b) the settled land is subject to any equitable charge for securing money actually raised and affecting the whole estate the subject of the settlement;

the estate owner shall be bound, if so requested in writing, to create such legal estate or charge by way of legal mortgage as may be required for raising the money or giving legal effect to the equitable charge:

Provided that, so long as the settlement remains subsisting, any legal estate or charge by way of legal mortgage so created shall take effect and shall be expressed to take effect subject to any equitable charges or powers of charging subsisting under the settlement which have priority to the interests or powers of the person or persons by or on behalf of whom the money is required to be raised or legal effect is required to be given to the equitable charge, unless the persons entitled to the prior charges or entitled to exercise the powers consent in writing to the same being postponed, but it shall not be necessary for such consent to be expressed in the instrument creating such legal estate or charge by way of legal mortgage.

- (2) Where a mortgage or charge is expressed to be made by an estate owner pursuant to this section, then, in favour of the mortgagee or chargee and persons deriving title under him, the same shall take effect in priority to all the trusts of the settlement and all equitable interests and powers subsisting or to arise under the settlement except those to which it is expressly made subject, and shall so take effect, whether the mortgagee or chargee has notice of any such trusts, interests, or powers, or not, and the mortgagee or chargee shall not be concerned to see that a case had arisen to authorise the mortgage or charge, or that no more money than was wanted was raised.
- (3) Nothing contained in paragraph (iii) of subsection (1) of this section affects the power conferred by this Act on a tenant for life of raising money by mortgage or of directing capital money to be applied in discharge of incumbrances.
- (4) Effect may be given by means of a legal mortgage to an agreement for a mortgage, or a charge or lien, whether or not arising by operation of law, if the agreement charge or lien ought to have priority over the settlement.
- (5) Save as hereinbefore expressly provided, no legal estate shall, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.
- (6) If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the court for directions as hereinafter provided.
- (7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.
- (8) This section does not affect a purchaser of a legal estate taking free from any equitable interest or power.

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## 17 Deed of discharge on termination of settlement.

- (1) Where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, the persons who in the last or only principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as hereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land:

Provided that, if the trustees have notice of any derivative settlement, [<sup>F10</sup>trust of land] or equitable charge affecting such land, they shall not execute a deed of discharge until—

- (a) in the case of a derivative settlement, or [<sup>F10</sup>trust of land], a vesting instrument or a conveyance has been executed or made for giving effect thereto; and
- (b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge.

Where the land is affected by a derivative settlement or [<sup>F10</sup>trust of land], the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is [<sup>F11</sup>subject to a trust of land] by virtue of such conveyance as aforesaid, as the case may require.

- (2) If, in the circumstances mentioned in subsection (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—

- (a) by the estate owner; or
- (b) by a person interested under, or by the trustees of, a derivative settlement; or
- (c) by the trustees of [<sup>F12</sup>land];

refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the court for an order discharging the first mentioned trustees as respects the whole or any part of the settled land, and the court may make such order as it may think fit.

- (3) Where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed or order relates shall be entitled to assume that the land has ceased to be settled land, and is not subject to [<sup>F13</sup>a trust of land].

### Textual Amendments

- F10** Words in s. 17(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(a)(i)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**
- F11** Words in s. 17(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(a)(ii)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**
- F12** Words in s. 17(2)(c) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(b)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art. 2**
- F13** Words in s. 17(3) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(6)(c)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

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*Restrictions on dispositions of Settled Land where Trustees have not been Discharged*

**18 Restrictions on dispositions of settled land where trustees have not been discharged.**

- (1) Where land is the subject of a vesting instrument and the trustees of the settlement have not been discharged under this Act, then—
- (a) any disposition by the tenant for life or statutory owner of the land, other than a disposition authorised by this Act or any other statute, or made in pursuance of any additional or larger powers mentioned in the vesting instrument, shall be void, except for the purpose of conveying or creating such equitable interests as he has power, in right of his equitable interests and powers under the trust instrument, to convey or create; and
  - (b) if any capital money is payable in respect of a transaction, a conveyance to a purchaser of the land shall only take effect under this Act if the capital money is paid to or by the direction of the trustees of the settlement or into court; and
  - (c) notwithstanding anything to the contrary in the vesting instrument, or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement.
- (2) The restrictions imposed by this section do not affect—
- (a) the right of a personal representative in whom the settled land may be vested to convey or deal with the land for the purposes of administration;
  - (b) the right of a person of full age who has become absolutely entitled (whether beneficially or as <sup>F14</sup>trustee of land] or personal representative or otherwise) to the settled land, free from all limitations, powers, and charges taking effect under the trust instrument, to require the land to be conveyed to him;
  - (c) the power of the tenant for life, statutory owner, or personal representative in whom the settled land is vested to transfer or create such legal estates, to take effect in priority to the settlement, as may be required for giving effect to any obligations imposed on him by statute, but where any capital money is raised or received in respect of the transaction the money shall be paid to or by the direction of the trustees of the settlement or in accordance with an order of the court.

**Textual Amendments**

**F14** Words in s. 18(2)(b) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(7)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

*Tenants for Life and Persons with Powers of Tenant for Life*

**19 Who is tenant for life.**

- (1) The person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement.
- (2) If in any case there are two or more persons of full age so entitled as joint tenants, they together constitute the tenant for life for the purposes of this Act.

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- (3) If in any case there are two or more persons so entitled as joint tenants and they are not all of full age, such one or more of them as is or are for the time being of full age is or (if more than one) together constitute the tenant for life for the purposes of this Act, but this subsection does not affect the beneficial interests of such of them as are not for the time being of full age.
- (4) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it came into possession, other than an assurance which extinguishes that estate or interest.

## **20 Other limited owners having powers of tenant for life.**

- (1) Each of the following persons being of full age shall, when his estate or interest is in possession, have the powers of a tenant for life under this Act, (namely):—
  - (i) A tenant in tail, including a tenant in tail after possibility of issue extinct, and a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services;
  - (ii) A person entitled to land for an estate in fee simple or for a term of years absolute with or subject to, in any of such cases, an executory limitation, gift, or disposition over on failure of his issue or in any other event;
  - (iii) A person entitled to a base or determinable fee, although the reversion or right of reverter is in the Crown, or to any corresponding interest in leasehold land;
  - (iv) A tenant for years determinable on life, not holding merely under a lease at a rent;
  - (v) A tenant for the life of another, not holding merely under a lease at a rent;
  - (vi) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for any purpose;
  - (vii) A tenant by the curtesy;
  - (viii) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether or not subject to expenses of management or to a trust for accumulation of income for any purpose, or until sale of the land, or until forfeiture, cesser or determination by any means of his interest therein, unless the land is subject to [<sup>F15</sup>a trust of land];
  - (ix) A person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement;
  - (x) .....<sup>F16</sup>
- (2) In every such case as is mentioned in subsection (1) of this section, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, shall extend to each of the persons aforesaid, and any reference in this Act to death as

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regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of the estate or interest of the person on whom the powers of a tenant for life are conferred by this section.

- (3) For the purposes of this Act the estate or interest of a tenant by the curtesy shall be deemed to be an estate or interest arising under a settlement made by his wife.
- (4) Where the reversion or right of reverter or other reversionary right is in the Crown, the exercise by a person on whom the powers of a tenant for life are conferred by this section of his powers under this Act, binds the Crown.

#### Textual Amendments

- F15** Words in s. 20(1)(viii) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(8)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art. 2**
- F16** Ss. 1(1)(iv), 20(1)(x), 25(2) repealed by **Married Women (Restraint upon Anticipation) Act 1949** (c. 78), s. 1, **Sch. 2**

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

- C8** S. 20(1)(i) restricted by **Trafalgar Estates Act 1947** (c. 34), s. 2(2)
- C9** S. 20(1)(ix) excluded by **Law of Property (Amendment) Act 1926** (c. 11), s. 1(1)

## 21 Absolute owners subject to certain interests to have the powers of tenant for life.

- (1) Where a person of full age is beneficially entitled in possession to a legal estate subject to any equitable interests or powers, then, for the purpose of overreaching such interests or powers, he may, notwithstanding any stipulation to the contrary, by deed (which shall have effect as a principal vesting deed within the meaning of this Act) declare that the legal estate is vested in him on trust to give effect to all equitable interests and powers affecting the legal estate, and that deed shall be executed by two or more individuals approved or appointed by the court or a trust corporation, who shall be stated to be the trustees of the settlement for the purposes of this Act.

Thereupon so long as any of the equitable interests and powers are subsisting the following provisions shall have effect:—

- (a) The person so entitled as aforesaid and each of his successors in title being an estate owner shall have the powers of a tenant for life and the land shall be deemed to be settled land;
- (b) The instrument (if any) under which his estate arises or is acquired, and the instrument (if any) under which the equitable interests or powers are subsisting or capable of taking effect shall be deemed to be the trust instrument:

Provided that where there is no such instrument as last aforesaid then a deed (which shall take effect as a trust instrument) shall be executed contemporaneously with the vesting deed, and shall declare the trusts affecting the land;

- (c) The persons stated in the principal vesting deed to be the trustees of the settlement for the purposes of this Act shall also be the trustees of the trust instrument for those purposes; and
- (d) Capital money arising on any disposition of the land shall be paid to or by the direction of the trustees of the settlement or into court, and shall be applicable towards discharging or providing for payment in due order of any principal



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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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money payable in respect of such interests or charges as are overreached by such disposition, and until so applied shall be invested or applied as capital money under the trust instrument, and the <sup>F17</sup>resultant profits] shall be applied as the income of such capital money, and be liable for keeping down in due order any annual or periodical sum which may be overreached by the disposition.

- (2) The following equitable interests and powers are excepted from the operation of subsection (1) of this section, namely—
- (i) an equitable interest protected by a deposit of documents relating to the legal estate affected;
  - (ii) the benefit of a covenant or agreement restrictive of the user of land;
  - (iii) an easement, liberty or privilege over or affecting land and being merely an equitable interest;
  - (iv) the benefit of a contract to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption, or any other like right;
  - (v) any equitable interest protected by registration under the <sup>M2</sup>Land Charges Act, 1925, other than—
    - (a) an innuity within the meaning of Part II. of that Act;
    - (b) a limited owner's charge or a general equitable charge within the meaning of that Act.
- (3) Subject to the powers conferred by this Act on a tenant for life, nothing contained in this section shall deprive an equitable chargee of any of his rights or of his remedies for enforcing those rights.

#### Textual Amendments

**F17** Words in s. 21(1)(d) substituted (1.2.2001) by [2000 c. 29, s. 40\(1\)](#), [Sch. 2 Pt. II para. 7](#) (with [s. 35](#)); [S.I. 2001/49, art. 2](#)

#### Marginal Citations

**M2** [1925 c. 22.](#)

## 22 Provisions applicable where interest in settled land is restored.

- (1) Where by a disentailing assurance settled land is expressed to be limited (whether subject or not to any estates, interests, charges or powers expressly created or conferred thereby) upon the trusts subsisting with respect thereto immediately before the execution of such disentailing assurance, or any of such trusts, then, for the purposes of this Act and otherwise, a person entitled to any estate or interest in the settled land under any such previously subsisting trust is entitled thereto after the execution of such disentailing assurance as of his former estate or interest.
- (2) Where by a resettlement of settled land any estate or interest therein is expressed to be limited to any person (whether subject or not to any estate, interest, charge or power expressly created or conferred by the resettlement) in restoration or confirmation of his estate or interest under a prior settlement, then, for the purposes of this Act and otherwise, that person is entitled to the estate or interest so restored or confirmed as of his former estate or interest, and in addition to the powers exercisable by him in respect of his former estate or interest, he is capable of exercising all such further powers as

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he could have exercised by virtue of the resettlement, if his estate or interest under the prior settlement had not been so restored or confirmed, but he had been entitled under the resettlement only.

## **23 Powers of trustees, &c. when there is no tenant for life.**

- (1) Where under a settlement there is no tenant for life nor, independently of this section, a person having by virtue of this Act the powers of a tenant for life then—
  - (a) any person of full age on whom such powers are by the settlement expressed to be conferred; and
  - (b) in any other case the trustees of the settlement;shall have the powers of a tenant for life under this Act.
- (2) This section applies to trustees of settlements of land purchased with money provided by Parliament in consideration of public services where the tenant in tail is restrained from barring or defeating his estate tail, except that, if the tenant in tail is of full age and capacity, the powers shall not be exercised without his consent, but a purchaser shall not be concerned to see or inquire whether such consent has been given.

## **24 As to a tenant for life who has parted with his interest.**

- (1) If it is shown to the satisfaction of the court that a tenant for life, who has by reason of bankruptcy, assignment, incumbrance, or otherwise ceased in the opinion of the court to have a substantial interest in his estate or interest in the settled land or any part thereof, has unreasonably refused to exercise any of the powers conferred on him by this Act, or consents to an order under this section, the court may, on the application of any person interested in the settled land or the part thereof affected, make an order authorising the trustees of the settlement, to exercise in the name and on behalf of the tenant for life, any of the powers of a tenant for life under this Act, in relation to the settled land or the part thereof affected, either generally and in such manner and for such period as the court may think fit, or in a particular instance, and the court may by the order direct that any documents of title in the possession of the tenant for life relating to the settled land be delivered to the trustees of the settlement.
- (2) While any such order is in force, the tenant for life shall not, in relation to the settled land or the part thereof affected, exercise any of the powers thereby authorised to be exercised in his name and on his behalf, but no person dealing with the tenant for life shall be affected by any such order, unless the order is for the time being registered as an order affecting land.
- (3) An order may be made under this section at any time after the estate or interest of the tenant for life under the settlement has taken effect in possession, and notwithstanding that he disposed thereof when it was an estate or interest in remainder or reversion.

## **25 Married woman, how to be affected.**

- (1) The foregoing provisions of this Act apply to a married woman of full age, whether or not she is entitled to her estate or interest for her separate use or as her separate property, and she, without her husband, may exercise the powers of a tenant for life under this Act.

- (2) .....

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### Textual Amendments

**F18** Ss. 1(1)(iv), 20(1)(x), 25(2) repealed by [Married Women \(Restraint upon Anticipation\) Act 1949](#) (c. 78), s. 1, [Sch. 2](#)

## 26 Infants, how to be affected.

- (1) Where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute or would if of full age be a tenant for life of or have the powers of a tenant for life over settled land, then, during the minority of the infant—
  - (a) if the settled land is vested in a personal representative, the personal representative, until a principal vesting instrument has been executed pursuant to the provisions of this Act; and
  - (b) in every other case, the trustees of the settlement;
 shall have, in reference to the settled land and capital money, all the powers conferred by this Act and the settlement on a tenant for life, and on the trustees of the settlement.
- (2) If the settled land is vested in a personal representative, then, if and when during the minority the infant, if of full age, would have been entitled to have the legal estate in the settled land conveyed to or otherwise vested in him pursuant to the provisions of this Act, a principal vesting instrument shall, if the trustees of the settlement so require, be executed, at the cost of the trust estate, for vesting the legal estate in themselves, and in the meantime the personal representatives shall, during the minority, give effect to the directions of the trustees of the settlement, and shall not be concerned with the propriety of any conveyance directed to be made by those trustees if the conveyance appears to be a proper conveyance under the powers conferred by this Act or by the settlement, and the capital money, if any, arising under the conveyance is paid to or by the direction of the trustees of the settlement or into court, but a purchaser dealing with the personal representative and paying the capital money, if any, to him shall not be concerned to see that the money is paid to trustees of the settlement or into court, or to inquire whether the personal representative is liable to give effect to any such directions, or whether any such directions have been given.
- (3) Subsection (2) of this section applies whether the infant becomes entitled before or after the commencement of this Act, and has effect during successive minorities until a person of full age becomes entitled to require the settled land to be vested in him.
- (4) This section does not apply where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute jointly with a person of full age (for which case provision is made in the <sup>M3</sup>Law of Property Act, 1925), but it applies to two or more infants entitled as aforesaid jointly, until one of them attains full age.
- (5) This section does not apply where an infant would, if of full age, constitute the tenant for life or have the powers of a tenant for life together with another person of full age, but it applies to two or more infants who would, if all of them were of full age, together constitute the tenant for life or have the powers of a tenant for life, until one of them attains full age.
- (6) Nothing in this section affects prejudicially any beneficial interest of an infant.

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#### Marginal Citations

**M3** 1925 c. 20.

<sup>F19</sup>**27** .....

#### Textual Amendments

**F19** S.27 repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4**(with ss. 24(2), 25(4)(5)); S.I. 1996/2974, **art.2**

**28** ..... <sup>F20</sup>

#### Textual Amendments

**F20** S. 28 repealed by **Mental Health Act 1959** (c. 72), **Sch. 8 Pt. I**

<sup>F21</sup>**29** .....

#### Textual Amendments

**F21** S. 29 repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch.4** (with ss. 24(2), 25(3)(4)(5)); S.I. 1996/2974, **art.2**

### *Trustees of Settlement*

#### **30 Who are trustees for purposes of Act.**

- (1) Subject to the provisions of this Act, the following persons are trustees of a settlement for the purposes of this Act, and are in this Act referred to as the “trustees of the settlement” or “trustees of a settlement,” namely—
- (i) the persons, if any, who are for the time being under the settlement, trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then
  - (ii) the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or this Act, or if there are no such persons; then
  - (iii) the persons, if any, who are for the time being under the settlement trustees with [<sup>F22</sup>a power or duty to sell] of any other land comprised in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power of sale, or, if there are no such persons; then
  - (iv) the persons, if any, who are for the time being under the settlement trustees with [<sup>F23</sup>a future power or duty to sell] the settled land, or with power of

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- consent to or approval of the exercise of such a future power of sale, and whether the power [<sup>F24</sup>or duty] takes effect in all events or not, or, if there are no such persons; then
- (v) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement.
- (2) Paragraphs (i) (iii) and (iv) of the last preceding subsection take effect in like manner as if the powers therein referred to had not by this Act been made exercisable by the tenant for life or statutory owner.
- (3) Where a settlement is created by will, or a settlement has arisen by the effect of an intestacy, and apart from this subsection there would be no trustees for the purposes of this Act of such settlement, then the personal representatives of the deceased shall, until other trustees are appointed, be by virtue of this Act the trustees of the settlement, but where there is a sole personal representative, not being a trust corporation, it shall be obligatory on him to appoint an additional trustee to act with him for the purposes of this Act, and the provisions of the Trustee Act, 1925, relating to the appointment of new trustees and the vesting of trust property shall apply accordingly.

#### Textual Amendments

- F22** Words in s. 30(1)(iii) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(9)(a)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**
- F23** Words in s. 30(1)(iv) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(9)(b)(i)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**
- F24** Words in s. 30(1)(iv) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(9)(b)(ii)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

### 31 As to trustees of compound settlements.

- (1) Persons who are for the time being trustees for the purposes of this Act of an instrument which is a settlement, or is deemed to be a subsisting settlement for the purposes of this Act, shall be the trustees for the purposes of this Act of any settlement constituted by that instrument and any instruments subsequent in date or operation.

[<sup>F25</sup>Where there are trustees for the purposes of this Act of the instrument under which there is a tenant for life or statutory owner but there are no trustees for those purposes of a prior instrument, being one of the instruments by which a compound settlement is constituted, those trustees shall, unless and until trustees are appointed of the prior instrument or of the compound settlement, be the trustees for the purposes of this Act of the compound settlement.]

- (2) This section applies to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the court before such commencement of trustees of a settlement constituted by more than one instrument, and to the power of the court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply to the settlement consisting of the instruments to which the appointment relates.

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#### Textual Amendments

**F25** Para. added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

### 32 As to trustees of referential settlements.

- (1) Where a settlement takes or has taken effect by reference to another settlement, the trustees for the time being of the settlement to which reference is made shall be the trustees of the settlement by reference, but this section does not apply if the settlement by reference contains an appointment of trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or this Act.
- (2) This section applies to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the court before such commencement of trustees of a settlement by reference, or of the compound settlement consisting of a settlement and any other settlement or settlements made by reference thereto, and to the power of the court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply.
- (3) In this section “a settlement by reference to another settlement” means a settlement of property upon the limitations and subject to the powers and provisions of an existing settlement, with or without variation.

### 33 Continuance of trustees in office, and as to certain compound settlements.

- (1) Where any persons have been appointed or constituted trustees of a settlement, whether by an order of the court or otherwise, or have by reason of [<sup>F26</sup> a power or duty to sell], or trust for sale, or by reason of a power of consent to, or approval of, the exercise of a power of sale, or by virtue of this Act, or otherwise at any time become trustees of a settlement for the purposes of the Settled Land Acts, 1882 to 1890, or this Act, then those persons or their successors in office shall remain and be trustees of the settlement as long as that settlement is subsisting or deemed to be subsisting for the purposes of this Act.

In this subsection “successors in office” means the persons who, by appointment or otherwise, have become trustees for the purposes aforesaid.

- (2) Where settled land is or has been expressed to be disposed of under a compound settlement of which trustees were appointed by the court, and the capital money (if any) arising on the disposition is or was paid to the persons who by virtue of the order or any subsequent appointment appear to be or to have been the trustees of that settlement, and where the person by or on whose behalf the disposition is or was made is or was the tenant for life or statutory owner of the land disposed of under an instrument mentioned in the order as constituting part of such compound settlement (in this subsection called “the principal instrument”) then the title of the person to whom the disposition is made shall not be impeachable on the ground—
  - (a) that the instruments mentioned in the order did not constitute a compound settlement; or

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- (b) that those instruments were not all the instruments at the date of the order or of the disposition constituting the compound settlement of the land disposed of; or
- (c) that any of the instruments mentioned in the order did not form part of the settlement of the land disposed of, or had ceased to form part of the settlement at the date of the disposition;

but nothing in this subsection shall prejudice the rights of any person in respect of any estate, interest or charge under any instrument existing at the date of the order and not mentioned therein which would not have been overreached if the disposition had been made by or on behalf of the tenant for life or statutory owner under the principal instrument as such, and there had been trustees of that instrument for the purposes of the Settled Land Acts, 1882 to 1890, or this Act, and the capital money, if any, arising on the disposition had been paid to the trustees.

- (3) The foregoing provisions of this section operate to confirm all dispositions made before the commencement of this Act, but not so as to render invalid or prejudice any order of the court, or any title or right acquired before the commencement of this Act, and operates without prejudice to any appointment already made by the court of trustees of a settlement, and to the power of the court in any case hereafter to make any such appointment.

#### Textual Amendments

- F26** Words in s. 33(1) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(10)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

### 34 Appointment of trustees by court.

- (1) If at any time there are no trustees of a settlement, or where in any other case it is expedient, for the purposes of this Act, that new trustees of a settlement be appointed, the court may, if it thinks fit, on the application of the tenant for life, statutory owner, or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder or otherwise, or, in the case of an infant, of his testamentary or other guardian or next friend, appoint fit persons to be trustees of the settlement.
- (2) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall become and be the trustees or trustee of the settlement.

### 35 Procedure on appointment of new trustees.

- (1) Whenever a new trustee for the purposes of this Act is appointed of a trust instrument or a trustee thereof for the purposes aforesaid is discharged from the trust without a new trustee being appointed, a deed shall be executed supplemental to the last or only principal vesting instrument containing a declaration that the persons therein named, being the persons who after such appointment or discharge, as the case may be, are the trustees of the trust instrument for the purposes aforesaid, are the trustees of the settlement for those purposes; and a memorandum shall be endorsed on or annexed to the last or only principal vesting instrument in accordance with the <sup>M4</sup>Trustee Act, 1925.



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- (2) Every such deed as aforesaid shall, if the trustee was appointed or discharged by the court, be executed by such person as the court may direct, and, in any other case, shall be executed by—
- (i) the person, if any, named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement, or if no person is so named, or the person is dead or unable or unwilling to act, the persons who if the principal vesting instrument had been the only instrument constituting the settlement would have had power to appoint new trustees thereof;
  - (ii) the persons named in the deed of declaration as the trustees of the settlement; and
  - (iii) any trustee who is discharged as aforesaid or retires.
- (3) A statement contained in any such deed of declaration as is mentioned in this section to the effect that the person named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement is unable or unwilling to act, or that a trustee has remained outside the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, shall in favour of a purchaser of a legal estate be conclusive evidence of the matter stated.

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**Marginal Citations**

**M4** 1925 c. 19.

*Provisions as to Undivided Shares*

**36 Undivided shares to take effect behind a [<sup>F27</sup>trust of land].**

- (1) If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration), at the cost of the trust estate, to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees.
- (2) If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage, but freed from any incumbrances affecting the undivided shares or not secured as aforesaid, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) [<sup>F28</sup>in trust for the persons interested in the land].
- (3) If the estate owner refuses or neglects for one month after demand in writing to convey the settled land so held in trust in undivided shares in manner aforesaid, or if by reason of his being outside the United Kingdom or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the conveyance cannot otherwise be made, or cannot be made without undue delay or



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expense, the court may, on the application of the trustees of the settlement, make an order vesting the settled land in them [<sup>F28</sup>in trust for the persons interested in the land].

(4) An undivided share in land shall not be capable of being created except under a trust instrument or under the <sup>M5</sup>Law of Property Act, 1925, and shall then only take effect behind a [<sup>F29</sup>trust of land].

(5) Nothing in this section affects the priority inter se of any incumbrances whether affecting the entirety of the land or an undivided share.

<sup>F30</sup>[(6) In subsections (2) and (3) of this section references to the persons interested in the land include persons interested as trustees or personal representatives (as well as persons beneficially interested).]

(7) The provisions of this section bind the Crown.

#### Textual Amendments

**F27** Words in s. 36 sidenote substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(11)(d)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

**F28** Words in s. 36(2)(3) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(11)(a)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art. 2**

**F29** Words in s. 36(4) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(11)(b)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

**F30** S. 36(6) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(11)(c)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

#### Marginal Citations

**M5** 1925 c. 20.

### *Transitional Provisions*

#### **37 Transitional provisions with respect to existing settlements, &c.**

The transitional provisions set out in the Second Schedule to this Act shall have effect as regards settlements existing at the commencement of this Act.

## **PART II**

### **POWERS OF A TENANT FOR LIFE**

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

**C10** Part II saved by **Trafalgar Estates Act 1947 (c. 34), s. 2(3)** and **Leasehold Reform Act 1967 (c. 88), s. 6(4)**; extended by **Forestry Act 1967 (c. 10), s. 5(4), Sch. 2 para. 1**

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## *Sale and Exchange*

### **38 Powers of sale and exchange.**

A tenant for life—

- (i) May sell the settled land, or any part thereof, or any easement, right or privilege of any kind over or in relation to the land; and
- (ii) .....<sup>F31</sup>
- (iii) May make an exchange of the settled land, or any part thereof, or of any easement, right, or privilege of any kind, whether or not newly created, over or in relation to the settled land, or any part thereof, for other land, or for any easement, right or privilege of any kind, whether or not newly created, over or in relation to other land, including an exchange in consideration of money paid for equality of exchange.

#### **Textual Amendments**

**F31** S. 38(ii) repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

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

**C11** S. 38 extended by [Leasehold Reform Act 1967 \(c. 88\)](#), [s. 6\(2\)\(a\)](#)

### **39 Regulations respecting sales.**

- (1) Save as hereinafter provided every sale shall be made for the best consideration in money that can reasonably be obtained.
- (2) A sale may be made in consideration wholly or partially of a perpetual rent, or a terminable rent consisting of principal and interest combined, payable yearly or half yearly to be secured upon the land sold, or the land to which the easement, right or privilege sold is to be annexed in enjoyment or an adequate part thereof.

In the case of a terminable rent, the conveyance shall distinguish the part attributable to principal and that attributable to interest, and the part attributable to principal shall be capital money arising under this Act:

Provided that, unless the part of the terminable rent attributable to interest varies according to the amount of the principal repaid, the trustees of the settlement shall, during the subsistence of the rent, [<sup>F32</sup>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.]

- (3) The rent to be reserved on any such sale shall be the best rent that can reasonably be obtained, regard being had to any money paid as part of the consideration, or laid out, or to be laid out, for the benefit of the settled land, and generally to the circumstances of the case, but a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable during any period not exceeding five years from the date of the conveyance.
- (4) Where a sale is made in consideration of a rent, the following provisions shall have effect:—

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- (i) The conveyance shall contain a covenant by the purchaser for payment of the rent, and [<sup>F33</sup>the statutory powers and remedies for the recovery of the rent shall apply];
  - (ii) A duplicate of the conveyance shall be executed by the purchaser and delivered to the tenant for life or statutory owner, of which execution and delivery the execution of the conveyance by the tenant for life or statutory owner shall be sufficient evidence;
  - (iii) A statement, contained in the conveyance or in an indorsement thereon, signed by the tenant for life or statutory owner, respecting any matter of fact or of calculation under this Act in relation to the sale, shall, in favour of the purchaser and of those claiming under him, be sufficient evidence of the matter stated.
- (5) The consideration on a sale to any company incorporated by special Act of Parliament or by provisional order confirmed by Parliament or by any other order, scheme or certificate having the force of an Act of Parliament, may, with the consent of the tenant for life, consist, wholly or in part, of fully-paid securities of any description of the company, and such securities shall be vested in the trustees of the settlement and shall be subject to the provisions of this Act relating to securities representing capital money arising under this Act, and may be retained and held by the trustees in like manner as if they had been authorised by this Act for the investment of capital money.
- (6) A sale may be made in one lot or in several lots, and either by auction or by private contract, and may be made subject to any stipulations respecting title, or evidence of title, or other things.
- (7) On a sale the tenant for life may fix reserve biddings and may buy in at an auction.

#### Textual Amendments

- F32** Words in the proviso to s. s. 39(2) substituted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 8** (with s. 35); S.I. 2001/49, **art. 2**
- F33** Words substituted by **Law of Property (Amendment) Act 1926 (c. 11), Sch.**

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

- C12** S. 39 excluded by **Housing Associations Act 1985 (c. 69, SIF 61), s. 8(2)(3)**  
S. 39 excluded (1.10.1996 subject to savings in S.I. 1996/2402, art. 3, **Sch. para. 11**) by 1996 c. 52, **s. 8(2)(3); S.I. 1996/2402, art. 3**
- C13** S. 39 excluded (1.4.2010) by **Housing and Regeneration Act 2008 (c. 17), ss. 188, 325(1)** (with s. 189); S.I. 2010/862, **art. 2** (with Sch.)
- C14** S. 39(2) saved by **Compulsory Purchase Act 1965 (c. 56), s. 24(6)**

## 40 Regulations respecting exchanges.

- (1) Save as in this Part of this Act provided, every exchange shall be made for the best consideration in land or in land and money that can reasonably be obtained.
- (2) An exchange may be made subject to any stipulations respecting title, or evidence of title, or other things.
- (3) Settled land in England or Wales shall not be given in exchange for land out of England and Wales.

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### *Leasing Powers*

#### **41 Power to lease for ordinary or building or mining or forestry purposes.**

A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind over or in relation to the land, for any purpose whatever, whether involving waste or not, for any term not exceeding—

- (i) In case of a building lease, nine hundred and ninety-nine years;
- (ii) In case of a mining lease, one hundred years;
- (iii) In case of a forestry lease, nine hundred and ninety-nine years;
- (iv) In case of any other lease, fifty years.

#### **42 Regulations respecting leases generally.**

- (1) Save as hereinafter provided, every lease—
  - (i) shall be by deed, and be made to take effect in possession not later than twelve months after its date, or in reversion after an existing lease having not more than seven years to run at the date of the new lease;
  - (ii) shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case;
  - (iii) shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.
- (2) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life or statutory owner, of which execution and delivery the execution of the lease by the tenant for life or statutory owner shall be sufficient evidence.
- (3) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life or statutory owner, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.
- (4) A fine received on the grant of a lease under any power conferred by this Act shall be deemed to be capital money arising under this Act.
- (5) A lease at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made—
  - (i) Where the term does not exceed twenty-one years—
    - (a) without any notice of an intention to make the lease having been given under this Act; and
    - (b) notwithstanding that there are no trustees of the settlement; and
  - (ii) Where the term does not extend beyond three years from the date of the writing, by any writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent.

#### **43 Leasing powers for special objects.**

The leasing power of a tenant for life extends to the making of—

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- (i) a lease for giving effect (in such manner and so far as the law permits) to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
- (ii) a lease for confirming, as far as may be, a previous lease being void or voidable, but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Act or otherwise, as the case may require.

*Provisions as to building, mining and forestry leases*

#### **44 Regulations respecting building leases.**

- (1) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected or agreeing to erect buildings, new or additional, or having improved or repaired or agreeing to improve or repair buildings, or having executed or agreeing to execute on the land leased, an improvement authorised by this Act for or in connexion with building purposes.
- (2) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.
- (3) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner:

Provided that—

- (i) the annual rent reserved by any lease shall not be less than ten shillings; and
- (ii) the total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and
- (iii) the rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

#### **45 Regulations respecting mining leases.**

- (1) In a mining lease—
  - (i) the rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and
  - (ii) the rent may also be made to vary according to the price of the minerals or substances gotten, or any of them, and such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease (including a reference to arbitration), or may be an average of any such prices or values taken during a specified period; and
  - (iii) a fixed or minimum rent may be made payable, with or without power for the lessees, in case the rent, according to acreage or quantity or otherwise, in any specified period does not produce an amount equal to the fixed or minimum

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rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

- (2) A lease may be made partly in consideration of the lessee having executed, or agreeing to execute, on the land leased an improvement authorised by this Act, for or in connexion with mining purposes.

#### **46 Variation of building or mining lease according to circumstances of district.**

- (1) Where it is shown to the court with respect to the district in which any settled land is situate, either—
- (i) that it is the custom for land therein to be leased for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act; or
  - (ii) that it is difficult to make leases for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act;

the court may, if it thinks fit, authorise generally the tenant for life or statutory owner to make from time to time leases of or affecting the settled land in that district, or parts thereof for any term or on any conditions as in the order of the court expressed, or may, if it thinks fit, authorise the tenant for life or statutory owner to make any such lease in any particular case.

- (2) Thereupon the tenant for life or statutory owner, and, subject to any direction in the order of the court to the contrary, each of his successors in title being a tenant for life or statutory owner, may make in any case, or in the particular case, a lease of the settled land, or part thereof, in conformity with the order.

#### **47 Capitalisation of part of mining rent.**

Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely—where the tenant for life or statutory owner is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

#### **48 Regulations respecting forestry leases.**

- (1) In the case of a forestry lease—
- (i) a peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first ten years or any less part of the term;
  - (ii) the rent may be made to be ascertainable by, or to vary according to the value of the timber on the land comprised in the lease, or the produce thereof, which may during any year be cut, converted, carried away, or otherwise disposed of;
  - (iii) a fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent according to value in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent; and

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- (iv) any other provisions may be made for the sharing of the proceeds or profits of the user of the land between the reversioner and the Forestry Commissioners.

(2) In this section the expression “timber” includes all forest products.

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

**C15** S. 48 amended with the substitution for references to Forestry Commissioners of references to Minister of Agriculture, Fisheries and Food (E.) and Secretary of State (W.): [Forestry Act 1967 \(c. 10\)](#), [Sch. 6 para. 5](#)

*Miscellaneous Powers*

**49 Power on dispositions to impose restrictions and make reservations and stipulations.**

- (1) On a sale or other disposition or dealing under the powers of this Act—
  - (a) any easement, right, or privilege of any kind may be reserved or granted over or in relation to the settled land or any part thereof or other land, including the land disposed of, and, in the case of an exchange, the land taken in exchange; and
  - (b) any restriction with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed and made binding, as far as the law permits, by covenant, condition or otherwise, on the tenant for life or statutory owner and the settled land or any part thereof, or on the other party and any land disposed of to him; and
  - (c) the whole or any part of any capital or annual sum (and in the case of an annual sum whether temporary or perpetual) charged on or payable out of the land disposed of, or any part thereof, and other land subject to the settlement, may as between the tenant for life or statutory owner and his successors in title, and the other party and persons deriving title under or in succession to him (but without prejudice to the rights of the person entitled to such capital or annual sum) be charged exclusively on the land disposed of, or any part thereof, or such other land as aforesaid, or any part thereof, in exoneration of the rest of the land on or out of which such capital or annual sum is charged or payable.
- (2) A sale of land may be made subject to a stipulation that all or any of the timber and other trees, pollards, tellers, underwood, saplings and plantations on the land sold (in this section referred to as “timber”) or any articles attached to the land (in this section referred to as “fixtures”) shall be taken by the purchaser at a valuation, and the amount of the valuation shall form part of the price of the land, and shall be capital money accordingly.
- (3) Where on a sale the consideration attributable to any timber or fixtures is by mistake paid to a tenant for life or other person not entitled to receive it, then, if such person or the purchaser or the persons deriving title under either of them subsequently pay the aforesaid consideration, with such interest, if any, thereon as the court may direct, to the trustees of the settlement or other persons entitled thereto or into court, the court may, on the application of the purchaser or the persons deriving title under him, declare that the disposition is to take effect as if the whole of the consideration had

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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at the date thereof been duly paid to the trustees of the settlement or other persons entitled to receive the same.

The person, not entitled to receive the same, to whom the consideration is paid, and his estate and effects shall remain liable to make good any loss attributable to the mistake.

**50 Separate dealing with surface and minerals, with or without wayleaves, &c.**

A sale, exchange, lease or other authorised disposition, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

**51 Power to grant options.**

- (1) A tenant for life may at any time, either with or without consideration, grant by writing an option to purchase or take a lease of the settled land, or any part thereof, or any easement, right, or privilege over or in relation to the same at a price or rent fixed at the time of the granting of the option.
- (2) Every such option shall be made exercisable within an agreed number of years not exceeding ten.
- (3) The price or rent shall be the best which, having regard to all the circumstances, can reasonably be obtained and either—
  - (a) may be a specified sum of money or rent, or at a specified rate according to the superficial area of the land with respect to which the option is exercised, or the frontage thereof or otherwise; or
  - (b) in the case of an option to purchase contained in a lease or agreement for a lease, may be a stated number of years' purchase of the highest rent reserved by the lease or agreement; or
  - (c) if the option is exercisable as regards part of the land comprised in the lease or agreement, may be a proportionate part of such highest rent;and any aggregate price or rent may be made to be apportionable in any manner, or according to any system, or by reference to arbitration.
- (4) An option to take a mining lease may be coupled with the grant of a licence to search for and prove any mines or minerals under the settled land, or any part thereof, pending the exercise of the option.
- (5) The consideration for the grant of the option shall be capital money arising under this Act.

**52 Surrenders and regrants.**

- (1) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, or a regrant of any land granted in fee simple, whether under this Act or not, in respect of the whole land leased or granted, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them, and with or



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without an exception of any easement, right or privilege of any kind over or in relation to the land surrendered or regranted.

- (2) On a surrender of a lease, or a regrant of land granted in fee simple, in respect of part only of the land or mines and minerals leased or granted, the rent or rentcharge may be apportioned.
- (3) On a surrender or regrant, the tenant for life may in relation to the land or mines and minerals surrendered or regranted, or of any part thereof, make a new or other lease, or grant in fee simple, or new or other leases, or grants in fee simple, in lots.
- (4) A new or other lease, or grant in fee simple, may comprise additional land or mines and minerals, and may reserve any apportioned or other rent or rentcharge.
- (5) On a surrender or regrant, and the making of a new or other lease, whether for the same or for any extended or other term, or of a new or other grant in fee simple, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's or grantee's interest in the lease surrendered, or the land regranted, may be taken into account in the determination of the amount of the rent or rentcharge to be reserved, and of any fine or consideration in money to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease, or grant in fee simple.
- (6) Every new or other lease, or grant in fee simple, shall be in conformity with this Act.
- (7) All money, not being rent or a rentcharge, received on the exercise by the tenant for life of the powers conferred by this section, shall, unless the court, on an application made within six months after the receipt thereof or within such further time as the court may in special circumstances allow, otherwise directs, be capital money arising under this Act.
- (8) A regrant shall be made to the tenant for life or statutory owner, and shall be deemed a subsidiary vesting deed, and the statements and particulars required in the case of subsidiary vesting deeds shall be inserted therein.
- (9) In this section "land granted in fee simple" means land so granted with or subject to a reservation thereof of a perpetual or terminable rentcharge which is or forms part of the settled land, and "grant in fee simple" has a corresponding meaning.

### **53 Acceptance of leases.**

- (1) A tenant for life may accept a lease of any land, or of any mines and minerals or of any easement, right, or privilege, convenient to be held or worked with or annexed in enjoyment to the settled land, or any part thereof, for such period, and upon such terms and conditions, as the tenant for life thinks fit:

Provided that no fine shall be paid out of capital money in respect of such lease.

- (2) The lease shall be granted to the tenant for life or statutory owner, and shall be deemed a subsidiary vesting deed, and the statements and particulars required in the case of subsidiary vesting deeds shall either be inserted therein or endorsed thereon.
- (3) The lease may contain an option to purchase the reversion expectant on the term thereby granted.

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

**C16** S. 53(2) extended by [Leasehold Reform Act 1967 \(c. 88\)](#), [s. 6\(2\)\(b\)](#)

**54 Power to grant water rights to statutory bodies.**

- (1) For the development, improvement, or general benefit of the settled land, or any part thereof, a tenant for life may make a grant in fee simple or absolutely, or a lease for any term of years absolute, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained, or gratuitously, to any statutory authority, of any water or streams or springs of water in, upon, or under the settled land, and of any rights of taking, using, enjoying and conveying water, and of laying, constructing, maintaining, and repairing mains, pipes, reservoirs, dams, weirs and other works of any kind proper for the supply and distribution of water, and of any part of the settled land required as a site for any of the aforesaid works, and of any easement, right or privilege over or in relation to the settled land or any part thereof in connexion with any of the aforesaid works.
- (2) This section does not authorise the creation of any greater rights than could have been created by a person absolutely entitled for his own benefit to the settled land affected.
- (3) In this section “statutory authority” means an authority or company for the time being empowered by any Act of Parliament, public general, or local or private, or by any order or certificate having the force of an Act of Parliament, to provide with a supply of water any town, parish or place in which the settled land or any part thereof is situated.
- (4) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

**55 Power to grant land for public and charitable purposes.**

- (1) For the development, improvement, or general benefit of the settled land, or any part thereof, a tenant for life may make a grant in fee simple, or absolutely, or a lease for any term of years absolute, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained, or gratuitously, of any part of the settled land, with or without any easement, right or privilege over or in relation to the settled land or any part thereof, for all or any one or more of the following purposes, namely:—
  - (i) For the site, or the extension of any existing site, of a place of religious worship, residence for a minister of religion, school house, town hall, market house, public library, public baths, museum, hospital, infirmary, or other public building, literary or scientific institution, drill hall, working-men’s club, parish room, reading room or village institute, with or without in any case any yard, garden, or other ground to be held with any such building; or
  - (ii) For the construction, enlargement, or improvement of any railway, canal, road (public or private), dock, sea-wall, embankment, drain, watercourse, or reservoir; or
  - (iii) For any other public or charitable purpose in connexion with the settled land, or any part thereof, or tending to the benefit of the persons residing, or for whom dwellings may be erected, on the settled land, or any part thereof.

Not more than one acre shall in any particular case be conveyed for any purpose mentioned in paragraphs (i) and (iii) of this subsection, nor more than five acres for any

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purpose mentioned in paragraph (ii) of this subsection, unless the full consideration be paid or reserved in respect of the excess.

- (2) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

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

C17 S. 55 extended by [National Trust Act 1937 \(c. lvii\)](#), s. 6(2)

## 56 Dedication for streets, open spaces, &c.

- (1) On or after or in connexion with a sale or grant for building purposes, or a building lease, or the development as a building estate of the settled land, or any part thereof, or at any other reasonable time, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof—

- (i) may cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith; and
- (ii) may provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
- (iii) may execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be inrolled in the Central Office of the [<sup>F34</sup>Senior Courts]), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

- (2) In regard to the dedication of land for the public purposes aforesaid, a tenant for life shall be in the same position as if he were an absolute owner.

- (3) A tenant for life shall have power—

- (a) to enter into any agreement for the recompense to be made for any part of the settled land which is required for the widening of a highway under [<sup>F35</sup>the Highways Act 1980] or otherwise;
- (b) to consent to the diversion of any highway over the settled land under [<sup>F35</sup>the Highways Act 1980] or otherwise; and
- (c) .....<sup>F36</sup>

and any agreement or consent so made or given shall be as valid and effectual, for all purposes, as if made or given by an absolute owner of the settled land.

- (4) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

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#### Textual Amendments

- F34** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 4; S.I. 2009/1604, art. 2\(d\)](#)
- F35** Words substituted by virtue of [Highways Act 1980 \(c. 66, SIF 59\), s. 147, Sch. 24 para. 2](#)
- F36** S. 56(3)(c) repealed by [Highways Act 1959 \(c. 25\), Sch. 25](#) and [London Government Act 1963 \(c. 33\), s. 16\(2\), Sch. 6 para. 70](#)

### 57 Provision of land for small dwellings, small holdings and dwellings for working classes.

- (1) Where land is sold, or given in exchange or leased—
- (a) for the purpose of the erection on such land of small dwellings; or
  - (b) to the council of a county or county borough for the purposes of small holdings;

the sale, exchange, or lease may, notwithstanding anything contained in this Act, be made for such consideration in money, or land, or in land and money, or may reserve such rent, as having regard to the said purposes and to all the circumstances of the case, is the best that can reasonably be obtained, notwithstanding that a better consideration or rent might have been obtained if the land were sold, exchanged, or leased, for another purpose.

- (2) Notwithstanding anything contained in, and in addition to the other powers conferred by this Act, a tenant for life may at any time—

- (a) for the purpose of the erection of dwellings for the working classes, or the provision of gardens to be held therewith; or
- (b) for the purpose of the Small Holdings and Allotments Acts, 1908 to 1919;

make a grant in fee simple or absolutely, or a lease for any term of years absolute of any part of the settled land, with or without any easement, right or privilege of any kind over or in relation to the settled land or any part thereof, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained or gratuitously:

Provided that, except under an order of the court, not more than two acres in the case of land situate in an urban district, or ten acres in the case of land situate in a rural district, in any one parish shall be granted or leased under the powers conferred by this subsection, unless the full consideration be paid or reserved in respect of the excess.

- (3) All money, not being rent, received on the exercise of any power conferred by this section shall be capital money arising under this Act.

### 58 Power to compromise claims and release restrictions, &c.

- (1) A tenant for life may, with the consent in writing of the trustees of the settlement, either with or without giving or taking any consideration in money or otherwise, compromise, compound, abandon, submit to arbitration, or otherwise settle any claim, dispute, or question whatsoever relating to the settled land, or any part thereof, including in particular claims, disputes or questions as to boundaries, the ownership of mines and minerals, rights and powers of working mines and minerals, local laws and customs relative to the working of mines and minerals and other matters, . . . <sup>F37</sup>, easements and restrictive covenants, and for any of those purposes may enter into,

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give, execute, and do such agreements, assurances, releases, and other things as the tenant for life may, with such consent as aforesaid, think proper.

- (2) A tenant for life may, with the consent in writing of the trustees of the settlement, at any time, by deed or writing, either with or without consideration in money or otherwise, release, waive, or modify, or agree to release, waive, or modify, any covenant, agreement, or restriction imposed on any other land for the benefit of the settled land, or any part thereof, or release, or agree to release, any other land from any easement, right or privilege, including a right of pre-emption, affecting the same for the benefit of the settled land, or any part thereof.
- (3) A tenant for life may contract that a transaction effected before or after the commencement of this Act, which (whether subject or not to any variation authorised by this subsection) is affected by section seventy-eight of the <sup>M6</sup>Railway Clauses Consolidation Act, 1845, or by section twenty-two of the <sup>M7</sup>Waterworks Clauses Act, 1847 (relating to support by minerals) shall take effect as if some other distance than forty yards or the prescribed distance had been mentioned in such sections or had been otherwise prescribed.

In any case where section seventy-eight aforesaid has effect as amended and re-enacted by Part II. of the <sup>M8</sup>Mines (Working Facilities and Support) Act, 1923, a tenant for life may make any agreement authorised by section eighty-fiveA of the <sup>M9</sup>Railway Clauses Consolidation Act, 1845, as enacted in the said Part II.

#### Textual Amendments

**F37** Words repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

#### Marginal Citations

**M6** [1845 c. 20.](#)  
**M7** [1847 c. 17.](#)  
**M8** [1923 c. 20.](#)  
**M9** [1845 c. 20.](#)

## 59 Power to vary leases and grants and to give licences and consents.

- (1) A tenant for life may, at any time, by deed, either with or without consideration in money or otherwise, vary, release, waive or modify, either absolutely or otherwise, the terms of any lease whenever made of the settled land or any part thereof, or any covenants or conditions contained in any grant in fee simple whenever made of land with or subject to a reservation thereof of a rent which is or forms part of the settled land, and in either case in respect of the whole or any part of the land comprised in any such lease or grant, but so that every such lease or grant shall, after such variation, release, waiver or modification as aforesaid, be such a lease or grant as might then have been lawfully made under this Act if the lease had been surrendered, or the land comprised in the grant had never been so comprised, or had been regranted.
- (2) Where land is or has been disposed of subject to any covenant requiring the licence, consent, or approval of the covenantee or his successors in title as to—
  - (a) the user of the land in any manner; or
  - (b) the erection construction or alteration of or addition to buildings or works of any description on the land; or
  - (c) the plans or elevations of any proposed buildings or other works on the land; or

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- (d) any other act, matter, or thing relating to the land, or any buildings or works thereon; or
- (e) any assignment, under-letting or parting with the possession of all or any part of the property comprised in any lease affecting the settled land;

and the covenant enures for the benefit of settled land (including, where the disposition is a lease, the reversion expectant on the determination thereof), the licence, consent or approval may be given by the tenant for life of the settled land affected.

## **60 Power to apportion rents.**

- (1) A tenant for life may, at any time, by deed, either with or without consideration in money or otherwise, agree for the apportionment of any rent reserved or created by any such lease or grant as mentioned in the last preceding section, or any rent being or forming part of the settled land, so that the apportioned parts of such rent shall thenceforth be payable exclusively out of or in respect of such respective portions of the land subject thereto as may be thought proper, and also agree that any covenants, agreements, powers, or remedies for securing such rent and any other covenants or agreements by the lessee or grantee and any conditions shall also be apportioned and made applicable exclusively to the respective portions of the land out of or in respect of which the apportioned parts of such rent shall thenceforth be payable.
- (2) Where the settled land, or any part thereof, is held or derived under a lease, or under a grant reserving rent, or subject to covenants, agreements or conditions, whether such lease or grant comprises other land or not, the tenant for life may at any time by deed, with or without giving or taking any consideration in money or otherwise, procure the variation, release, waiver, or modification, either absolutely or otherwise, of the terms, covenants, agreements, or conditions contained in such lease or grant, in respect of the whole or any part of the settled land comprised therein, including the apportionment of any rent, covenants, agreements, conditions, and provisions reserved, or created by, or contained in, such lease or grant.
- (3) This section applies to leases or grants made either before or after the commencement of this Act.

## **61 Provisions as to consideration.**

- (1) All money, not being rent, payable by the tenant for life in respect of any transaction to which any of the three last preceding sections relates shall be paid out of capital money arising under this Act, and all money, not being rent, received on the exercise by the tenant for life of the powers conferred by any of those sections, shall, unless the court, on an application made within six months after the receipt thereof or within such further time as the court may in special circumstances allow, otherwise directs, be capital money arising under this Act.
- (2) For the purpose of the three last preceding sections “consideration in money or otherwise” means—
  - (a) a capital sum of money or a rent;
  - (b) land being freehold or leasehold for any term of years whereof not less than sixty years shall be unexpired;
  - (c) any easement, right or privilege over or in relation to the settled land, or any part thereof, or any other land;
  - (d) the benefit of any restrictive covenant or condition; and

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- (e) the release of the settled land, or any part thereof, or any other land, from any easement, right or privilege, including a right of pre-emption, or from the burden of any restrictive covenant or condition affecting the same.

## 62 †Special provisions as to manorial incidents, &c.

- (1) ..... <sup>F38</sup>
- (4) In reference to the conversion of a perpetually renewable lease or underlease into a long term, a tenant for life may enter into such agreements and do such acts and things as the lessor or lessee or underlessee, as the case may require, is, by any enactment authorised to enter into or do.

### Textual Amendments

**F38** Ss. 62(1)–(3), 71(1)(iv)(v), 73(1)(vi)(vii) repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

### Modifications etc. (not altering text)

**C18** Unreliable margin note

## 63 Power to complete predecessor's contracts.

A tenant for life may make any disposition which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by that predecessor would have been valid as against his successors in title.

## 64 General power for the tenant for life to effect any transaction under an order of the court.

- (1) Any transaction affecting or concerning the settled land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Act, or by the settlement) which in the opinion of the court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner.
- (2) In this section “transaction” includes any sale, . . . <sup>F39</sup>, exchange, assurance, grant, lease, surrender, reconveyance, release, reservation, or other disposition, and any purchase or other acquisition, and any covenant, contract, or option, and any application of capital money, . . . <sup>F40</sup> and any compromise or other dealing, or arrangement; . . . <sup>F40</sup> and “effected” has the meaning appropriate to the particular transaction; and the references to land include references to restrictions and burdens affecting land.

### Textual Amendments

**F39** Words repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), [Sch. Pt. III](#)

**F40** Words repealed by [Settled Land and Trustee Acts \(Court's General Powers\) Act 1943 \(c. 25\)](#), [s. 2](#)

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

**C19** S. 64 extended by [Settled Land and Trustee Acts \(Court's General Powers\) Act 1943 \(c. 25\)](#); saved by [Variation of Trusts Act 1958 \(c. 53\), s. 1\(6\)](#)

*Provisions as to special classes of property*

**65 Power to dispose of mansion.**

- (1) The powers of disposing of settled land conferred by this Act on a tenant for life may be exercised as respects the principal mansion house, if any, on any settled land, and the pleasure grounds and park and lands, if any, usually occupied therewith:

Provided that those powers shall not be exercised without the consent of the trustees of the settlement or an order of the court—

- (a) if the settlement is a settlement made or coming into operation before the commencement of this Act and the settlement does not expressly provide to the contrary; or
  - (b) if the settlement is a settlement made or coming into operation after the commencement of this Act and the settlement expressly provides that these powers or any of them shall not be exercised without such consent or order.
- (2) Where a house is usually occupied as a farmhouse, or where the site of any house and the pleasure grounds and park and lands, if any, usually occupied therewith do not together exceed twenty-five acres in extent, the house is not to be deemed a principal mansion house within the meaning of this section, and may accordingly be disposed of in like manner as any other part of the settled land.

**66 Cutting and sale of timber, and capitalisation of part of proceeds.**

- (1) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the court, may cut and sell that timber, or any part thereof.
- (2) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

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

**C20** S. 66(2) applied by [Forestry Act 1967 \(c. 10\), s. 29\(3\)](#)

**67 Sale and purchase of heirlooms under order of court.**

- (1) Where personal chattels are settled so as to devolve with settled land, or to devolve therewith as nearly as may be in accordance with the law or practice in force at the date of the settlement, or are settled together with land, or upon trusts declared by reference to the trusts affecting land, a tenant for life of the land may sell the chattels or any of them.
- (2) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as



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by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

- (3) A sale or purchase of chattels under this section shall not be made without an order of the court.
- (4) Any reference in any enactment to personal chattels settled as heirlooms shall extend to any chattels to which this section applies.

*Dealings as between tenants for life and the estate*

**68 Provision enabling dealings with tenant for life.**

- (1) In the manner mentioned and subject to the provisions contained in this section—
  - (a) a sale, grant, lease, mortgage, charge or other disposition of settled land, or of any easement, right, or privilege over the same may be made to the tenant for life; or
  - (b) capital money may be advanced on mortgage to him; or
  - (c) a purchase may be made from him of land to be made subject to the limitations of the settlement; or
  - (d) an exchange may be made with him of settled land for other land; and
  - (e) any such disposition, advance, purchase, or exchange as aforesaid may be made to, from, or with any persons of whom the tenant for life is one.
- (2) In every such case the trustees of the settlement shall, in addition to their powers as trustees, have all the powers of a tenant for life in reference to negotiating and completing the transaction, and shall have power to enforce any covenants by the tenant for life, or, where the tenant for life is himself one of the trustees, then the other or others of them shall have such power, and the said powers of a tenant for life may be exercised by the trustees of the settlement in the name and on behalf of the tenant for life.
- (3) This section applies, notwithstanding that the tenant for life is one of the trustees of the settlement, or that an order has been made authorising the trustees to act on his behalf, or that he is [<sup>F41</sup>suffering from mental disorder] but does not apply to dealings with any body of persons which includes a trustee of the settlement, not being the tenant for life, unless the transaction is either previously or subsequently approved by the court.

**Textual Amendments**

**F41** Words substituted by [Mental Health Act 1959 \(c. 72\)](#), [Sch. 7 Pt. I](#)

*Incumbrances*

**69 Shifting of incumbrances.**

Where there is an incumbrance affecting any part of the settled land (whether capable of being overreached on the exercise by the tenant for life of his powers under this Act or not), the tenant for life, with the consent of the incumbrancer, may charge

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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that incumbrance on any other part of the settled land, or on all or any part of the capital money or securities representing capital money subject or to become subject to the settlement, whether already charged therewith or not, in exoneration of the first mentioned part, and, by a legal mortgage, or otherwise, make provision accordingly.

**70 Power to vary provisions of an incumbrance and to charge by way of additional security.**

- (1) Where an incumbrance affects any part of the settled land, the tenant for life may, with the consent of the incumbrancer, vary the rate of interest charged and any of the other provisions of the instrument, if any, creating the incumbrance, and with the like consent charge that incumbrance on any part of the settled land, whether already charged therewith or not, or on all or any part of the capital money or securities representing capital money subject or to become subject to the settlement, by way of additional security, or of consolidation of securities, and by a legal mortgage or otherwise, make provision accordingly.
- (2) “Incumbrance” in this section includes any annual sum payable during a life or lives or during a term of years absolute or determinable, but in any such case an additional security shall be effected so as only to create a charge or security similar to the original charge or security.

*Raising of Money*

**71 Power to raise money by mortgage.**

- (1) Where money is required for any of the following purposes namely:—
  - (i) Discharging an incumbrance on the settled land or part thereof;
  - (ii) paying for any improvement authorised by this Act or by the settlement;
  - (iii) Equality of exchange:
  - (iv) ..... <sup>F42</sup>
  - (vi) Redeeming a compensation rentcharge in respect of the extinguishment of manorial incidents and affecting the settled land;
  - (vii) Commuting any additional rent made payable on the conversion of a perpetually renewable leasehold interest into a long term;
  - (viii) Satisfying any claims for compensation on the conversion of a perpetually renewable leasehold interest into a long term by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or under-lessee on any renewal;
  - (ix) Payment of the costs of any transaction authorised by this section or either of the two last preceding sections;

the tenant for life may raise the money so required, on the security of the settled land, or of any part thereof, by a legal mortgage, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly.

- (2) “Incumbrance” in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.
- (3) The restrictions imposed by this Part of this Act on the leasing powers of a tenant for life do not apply in relation to a mortgage term created under this Act.

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

### Textual Amendments

- F42** Ss. 62(1)–(3), 71(1)(iv)(v), 73(1)(vi)(vii) repealed by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), **Sch. Pt. III**

### Modifications etc. (not altering text)

- C21** S. 71 modified by [Chequers Estate Act 1917 \(c. 55\)](#), **Sch.** clause 8D as now inserted by [Chequers Estate Act 1958 \(c. 60\)](#), s. 1, **Sch. para. 10**; extended by [Landlord and Tenant Act 1927 \(c. 36\)](#), **s. 13(1)(2)**, [Agricultural Credits Act 1932 \(c. 35\)](#), s. 3, [Coast Protection Act 1949 \(c. 74\)](#), **s. 11(2)(a)**, [Landlord and Tenant Act 1954 \(c. 56\)](#), s. 8(5), **Sch. 2 para. 6**, [Coal-Mining \(Subsidence\) Act 1957 \(c. 59\)](#), **s. 11(7)**, [Land Commission Act 1967 \(c. 1\)](#), **s. 92**, [Leasehold Reform Act 1967 \(c. 88\)](#), ss. 6(5), 17, 18, **Sch. 2 para. 9(1)**, [Mines and Quarries \(Tips\) Act 1969 \(c. 10\)](#), **s. 32(2)(b)** and [Town and Country Planning Act 1971 \(c. 78\)](#), **s. 275(1)**; amended (temp.) by [Finance Act 1968 \(c. 44\)](#), s. 41(5), **Sch. 15 para. 8(1)**
- C22** S. 71 extended by [Town and Country Planning Act 1990 \(c. 8\)](#), SIF 123:1), **s. 328(2)(a)**  
S. 71 extended (1.11.1993) by 1993 c. 28, ss. 9, 40, **Sch. 2 paras. 5(2)(b)(ii)**, 6(b); S.I. 1993/2134, **arts. 2, 5**  
S. 71 extended (1.9.1995) by 1995 c. 8, **ss. 33(2)**, 41(2)
- C23** S. 71 extended (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), **ss. 109(4)(b)**, 181(1); S.I. 2003/1986, art. 2(a)

## Conveyance

### 72 Completion of transactions by conveyance.

- (1) On a sale, exchange, lease, mortgage, charge, or other disposition, the tenant for life may, as regards land sold, given in exchange, leased, mortgaged, charged, or otherwise disposed of, or intended so to be, or as regards easements or other rights or privileges sold, given in exchange, leased, mortgaged, or otherwise disposed of, or intended so to be, effect the transaction by deed to the extent of the estate or interest vested or declared to be vested in him by the last or only vesting instrument affecting the settled land or any less estate or interest, in the manner requisite for giving effect to the sale, exchange, lease, mortgage charge, or other disposition, but so that a mortgage shall be effected by the creation of a term of years absolute in the settled land or by charge by way of legal mortgage, and not otherwise.
- (2) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, privileges or other interests created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—
  - (i) all legal estates and charges by way of legal mortgage having priority to the settlement; and
  - (ii) all legal estates and charges by way of legal mortgage which have been conveyed or created for securing money actually raised at the date of the deed; and
  - (iii) all leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges which—
    - (a) were before the date of the deed granted or made for value in money or money's worth, or agreed so to be, by the tenant for life or statutory owner, or by any of his predecessors in title, or any trustees for them,

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- under the settlement, or under any statutory power, or are at that date otherwise binding on the successors in title of the tenant for life or statutory owner; and
- (b) are at the date of the deed protected by registration under the <sup>M10</sup>Land Charges Act, 1925, if capable of registration thereunder.
- (3) Notwithstanding registration under the Land Charges Act, 1925, of—
- (a) an annuity within the meaning of Part II. of that Act;
  - (b) a limited owner's charge or a general equitable charge within the meaning of that Act;
- a disposition under this Act operates to overreach such annuity or charge which shall, according to its priority, take effect as if limited by the settlement.
- (4) Where a lease is by this Act authorised to be made by writing under hand only, such writing shall have the same operation under this section as if it had been a deed.

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

**C24** S. 72 extended (30.10.1994) by [S.I. 1994/2716](#), [reg. 86\(1\)\(c\)](#)

**Marginal Citations**

**M10** 1925 c. 22.

## PART III

### INVESTMENT OR OTHER APPLICATION OF CAPITAL MONEY

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

**C25** Pt. III applied with modifications by [Chequers Estate Act 1917 \(c. 55\)](#), [Sch.](#) clause 6A now inserted by [Chequers Estate Act 1958 \(c. 60\)](#), s. 1, [Sch. para. 7](#); saved by [Trafalgar Estate Act 1947 \(c. 34\)](#), [s. 2\(3\)](#)

## 73 Modes of investment or application.

- (1) Capital money arising under this Act, subject to payment of claims properly payable thereout and to the application thereof for any special authorised object for which the capital money was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):—
- <sup>F43</sup>(i) In investment in Government 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;]
  - (ii) In discharge, purchase, or redemption of incumbrances affecting the whole estate the subject of the settlement, or of . . . <sup>F44</sup>, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land, or of any charge in respect of an improvement created on a holding under the [<sup>F45</sup>Agricultural Holdings Act 1986], or any similar previous enactment;
  - (iii) In payment for any improvement authorised by this Act;

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- (iv) In payment as for an improvement authorised by this Act of any money expended and costs incurred by a landlord under or in pursuance of the [<sup>F45</sup>Agricultural Holdings Act 1986], or any similar previous enactment, or under custom or agreement or otherwise, in or about the execution of any improvement comprised in [<sup>F45</sup>Schedule 7] to the said Agricultural Holdings Act;
- (v) In payment for equality of exchange of settled land;
- (vi) .....<sup>F46</sup>
- (viii) In redemption of any compensation rentcharge created in respect of the extinguishment of manorial incidents, and affecting the settled land;
- (ix) In commuting any additional rent made payable on the conversion of a perpetually renewable leasehold interest into a long term, and in satisfying any claim for compensation on such conversion by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or under-lessee on any renewal;
- (x) In purchase of the freehold reversion in fee of any part of the settled land, being leasehold land held for years;
- (xi) In purchase of land in fee simple, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land;
- (xii) In purchase either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes;
- (xiii) In redemption of an improvement rentcharge, that is to say, a rentcharge (temporary or permanent) created, whether before or after the commencement of this Act, in pursuance of any Act of Parliament, with the object of paying off any money advanced for defraying the expenses of an improvement of any kind authorised by Part I. of the Third Schedule to this Act;
- (xiv) In the purchase, with the leave of the court, of any leasehold interest where the immediate reversion is settled land, so as to merge the leasehold interest (unless the court otherwise directs) in the reversion, and notwithstanding that the leasehold interest may have less than sixty years to run;
- (xv) In payment of the costs and expenses of all plans, surveys, and schemes, including schemes under the <sup>M11</sup>Town Planning Act, 1925, or any similar previous enactment, made with a view to, or in connexion with the improvement or development of the settled land, or any part thereof, or the exercise of any statutory powers, and of all negotiations entered into by the tenant for life with a view to the exercise of any of the said powers, notwithstanding that such negotiations may prove abortive, and in payment of the costs and expenses of opposing any such proposed scheme as aforesaid affecting the settled land, whether or not the scheme is made;
- <sup>F47</sup>(xvi) .....
- (xvii) In payment to a local or other authority of such sum as may be agreed in consideration of such authority taking over and becoming liable to repair a private road on the settled land or a road for the maintenance whereof a tenant for life is liable *ratione tenuræ*;

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- (xviii) In financing any person who may have agreed to take a lease or grant for building purposes of the settled land, or any part thereof, by making advances to him in the usual manner on the security of an equitable mortgage of his building agreement;
  - (xix) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge;
  - (xx) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Act including the costs and expenses incidental to any of the matters referred to in this section;
  - (xxi) In any other mode authorised by the settlement with respect to money produced by the sale of the settled land.
- (2) Notwithstanding anything in this section capital money arising under this Act from settled land in England or Wales shall not be applied in the purchase of land out of England and Wales, unless the settlement expressly authorises the same.

#### Textual Amendments

- F43** S. 73(1)(i) substituted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 9** (with s. 35); S.I. 2001/49, **art. 2**
- F44** Words repealed by Finance Act 1963 (c. 25), **Sch. 14 Pt. VI**
- F45** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99(1), 100, Sch. 13 para. 3, **Sch. 14 para. 11**
- F46** Ss. 62(1)–(3), 71(1)(iv)(v), 73(1)(vi)(vii) repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**
- F47** S. 73(1)(xvi) repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt. II** Group 2.

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

- C26** S. 73 extended by Housing (Rural Workers) Act 1926 (c. 56), **s. 3(3)**, Landlord and Tenant Act 1927 (c. 36), **s. 13(1)**, Agricultural Credits Act 1932 (c. 35), **s. 3**, Coast Protection Act 1949 (c. 74), **s. 11(2)(a)**, Landlord and Tenant Act 1954 (c. 56), s. 8(5), **Sch. 2 para. 6**, Coal-Mining (Subsidence) Act 1957 (c. 59), **s. 11(7)**, Land Commission Act 1967 (c. 1), **s. 92**, Leasehold Reform Act 1967 (c. 88), ss. 6(5), 17, 18, **Sch. 2 para. 9(1)**, Mines and Quarries (Tips) Act 1969 (c. 10), **s. 32(2)(a)** and Town and Country Planning Act 1971 (c. 78), **s. 275(1)**; amended (temp) by Finance Act 1968 (c. 44), s. 41(5), **Sch. 15 para. 8(1)**
- C27** S. 73 extended by Housing Act 1985 (c. 68, SIF 61), **s. 507(3)** and by Town and Country Planning Act 1990 (c. 8, SIF 123:1), **s. 328(1)(a)**  
 S. 73 extended (1.11.1993) by 1993 c. 28, ss. 9, 40, Sch. 2 paras. 5(2)(b)(i), **6(a)**; S.I. 1993/2134, **arts. 2, 5**  
 S. 73 extended (1.9.1995) by 1995 c. 8, **ss. 33(1)**, 41(2)  
 S. 73 extended (1.10.1996 subject to savings in S.I. 1996/2212, art. 2(2), **Sch. para. 4**) by 1993 c. 28, **s. 93A** (as inserted by 1996 c. 52, **s. 113**; S.I. 1996/2212, **art. 2(2)**)  
 S. 73 extended (17.12.1996) by 1996 c. 53, **s. 55(4)(a)**; S.I. 1996/2842, **art. 3**  
 S. 73 extended (17.12.1996) by 1996 c. 53, **s. 73(3)(a)**; S.I. 1996/2842, **art. 3**  
 S. 73 extended (*prosp.*) by 2002 c. 15, **ss. 109(4)(a)**, 181(1)
- C28** S. 73 amended by Local Government and Housing Act 1989 (c. 42, SIF 61), **s. 125(5)(a)**
- C29** S. 73 extended (30.9.2003 for E., 30.3.2004 for W.) by Commonhold and Leasehold Reform Act 2002 (c. 15), **ss. 109(4)(a)**, 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)
- C30** Power to apply s. 73(1)(ii) given by Finance Act 1949 (c. 47), s. 40(9), **Sch. 9**
- C31** S. 73(1)(xiii) extended by Agricultural Credits Act 1932 (c. 35), **s. 3(3)**; modified by Agriculture Act 1967 (c. 22), **s. 68**

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### **Marginal Citations**

**M11** 1925 c. 16.

## **74 Power to acquire land subject to certain incumbrances.**

- (1) Land may be acquired on a purchase or exchange to be made subject to a settlement, notwithstanding that the land is subject to any Crown rent, quit rent, chief rent, or other incident of tenure, or to any easement, right or privilege, or to any restrictive covenant, or to any liability to maintain or repair walls, fences, sea-walls, river banks, dykes, roads, streets, sewers, or drains, or to any improvement rentcharge which is capable under this Act of being redeemed out of capital money.
- (2) The acquisition on a purchase or exchange before the commencement of this Act of any land subject to any such burden as aforesaid is hereby confirmed.

## **75 Regulations respecting investment, devolution, and income of securities, &c.**

- (1) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into court at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the court, as the case may be, accordingly.
- [<sup>F48</sup>(2) Subject to Part IV of the Trustee Act 2000, to section 75A of this Act and to the following provisions of this section—
  - (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.]
  - (3) The investment or other application under the direction of the court shall be made on the application of the tenant for life, or of the trustees.
  - [<sup>F49</sup>(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.
  - <sup>F49</sup>(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.
  - <sup>F49</sup>(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.
  - <sup>F49</sup>(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.]
  - (5) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made shall for all purposes of disposition, transmission and devolution be treated as land, and shall be



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held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

- (6) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.
- (7) Those securities may be converted into money, which shall be capital money arising under this Act.
- (8) All or any part of any capital money paid into court may, if the court thinks fit, be at any time paid out to the trustees of the settlement.

#### Textual Amendments

**F48** S. 75(2) substituted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 10(1)(3)** (with s. 35); S.I. 2001/49, **art. 2**

**F49** S. 75(4)-(4C) substituted (1.2.2001) for s. 75(4) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 10(2)(3)** (with s. 35); S.I. 2001/49, **art. 2**

#### [<sup>F50</sup>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
  - (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.]



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#### Textual Amendments

**F50** S. 75A inserted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 11** (with s. 35); S.I. 2001/49, art. 2

### 76 Application of money in court under Lands Clauses and other Acts.

Where, under an Act, or an order or scheme confirmed by or having the force of an Act of Parliament, incorporating or applying, wholly or in part, the Lands Clauses Acts, or under any Act, public general or local or private, money is at the commencement of this Act in court, or is afterwards paid into court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorised by the Act under which the money is in court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and notwithstanding anything in this Act according to the same procedure, as if the modes of investment or application authorised by this Act were authorised by the Act under which the money is in court.

### 77 Application of money in hands of trustees under powers of settlement.

Where—

- (a) under any instrument coming into operation either before or after the commencement of this Act money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the trusts declared by that instrument; or
- (b) under any instrument coming into operation after the commencement of this Act money or securities or the proceeds of sale of any property is or are held by trustees on trusts creating entailed interests therein;

then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the money securities or proceeds as if they were capital money arising under this Act.

### 78 Provision as to personal estate settled by reference to capital money, or on trusts corresponding with the limitations of land.

- (1) Where money or securities or the proceeds of sale of any property is or are by any instrument coming into operation either before or after the commencement of this Act directed to be held on trusts declared by reference to capital money arising under this Act from land settled by that instrument or any other instrument, the money securities or proceeds shall be held on the like trusts as if the same had been or represented money which had actually arisen under this Act from the settled land.

[<sup>F51</sup>This subsection operates without prejudice to the rights of any person claiming under a disposition for valuable consideration of any such money securities or proceeds, made before the commencement of this Act.]

- (2) Where money or securities or the proceeds of sale of any property is or are by any instrument coming into operation after the commencement of this Act directed to be held on the same trusts as, or on trusts corresponding as nearly as may be with the limitations of land settled by that instrument or any other instrument, the money,

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securities or proceeds shall be held on the like trusts as if the same had been or represented capital money arising under this Act from the settled land.

- (3) Such money, securities, or proceeds of sale shall be paid or transferred to or retained by the trustees of the settlement of the settled land, or paid or transferred into court, and invested or applied accordingly.
- (4) Where the settled land includes freehold land, the money, securities, or proceeds of sale aforesaid shall be held on the like trusts as if the same had been or represented capital money arising from the freehold land.
- (5) This section has effect notwithstanding any direction in the instrument creating the trust that the trust property is not to vest absolutely in any tenant in tail or in tail male or in tail female under the limitations of the settled land who dies under a specified age, or before the happening of a specified event, but, save as aforesaid, has effect with any variations and subject to any contrary intention expressed in the instrument creating the trust.

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**Textual Amendments**

**F51** Para. added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

**79 Application of money paid for lease or reversion.**

Where capital money arising under this Act is purchase-money paid in respect of—

- (a) a lease for years; or
- (b) any other estate or interest in land less than the fee simple; or
- (c) a reversion dependent on any such lease, estate, or interest;

the trustees of the settlement or the court, as the case may be, and in the case of the court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

**80 As to money received by way of damages for breach of covenant.**

- (1) Money, not being rent, received by way of damages or compensation for breach of any covenant by a lessee or grantee contained in any lease or grant of settled land shall, unless in any case the court on the application of the tenant for life or the trustees of the settlement otherwise directs, be deemed to be capital money arising under this Act, and shall be paid to or retained by the trustees of the settlement, or paid into court, and invested or applied, accordingly.
- (2) In addition to the other modes in which capital money may be applied under this Act or the settlement, money so received as aforesaid or any part thereof may, if the circumstances permit, be applied at any time within twelve months after such receipt, or such extended period as the court may allow, in or towards payment of the costs of making good in whole or in part the breach of covenant in respect of which it was so received, or the consequences thereof, and the trustees of the settlement, if they think fit, may require any money so received or any part thereof to be so applied.

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- (3) In the application of any such money in or towards payment of the cost of making good any such breach or the consequences of any such breach as aforesaid, the work required to be done for the purpose shall be deemed to be an improvement authorised by Part I. of the Third Schedule to this Act.
- (4) This section does not apply to money received by way of damages or compensation for the breach of a covenant to repay to the lessor or grantor money laid out or expended by him, or to any case in which if the money received were applied in making good the breach of covenant or the consequences thereof such application would not enure for the benefit of the settled land, or any buildings thereon.
- (5) This section does not apply to money received by way of damages or compensation before the commencement of this Act, but it applies whether the lease or grant was made before or after the commencement of this Act, and whether under the powers conferred by the Settled Land Acts, 1882 to 1890, or this Act or not.
- (6) The provisions of this section apply only if and as far as a contrary intention is not expressed in the settlement, and have effect subject to the terms of the settlement, and to any provisions therein contained, but a contrary intention shall not be deemed to be expressed merely by words negating impeachment for waste.

## **81 As to capital arising otherwise than under the Act.**

Any money which after the commencement of this Act arises from settled land otherwise than under this Act, as well as any money or securities in the names or under the control of the tenant for life or the trustees of the settlement, being or representing money which had arisen before the commencement of this Act from the settled land otherwise than under the Settled Land Acts, 1882 to 1890, and which ought, as between the persons interested in the settled land, to be or to have been treated as capital, shall (without prejudice to any other statutory provisions affecting the same) be deemed to be or to represent capital money arising under this Act, and shall be paid or transferred to or retained by the trustees of the settlement, or paid or transferred into court, and invested or applied, accordingly.

## **82 Land acquired may be made a substituted security for released charges.**

- (1) Land acquired by purchase or in exchange or otherwise under the powers of this Act, may be made a substituted security for any charge from which the settled land or any part thereof has theretofore been released on the occasion and in order to the completion of a sale, exchange or other disposition:

Provided that, where a charge does not affect the whole of the settled land, the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange of land which was before the exchange subject to the charge.

- (2) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any legal estate or charge by way of legal mortgage, is not concerned to inquire whether or not it is proper that the land should be subjected to such legal estate or charge.

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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## PART IV

### IMPROVEMENTS

#### *Improvements with Capital Money*

#### **83 Description of improvements authorised by Act.**

Improvements authorised by this Act are the making or execution on, or in connexion with, and for the benefit of settled land, of any of the works mentioned in the Third Schedule to this Act, or of any works for any of the purposes mentioned in that Schedule, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes.

#### **84 Mode of application of capital money.**

- (1) Capital money arising under this Act may be applied in or towards payment for any improvement authorised by this Act or by the settlement, without any scheme for the execution of the improvement being first submitted for approval to, or approved by, the trustees of the settlement or the court.
- (2) Where the capital money to be expended is in the hands of the trustees of the settlement, they may apply that money in or towards payment for the whole or any part of any work or operation comprised in the improvement, on—
  - (i) a certificate to be furnished by a competent engineer or able practical surveyor employed independently of the tenant for life, certifying that the work or operation comprised in the improvement or some specific part thereof, has been properly executed, and what amount is properly payable in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or
  - (ii) an order of the court directing or authorising the trustees so to apply a specified portion of the capital money:

Provided that—

- (a) In the case of improvements not authorised by Part I. of the Third Schedule to this Act or by the settlement, the trustees may, if they think fit, and shall if so directed by the court, before they make any such application of capital money require that that money, or any part thereof, shall be repaid to them out of the income of the settled land by not more than fifty half-yearly instalments, the first of such instalments to be paid or to be deemed to have become payable at the expiration of six months from the date when the work or operation, in payment for which the money is to be applied, was completed;
  - (b) No capital money shall be applied by the trustees in payment for improvements not authorised by Parts I. and II. of the Third Schedule to this Act, or by the settlement, except subject to provision for the repayment thereof being made in manner mentioned in the preceding paragraph of this proviso.
- (3) Where the capital money to be expended is in court, the court may, if it thinks fit, on a report or certificate of the [F52Secretary of State], or of a competent engineer or able practical surveyor approved by the court, or on such other evidence as the court

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may think sufficient, make such order and give such directions as it thinks fit for the application of the money, or any part thereof, in or towards payment for the whole or any part of any work or operation comprised in the improvement.

- (4) Where the court authorises capital money to be applied in payment for any improvement or intended improvement not authorised by Part I. of the Third Schedule to this Act or by the settlement, the court, as a condition of making the order, may in any case require that the capital money or any part thereof, and shall as respects an improvement mentioned in Part III. of that Schedule (unless the improvement is authorised by the settlement), require that the whole of the capital money shall be repaid to the trustees of the settlement out of the income of the settled land by a fixed number of periodical instalments to be paid at the times appointed by the court, and may require that any incumbrancer of the estate or interest of the tenant for life shall be served with notice of the proceedings.
- (5) All money received by the trustees of the settlement in respect of any instalments under this section shall be held by them as capital money arising from freehold land under the settlement, unless the court otherwise directs.

#### Textual Amendments

**F52** Words in s. 84(3) substituted (27.3.2002) by [S.I. 2002/794](#), [art. 5\(1\)](#), [Sch. 1 para. 2](#) (with [arts. 5\(3\), 6](#))

## 85 Creation of rentcharges to discharge instalments.

- (1) When the tenant for life is required by the trustees to repay by instalments the capital money expended, or any part thereof, the tenant for life is by this section authorised to create out of the settled land, or any part thereof, a yearly rentcharge in favour of the trustees of the settlement sufficient in amount to discharge the said half-yearly instalments.
- (2) Where an order is made requiring repayment by instalments, the settled land shall stand charged with the payment to the trustees of the settlement of a yearly rentcharge sufficient in amount to discharge the periodical instalments, and the rentcharge shall accrue from day to day, and be payable at the times appointed for payment of the periodical instalments, and shall have effect as if limited by the settlement prior to the estate of the tenant for life, and the trustees of the settlement shall have all statutory and other powers for recovery thereof.
- (3) A rentcharge created by or under this section shall not be redeemed out of capital money, but may be overreached in like manner as if the same were limited by the settlement, and shall cease if and when the land affected by the improvement ceases to be settled or is sold or exchanged, but if part of the land so affected remains subject to the settlement the rentcharge shall remain in force in regard to the settled land.

### *Sundry Provisions as to Improvements*

## 86 Concurrence in improvements.

The tenant for life may join or concur with any other person interested in executing any improvement authorised by this Act, or in contributing to the cost thereof.

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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**87 Court may order payment for improvements executed.**

The court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by the <sup>M12</sup>Settled Land Acts, 1882 to 1890, or this Act, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Settled Land Act, 1882, to the trustees of the settlement or to the court, and notwithstanding that no capital money is immediately available for the purpose.

**Marginal Citations**

**M12** 1882 c. 38.

**88 Obligation on tenant for life and successors to maintain, insure, &c.**

- (1) The tenant for life, and each of his successors in title having under the trust instrument a limited estate or interest only in the settled land, shall, during such period, if any, as the [<sup>F53</sup>Secretary of State] by certificate in any case prescribes, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act or the enactments replaced thereby, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall at his own expense insure and keep insured the improvement in such amount, if any, as the [<sup>F53</sup>Secretary of State] by certificate in any case prescribes.
- (2) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act, or under the enactments replaced by those provisions.
- (3) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the [<sup>F54</sup>Secretary of State] on or without the application of any person having under the trust instrument any estate or interest in the settled land in possession, remainder, or otherwise, report to the [<sup>F54</sup>Secretary of State] the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.
- (4) The [<sup>F55</sup>Secretary of State] may vary any certificate made by him under this section in such manner or to such extent as circumstances appear to him to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.
- (5) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the trust instrument, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the trust instrument any damages occasioned by that default or act.
- (6) Where in connexion with any improvement an improvement rentcharge, as hereinbefore defined, has been created, and that rentcharge has been redeemed out of capital money, this section shall apply to the improvement as if it had been an improvement executed under this Act.

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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#### Textual Amendments

- F53** Words in s. 88(1) substituted (27.3.2002) by [S.I. 2002/794](#), art. 5(1), **Sch. 1 para. 3(2)** (with arts. 5(3), 6)
- F54** Words in s. 88(3) substituted (27.3.2002) by [S.I. 2002/794](#), art. 5(1), **Sch. 1 para. 3(3)** (with arts. 5(3), 6)
- F55** Words in s. 88(4) substituted (27.3.2002) by [S.I. 2002/794](#), art. 5(1), **Sch. 1 para. 3(4)** (with arts. 5(3), 6)

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

- C32** S. 88 extended by [Agricultural Credits Act 1932](#) (c. 35), s. 3(3)

### 89 Protection as regards waste in execution and repair of improvements.

The tenant for life, and each of his successors in title having, under the trust instrument, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorised by this Act, or inspect, maintain, and repair the same, and for the purposes thereof do, make, and use on the settled land, all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

## PART V

### MISCELLANEOUS PROVISIONS

### 90 Power for tenant for life to enter into contracts.

(1) A tenant for life—

- (i) may contract to make any sale, exchange, mortgage, charge or other disposition authorised by this Act; and
- (ii) may vary or rescind, with or without consideration, the contract in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and
- (iii) may contract to make any lease, and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and
- (iv) may accept a surrender of a contract for a lease or a grant in fee simple at a rent, in like manner and on the like terms in and on which he might accept a surrender of a lease or a regrant, and thereupon may make a new or other contract for or relative to a lease or leases, or a grant or grants in fee simple at a rent, in like manner and on the like terms in and on which he might make a new or other lease or grant, or new or other leases or grants, where a lease or a grant in fee simple at a rent had been executed; and

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- (v) may enter into a contract for or relating to the execution of any improvement authorised by this Act, and may vary or rescind any such contract; and
  - (vi) may, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind any such contract.
- (2) Every contract, including a contract arising by reason of the exercise of an option, shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, or statutory owner, and may be carried into effect by any such successor, but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.
- (3) The court may, on the application of the tenant for life, or statutory owner, or of any such successor as aforesaid, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.
- (4) A preliminary contract under this Act for or relating to a lease, and a contract conferring an option, shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof, or to the land the subject of the option.
- (5) All money, not being rent, received on the exercise by the tenant for life or statutory owner of the powers conferred by subsection (1) of this section, shall, unless the court on an application made within six months after the receipt of the money, or within such further time as the court may in special circumstances allow, otherwise directs, be capital money arising under this Act.

## **91 Provisions as to different estates settled upon the same limitations.**

- (1) Where estates are settled by different settlements upon the same limitations, whether by reference or otherwise, the following provisions shall have effect:—
- (i) The estates or any two or more of them, as the case may require, may be treated as one aggregate estate, in which case the aggregate estate shall be the settled land for all the purposes of this Act;
  - (ii) Where the trustees for the purposes of this Act of the two or several settlements are the same persons they shall be the trustees of the settlement of the aggregate estate for all the purposes of this Act, and all or any part of the capital money arising from one of the estates may be applied by the direction of the tenant for life or statutory owner as if the same had arisen from any other of the estates;
  - (iii) Where the trustees for the purposes of this Act of the settlements or of any two or more of them are not the same persons—
    - (a) any notice required to be given by this Act to the trustees of the settlement and to the solicitor of such trustees shall be given to the trustees of every settlement which comprises any part of the land to which such notice relates and to the solicitor of such trustees;
    - (b) any capital money arising on any sale, exchange, lease, mortgage, charge, or other disposition of land comprised in more than one settlement, shall be apportioned between the trustees of the different settlements in such manner as the tenant for life or statutory owner may think fit;
    - (c) all or any part of the capital money arising from the land comprised in one of the settlements may be paid by the trustees of that settlement,



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by such direction as aforesaid, to the trustees of any of the other settlements, to be applied by such last-mentioned trustees as if the same had arisen from land comprised in that other settlement:

- (iv) For the purposes of this subsection, money liable to be laid out in the purchase of land to be settled upon the same limitations as other land may be applied and dealt with in like manner in all respects as if land had been purchased and settled, and the money were capital money arising therefrom.

- (2) Estates shall be deemed to be settled upon the same limitations, notwithstanding that any of them may be subject to incumbrances, charges, or powers of charging to which the other or others of them may not be subject:

Provided that, in any such case as last aforesaid, the powers of this section relating to the payment or application of capital money shall not, unless the settlement under which the capital money is held otherwise provides, be exercisable without an order of the court.

- (3) This section has effect without prejudice to any appointment made by the court before the commencement of this Act of trustees of the settlement of an aggregate estate, and to the power of the court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement, or is made thereafter, this section has effect as if the trustees so appointed and their successors in office were the trustees for the purposes of this Act of each of the settlements constituting the settlement of the aggregate estate, and there were no other trustees thereof for the purposes of this Act.
- (4) In this section “estate” means the land, capital money, and securities representing capital money for the time being subject to a particular settlement.

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

**C33** S. 91 applied (with modifications) (23.12.2011) by [The Legal Services Act 2007 \(Designation as a Licensing Authority\) \(No. 2\) Order 2011 \(S.I. 2011/2866\)](#), art. 1(2), [Sch. 2](#)

## **92 Proceedings for protection or recovery of land settled or claimed as settled.**

The court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for the protection of settled land, or of any action or proceeding taken or proposed to be taken for the recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

## **93 Reference of questions to court.**

If a question arises or a doubt is entertained—

- (a) respecting the exercise or intended exercise of any of the powers conferred by this Act, or any enactment replaced by this Act, or the settlement, or any matter relating thereto; or
- (b) as to the person in whose favour a vesting deed or assent ought to be executed, or as to the contents thereof; or
- (c) otherwise in relation to property subject to a settlement;

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the tenant for life or statutory owner, or the trustees of the settlement, or any other person interested under the settlement, may apply to the court for its decision or directions thereon, or for the sanction of the court to any conditional contract, and the court may make such order or give such directions respecting the matter as the court thinks fit.

## PART VI

### GENERAL PROVISIONS AS TO TRUSTEES

#### 94 Number of trustees to act.

- (1) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the trustee is a trust corporation.
- (2) Subject as aforesaid the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

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

C34 S. 94 saved by [Trafalgar Estates Act 1947 \(c. 34\), s. 2\(1\)](#)

#### 95 Trustees' receipts.

The receipt or direction in writing of or by the trustees of the settlement, or where a sole trustee is a trust corporation, of or by that trustee, or of or by the personal representatives of the last surviving or continuing trustee, for or relating to any money or securities, paid or transferred to or by the direction of the trustees, trustee, or representatives, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

F5696 .....

#### Textual Amendments

F56 S. 96 repealed (1.2.2001) by [2000 c. 29, s. 40\(1\)\(3\), Sch. 2 Pt. II para. 12, Sch. 4 Pt. II](#) (with [s. 35](#)); [S.I. 2001/49, art. 2](#)

#### 97 Protection of trustees generally.

The trustees of a settlement, or any of them—

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- (a) are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and
- (b) in case of a purchase of land with capital money arising under this Act, or of an exchange, lease, or other disposition, are not liable for adopting any contract made by the tenant for life or statutory owner, or bound to inquire as to the propriety of the purchase, exchange, lease, or other disposition, or answerable as regards any price, consideration, or fine; and
- (c) are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode; and
- (d) are not liable in respect of purchase-money paid by them by the direction of the tenant for life or statutory owner to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by the direction of the tenant for life or statutory owner on the purchase, exchange, lease, or other disposition.

## 98 Protection of trustees in particular cases.

<sup>F57</sup>(1) .....

<sup>F57</sup>(2) .....

- (3) The trustees of the settlement shall not be liable in any way on account of any vesting instrument or other documents of title relating to the settled land, other than securities for capital money, being placed in the possession of the tenant for life or statutory owner:

Provided that where, if the settlement were not disclosed, it would appear that the tenant for life had a general power of appointment over, or was absolutely and beneficially entitled to the settled land, the trustees of the settlement shall, before they deliver the documents to him, require that notice of the last or only principal vesting instrument be written on one of the documents under which the tenant for life acquired his title, and may, if the documents are not in their possession, require such notice to be written as aforesaid, but, in the latter case, they shall not be liable in any way for not requiring the notice to be written.

- (4) This section applies to dealings and matters effected before as well as after the commencement of this Act.

### Textual Amendments

**F57** S. 98(1)(2) repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), Sch. 2 Pt. II para. 13, **Sch. 4 Pt. II** (with s. 35); S.I. 2001/49, **art. 2**

## 99 Indemnities to personal representatives and others.

Personal representatives, trustees, or other persons who have in good faith, pursuant to this Act, executed a vesting deed, assent, or other conveyance of the settled land, or a deed of discharge of trustees, shall be absolutely discharged from all liability in respect of the equitable interests and powers taking effect under the settlement, and

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shall be entitled to be kept indemnified at the cost of the trust estate from all liabilities affecting the settled land, but the person to whom the settled land is conveyed (not being a purchaser taking free therefrom) shall hold the settled land upon the trusts, if any, affecting the same.

**F58** **100** .....

#### Textual Amendments

**F58** S. 100 repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), Sch. 2 Pt. II para. 14, **Sch. 4 Pt. II** (with s. 35); S.I. 2001/49, **art. 2**

#### **101 Notice to trustees.**

(1) Save as otherwise expressly provided by this Act, a tenant for life or statutory owner, when intending to make a sale, exchange, lease, mortgage, or charge or to grant an option—

- (a) shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees severally, each at his usual or last known place of abode in the United Kingdom; and
- (b) shall give a like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life or statutory owner, by posting a registered letter, containing the notice, addressed to the solicitor at this place of business in the United Kingdom;

every letter under this section being posted not less than one month before the making or granting by the tenant for life or statutory owner of the sale, exchange, lease, mortgage, charge, or option, or of a contract for the same:

Provided that a notice under this section shall not be valid unless at the date thereof the trustee is a trust corporation, or the number of trustees is not less than two.

- (2) The notice required by this section of intention to make a sale, exchange, or lease, or to grant an option, may be notice of a general intention in that behalf.
- (3) The tenant for life or statutory owner is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, or leases effected, or in progress, or immediately intended.
- (4) Any trustee, by writing under his hand, may waive notice either in any particular case, or generally, and may accept less than one months' notice.
- (5) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

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

**C35** S. 101 applied (with modifications) (23.12.2011) by The Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011 (S.I. 2011/2866), art. 1(2), **Sch. 2**

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## 102 Management of land during minority or pending contingency.

- (1) If and as long as any person who is entitled to a beneficial interest in possession affecting land is an infant, the trustees appointed for this purpose by the settlement, or if there are none so appointed, then the trustees of the settlement, unless the settlement or the order of the court whereby they or their predecessors in office were appointed to be such trustees expressly provides to the contrary, or if there are none, then any persons appointed as trustees for this purpose by the court on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land on behalf of the infant, and in every such case the subsequent provisions of this section shall apply.
- (2) The trustees shall manage or superintend the management of the land, with full power—
  - (a) to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise; and
  - (b) to erect, pull down, rebuild, and repair houses, and other buildings and erections; and
  - (c) to continue the working of mines, minerals, and quarries which have usually been worked; and
  - (d) to drain or otherwise improve the land or any part thereof; and
  - [<sup>F59</sup>(e) to insure against risks of loss or damage due to any event under section 19 of the Trustee Act 1925;]
  - (f) to make allowances to and arrangements with tenants and others; and
  - (g) to determine tenancies, and to accept surrenders of leases and tenancies; and
  - (h) generally to deal with the land in a proper and due course of management;

but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.
- (3) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.
- (4) This section has effect subject to an express appointment by the settlement, or the court, of trustees for the purposes of this section or of any enactment replaced by this section.
- (5) Where any person is contingently entitled to land, this section shall, subject to any prior interests or charges affecting that land, apply until his interest vests, or, if his interest vests during his minority, until he attains the age of [<sup>F60</sup>eighteen years].  
  

This subsection applies only where a person becomes contingently entitled under an instrument coming into operation after the commencement of this Act.
- (6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, under which the interest of the infant or person contingently entitled as aforesaid arises, and has effect subject to the terms of that instrument and to the provisions therein contained.

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

#### Textual Amendments

- F59** S. 102(2)(e) substituted (1.2.2001) by 2000 c. 29, s. 40(1), [Sch. 2 Pt. II para. 15](#) (with s. 35); [S.I. 2001/49, art. 2](#)
- F60** Words substituted by [Family Law Reform Act 1969 \(c. 46\)](#), s. 1(3), [Sch. 1 Pt. I](#)

## PART VII

### RESTRICTIONS, SAVINGS, AND PROTECTION OF PURCHASERS

#### 103 Legal estate in settled land not to vest in trustee in bankruptcy of estate owner.

[<sup>F61</sup>For the purposes of determining, where the estate owner of any settled land is bankrupt, whether the legal estate in the settled land is comprised in, or is capable of being claimed for, the bankrupt's estate, the legal estate in the settled land shall be deemed not to vest in the] estate owner unless and until the estate owner becomes absolutely and beneficially entitled to the settled land free from all limitations, powers, and charges taking effect under the settlement.

#### Textual Amendments

- F61** Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), [Sch. 8 para. 3](#), (with saving in [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 437, [Sch. 11 para. 10](#))

#### 104 Powers not assignable, and contract not to exercise powers void.

- (1) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

This subsection applies notwithstanding that the estate or interest of the tenant for life under the settlement was not in possession when the assignment was made or took effect by operation of law.

- (2) A contract by a tenant for life not to exercise his powers under this Act or any of them shall be void.
- (3) Where an assignment for value of the estate or interest of the tenant for life was made before the commencement of this Act, this section shall operate without prejudice to the rights of the assignee, and in that case the assignee's rights shall not be affected without his consent, except that—
- (a) unless the assignee is actually in possession of the settled land or the part thereof affected, his consent shall not be requisite for the making of leases thereof by the tenant for life or statutory owner, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act; and
  - (b) the consent of the assignee shall not be required to an investment of capital money for the time being affected by the assignment in securities <sup>F62</sup>. . .

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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- (4) Where such an assignment for value is made or comes into operation after the commencement of this Act, the consent of the assignee shall not be requisite for the exercise by the tenant for life of any of the powers conferred by this Act:
- provided that—
- (a) the assignee shall be entitled to the same or the like estate or interest in or charge on the land, money, or securities for the time being representing the land, money, or securities comprised in the assignment, as he had by virtue of the assignment in the last-mentioned land, money, or securities; and
  - (b) if the assignment so provides, or if it takes effect by operation of the law of bankruptcy, and after notice thereof to the trustees of the settlement, [<sup>F63</sup>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;] and
  - (c) notice of the intended transaction shall, unless the assignment otherwise provides, be given to the assignee, but a purchaser shall not be concerned to see or inquire whether such notice has been given.
- (5) Where such an assignment for value was made before the commencement of this Act, then on the exercise by the tenant for life after such commencement of any of the powers conferred by this Act—
- (a) a purchaser shall not be concerned to see or inquire whether the consent of the assignee has been obtained; and
  - (b) the provisions of paragraph (a) of the last subsection shall apply for the benefit of the assignee.
- (6) A trustee or personal representative who is an assignee for value shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, and to bind by such consent all persons interested in the trust estate, or the estate of the testator or intestate.
- (7) If by the original assignment, or by any subsequent disposition, the estate or interest assigned or created by the original assignment, or any part thereof, or any derivative interest is settled on persons in succession, whether subject to any prior charge or not, and there is no trustee or personal representative in whom the entirety of the estate or interest so settled is vested, then the person for the time being entitled in possession under the limitations of that settlement, whether as trustee or beneficiary, or who would, if of full age, be so entitled, and notwithstanding any charge or incumbrance subsisting or to arise under such settlement, shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, and to bind by such consent all persons interested or to become interested under such settlement.
- (8) Where an assignee for value, or any person who has power to consent as aforesaid under this section, is an infant, the consent may be given on his behalf by his parents or parent or testamentary or other guardian in the order named.
- (9) The court shall have power to authorise any person interested under any assignment to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, on behalf of himself and all other persons interested, or who may become interested under such assignment.

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- (10) An assignment by operation of the law of bankruptcy, where the assignment comes into operation after the commencement of this Act, shall be deemed to be an assignment for value for the purposes of this section.
- (11) An instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement, and not an assignment for value for the purposes of this section:

Provided that this subsection shall not have effect with respect to any disposition made before the eighteenth day of August eighteen hundred and ninety, if inconsistent with the nature or terms of the disposition.

- (12) This section extends to assignments made or coming into operation before or after the commencement of this Act, and in this section “assignment” includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance, “assignee” has a corresponding meaning, and “assignee for value” includes persons deriving title under the original assignee.

#### Textual Amendments

- F62** Words in s. 104(3)(b) repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), Sch. 2 Pt. II para. 16(1)(a)(2), Sch. 4 Pt. II (with s. 35); S.I. 2001/49, art. 2
- F63** Words in s. 104(4)(b) substituted (1.2.2001) by 2000 c. 29, s. 40(1), Sch. 2 Pt. II para. 16(1)(b)(2) (with s. 35); S.I. 2001/49, art. 2

### 105 Effect of surrender of life estate to the next remainderman.

- (1) Where the estate or interest of a tenant for life under the settlement has been or is absolutely assured with intent to extinguish the same, either before or after the commencement of this Act, to the person next entitled in remainder or reversion under the settlement, then, . . . <sup>F64</sup> the statutory powers of the tenant for life under this Act shall, in reference to the property affected by the assurance, and notwithstanding the provisions of the last preceding section, cease to be exercisable by him, and the statutory powers shall thenceforth become exercisable as if he were dead, but without prejudice to any incumbrance affecting the estate or interest assured, and to the rights to which any incumbrancer would have been entitled if those powers had remained exercisable by the tenant for life.

This subsection applies whether or not any term of years or charge intervenes, or the estate of the remainderman or reversioner is liable to be defeated, and whether or not the estate or interest of the tenant for life under the settlement was in possession at the date of the assurance.

This subsection does not prejudice anything done by the tenant for life before the commencement of this Act, in exercise of any power operating under the Settled Land Acts, 1882 to 1890, or, unless the assurance provides to the contrary, operate to accelerate any such intervening term of years or charge as aforesaid.

- (2) In this section “assurance” means any surrender, conveyance, assignment or appointment under a power (whether vested in any person solely, or jointly in two or



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more persons) which operates in equity to extinguish the estate or interest of the tenant for life, and “assured” has a corresponding meaning.

#### Textual Amendments

**F64** Words repealed by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

### **106 Prohibition or limitation against exercise of powers void, and provision against forfeiture.**

- (1) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted—
  - (a) purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life or statutory owner to exercise any power under this Act, or his right to require the settled land to be vested in him; or
  - (b) attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising or to put him into a position inconsistent with his exercising, any power under this Act, or his right to require the settled land to be vested in him;

that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.
- (2) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any such power or right as aforesaid shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power or right, discharged from liability to determination or cesser by or on his exercising the same.
- (3) Notwithstanding anything in a settlement, the exercise by the tenant for life or statutory owner of any power under this Act shall not occasion a forfeiture.

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

**C36** S. 106(1) excluded by [Chequers Estate Act 1958 \(c. 60\)](#), [s. 3\(5\)](#)

### **107 Tenant for life trustee for all parties interested.**

- (1) A tenant for life or statutory owner shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.
- [<sup>F65</sup>(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.),

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- (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).]
- (2) The provision by a tenant for life or statutory owner, at his own expense, of dwellings available for the working classes on any settled land shall not be deemed to be an injury to any interest in reversion or remainder in that land, but such provision shall not be made by a tenant for life or statutory owner without the previous approval in writing of the trustees of the settlement.

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**Textual Amendments**

**F65** S. 107(1A) inserted (1.2.2001) by [2000 c. 29, s. 40\(1\)](#), [Sch. 2 Pt. II para. 17](#) (with [s. 35](#)); [S.I. 2001/49, art. 2](#)

**108 Saving for and exercise of other powers.**

- (1) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or (save as hereinafter provided) by trustees with his consent, or on his request, or by his direction, or otherwise, and the powers given by this Act are cumulative.
- (2) In case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life or statutory owner exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, notwithstanding anything in the settlement, any power (not being merely a power of revocation or appointment) relating to the settled land thereby conferred on the trustees of the settlement or other persons exercisable for any purpose, whether or not provided for in this Act, shall, after the commencement of this Act, be exercisable by the tenant for life or statutory owner as if it were an additional power conferred on the tenant for life within the next following section of this Act and not otherwise.
- (3) If a question arises or a doubt is entertained respecting any matter within this section, the tenant for life or statutory owner, or the trustees of the settlement, or any other person interested, under the settlement may apply to the court for its decision thereon, and the court may make such order respecting the matter as the court thinks fit.

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

**C37** S. 108(2) excluded by [Chequers Estate Act 1958 \(c. 60\)](#), [s. 3\(5\)](#)

**109 Saving for additional or larger powers under settlement.**

- (1) Nothing in this Act precludes a settlor from conferring on the tenant for life, or (save as provided by the last preceding section) on the trustees of the settlement, any powers additional to or larger than those conferred by this Act.
- (2) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the

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like incidents, effects, and consequences, as if they were conferred by this Act, and, if relating to the settled land, as if they were conferred by this Act on a tenant for life.

## **110 Protection of purchasers, &c.**

- (1) On a sale, exchange, lease, mortgage, charge, or other disposition, a purchaser dealing in good faith with a tenant for life or statutory owner shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent as the case may require, that could reasonably be obtained by the tenant for life or statutory owner, and to have complied with all the requisitions of this Act.
- (2) A purchaser of a legal estate in settled land shall not, except as hereby expressly provided, be bound or entitled to call for the production of the trust instrument or any information concerning that instrument or any ad valorem stamp duty thereon, and whether or not he has notice of its contents he shall, save as hereinafter provided, be bound and entitled if the last or only principal vesting instrument contains the statements and particulars required by this Act to assume that—
  - (a) the person in whom the land is by the said instrument vested or declared to be vested is the tenant for life or statutory owner and has all the powers of a tenant for life under this Act, including such additional or larger powers, if any, as are therein mentioned;
  - (b) the persons by the said instrument stated to be the trustees of the settlement, or their successors appearing to be duly appointed, are the properly constituted trustees of the settlement;
  - (c) the statements and particulars required by this Act and contained (expressly or by reference) in the said instrument were correct at the date thereof;
  - (d) the statements contained in any deed executed in accordance with this Act declaring who are the trustees of the settlement for the purposes of this Act are correct;
  - (e) the statements contained in any deed of discharge, executed in accordance with this Act, are correct:

Provided that, as regards the first vesting instrument executed for the purpose of giving effect to—

- (a) a settlement subsisting at the commencement of this Act; or
- (b) an instrument which by virtue of this Act is deemed to be a settlement; or
- (c) a settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act; or
- (d) an instrument inter vivos intended to create a settlement of a legal estate in land which is executed after the commencement of this Act and does not comply with the requirements of this Act with respect to the method of effecting such a settlement;

a purchaser shall be concerned to see—

- (i) that the land disposed of to him is comprised in such settlement or instrument;
- (ii) that the person in whom the settled land is by such vesting instrument vested, or declared to be vested, is the person in whom it ought to be vested as tenant for life or statutory owner;
- (iii) that the persons thereby stated to be the trustees of the settlement are the properly constituted trustees of the settlement.

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- (3) A purchaser of a legal estate in settled land from a personal representative shall be entitled to act on the following assumptions:—
- (i) If the capital money, if any, payable in respect of the transaction is paid to the personal representative, that such representative is acting under his statutory or other powers and requires the money for purposes of administration;
  - (ii) If such capital money is, by the direction of the personal representative, paid to persons who are stated to be the trustees of a settlement, that such persons are the duly constituted trustees of the settlement for the purposes of this Act, and that the personal representative is acting under his statutory powers during a minority;
  - (iii) In any other case, that the personal representative is acting under his statutory or other powers.
- (4) Where no capital money arises under a transaction, a disposition by a tenant for life or statutory owner shall, in favour of a purchaser of a legal estate, have effect under this Act notwithstanding that at the date of the transaction there are no trustees of the settlement.
- (5) If a conveyance of or an assent relating to land formerly subject to a vesting instrument does not state who are the trustees of the settlement for the purposes of this Act, a purchaser of a legal estate shall be bound and entitled to act on the assumption that the person in whom the land was thereby vested was entitled to the land free from all limitations, powers, and charges taking effect under that settlement, absolutely and beneficially, or, if so expressed in the conveyance or assent, as personal representative, or [<sup>F66</sup>trustee of land] or otherwise, and that every statement of fact in such conveyance or assent is correct.

#### Textual Amendments

**F66** Words in s. 110(5) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 2(12)**(with ss. 24(2), 25(4)(5)); **S.I. 1996/2974, art.2**

### **111 Purchaser of beneficial interest of tenant for life to have remedies of a legal owner.**

Where—

- (a) at the commencement of this Act the legal beneficial interest of a tenant for life under a settlement is vested in a purchaser; or
- (b) after the commencement of this Act a tenant for life conveys or deals with his beneficial interest in possession in favour of a purchaser, and the interest so conveyed or created would, but for the restrictions imposed by statute on the creation of legal estates, have been a legal interest;

the purchaser shall (without prejudice to the powers conferred by this Act on the tenant for life) have and may exercise all the same rights and remedies as he would have had or have been entitled to exercise if the interest had remained or been a legal interest and the reversion, if any, on any leases or tenancies derived out of the settled land had been vested in him:

Provided that, where the conveyance or dealing is effected after the commencement of this Act, the purchaser shall not be entitled to the possession of the documents of title relating to the settled land, but shall have the same rights with respect thereto as if the

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tenant for life had given to him a statutory acknowledgment of his right to production and delivery of copies thereof, and a statutory undertaking for the safe custody thereof.

The tenant for life shall not deliver any such documents to a purchaser of his beneficial interest, who is not also a purchaser of the whole of the settled land to which such documents relate.

## **112 Exercise of powers; limitation of provisions, &c.**

- (1) Where a power of sale, exchange, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or statutory owner or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.
- (2) Where any provision in this Act refers to sale, purchase, exchange, mortgaging, charging, leasing, or other disposition or dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, it shall (unless the contrary appears) be construed as extending only to sales, purchases, exchanges, mortgages, charges, leases, dispositions, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

## **PART VIII**

### **COURT, MINISTRY OF AGRICULTURE AND FISHERIES, PROCEDURE**

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

- C38** Style and title of Minister of Agriculture and Fisheries now changed to Minister of Agriculture, Fisheries and Food by [S.I. 1955/554](#) (1955 L.p. 1200)

## **113 Jurisdiction and procedure.**

- (1) All matters within the jurisdiction of the court under this Act shall, subject to the enactments for the time being in force with respect to the procedure of the [<sup>F34</sup>Senior Courts], be assigned to the Chancery Division of the High Court.
- (2) .....<sup>F67</sup>
- [<sup>F68</sup>(3)] The powers of the court may, as regards land not exceeding in capital value the county court limit, or in net annual value for rating the county court limit, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value the county court limit, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding the county court limit, be exercised by [<sup>F69</sup>the county] court. Section 147(2) and (3) of the County Courts Act 1984 (construction of references to net annual value for rating) shall apply for the purposes of this subsection as it applies for the purposes of that Act.]
- [<sup>F70</sup>(3A)] In the preceding subsection “ the county court limit ” means the county court limit for the time being specified by an Order in Council under [<sup>F71</sup>section 145 of the County Courts Act 1984 ] as the county court limit for the purposes of that subsection. ]
- (4) payment of money into court effectually exonerates therefrom the person making the payment.

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- (5) Every application to the court under this Act shall, subject to any rules of court to the contrary, be by summons at Chambers.
- (6) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.
- (7) On any application notice shall be served on such persons, if any, as the court thinks fit.
- (8) The court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.
- (9) The provisions of the <sup>M13</sup>Trustee Act, 1925, relating to vesting orders and orders appointing a person to convey shall apply to all vesting orders authorised to be made by this Act.

#### Textual Amendments

- F34** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 4**; [S.I. 2009/1604](#), art. 2(d)
- F67** S. 113(2) repealed by [Courts Act 1971 \(c. 23\)](#), **Sch. 11 Pt. II**
- F68** S. 113(3) substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), **Sch. 2 Pt. V para. 20(a)**
- F69** Words in s. 113(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 127**; [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F70** S. 113(3A) inserted by [Administration of Justice Act 1982 \(c. 53, SIF 34\)](#), s. 37, **Sch. 3 para. 4**
- F71** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), **Sch. 2 Pt. V para. 20(b)**

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

- C39** S. 113 amended by [S.I. 1990/776](#), **art. 4(1)(c)**
- C40** S. 113(3) modified by [County Courts Act 1984 \(c. 28, SIF 34\)](#), **s. 24(2)(a)**

#### Marginal Citations

- M13** [1925 c. 19](#).

### 114 Payment of costs out of settled property.

Where the court directs that any costs, charges, or expenses to be paid out of property subject to a settlement, the same shall, subject and according to the directions of the court, be raised and paid—

- (a) out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement; or
- (b) out of securities representing such money, or out of income of any such money or securities; or
- (c) out of any accumulations of income of land, money, or securities; or
- (d) by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations; or
- (e) by means of a legal mortgage of the settled land or any part thereof to be made by such person as the court directs;

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or partly in one of those modes and partly in another or others, or in any such other mode as the court thinks fit.

## 115 Powers of the Minister of Agriculture.

- (1) The [<sup>F72</sup>Secretary of State] shall, by virtue of this Act, have for the purposes of any Act, public general or local or private, making provision for the execution of improvements on settled land, all such powers and authorities as he has for the purposes of the <sup>M14</sup>Improvement of Land Act, 1864.
- (2) The provisions of the last-mentioned Act relating to proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the [<sup>F73</sup>Secretary of State] under any Act making provision as last aforesaid.
- (3) The provisions of any Act relating . . . <sup>F74</sup> to security for costs to be taken in respect of the business transacted under the Acts administered by the [<sup>F75</sup>Secretary of State] as successor of the Land Commissioners for England shall extend and apply to the business transacted by or under the direction of the [<sup>F75</sup>Secretary of State] under any Act, public general or local or private, by which any power or duty is conferred or imposed on him as such successor.

### Textual Amendments

- F72** Words in s. 115(1) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 4(2)** (with arts. 5(3), 6)
- F73** Words in s. 115(2) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 4(3)** (with arts. 5(3), 6)
- F74** Words repealed by **Agriculture (Miscellaneous Provisions) Act 1963 (c. 11)**, **Sch. Pt. II**
- F75** Words in s. 115(3) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 4(4)** (with arts. 5(3), 6)

### Marginal Citations

- M14** 1864 c. 114.

## 116 Filing of certificates, &c. at the Ministry of Agriculture.

- (1) Every certificate and report approved and made by the [<sup>F76</sup>Secretary of State] under this Act shall be filed in the office of the [<sup>F77</sup>Secretary of State].
- (2) An office copy of any certificate or report so filed shall be delivered out of such office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

### Textual Amendments

- F76** Words in s. 116(1) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 5(2)** (with arts. 5(3), 6)



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**F77** Words in s. 116(1) substituted (27.3.2002) by S.I. 2002/794, art. 5(1), **Sch. 1 para. 5(3)** (with arts. 5(3), 6)

## PART IX

### SUPPLEMENTARY PROVISIONS

#### 117 Definitions.

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

- (i) “Building purposes” include the erecting and the improving of, and the adding to, and the repairing of buildings; and a “building lease” is a lease for any building purposes or purposes connected therewith;
- (ii) “Capital money arising under this Act” means capital money arising under the powers and provisions of this Act or the Acts replaced by this Act, and receivable for the trusts and purposes of the settlement and includes securities representing capital money;
- (iii) “Death duty” means estate duty, <sup>F78</sup>... and every other duty leviable or payable on death;
- (iv) “Determinable fee” means a fee determinable whether by limitation or condition;
- (v) “Disposition” and “conveyance” include a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and “dispose of” and “convey” have corresponding meanings;
- (vi) “Dower” includes “freebench”;
- (vii) “Hereditaments” mean real property which on an intestacy might before the commencement of this Act have devolved on an heir;
- (viii) “Instrument” does not include a statute unless the statute creates a settlement;
- (ix) “Land” includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and any estate or interest in land [<sup>F79</sup>, but does not (except in the phrase “trust of land”) include] an undivided share in land;
- (x) “Lease” includes an agreement for a lease, and “forestry lease” means a lease to the Forestry Commissioners for any purpose for which they are authorised to acquire land by the <sup>M15</sup>Forestry Act, 1919;
- (xi) “Legal mortgage” means a mortgage by demise or subdemise or a charge by way of legal mortgage, and “legal mortgagee” has a corresponding meaning; “legal estate” means an estate interest or charge in or over land (subsisting or created at law) which is by statute authorised to subsist or to be created at law; and “equitable interests” mean all other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest “capable of subsisting at law” means such an equitable interest as could validly subsist at law, if clothed with the legal estate; and “estate owner” means the owner of a legal estate;



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- (xii) “Limitation” includes a trust, and “trust” includes an implied or constructive trust;
- <sup>F80</sup>(xiii) .....
- (xiv) “Manor” includes lordship, and reputed manor or lordship; and “manorial incident” has the same meaning as in the <sup>M16</sup>Law of Property Act, 1922;
- (xv) “Mines and minerals” mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and “mining purposes” include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes; and a “mining lease” is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes;
- <sup>F81</sup>(xvi) .....
- (xvii) “Notice” includes constructive notice;
- (xviii) “personal representative” means the executor, original or by representation, or administrator, for the time being of a deceased person, and where there are special personal representatives for the purposes of settled land means those personal representatives;
- (xix) “Possession” includes receipt of rents and profits, or the right to receive the same, if any; and “income” includes rents and profits;
- (xx) “property” includes any thing in action, and any interest in real or personal property;
- (xxi) “purchaser” means a purchaser in good faith for value, and includes a lessee, mortgagee or other person who in good faith acquires an interest in settled land for value; and in reference to a legal estate includes a chargee by way of legal mortgage;
- (xxii) “Rent” includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, “payment” includes delivery; and “fine” includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift;
- (xxiii) “Securities” include stocks, funds, and shares;
- (xxiv) “Settled land” includes land which is deemed to be settled land; “settlement” includes an instrument or instruments which under this Act or the Acts which it replaces is or are deemed to be or which together constitute a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of this Act; “a settlement subsisting at the commencement of this Act” includes a settlement created by virtue of this Act immediately on the commencement thereof; and “trustees of the settlement” mean the trustees thereof for the purposes of this Act howsoever appointed or constituted;
- (xxv) “Small dwellings” mean dwelling-houses of a rateable value not exceeding one hundred pounds per annum;
- (xxvi) “Statutory owner” means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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- of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life;
- (xxvii) “Steward” includes deputy steward, or other proper officer, of a manor;
- (xxviii) “Tenant for life” includes a person (not being a statutory owner) who has the powers of a tenant for life under this Act, and also (where the context requires) one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life; and “tenant in tail” includes a person entitled to an entailed interest in any property; and “entailed interest” has the same meaning as in the <sup>M17</sup>Law of Property Act, 1925;
- (xxix) A “term of years absolute” means a term of years, taking effect either in possession or in reversion, with or without impeachment for waste, whether at a rent or not and whether subject or not to another legal estate, and whether certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest), but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by statute to take effect within that period; and in this definition the expression “term of years” includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;
- (xxx) “Trust corporation” means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the <sup>M18</sup>Public Trustee Act, 1906, to act as custodian trustee, and “trust for sale” [<sup>F82</sup>has the same meaning] as in the <sup>M19</sup>Law of Property Act, 1925;
- (xxxi) In relation to settled land “vesting deed” or “vesting order” means the instrument whereby settled land is conveyed to or vested or declared to be vested in a tenant for life or statutory owner; “vesting assent” means the instrument whereby a personal representative, after the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, vests settled land in a person entitled as tenant for life or statutory owner; “vesting instrument” means a vesting deed, a vesting assent or, where the land affected remains settled land, a vesting order; “principal vesting instrument” includes any vesting instrument other than a subsidiary vesting deed; and “trust instrument” means the instrument whereby the trusts of the settled land are declared, and includes any two or more such instruments and a settlement or instrument which is deemed to be a trust instrument;
- (xxxii) “United Kingdom” means Great Britain and Northern Ireland;
- (xxxiii) “Will” includes codicil.

[<sup>F83</sup>(1A) Any reference in this Act to money, securities or proceeds of sale being paid or transferred into court shall be construed as referring to the money, securities or proceeds being paid or transferred into the [<sup>F34</sup>Senior Courts] or any other court that has jurisdiction, and any reference in this Act to the court, in a context referring to the investment or application of money, securities or proceeds of sale paid or transferred into court, shall be construed, in the case of money, securities or proceeds paid or transferred into the [<sup>F34</sup>Senior Courts], as referring to the High Court, and, in the case of money, securities or proceeds paid or transferred into another court, as referring to that other court].

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

- (2) Where an equitable interest in or power over property arises by statute or operation of law, references to the “creation” of an interest or power include any interest or power so arising.
- (3) References to registration under the <sup>M20</sup>Land Charges Act, 1925, apply to any registration made under any statute which is by the Land Charges Act, 1925, to have effect as if the registration had been made under that Act.

#### Textual Amendments

- F34** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 4**; [S.I. 2009/1604](#), art. 2(d)
- F78** Words repealed with saving by [Finance Act 1949 \(c. 47\)](#), **Sch. 11 Pt. IV**
- F79** Words in s. 117(1)(ix) substituted (1.1.1997) by [1996 c. 47](#), s. 25(1), **Sch. 3 para. 2(13)(a)**(with ss. 24(2), 25(4)(5)); [S.I. 1996/2974](#), art. 2
- F80** S. 117(1)(xiii) repealed by [Mental Health Act 1959 \(c. 72\)](#), **Sch. 8 Pt. I**
- F81** S. 117(1)(xvi) repealed (27.3.2002) by [S.I. 2002/794](#), art. 5(2), **Sch. 2** (with art. 6)
- F82** Words in s. 117(1)(xxx) substituted (1.1.1997) by [1996 c. 47](#), s. 25(1), **Sch. 3 para. 2(13)(b)**(with ss. 24(2), 25(4)(5)); [S.I. 1996/2974](#), art. 2
- F83** S. 117(1A) added by [Administration of Justice Act 1965 \(c. 2\)](#), **Sch. 1**

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

- C41** [S. 117\(1\)](#) modified (31.10.2022) by [2011 c. 25](#), s. 334A(2) (as inserted by [Charities Act 2022 \(c. 6\)](#), ss. 32(1), 41(4) (with s. 32(2)); [S.I. 2022/1109](#), **Sch. para. 7**)
- C42** [S. 117\(1\)\(ii\)](#) extended by [Land Compensation Act 1973 \(c. 26, SIF 28:1\)](#), ss. 10(3), 52(7)
- C43** Definition of “forestry lease” amended with the substitution for references to Forestry Commissioners of references to Minister of Agriculture, Fisheries and Food (E.) and Secretary of State (W.): [Forestry Act 1967 \(c. 10\)](#), **Sch. 6 para. 5**
- C44** [S. 117\(1\)\(xx\)](#): definition extended (coming into force in accordance with s. 53(3) of the amending Measure) by [Cathedrals Measure 2021 \(No. 2\)](#), **Sch. 1 para. 7(a)** (with ss. 42(4), 48, 52(1))
- C45** [S. 117\(1\)\(xxx\)](#): definition extended by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), s. 3, [S.I. 1952/862 \(1952 II, P. 2322\)](#), [Clergy Pensions Measure 1961 \(No. 3\)](#), s. 31
- C46** Definition in [s. 117\(1\)\(xxx\)](#) extended (retrospectively) by [Charities Act 1960 \(c. 58\)](#) s. 21A(a) (which was inserted and applied retrospectively (1. 9. 1992) by [Charities Act 1992 \(c. 41\)](#), s. 14(1)(2); [S.I. 1992/1900](#), art. 2(1), **Sch. 1**) and the said s. 14 falls with the partial repeal (1.8.1993) of that 1960 Act by [1993 c. 10](#), s. 98(2), **Sch. 7**.  
Definition in [s. 117\(1\)\(xxx\)](#) extended (retrospectively) by [1993 c. 10](#), s. 35(1)(a)(2), 99(1)
- C47** Definition in [s. 117\(1\)\(xxx\)](#) extended (retrospectively) by [Charities Act 2011 \(c. 25\)](#), s. 10(2), **Sch. 7 para. 3(1)(2)(a)(3)** (with s. 20(2), **Sch. 8**)
- C48** [S. 117\(1\)\(xxx\)](#) modified by [Academies Act 2010 \(c. 32\)](#), s. 12(1A)(1B) (as inserted (1.2.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 14 para. 20(2)**; [S.I. 2012/84](#), art. 3 (with art. 5))

#### Marginal Citations

- M15** 1919 c. 58.  
**M16** 1922 c. 16.  
**M17** 1925 c. 20.  
**M18** 1906 c. 55.  
**M19** 1925 c. 20.  
**M20** 1925 c. 22.

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

<sup>F84</sup>**118 Retrospective amendment of certain provisions of Settled Land Acts.**

**Textual Amendments**

**F84** S. 118 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 12](#)

**119 Repeals, savings, and construction.**

- (1) .....<sup>F85</sup> without prejudice to the provisions of section thirty-eight of the <sup>M21</sup>Interpretation Act, 1889:—
- (a) Nothing in this repeal shall affect the validity or legality of any dealing in land or other transaction completed before the commencement of this Act, or any title or right acquired or appointment made before the commencement of this Act, but, subject as aforesaid, this Act shall, except where otherwise expressly provided, apply to and in respect of settlements and other instruments whether made or coming into operation before or after the commencement of this Act;
  - (b) Nothing in this repeal shall affect any rules, orders, or other instruments made under any enactment so repealed, but all such rules, orders and instruments shall continue in force as if made under the corresponding enactment in this Act;
  - (c) References in any document to any enactment repealed by this Act shall be construed as references to this Act or the corresponding enactment in this Act.
- (2) References in any statute to the <sup>M22</sup>Settled Estates Act, 1877, and to any enactment which it replaced shall be construed as references to this Act.
- <sup>F86</sup>(3) .....

**Textual Amendments**

**F85** Words repealed by [Statute Law Revision Act 1950 \(14 Geo. 6 c. 6\)](#)

**F86** S. 119(3) repealed (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), s. 136(2), [Sch. 11 para. 1](#), [Sch. 13](#) (with s. 129, [Sch. 12 para. 1](#)); S.I. 2003/1725, art. 2(1)

**Marginal Citations**

**M21** 1889 c. 63.

**M22** 1877 c. 18.

**120 †Short title, commencement and extent.**

- (1) This Act may be cited as the Settled Land Act, 1925.
- (2) .....<sup>F87</sup>
- (3) This Act extends to England and Wales only.

**Textual Amendments**

**F87** S. 120(2) repealed by [Statute Law Revision Act 1950 \(14 Geo. 6 c. 6\)](#)

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**Changes to legislation:** *There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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

**C49** Unreliable margin note

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

<sup>F88</sup> FIRST SCHEDULE

Section 15.

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**Textual Amendments**

**F88** Sch. FIRST repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 12

SECOND SCHEDULE

Section 37.

TRANSITIONAL PROVISIONS AFFECTING EXISTING SETTLEMENTS

**PARAGRAPH 1**

PROVISIONS FOR VESTING LEGAL ESTATE IN TENANT FOR LIFE OR STATUTORY OWNER

- 1 (1) A settlement subsisting at the commencement of this Act is, for the purposes of this Act, a trust instrument.
- (2) As soon as practicable after the commencement of this Act, the trustees for the purposes of this Act of every settlement of land subsisting at the commencement of this Act (whether or not the settled land is already vested in them), may and on the request of the tenant for life or statutory owner, shall at the cost of the trust estate, execute a principal vesting deed (containing the proper statements and particulars) declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named (being the tenant for life or statutory owner, and including themselves if they are the statutory owners), and such deed shall (unless the legal estate is already so vested) operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.
- (3) If there are no trustees of the settlement then (in default of a person able and willing to appoint such trustees), an application shall be made to the court by the tenant for life or statutory owner, or by any other person interested, for the appointment of such trustees.
- (4) If default is made in the execution of any such principal vesting deed, the provisions of this Act relating to vesting orders of settled land shall apply in like manner as if the trustees of the settlement were persons in whom the settled land is wrongly vested.
- (5) This paragraph does not apply where, at the commencement of this Act, settled land is held at law or in equity in undivided shares vested in possession.
- (6) In the case of settlements subsisting at the commencement of this Act, all the estates, interests and powers thereby limited which are not by statute otherwise converted into equitable interests or powers, shall, as from the date of the principal vesting deed or the vesting order, take effect only in equity.

[<sup>F89</sup>This sub-paragraph shall not apply to any legal estate or interest vested in a mortgagee or other purchaser for money or money's worth.]

- (7) This paragraph does not apply where settled land is vested in personal representatives at the commencement of this Act, or where settled land becomes vested in personal

*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

representatives before a principal vesting deed has been executed pursuant to this paragraph.

- (8) No ad valorem stamp duty shall be payable in respect of a vesting deed or order made for giving effect to an existing settlement.

#### **Textual Amendments**

**F89** Para. added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

### **PARAGRAPH 2**

#### PROVISIONS WHERE SETTLED LAND IS AT COMMENCEMENT OF ACT VESTED IN PERSONAL REPRESENTATIVES

- 2 (1) Where settled land remains at the commencement of this Act vested in the personal representatives of a person who dies before such commencement, or becomes vested in personal representatives before a principal vesting deed has been executed pursuant to the last preceding paragraph, the personal representatives shall hold the settled land on trust, if and when required so to do, to convey the same to the person who, under the trust instrument, or by virtue of this Act, is the tenant for life or statutory owner and, if more than one, as joint tenants.
- (2) A conveyance under this paragraph shall be made at the cost of the trust estate and may be made by an assent in writing signed by the personal representatives which shall operate as a conveyance. No stamp duty is payable in respect of a vesting assent.
- (3) The obligation to convey settled land imposed on the personal representatives by this paragraph is subject and without prejudice—
- (a) to their rights and powers for purposes of administration, and
  - (b) to their being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest therein for which they are accountable, and any interest and costs in respect of such duties, or that they are otherwise effectually indemnified against such duties, interest and costs.
- (4) A conveyance under this paragraph shall—
- (a) if by deed, be a principal vesting deed, and
  - (b) if by an assent, be a vesting assent, which shall contain the like statements and particulars as are required by this Act in the case of a principal vesting deed.
- (5) Nothing contained in this paragraph affects the rights of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under this paragraph as may be required for giving effect to the obligations imposed on them by statute.
- (6) A conveyance by personal representatives under this paragraph, if made by deed, may contain a reservation to themselves of a term of years absolute in the land conveyed upon trusts for indemnifying them against any unpaid death duties in respect of the land conveyed or any interest therein, and any interest and costs in respect of such duties.

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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- (7) Nothing contained in this paragraph affects any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under this section.

### PARAGRAPH 3

#### PROVISIONS AS TO INFANTS

- 3 (1) Where, at the commencement of this Act, an infant is beneficially entitled to land in possession for an estate in fee simple or for a term of years absolute, or would, if of full age, be a tenant for life or have the powers of a tenant for life, the settled land shall, by virtue of this Act, vest in the trustees (if any) of the settlement upon such trusts as may be requisite for giving effect to the rights of the infant and other persons (if any) interested:

provided that, if there are no such trustees, then—

- (i) Pending their appointment, the settled land shall, by virtue of this Act, vest in the Public Trustee upon the trusts aforesaid:
- (ii) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner unless and until requested in writing to act on behalf of the infant by his parents or parent or testamentary or other guardian in the order named:
- (iii) After the Public Trustee has been so requested to act, and has accepted the trust, he shall become the trustee of the settlement, and no trustee shall (except by an order of the court) be appointed in his place without his consent:
- (iv) If there is no other person able and willing to appoint trustees the parents or parent or testamentary or other guardian of the infant, if respectively able and willing to act, shall (in the order named) have power by deed to appoint trustees of the settlement in place of the Public Trustee in like manner as if the Public Trustee had refused to act in the trust, and to vest the settled land in them on the trusts aforesaid, and the provisions of the <sup>M23</sup>Trustee Act, 1925, relating to the appointment of new trustees, and the vesting of trust property shall apply as if the persons aforesaid (in the order named) had been nominated by the settlement for the purpose of appointing new trustees thereof; and in default of any such appointment the infant by his next friend, may, at any time during the minority, apply to the court for the appointment of trustees of the settlement, and the court may make such order as it thinks fit, and if thereby trustees of the settlement are appointed, the settled land shall, by virtue of this Act, vest in the trustees as joint tenants upon the trusts aforesaid:

Provided that in favour of a purchaser a statement in the deed of appointment that the father or mother or both are dead or are unable or unwilling to make the appointment shall be conclusive evidence of the fact stated.

- (v) If land to which an infant is beneficially entitled in possession for an estate in fee simple or for a term of years absolute vests in the Public Trustee, but the Public Trustee does not become the trustee of the settlement, and trustees of the settlement are not appointed in his place, then, if and when the infant attains the age of twenty-one years, the land shall vest in him.



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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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- (2) The provisions of this paragraph shall extend to the legal estate in the settled land, except where such legal estate is, at or immediately after the commencement of this Act, vested in personal representatives, in which case this paragraph shall have effect without prejudice to the provisions of paragraph two of this Schedule.
- (3) Where, at the commencement of this Act, any persons appointed under section sixty of the <sup>M24</sup>Settled Land Act, 1882, have power to act generally or for any specific purpose on behalf of an infant, then those persons shall, by virtue of this Act, become and be the trustees of the settlement.
- (4) Notwithstanding that the settled land is by virtue of this paragraph vested in the trustees of the settlement, they shall, at the cost of the trust estate, in accordance with this Act, execute a principal vesting deed declaring that the settled land is vested in them.
- (5) This paragraph does not apply where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute jointly with a person of full age (for which case provision is made in the <sup>M25</sup>Law of Property Act, 1925), but it applies to two or more infants entitled as aforesaid jointly.
- (6) This paragraph does not apply where an infant would, if of full age, constitute the tenant for life or have the powers of a tenant for life together with another person of full age, but it applies to two or more infants who would, if all of them were of full age, together constitute the tenant for life or have the powers of a tenant for life.

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#### Marginal Citations

- M23** 1925 c. 19.  
**M24** 1882 c. 38.  
**M25** 1925 c. 20.

### THIRD SCHEDULE

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

- C50** Power to extend Sch. 3 given by [Agriculture Act 1967 \(c. 22\)](#), **s. 36(5)** and [Agriculture Act 1970 \(c. 40\)](#), **s. 30(1)**  
**C51** Sch. 3 extended by [S.I. 1968/704](#)

### PART I

#### IMPROVEMENTS, THE COSTS OF WHICH ARE NOT LIABLE TO BE REPLACED BY INSTALMENTS

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

- C52** Sch. 3 Pt. I extended by [Landlord and Tenant \(War Damage\) Act 1939 \(c. 72\)](#), **s. 3**, [Hill Farming Act 1946 \(c. 73\)](#), **s. 11** and [S.I. 1951/1816](#) (1951 I, p. 45)

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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**C53** Sch. 3 Pt. I modified by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 89(1), 99, [Sch. 13 para. 3](#)

- (i) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses:
- (ii) Bridges:
- (iii) Irrigation; warping:
- (iv) Drains, pipes, and machinery for supply and distribution of sewage as manure:
- (v) Embanking or weiring from a river or lake, or from the sea, or a tidal water:
- (vi) Groynes; sea walls; defences against water:
- (vii) Inclosing; straightening of fences; re-division of fields:
- (viii) Reclamation; dry warping:
- (ix) Farm roads; private roads; roads or streets in villages or towns:
- (x) Clearing; trenching; planting:
- (xi) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not:
- (xii) Farmhouses, offices, and outbuildings, and other buildings for farm purposes:
- (xiii) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise:
- (xiv) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption:
- (xv) Tramways; railways; canals; docks:
- (xvi) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:
- (xvii) Markets and market-places:
- (xviii) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land:
- (xix) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid:
- (xx) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines:
- (xxi) Reconstruction, enlargement, or improvement of any of those works:
- (xxii) The provision of small dwellings, either by means of building new buildings or by means of the reconstruction, enlargement, or improvement of existing buildings, if

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*Changes to legislation: There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)*

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that provision of small dwellings is, in the opinion of the court, not injurious to the settled land or is agreed to by the tenant for life and the trustees of the settlement:

- (xxiii) Additions to or alterations in buildings reasonably necessary or proper to enable the same to be let:
- (xxiv) Erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof:
- (xxv) The rebuilding of the principal mansion house on the settled land:

provided that the sum to be applied under this head shall not exceed one-half of the annual rental of the settled land.

## PART II

### IMPROVEMENTS, THE COSTS OF WHICH THE TRUSTEES OF THE SETTLEMENT OR THE COURT MAY REQUIRE TO BE REPLACED BY INSTALMENTS

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

**C54** Sch. 3 Pt. II extended by [Town and Country Planning Act 1971 \(c. 78\), s. 275\(2\)](#)

**C55** Sch. 3 Pt. II extended by [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c. 9, SIF 123:1\), s. 87](#)

- (i) Residential houses for land or mineral agents, managers, clerks, bailiffs, woodmen, gamekeepers and other persons employed on the settled land, or in connexion with the management or development thereof:
- (ii) Any offices, workshops and other buildings of a permanent nature required in connexion with the management or development of the settled land or any part thereof:
- (iii) The erection and building of dwelling houses, shops, buildings for religious, educational, literary, scientific, or public purposes, market places, market houses, places of amusement and entertainment, gasworks, electric light or power works, or any other works necessary or proper in connexion with the development of the settled land, or any part thereof as a building estate:
- (iv) Restoration or reconstruction of buildings damaged or destroyed by dry rot:
- (v) Structural additions to or alterations in buildings reasonably required, whether the buildings are intended to be let or not, or are already let:
- (vi) Boring for water and other preliminary works in connexion therewith.

## PART III

### IMPROVEMENTS, THE COSTS OF WHICH THE TRUSTEES OF THE SETTLEMENT AND THE COURT MUST REQUIRE TO BE REPLACED BY INSTALMENTS

- (i) Heating, hydraulic or electric power apparatus for buildings, and engines, pumps, lifts, rams, boilers, flues, and other works required or used in connexion therewith:

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**Changes to legislation:** There are currently no known outstanding effects for the Settled Land Act 1925. (See end of Document for details)

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- (ii) Engine houses, engines, gasometers, dynamos, accumulators, cables, pipes, wiring, switchboards, plant and other works required for the installation of electric, gas, or other artificial light, in connexion with any principal mansion house, or other house or buildings; but not electric lamps, gas fittings, or decorative fittings required in any such house or building:
- (iii) Steam rollers, traction engines, motor lorries and moveable machinery for farming or other purposes.

## F<sup>90</sup>FOURTH SCHEDULE

Section 118.

### Textual Amendments

**F90** Sch. FOURTH repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), **Sch. 1 Pt. 12**

## FIFTH SCHEDULE

. . . **F91**

### Textual Amendments

**F91** [Sch. 5](#) repealed by [Statute Law Revision Act 1950 \(14 Geo. 6 c. 6\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Settled Land Act 1925.



# Trusts of Land and Appointment of Trustees Act 1996

## 1996 CHAPTER 47

An Act to make new provision about trusts of land including provision phasing out the Settled Land Act 1925, abolishing the doctrine of conversion and otherwise amending the law about trusts for sale of land; to amend the law about the appointment and retirement of trustees of any trust; and for connected purposes. [24th July 1996]

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:—

### Extent Information

**E1** Act extends to England and Wales except as mentioned in s. 27(4)

### Commencement Information

**II** Act not in force at Royal Assent, see [s. 27\(2\)](#); Act wholly in force at 1.1.1997

## PART I

### TRUSTS OF LAND

#### *Introductory*

#### **1 Meaning of “trust of land”.**

(1) In this Act—

- (a) “trust of land” means (subject to subsection (3)) any trust of property which consists of or includes land, and

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- (b) “trustees of land” means trustees of a trust of land.
- (2) The reference in subsection (1)(a) to a trust—
  - (a) is to any description of trust (whether express, implied, resulting or constructive), including a trust for sale and a bare trust, and
  - (b) includes a trust created, or arising, before the commencement of this Act.
- (3) The reference to land in subsection (1)(a) does not include land which (despite section 2) is settled land or which is land to which the <sup>M1</sup>Universities and College Estates Act 1925 applies.

#### Marginal Citations

**M1** 1925 c. 24.

### *Settlements and trusts for sale as trusts of land*

## 2 Trusts in place of settlements.

- (1) No settlement created after the commencement of this Act is a settlement for the purposes of the <sup>M2</sup>Settled Land Act 1925; and no settlement shall be deemed to be made under that Act after that commencement.
- (2) Subsection (1) does not apply to a settlement created on the occasion of an alteration in any interest in, or of a person becoming entitled under, a settlement which—
  - (a) is in existence at the commencement of this Act, or
  - (b) derives from a settlement within paragraph (a) or this paragraph.
- (3) But a settlement created as mentioned in subsection (2) is not a settlement for the purposes of the Settled Land Act 1925 if provision to the effect that it is not is made in the instrument, or any of the instruments, by which it is created.
- (4) Where at any time after the commencement of this Act there is in the case of any settlement which is a settlement for the purposes of the Settled Land Act 1925 no relevant property which is, or is deemed to be, subject to the settlement, the settlement permanently ceases at that time to be a settlement for the purposes of that Act.  
 In this subsection “relevant property” means land and personal chattels to which section 67(1) of the Settled Land Act 1925 (heirlooms) applies.
- (5) No land held on charitable, ecclesiastical or public trusts shall be or be deemed to be settled land after the commencement of this Act, even if it was or was deemed to be settled land before that commencement.
- (6) Schedule 1 has effect to make provision consequential on this section (including provision to impose a trust in circumstances in which, apart from this section, there would be a settlement for the purposes of the Settled Land Act 1925 (and there would not otherwise be a trust)).

#### Marginal Citations

**M2** 1925 c. 18.

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### 3 Abolition of doctrine of conversion.

- (1) Where land is held by trustees subject to a trust for sale, the land is not to be regarded as personal property; and where personal property is subject to a trust for sale in order that the trustees may acquire land, the personal property is not to be regarded as land.
- (2) Subsection (1) does not apply to a trust created by a will if the testator died before the commencement of this Act.
- (3) Subject to that, subsection (1) applies to a trust whether it is created, or arises, before or after that commencement.

### 4 Express trusts for sale as trusts of land.

- (1) In the case of every trust for sale of land created by a disposition there is to be implied, despite any provision to the contrary made by the disposition, a power for the trustees to postpone sale of the land; and the trustees are not liable in any way for postponing sale of the land, in the exercise of their discretion, for an indefinite period.
- (2) Subsection (1) applies to a trust whether it is created, or arises, before or after the commencement of this Act.
- (3) Subsection (1) does not affect any liability incurred by trustees before that commencement.

### 5 Implied trusts for sale as trusts of land.

- (1) Schedule 2 has effect in relation to statutory provisions which impose a trust for sale of land in certain circumstances so that in those circumstances there is instead a trust of the land (without a duty to sell).
- (2) Section 1 of the <sup>M3</sup>Settled Land Act 1925 does not apply to land held on any trust arising by virtue of that Schedule (so that any such land is subject to a trust of land).

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#### Marginal Citations

**M3** 1925 c. 18.

#### *Functions of trustees of land*

### 6 General powers of trustees.

- (1) For the purpose of exercising their functions as trustees, the trustees of land have in relation to the land subject to the trust all the powers of an absolute owner.
- (2) Where in the case of any land subject to a trust of land each of the beneficiaries interested in the land is a person of full age and capacity who is absolutely entitled to the land, the powers conferred on the trustees by subsection (1) include the power to convey the land to the beneficiaries even though they have not required the trustees to do so; and where land is conveyed by virtue of this subsection—
  - (a) the beneficiaries shall do whatever is necessary to secure that it vests in them, and
  - (b) if they fail to do so, the court may make an order requiring them to do so.



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- (3) The trustees of land have power to [<sup>F1</sup>acquire land under the power conferred by section 8 of the Trustee Act 2000.]
- <sup>F2</sup>(4) .....
- (5) In exercising the powers conferred by this section trustees shall have regard to the rights of the beneficiaries.
- (6) The powers conferred by this section shall not be exercised in contravention of, or of any order made in pursuance of, any other enactment or any rule of law or equity.
- (7) The reference in subsection (6) to an order includes an order of any court or of the [<sup>F3</sup>Charity Commission].
- (8) Where any enactment other than this section confers on trustees authority to act subject to any restriction, limitation or condition, trustees of land may not exercise the powers conferred by this section to do any act which they are prevented from doing under the other enactment by reason of the restriction, limitation or condition.
- <sup>F4</sup>[(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.]

#### Textual Amendments

- F1** Words in s. 6(3) substituted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 45(1)** (with s. 35); S.I. 2001/49, **art. 2**
- F2** S. 6(4) repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), **Sch. 2 Pt. II para. 45(2), Sch. 4 Pt. II** (with s. 35); S.I. 2001/49, **art. 2**
- F3** Words in s. 6(7) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 182**; S.I. 2007/309, **art. 2, Sch.**
- F4** S. 6(9) inserted (1.2.2001) by 2000 c. 29, s. 40(1), **Sch. 2 Pt. II para. 45(3)** (with s. 35); S.I. 2001/49, **art. 2**

## 7 Partition by trustees.

- (1) The trustees of land may, where beneficiaries of full age are absolutely entitled in undivided shares to land subject to the trust, partition the land, or any part of it, and provide (by way of mortgage or otherwise) for the payment of any equality money.
- (2) The trustees shall give effect to any such partition by conveying the partitioned land in severalty (whether or not subject to any legal mortgage created for raising equality money), either absolutely or in trust, in accordance with the rights of those beneficiaries.
- (3) Before exercising their powers under subsection (2) the trustees shall obtain the consent of each of those beneficiaries.
- (4) Where a share in the land is affected by an incumbrance, the trustees may either give effect to it or provide for its discharge from the property allotted to that share as they think fit.
- (5) If a share in the land is absolutely vested in a minor, subsections (1) to (4) apply as if he were of full age, except that the trustees may act on his behalf and retain land or other property representing his share in trust for him.

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[<sup>F5</sup>(6) Subsection (1) is subject to sections 21 (part-unit: interests) and 22 (part-unit: charging) of the Commonhold and Leasehold Reform Act 2002.]

#### Textual Amendments

**F5** S. 7(6) added (27.9.2004) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), s. 181\(1\), Sch. 5 para. 8](#); S.I. 2004/1832, art. 2

### 8 Exclusion and restriction of powers.

- (1) Sections 6 and 7 do not apply in the case of a trust of land created by a disposition in so far as provision to the effect that they do not apply is made by the disposition.
- (2) If the disposition creating such a trust makes provision requiring any consent to be obtained to the exercise of any power conferred by section 6 or 7, the power may not be exercised without that consent.
- (3) Subsection (1) does not apply in the case of charitable, ecclesiastical or public trusts.
- (4) Subsections (1) and (2) have effect subject to any enactment which prohibits or restricts the effect of provision of the description mentioned in them.

### 9 Delegation by trustees.

- (1) The trustees of land may, by power of attorney, delegate to any beneficiary or beneficiaries of full age and beneficially entitled to an interest in possession in land subject to the trust any of their functions as trustees which relate to the land.
- (2) Where trustees purport to delegate to a person by a power of attorney under subsection (1) functions relating to any land and another person in good faith deals with him in relation to the land, he shall be presumed in favour of that other person to have been a person to whom the functions could be delegated unless that other person has knowledge at the time of the transaction that he was not such a person.

And it shall be conclusively presumed in favour of any purchaser whose interest depends on the validity of that transaction that that other person dealt in good faith and did not have such knowledge if that other person makes a statutory declaration to that effect before or within three months after the completion of the purchase.

- (3) A power of attorney under subsection (1) shall be given by all the trustees jointly and (unless expressed to be irrevocable and to be given by way of security) may be revoked by any one or more of them; and such a power is revoked by the appointment as a trustee of a person other than those by whom it is given (though not by any of those persons dying or otherwise ceasing to be a trustee).
- (4) Where a beneficiary to whom functions are delegated by a power of attorney under subsection (1) ceases to be a person beneficially entitled to an interest in possession in land subject to the trust—
  - (a) if the functions are delegated to him alone, the power is revoked,
  - (b) if the functions are delegated to him and to other beneficiaries to be exercised by them jointly (but not separately), the power is revoked if each of the other beneficiaries ceases to be so entitled (but otherwise functions exercisable in

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accordance with the power are so exercisable by the remaining beneficiary or beneficiaries), and

- (c) if the functions are delegated to him and to other beneficiaries to be exercised by them separately (or either separately or jointly), the power is revoked in so far as it relates to him.

(5) A delegation under subsection (1) may be for any period or indefinite.

(6) A power of attorney under subsection (1) cannot be [<sup>F6</sup>an enduring power of attorney or lasting power of attorney within the meaning of the Mental Capacity Act 2005].

(7) Beneficiaries to whom functions have been delegated under subsection (1) are, in relation to the exercise of the functions, in the same position as trustees (with the same duties and liabilities); but such beneficiaries shall not be regarded as trustees for any other purposes (including, in particular, the purposes of any enactment permitting the delegation of functions by trustees or imposing requirements relating to the payment of capital money).

<sup>F7</sup>(8) .....

(9) Neither this section nor the repeal by this Act of section 29 of the <sup>M4</sup>Law of Property Act 1925 (which is superseded by this section) affects the operation after the commencement of this Act of any delegation effected before that commencement.

#### Textual Amendments

**F6** Words in s. 9(6) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\), Sch. 6 para. 42\(2\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897, art. 2\(1\)\(d\)](#)

**F7** S. 9(8) repealed (1.2.2001) by [2000 c. 29, s. 40\(1\)\(3\), Sch. 2 Pt. II para. 46, Sch. 4 Pt. II](#) (with [s. 35](#)); [S.I. 2001/49, art. 2](#)

#### Marginal Citations

**M4** [1925 c. 20.](#)

[<sup>F8</sup>9A

(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.

(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.

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- (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.]

#### Textual Amendments

**F8** [S. 9A](#) inserted (1.2.2001) by [2000 c. 29, s. 40\(2\)](#), [Sch. 2 Pt. II para. 47](#) (with [s. 35](#)); [S.I. 2001/49, art. 2](#)

### *Consents and consultation*

## 10 Consents.

- (1) If a disposition creating a trust of land requires the consent of more than two persons to the exercise by the trustees of any function relating to the land, the consent of any two of them to the exercise of the function is sufficient in favour of a purchaser.
- (2) Subsection (1) does not apply to the exercise of a function by trustees of land held on charitable, ecclesiastical or public trusts.
- (3) Where at any time a person whose consent is expressed by a disposition creating a trust of land to be required to the exercise by the trustees of any function relating to the land is not of full age—
  - (a) his consent is not, in favour of a purchaser, required to the exercise of the function, but
  - (b) the trustees shall obtain the consent of a parent who has parental responsibility for him (within the meaning of the <sup>M5</sup>Children Act 1989) or of a guardian of his.

#### Marginal Citations

**M5** [1989 c. 41](#).

## 11 Consultation with beneficiaries.

- (1) The trustees of land shall in the exercise of any function relating to land subject to the trust—
  - (a) so far as practicable, consult the beneficiaries of full age and beneficially entitled to an interest in possession in the land, and
  - (b) so far as consistent with the general interest of the trust, give effect to the wishes of those beneficiaries, or (in case of dispute) of the majority (according to the value of their combined interests).
- (2) Subsection (1) does not apply—

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- (a) in relation to a trust created by a disposition in so far as provision that it does not apply is made by the disposition,
  - (b) in relation to a trust created or arising under a will made before the commencement of this Act, or
  - (c) in relation to the exercise of the power mentioned in section 6(2).
- (3) Subsection (1) does not apply to a trust created before the commencement of this Act by a disposition, or a trust created after that commencement by reference to such a trust, unless provision to the effect that it is to apply is made by a deed executed—
- (a) in a case in which the trust was created by one person and he is of full capacity, by that person, or
  - (b) in a case in which the trust was created by more than one person, by such of the persons who created the trust as are alive and of full capacity.
- (4) A deed executed for the purposes of subsection (3) is irrevocable.

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

**C1** S. 11(1) excluded (1.2.2001) by 2000 c. 29, s. 13(5) (with ss. 25-27, 35, 36(4)-(8), 37, 38); S.I. 2001/49, art. 2

*Right of beneficiaries to occupy trust land*

**12 The right to occupy.**

- (1) A beneficiary who is beneficially entitled to an interest in possession in land subject to a trust of land is entitled by reason of his interest to occupy the land at any time if at that time—
- (a) the purposes of the trust include making the land available for his occupation (or for the occupation of beneficiaries of a class of which he is a member or of beneficiaries in general), or
  - (b) the land is held by the trustees so as to be so available.
- (2) Subsection (1) does not confer on a beneficiary a right to occupy land if it is either unavailable or unsuitable for occupation by him.
- (3) This section is subject to section 13.

**13 Exclusion and restriction of right to occupy.**

- (1) Where two or more beneficiaries are (or apart from this subsection would be) entitled under section 12 to occupy land, the trustees of land may exclude or restrict the entitlement of any one or more (but not all) of them.
- (2) Trustees may not under subsection (1)—
- (a) unreasonably exclude any beneficiary's entitlement to occupy land, or
  - (b) restrict any such entitlement to an unreasonable extent.
- (3) The trustees of land may from time to time impose reasonable conditions on any beneficiary in relation to his occupation of land by reason of his entitlement under section 12.

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- (4) The matters to which trustees are to have regard in exercising the powers conferred by this section include—
  - (a) the intentions of the person or persons (if any) who created the trust,
  - (b) the purposes for which the land is held, and
  - (c) the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.
- (5) The conditions which may be imposed on a beneficiary under subsection (3) include, in particular, conditions requiring him—
  - (a) to pay any outgoings or expenses in respect of the land, or
  - (b) to assume any other obligation in relation to the land or to any activity which is or is proposed to be conducted there.
- (6) Where the entitlement of any beneficiary to occupy land under section 12 has been excluded or restricted, the conditions which may be imposed on any other beneficiary under subsection (3) include, in particular, conditions requiring him to—
  - (a) make payments by way of compensation to the beneficiary whose entitlement has been excluded or restricted, or
  - (b) forgo any payment or other benefit to which he would otherwise be entitled under the trust so as to benefit that beneficiary.
- (7) The powers conferred on trustees by this section may not be exercised—
  - (a) so as prevent any person who is in occupation of land (whether or not by reason of an entitlement under section 12) from continuing to occupy the land, or
  - (b) in a manner likely to result in any such person ceasing to occupy the land, unless he consents or the court has given approval.
- (8) The matters to which the court is to have regard in determining whether to give approval under subsection (7) include the matters mentioned in subsection (4)(a) to (c).

### *Powers of court*

## **14 Applications for order.**

- (1) Any person who is a trustee of land or has an interest in property subject to a trust of land may make an application to the court for an order under this section.
- (2) On an application for an order under this section the court may make any such order—
  - (a) relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions), or
  - (b) declaring the nature or extent of a person's interest in property subject to the trust,
 as the court thinks fit.
- (3) The court may not under this section make any order as to the appointment or removal of trustees.

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- (4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this Act.

## 15 Matters relevant in determining applications.

- (1) The matters to which the court is to have regard in determining an application for an order under section 14 include—
- (a) the intentions of the person or persons (if any) who created the trust,
  - (b) the purposes for which the property subject to the trust is held,
  - (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home, and
  - (d) the interests of any secured creditor of any beneficiary.
- (2) In the case of an application relating to the exercise in relation to any land of the powers conferred on the trustees by section 13, the matters to which the court is to have regard also include the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.
- (3) In the case of any other application, other than one relating to the exercise of the power mentioned in section 6(2), the matters to which the court is to have regard also include the circumstances and wishes of any beneficiaries of full age and entitled to an interest in possession in property subject to the trust or (in case of dispute) of the majority (according to the value of their combined interests).
- (4) This section does not apply to an application if section 335A of the <sup>M6</sup>Insolvency Act 1986 (which is inserted by Schedule 3 and relates to applications by a trustee of a bankrupt) applies to it.

### Marginal Citations

**M6** 1986 c. 45.

## *Purchaser protection*

## 16 Protection of purchasers.

- (1) A purchaser of land which is or has been subject to a trust need not be concerned to see that any requirement imposed on the trustees by section 6(5), 7(3) or 11(1) has been complied with.
- (2) Where—
- (a) trustees of land who convey land which (immediately before it is conveyed) is subject to the trust contravene section 6(6) or (8), but
  - (b) the purchaser of the land from the trustees has no actual notice of the contravention,
- the contravention does not invalidate the conveyance.
- (3) Where the powers of trustees of land are limited by virtue of section 8—
- (a) the trustees shall take all reasonable steps to bring the limitation to the notice of any purchaser of the land from them, but

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- (b) the limitation does not invalidate any conveyance by the trustees to a purchaser who has no actual notice of the limitation.
- (4) Where trustees of land convey land which (immediately before it is conveyed) is subject to the trust to persons believed by them to be beneficiaries absolutely entitled to the land under the trust and of full age and capacity—
  - (a) the trustees shall execute a deed declaring that they are discharged from the trust in relation to that land, and
  - (b) if they fail to do so, the court may make an order requiring them to do so.
- (5) A purchaser of land to which a deed under subsection (4) relates is entitled to assume that, as from the date of the deed, the land is not subject to the trust unless he has actual notice that the trustees were mistaken in their belief that the land was conveyed to beneficiaries absolutely entitled to the land under the trust and of full age and capacity.
- (6) Subsections (2) and (3) do not apply to land held on charitable, ecclesiastical or public trusts.
- (7) This section does not apply to registered land.

### *Supplementary*

## **17 Application of provisions to trusts of proceeds of sale.**

- <sup>F9</sup>(1) . . . . .
- (2) Section 14 applies in relation to a trust of proceeds of sale of land and trustees of such a trust as in relation to a trust of land and trustees of land.
  - (3) In this section “trust of proceeds of sale of land” means (subject to subsection (5)) any trust of property (other than a trust of land) which consists of or includes—
    - (a) any proceeds of a disposition of land held in trust (including settled land), or
    - (b) any property representing any such proceeds.
  - (4) The references in subsection (3) to a trust—
    - (a) are to any description of trust (whether express, implied, resulting or constructive), including a trust for sale and a bare trust, and
    - (b) include a trust created, or arising, before the commencement of this Act.
  - (5) A trust which (despite section 2) is a settlement for the purposes of the <sup>M7</sup>Settled Land Act 1925 cannot be a trust of proceeds of sale of land.
  - (6) In subsection (3)—
    - (a) “disposition” includes any disposition made, or coming into operation, before the commencement of this Act, and
    - (b) the reference to settled land includes personal chattels to which section 67(1) of the Settled Land Act 1925 (heirlooms) applies.

### **Textual Amendments**

- F9** S. 17(1) repealed (1.2.2001) by 2000 c. 29, s. 40(1)(3), Sch. 2 Pt. II para. 48, **Sch. 4 Pt. II** (with s. 35); S.I. 2001/49, **art. 2**



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#### **Marginal Citations**

**M7** 1925 c. 18.

### **18 Application of Part to personal representatives.**

- (1) The provisions of this Part relating to trustees, other than sections 10, 11 and 14, apply to personal representatives, but with appropriate modifications and without prejudice to the functions of personal representatives for the purposes of administration.
- (2) The appropriate modifications include—
  - (a) the substitution of references to persons interested in the due administration of the estate for references to beneficiaries, and
  - (b) the substitution of references to the will for references to the disposition creating the trust.
- (3) Section 3(1) does not apply to personal representatives if the death occurs before the commencement of this Act.

## **PART II**

### **APPOINTMENT AND RETIRMENT OF TRUSTEES**

### **19 Appointment and retirement of trustee at instance of beneficiaries.**

- (1) This section applies in the case of a trust where—
  - (a) there is no person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, and
  - (b) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give a direction or directions of either or both of the following descriptions—
  - (a) a written direction to a trustee or trustees to retire from the trust, and
  - (b) a written direction to the trustees or trustee for the time being (or, if there are none, to the personal representative of the last person who was a trustee) to appoint by writing to be a trustee or trustees the person or persons specified in the direction.
- (3) Where—
  - (a) a trustee has been given a direction under subsection (2)(a),
  - (b) reasonable arrangements have been made for the protection of any rights of his in connection with the trust,
  - (c) after he has retired there will be either a trust corporation or at least two persons to act as trustees to perform the trust, and
  - (d) either another person is to be appointed to be a new trustee on his retirement (whether in compliance with a direction under subsection (2)(b) or otherwise) or the continuing trustees by deed consent to his retirement,
 he shall make a deed declaring his retirement and shall be deemed to have retired and be discharged from the trust.

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- (4) Where a trustee retires under subsection (3) he and the continuing trustees (together with any new trustee) shall (subject to any arrangements for the protection of his rights) do anything necessary to vest the trust property in the continuing trustees (or the continuing and new trustees).
- (5) This section has effect subject to the restrictions imposed by the <sup>M8</sup>Trustee Act 1925 on the number of trustees.

#### Marginal Citations

**M8** 1925 c. 19.

## 20 [F10 Appointment of substitute for trustee who lacks capacity]

- (1) This section applies where—
- (a) a trustee [F11 lacks capacity (within the meaning of the Mental Capacity Act 2005) to exercise] his functions as trustee,
  - (b) there is no person who is both entitled and willing and able to appoint a trustee in place of him under section 36(1) of the Trustee Act 1925, and
  - (c) the beneficiaries under the trust are of full age and capacity and (taken together) are absolutely entitled to the property subject to the trust.
- (2) The beneficiaries may give to—
- [F12(a) a deputy appointed for the trustee by the Court of Protection,]
  - (b) an attorney acting for him under the authority of [F13 an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005]
  - (c) a person authorised for the purpose by [F14 the Court of Protection],
- a written direction to appoint by writing the person or persons specified in the direction to be a trustee or trustees in place of the incapable trustee.

#### Textual Amendments

- F10** S. 20 title substituted (1.10.2007) by virtue of [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\), Sch. 6 para. 42\(3\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897, art. 2\(1\)\(d\)](#)
- F11** Words in s. 20(1)(a) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\), Sch. 6 para. 42\(3\)\(a\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897, art. 2\(1\)\(d\)](#)
- F12** S. 20(2)(a) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\), Sch. 6 para. 42\(3\)\(b\)\(i\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897, art. 2\(1\)\(d\)](#)
- F13** Words in s. 20(2)(b) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\), Sch. 6 para. 42\(3\)\(b\)\(ii\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897, art. 2\(1\)\(d\)](#)
- F14** Words in s. 20(2)(c) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\), Sch. 6 para. 42\(3\)\(b\)\(iii\)](#) (with [ss. 27-29, 62](#)); [S.I. 2007/1897, art. 2\(1\)\(d\)](#)

## 21 Supplementary.

- (1) For the purposes of section 19 or 20 a direction is given by beneficiaries if—
- (a) a single direction is jointly given by all of them, or

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- (b) (subject to subsection (2)) a direction is given by each of them (whether solely or jointly with one or more, but not all, of the others),  
and none of them by writing withdraws the direction given by him before it has been complied with.
- (2) Where more than one direction is given each must specify for appointment or retirement the same person or persons.
- (3) Subsection (7) of section 36 of the <sup>M9</sup>Trustee Act 1925 (powers of trustees appointed under that section) applies to a trustee appointed under section 19 or 20 as if he were appointed under that section.
- (4) A direction under section 19 or 20 must not specify a person or persons for appointment if the appointment of that person or those persons would be in contravention of section 35(1) of the Trustee Act 1925 or section 24(1) of the <sup>M10</sup>Law of Property Act 1925 (requirements as to identity of trustees).
- (5) Sections 19 and 20 do not apply in relation to a trust created by a disposition in so far as provision that they do not apply is made by the disposition.
- (6) Sections 19 and 20 do not apply in relation to a trust created before the commencement of this Act by a disposition in so far as provision to the effect that they do not apply is made by a deed executed—
  - (a) in a case in which the trust was created by one person and he is of full capacity, by that person, or
  - (b) in a case in which the trust was created by more than one person, by such of the persons who created the trust as are alive and of full capacity.
- (7) A deed executed for the purposes of subsection (6) is irrevocable.
- (8) Where a deed is executed for the purposes of subsection (6)—
  - (a) it does not affect anything done before its execution to comply with a direction under section 19 or 20, but
  - (b) a direction under section 19 or 20 which has been given but not complied with before its execution shall cease to have effect.

#### Marginal Citations

**M9** 1925 c. 19.

**M10** 1925 c. 20.

## PART III

### SUPPLEMENTARY

#### 22 Meaning of “beneficiary”.

- (1) In this Act “beneficiary”, in relation to a trust, means any person who under the trust has an interest in property subject to the trust (including a person who has such an interest as a trustee or a personal representative).

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- (2) In this Act references to a beneficiary who is beneficially entitled do not include a beneficiary who has an interest in property subject to the trust only by reason of being a trustee or personal representative.
- (3) For the purposes of this Act a person who is a beneficiary only by reason of being an annuitant is not to be regarded as entitled to an interest in possession in land subject to the trust.

## 23 Other interpretation provisions.

- (1) In this Act “purchaser” has the same meaning as in Part I of the <sup>M11</sup>Law of Property Act 1925.
- (2) Subject to that, where an expression used in this Act is given a meaning by the Law of Property Act 1925 it has the same meaning as in that Act unless the context otherwise requires.
- (3) In this Act “the court” means—
  - (a) the High Court, or
  - (b) [<sup>F15</sup>the county court].

### Textual Amendments

- F15** Words in s. 23(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

### Marginal Citations

- M11** [1925 c. 20](#).

## 24 Application to Crown.

- (1) Subject to subsection (2), this Act binds the Crown.
- (2) This Act (except so far as it relates to undivided shares and joint ownership) does not affect or alter the descent, devolution or nature of the estates and interests of or in—
  - (a) land for the time being vested in Her Majesty in right of the Crown or of the Duchy of Lancaster, or
  - (b) land for the time being belonging to the Duchy of Cornwall and held in right or respect of the Duchy.

## 25 Amendments, repeals etc.

- (1) The enactments mentioned in Schedule 3 have effect subject to the amendments specified in that Schedule (which are minor or consequential on other provisions of this Act).
- (2) The enactments mentioned in Schedule 4 are repealed to the extent specified in the third column of that Schedule.
- (3) Neither section 2(5) nor the repeal by this Act of section 29 of the <sup>M12</sup>Settled Land Act 1925 applies in relation to the deed of settlement set out in the Schedule to the

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<sup>M13</sup>Chequers Estate Act 1917 or the trust instrument set out in the Schedule to the <sup>M14</sup>Chevening Estate Act 1959.

- (4) The amendments and repeals made by this Act do not affect any entailed interest created before the commencement of this Act.
- (5) The amendments and repeals made by this Act in consequence of section 3—
  - (a) do not affect a trust created by a will if the testator died before the commencement of this Act, and
  - (b) do not affect personal representatives of a person who died before that commencement;
 and the repeal of section 22 of the <sup>M15</sup>Partnership Act 1890 does not apply in any circumstances involving the personal representatives of a partner who died before that commencement.

#### Marginal Citations

**M12** 1925 c. 18.

**M13** 1917 c. 55.

**M14** 1959 c. 49.

**M15** 1890 c. 39.

## 26 Power to make consequential provision.

- (1) The Lord Chancellor may by order made by statutory instrument make any such supplementary, transitional or incidental provision as appears to him to be appropriate for any of the purposes of this Act or in consequence of any of the provisions of this Act.
- (2) An order under subsection (1) may, in particular, include provision modifying any enactment contained in a public general or local Act which is passed before, or in the same Session as, this Act.
- (3) A statutory instrument made in the exercise of the power conferred by this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## 27 Short title, commencement and extent.

- (1) This Act may be cited as the Trusts of Land and Appointment of Trustees Act 1996.
- (2) This Act comes into force on such day as the Lord Chancellor appoints by order made by statutory instrument.
- (3) Subject to subsection (4), the provisions of this Act extend only to England and Wales.
- (4) The repeal in section 30(2) of the <sup>M16</sup>Agriculture Act 1970 extends only to Northern Ireland.

#### Subordinate Legislation Made

**P1** [S. 27\(2\)](#): s. 27(2) power fully exercised (25.11.1996): 1.1.1997 for whole Act by [S.I.1996/2974](#)

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#### Marginal Citations

**M16** 1970 c. 40.

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## SCHEDULES

### SCHEDULE 1

Section 2.

#### PROVISIONS CONSEQUENTIAL ON SECTION 2

##### *Minors*

- 1 (1) Where after the commencement of this Act a person purports to convey a legal estate in land to a minor, or two or more minors, alone, the conveyance—
  - (a) is not effective to pass the legal estate, but
  - (b) operates as a declaration that the land is held in trust for the minor or minors (or if he purports to convey it to the minor or minors in trust for any persons, for those persons).
- (2) Where after the commencement of this Act a person purports to convey a legal estate in land to—
  - (a) a minor or two or more minors, and
  - (b) another person who is, or other persons who are, of full age,
 the conveyance operates to vest the land in the other person or persons in trust for the minor or minors and the other person or persons (or if he purports to convey it to them in trust for any persons, for those persons).
- (3) Where immediately before the commencement of this Act a conveyance is operating (by virtue of section 27 of the <sup>M17</sup>Settled Land Act 1925) as an agreement to execute a settlement in favour of a minor or minors—
  - (a) the agreement ceases to have effect on the commencement of this Act, and
  - (b) the conveyance subsequently operates instead as a declaration that the land is held in trust for the minor or minors.

##### **Marginal Citations**

**M17** 1925 c. 18.

- 2 Where after the commencement of this Act a legal estate in land would, by reason of intestacy or in any other circumstances not dealt with in paragraph 1, vest in a person who is a minor if he were a person of full age, the land is held in trust for the minor.

##### *Family charges*

- 3 Where, by virtue of an instrument coming into operation after the commencement of this Act, land becomes charged voluntarily (or in consideration of marriage<sup>F16</sup> or the formation of a civil partnership) or by way of family arrangement, whether immediately or after an interval, with the payment of—
  - (a) a rentcharge for the life of a person or a shorter period, or

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- (b) capital, annual or periodical sums for the benefit of a person,  
the instrument operates as a declaration that the land is held in trust for giving effect to the charge.

#### Textual Amendments

**F16** Words in [Sch. 1 para. 3](#) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), [Sch. 27 para. 153](#); [S.I. 2005/3175](#), art. 2(2)

#### *Charitable, ecclesiastical and public trusts*

- 4 (1) This paragraph applies in the case of land held on charitable, ecclesiastical or public trusts (other than land to which the <sup>M18</sup>Universities and College Estates Act 1925 applies).
- (2) Where there is a conveyance of such land—
- (a) if neither [<sup>F17</sup>section 122(2) nor section 125(1) of the Charities Act 2011] applies to the conveyance, it shall state that the land is held on such trusts, and
- (b) if neither [<sup>F18</sup>section 122(3) nor section 125(2)] of that Act has been complied with in relation to the conveyance and a purchaser has notice that the land is held on such trusts, he must see that any consents or orders necessary to authorise the transaction have been obtained.
- (3) Where any trustees or the majority of any set of trustees have power to transfer or create any legal estate in the land, the estate shall be transferred or created by them in the names and on behalf of the persons in whom it is vested.

#### Textual Amendments

**F17** Words in [Sch. 1 para. 4\(2\)\(a\)](#) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 70\(a\)](#) (with s. 20(2), [Sch. 8](#))

**F18** Words in [Sch. 1 para. 4\(2\)\(b\)](#) substituted (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 7 para. 70\(b\)](#) (with s. 20(2), [Sch. 8](#))

#### Marginal Citations

**M18** 1925 c. 24.

#### *Entailed interests*

- 5 (1) Where a person purports by an instrument coming into operation after the commencement of this Act to grant to another person an entailed interest in real or personal property, the instrument—
- (a) is not effective to grant an entailed interest, but
- (b) operates instead as a declaration that the property is held in trust absolutely for the person to whom an entailed interest in the property was purportedly granted.
- (2) Where a person purports by an instrument coming into operation after the commencement of this Act to declare himself a tenant in tail of real or personal property, the instrument is not effective to create an entailed interest.



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*Property held on settlement ceasing to exist*

- 6 Where a settlement ceases to be a settlement for the purposes of the <sup>M19</sup>Settled Land Act 1925 because no relevant property (within the meaning of section 2(4)) is, or is deemed to be, subject to the settlement, any property which is or later becomes subject to the settlement is held in trust for the persons interested under the settlement.

**Marginal Citations**

**M19** 1925 c. 18.

SCHEDULE 2

Section 5.

AMENDMENTS OF STATUTORY PROVISIONS IMPOSING TRUST FOR SALE

*Mortgaged property held by trustees after redemption barred*

- 1 (1) Section 31 of the <sup>M20</sup>Law of Property Act 1925 (implied trust for sale of mortgaged property where right of redemption is barred) is amended as follows.
- (2) In subsection (1), for the words “on trust for sale.” substitute “in trust—
- (a) to apply the income from the property in the same manner as interest paid on the mortgage debt would have been applicable; and
  - (b) if the property is sold, to apply the net proceeds of sale, after payment of costs and expenses, in the same manner as repayment of the mortgage debt would have been applicable.”
- (3) In subsection (2), for the words from the beginning to “this subsection” substitute—
- “(2) Subsection (1) of this section”.
- (4) Omit subsection (3).
- (5) For subsection (4) substitute—
- “(4) Where—
- (a) the mortgage money is capital money for the purposes of the Settled Land Act 1925;
  - (b) land other than any forming the whole or part of the property mentioned in subsection (1) of this section is, or is deemed to be, subject to the settlement; and
  - (c) the tenant for life or statutory owner requires the trustees to execute with respect to land forming the whole or part of that property a vesting deed such as would have been required in relation to the land if it had been acquired on a purchase with capital money,
- the trustees shall execute such a vesting deed.”
- (6) In accordance with the amendments made by sub-paragraphs (2) to (5), in the sidenote of section 31 for the words “Trust for sale” substitute “Trust”.
- (7) The amendments made by this paragraph—

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- (a) apply whether the right of redemption is discharged before or after the commencement of this Act, but
- (b) are without prejudice to any dealings or arrangements made before the commencement of this Act.

**Marginal Citations**

**M20** 1925 c. 20.

*Land purchased by trustees of personal property etc.*

- 2
- (1) Section 32 of the <sup>M21</sup>Law of Property Act 1925 (implied trust for sale of land acquired by trustees of personal property or of land held on trust for sale) is omitted.
  - (2) The repeal made by this paragraph applies in relation to land purchased after the commencement of this Act whether the trust or will in pursuance of which it is purchased comes into operation before or after the commencement of this Act.

**Marginal Citations**

**M21** 1925 c. 20.

*Dispositions to tenants in common*

- 3
- (1) Section 34 of the Law of Property Act 1925 is amended as follows.
  - (2) In subsection (2) (conveyance of land in undivided shares to operate as conveyance to grantees on trust for sale), for the words from “upon the statutory trusts” to “those shares” substitute “in trust for the persons interested in the land”.
  - (3) In subsection (3) (devise etc. of land in undivided shares to operate as devise etc. to trustees of will etc. on trust for sale)—
    - (a) omit the words from “the trustees (if any)” to “then to” and the words “in each case”, and
    - (b) for the words “upon the statutory trusts hereinafter mentioned” substitute “in trust for the persons interested in the land”.
  - (4) After that subsection insert—
    - “(3A) In subsections (2) and (3) of this section references to the persons interested in the land include persons interested as trustees or personal representatives (as well as persons beneficially interested).”
  - (5) Omit subsection (4) (settlement of undivided shares in land to operate only as settlement of share of profits of sale and rents and profits).
  - (6) The amendments made by this paragraph apply whether the disposition is made, or comes into operation, before or after the commencement of this Act.

*Joint tenancies*

- 4
- (1) Section 36 of the Law of Property Act 1925 is amended as follows.

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- (2) In subsection (1) (implied trust for sale applicable to land held for persons as joint tenants), for the words “on trust for sale” substitute “ in trust ”.
- (3) In subsection (2) (severance of beneficial joint tenancy)—
  - (a) in the proviso, for the words “under the trust for sale affecting the land the net proceeds of sale, and the net rents and profits until sale, shall be held upon the trusts” substitute “ the land shall be held in trust on terms ”, and
  - (b) in the final sentence, for the words “on trust for sale” substitute “ in trust ”.
- (4) The amendments made by this paragraph apply whether the legal estate is limited, or becomes held in trust, before or after the commencement of this Act.

### *Intestacy*

- 5 (1) Section 33 of the <sup>M22</sup>Administration of Estates Act 1925 (implied trust for sale on intestacy) is amended as follows.
- (2) For subsection (1) substitute—
 

“(1) On the death of a person intestate as to any real or personal estate, that estate shall be held in trust by his personal representatives with the power to sell it.”
- (3) In subsection (2), for the words from the beginning to “pay all” substitute—
 

“(2) The personal representatives shall pay out of—

  - (a) the ready money of the deceased (so far as not disposed of by his will, if any); and
  - (b) any net money arising from disposing of any other part of his estate (after payment of costs),

all”.
- (4) In subsection (4), for the words from “including” to “retained” substitute “ and any part of the estate of the deceased which remains ”.
- (5) The amendments made by this paragraph apply whether the death occurs before or after the commencement of this Act.

#### **Marginal Citations**

**M22** 1925 c. 23.

### *Reverter of sites*

- 6 (1) Section 1 of the <sup>M23</sup>Reverter of Sites Act 1987 (right of reverter replaced by trust for sale) is amended as follows.
- (2) In subsection (2)—
  - (a) after “a trust” insert “ for the persons who (but for this Act) would from time to time be entitled to the ownership of the land by virtue of its reverter with a power, without consulting them, ”, and
  - (b) for the words “upon trust” onwards substitute “ in trust for those persons; but they shall not be entitled by reason of their interest to occupy the land. ”

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- (3) In subsection (3), for the words “trustees for sale” substitute “ trustees ”.
- (4) In subsection (4), for the words “on trust for sale” substitute “ in trust ”.
- (5) In accordance with the amendments made by this paragraph, in the sidenote, for “trust for sale” substitute “ trust ”.
- (6) The amendments made by this paragraph apply whether the trust arises before or after the commencement of this Act.

**Marginal Citations**

M23 1987 c. 15.

*Trusts deemed to arise in 1926*

- 7        Where at the commencement of this Act any land is held on trust for sale, or on the statutory trusts, by virtue of Schedule 1 to the <sup>M24</sup>Law of Property Act 1925 (transitional provisions), it shall after that commencement be held in trust for the persons interested in the land; and references in that Schedule to trusts for sale or trustees for sale or to the statutory trusts shall be construed accordingly.

**Marginal Citations**

M24 1925 c. 20.

SCHEDULE 3

Section 25(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Law of Property Act 1922 (c.16)*

- 1        In paragraph 17(3) and (4) of Schedule 15 to the Law of Property Act 1922, for the words “held on trust for sale” substitute “ subject to a trust of land ”.

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

- 2        (1) The Settled Land Act 1925 is amended as follows.
- (2) In section 1(1)(ii)(c), after the word “fee” insert “ (other than a fee which is a fee simple absolute by virtue of section 7 of the Law of Property Act 1925) ”.
  - (3) In section 3, for the words “not held upon trust for sale which has been subject to a settlement” substitute “ which has been subject to a settlement which is a settlement for the purposes of this Act ”.
  - (4) In section 7(5), for the words “trustee for sale” substitute “ trustee of land ”.
  - (5) In section 12(1), for the words “trustee for sale” substitute “ trustee of land ”.
  - (6) In section 17—

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- (a) in subsection (1)—
    - (i) for the words “trust for sale”, in the first three places, substitute “trust of land”, and
    - (ii) for the words “held on trust for sale” substitute “subject to a trust of land”,
  - (b) in subsection (2)(c), for the words “a conveyance on trust for sale” substitute “land”, and
  - (c) in subsection (3), for the words “any trust for sale” substitute “a trust of land”.
- (7) In section 18(2)(b), for the words “trustee for sale” substitute “trustee of land”.
- (8) In section 20(1)(viii), for the words “an immediate binding trust for sale” substitute “a trust of land”.
- (9) In section 30(1)—
- (a) in paragraph (iii), for the words “power of or upon trust for sale of” substitute “a power or duty to sell”, and
  - (b) in paragraph (iv)—
    - (i) for the words “future power of sale, or under a future trust for sale of” substitute “a future power or duty to sell”, and
    - (ii) for the words “or trust” substitute “or duty”.
- (10) In section 33(1), for the words “any power of sale, or trust for sale” substitute “a power or duty to sell”.
- (11) In section 36—
- (a) for the words—
    - (i) “upon the statutory trusts” in subsection (2), and
    - (ii) “on the statutory trusts” in subsection (3),
 substitute “in trust for the persons interested in the land”,
  - (b) in subsection (4), for the words “trust for sale” substitute “trust of land”,
  - (c) for subsection (6) substitute—
 

“(6) In subsections (2) and (3) of this section references to the persons interested in the land include persons interested as trustees or personal representatives (as well as persons beneficially interested).”, and
  - (d) in accordance with the amendments made by paragraphs (a) to (c), in the sidenote, for the words “trust for sale of the land” substitute “trust of land”.
- (12) In section 110(5), for the words “trustee for sale” substitute “trustee of land”.
- (13) In section 117(1)—
- (a) in paragraph (ix), for the words “not being” substitute “, but does not (except in the phrase “trust of land”) include”, and
  - (b) in paragraph (xxx), for the words ““trustees for sale” and “power to postpone a sale” have the same meanings” substitute “has the same meaning”.

*The Trustee Act 1925 (c.19)*

- 3 (1) The Trustee Act 1925 is amended as follows.

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**Changes to legislation:** *Trusts of Land and Appointment of Trustees Act 1996 is up to date with all changes known to be in force on or before 14 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (2) In section 12—
  - (a) in subsection (1), for the words “a trust for sale or a power of sale of property is vested in a trustee” substitute “a trustee has a duty or power to sell property”, and
  - (b) in subsection (2), for the word “trust”, in both places, substitute “duty”.
- (3) In section 14(2), for paragraph (a) substitute—
  - “(a) proceeds of sale or other capital money arising under a trust of land;”.
- <sup>F19</sup>(4) . . . . .
- (5) In section 20(3)(c), for the words “property held upon trust for sale” substitute “land subject to a trust of land or personal property held on trust for sale”.
- (6) In section 24—
  - (a) for the words “the proceeds of sale of land directed to be sold, or in any other” substitute “any”,
  - (b) for the words “trust for sale” substitute “trust”,
  - (c) for the words “trustees for sale” substitute “trustees”, and
  - (d) for the words “trust or” substitute “duty or”.
- (7) In section 27(1), for the words “or of a disposition on trust for sale” substitute “, trustees of land, trustees for sale of personal property”.
- (8) In section 32, for subsection (2) substitute—
  - “(2) This section does not apply to capital money arising under the <sup>M25</sup>Settled Land Act 1925.”
- (9) In section 34(2), for the words “on trust for sale of land” substitute “creating trusts of land”.
- (10) In section 35—
  - (a) for subsection (1) substitute—
    - “(1) Appointments of new trustees of land and of new trustees of any trust of the proceeds of sale of the land shall, subject to any order of the court, be effected by separate instruments, but in such manner as to secure that the same persons become trustees of land and trustees of the trust of the proceeds of sale.”,
  - (b) for subsection (3) substitute—
    - “(3) Where new trustees of land are appointed, a memorandum of the persons who are for the time being the trustees of the land shall be endorsed on or annexed to the conveyance by which the land was vested in trustees of land; and that conveyance shall be produced to the persons who are for the time being the trustees of the land by the person in possession of it in order for that to be done when the trustees require its production.”, and
  - (c) in accordance with the amendments made by paragraphs (a) and (b), in the sidenote, for the words “dispositions on trust for sale of land” substitute “and trustees of land”.

**Changes to legislation:** *Trusts of Land and Appointment of Trustees Act 1996 is up to date with all changes known to be in force on or before 14 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (11) In section 36(6), for the words before paragraph (a) substitute—  
 “(6) Where, in the case of any trust, there are not more than three trustees—”.
- (12) In section 37(1)(c), for the word “individuals” substitute “ persons ”.
- (13) In section 39(1), for the word “individuals” substitute “ persons ”.
- (14) In section 40(2), for the words “the statutory power” substitute “ section 39 of this Act or section 19 of the Trusts of Land and Appointment of Trustees Act 1996 ”.

#### Textual Amendments

**F19** Sch. 3 para. 3(4) repealed (1.2.2001) by 2000 c. 29, s. 40, Sch. 2 Pt. II para. 49, Sch. 4 Pt. II (with s. 35); S.I. 2001/49, art. 2

#### Marginal Citations

**M25** 1925 c. 18.

### *The Law of Property Act 1925 (c.20)*

- 4 (1) The Law of Property Act 1925 is amended as follows.
- (2) In section 2—
  - (a) in subsection (1), in paragraph (ii)—
    - (i) for the words “trustees for sale” substitute “ trustees of land ”, and
    - (ii) for the words “the statutory requirements respecting the payment of capital money arising under a disposition upon trust for sale” substitute “ the requirements of section 27 of this Act respecting the payment of capital money arising on such a conveyance ”,
  - (b) after that subsection insert—  
 “(1A) An equitable interest in land subject to a trust of land which remains in, or is to revert to, the settlor shall (subject to any contrary intention) be overreached by the conveyance if it would be so overreached were it an interest under the trust.”, and
  - (c) in subsection (2)—
    - (i) for the words “a trust for sale” substitute “ a trust of land ”,
    - (ii) for the words “under the trust for sale or the powers conferred on the trustees for sale” substitute “ by the trustees ”, and
    - (iii) for the words “to the trust for sale” substitute “ to the trust ”.
- (3) In section 3(1)(c), for the words “Where the legal estate affected is neither settled land nor vested in trustees for sale” substitute “ In any other case ”.
- (4) In section 16—
  - (a) in subsection (2), for the words “pursuant to a trust for sale” substitute “ by trustees of land ”, and
  - (b) in subsection (6), for the words “trustee for sale” substitute “ trustee of land ”.
- (5) In section 18—
  - (a) in subsection (1)—

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- (i) after the word “settled” insert “ or held subject to a trust of land ”,  
and
    - (ii) for the words “trustee for sale” substitute “ trustee of land ”, and
  - (b) in subsection (2)(b), for the words “of the land or of the proceeds of sale” substitute “ or trust ”.
- (6) In section 22(2)—
- (a) for the words “held on trust for sale” substitute “ subject to a trust of land ”, and
  - (b) for the words “under the trust for sale or under the powers vested in the trustees for sale” substitute “ by the trustees ”,
- and, in accordance with the amendments made by paragraphs (a) and (b), in the sidenote of section 22, for the words “on trust for sale” substitute “ in trust ”.
- (7) For section 24 substitute—

*“ Trusts of land*

**24 Appointment of trustees of land.**

- (1) The persons having power to appoint new trustees of land shall be bound to appoint the same persons (if any) who are for the time being trustees of any trust of the proceeds of sale of the land.
  - (2) A purchaser shall not be concerned to see that subsection (1) of this section has been complied with.
  - (3) This section applies whether the trust of land and the trust of proceeds of sale are created, or arise, before or after the commencement of this Act.”
- (8) In section 27—
- (a) for subsection (1) substitute—
    - “(1) A purchaser of a legal estate from trustees of land shall not be concerned with the trusts affecting the land, the net income of the land or the proceeds of sale of the land whether or not those trusts are declared by the same instrument as that by which the trust of land is created.”, and
  - (b) in subsection (2)—
    - (i) for the words “trust for sale” substitute “ trust ”,
    - (ii) for the words “the settlement of the net proceeds” substitute “ any trust affecting the net proceeds of sale of the land if it is sold ”, and
    - (iii) for the words “trustees for sale” substitute “ trustees ”.
- (9) In section 33—
- (a) for the words “trustees for sale” substitute “ trustees of land ”, and
  - (b) for the words “on trust for sale” substitute “ land in trust ”.
- (10) In section 39(4), for the words “trusts for sale” substitute “ trusts ”.
- (11) In section 42—
- (a) in subsection (1)(a), for the words “trust for sale” substitute “ trust of land ”, and



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- (b) in subsection (2)—
  - (i) in paragraph (a), for the words “a conveyance on trust for sale” substitute “land”, and
  - (ii) in paragraph (b), for the words “on trust for sale” substitute “in trust”.
- (12) In section 66(2), for the words “trustee for sale” substitute “trustee of land”.
- (13) In section 102(1)—
  - (a) for the words “share in the proceeds of sale of the land and in the rents and profits thereof until sale” substitute “interest under the trust to which the land is subject”, and
  - (b) for the words “trustees for sale” substitute “trustees”.
- (14) In section 131, after the words “but for this section” insert “(and paragraph 5 of Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996)”.
- (15) In section 137—
  - (a) in subsection (2)(ii), for the words “the proceeds of sale of land” onwards substitute “land subject to a trust of land, or the proceeds of the sale of such land, the persons to be served with notice shall be the trustees.”, and
  - (b) in subsection (5), for the words “held on trust for sale” substitute “subject to a trust of land”.
- (16) In section 153(6)(ii), for the words “in trust for sale” substitute “as a trustee of land”.

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

F205

**Textual Amendments**

**F20** Sch. 3 para. 5 repealed (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), s. 136(2), [Sch. 13](#) (with s. 129, [Sch. 12 para. 1](#)); [S.I. 2003/1725](#), art. 2(1)

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

- 6 (1) The Administration of Estates Act 1925 is amended as follows.
- (2) In section 39(1)—
  - (a) in paragraph (i), at the beginning insert “as respects the personal estate,”,
  - (b) for paragraph (ii) substitute—
    - “(ii) as respects the real estate, all the functions conferred on them by Part I of the Trusts of Land and Appointment of Trustees Act 1996,”, and
  - (c) in paragraph (iii), for the words “conferred by statute on trustees for sale, and” substitute “necessary”.
- (3) In section 41(6), for the words “trusts for sale” substitute “trusts”.
- (4) In section 51(3)—
  - (a) after the word “married” insert “and without issue”,

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- (b) before the word “settlement”, in both places, insert “ trust or ”, and
- (c) for the words “an entailed interest” substitute “ a life interest ”.

(5) In section 55(1), after paragraph (vi) insert—

“(via) “Land” has the same meaning as in the <sup>M26</sup>Law of Property Act 1925;”.

#### Marginal Citations

M26 1925 c. 20.

#### *The Green Belt (London and Home Counties) Act 1938 (c.xciii)*

- 7 In section 19(1) of the Green Belt (London and Home Counties) Act 1938—
- (a) for the words “trustee for sale within the meaning of the Law of Property Act 1925” substitute “ trustee of land ”, and
  - (b) for the words “of a trustee for sale” substitute “ of a trustee of land ”.

#### *The Settled Land and Trustee Acts (Court’s General Powers) Act 1943 (c.25)*

- 8 In section 1 of the Settled Land and Trustee Acts (Court’s General Powers) Act 1943—
- (a) in subsection (1)—
    - (i) for the words “trustees for sale of land” substitute “ trustees of land ”, and
    - (ii) for the words “land held on trust for sale” substitute “ land subject to a trust of land ”, and
  - (b) in subsections (2) and (3), for the words “trust for sale” substitute “ trust of land ”.

#### *The Historic Buildings and Ancient Monuments Act 1953 (c.49)*

- 9 In sections 8(3), 8A(3) and 8B(3) of the Historic Buildings and Ancient Monuments Act 1953, for the words from “held on” to “thereof” substitute “ subject to a trust of land, are conferred by law on the trustees of land in relation to the land and to the proceeds of its sale ”.

#### *The Leasehold Reform Act 1967 (c.88)*

- 10 In the Leasehold Reform Act 1967—
- (a) in section 6(1), for the words “the statutory trusts arising by virtue of sections 34 to 36” substitute “ a trust arising under section 34 or section 36 ”,
  - (b) in section 24(1)(a), for the words “held on trust for sale” substitute “ subject to a trust of land ”, and
  - (c) in paragraph 7 of Schedule 2—
    - (i) in sub-paragraph (1), for the words “a disposition on trust for sale” substitute “ trust of land ”, and
    - (ii) in sub-paragraph (3), for the words “held on trust for sale” substitute “ subject to a trust of land ”.

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*The Agriculture Act 1970 (c.40)*

- 11 In section 33(2) of the Agriculture Act 1970—
- (a) for the words “held under a trust for sale” substitute “ subject to a trust of land ”, and
  - (b) for the words “the trustees for sale” substitute “ the trustees of land ”.

*The Land Charges Act 1972 (c.61)*

- 12 (1) The Land Charges Act 1972 is amended as follows.
- (2) In section 2(4)(iii)(b), for the words “trust for sale” substitute “ trust of land ”.
- (3) In section 6, after subsection (1) insert—
- “(1A) No writ or order affecting an interest under a trust of land may be registered under subsection (1) above.”

*The Land Compensation Act 1973 (c.26)*

- 13 In subsection (2) of section 10 of the Land Compensation Act 1973, for the words “held on trust for sale” substitute “ subject to a trust of land ” and, in accordance with that amendment, in the sidenote of that section, for the words “trusts for sale” substitute “ trusts of land ”.

*The Local Land Charges Act 1975 (c.76)*

- 14 In section 11(2) of the Local Land Charges Act 1975, for the words “held on trust for sale” substitute “ subject to a trust of land ”.

*The Rentcharges Act 1977 (c.30)*

- 15 (1) The Rentcharges Act 1977 is amended as follows.
- (2) In section 2(3), for paragraphs (a) and (b) substitute—
- “(a) in the case of which paragraph 3 of Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996 (trust in case of family charge) applies to the land on which the rent is charged;
  - (b) in the case of which paragraph (a) above would have effect but for the fact that the land on which the rent is charged is settled land or subject to a trust of land;”.
- (3) In section 10(2)(b), for the words “trust for sale” substitute “ trust of land ”.

*The Interpretation Act 1978 (c.30)*

- 16 In Schedule 1 to the Interpretation Act 1978, after the definition of “The Treasury” insert—
- ““Trust of land” and “trustees of land”, in relation to England and Wales, have the same meanings as in the Trusts of Land and Appointment of Trustees Act 1996.”

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*The Ancient Monuments and Archaeological Areas Act 1979 (c.46)*

- 17 In the Ancient Monuments and Archaeological Areas Act 1979—
- (a) in section 12(3), for the words “trust for sale” substitute “trust of land”, and
  - (b) in section 18(4), for paragraph (b) substitute—  
“ (b) as trustees of land; ”.

*The Limitation Act 1980 (c.58)*

- 18 In paragraph 9 of Schedule 1 to the Limitation Act 1980, for the words “held on trust for sale” substitute “subject to a trust of land”.

*The Highways Act 1980 (c.66)*

- 19 In section 87(4)(b) of the Highways Act 1980, for the words from “and section 28” to “apply” substitute “applies”.

F21 . . .

**Textual Amendments**

- F21** [Sch. 3 para. 20](#) and the cross-heading preceding it repealed (30.1.2001 for E. and 1.5.2001 for W.) by 2000 c. 37, ss. 102, [Sch. 16 Pt. III](#); S.I. 2001/114, [art. 2\(1\)\(d\)\(ii\)](#); S.I. 2001/1410, [art. 2\(i\)\(p\)](#)

F2220 . . . . .

**Textual Amendments**

- F22** [Sch. 3 para. 20](#) and the cross-heading preceding it repealed (30.1.2001 for E. and 1.5.2001 for W.) by 2000 c. 37, ss. 102, 103(2), [Sch. 16 Pt. III](#); S.I. 2001/114, [art. 2\(1\)\(d\)\(ii\)](#); S.I. 2001/1410, [art. 2\(i\)\(p\)](#)

*The Health and Social Services and Social Security Adjudications Act 1983 (c.41)*

- 21 In section 22 of the Health and Social Services and Social Security Adjudications Act 1983—
- (a) in subsection (5)—
    - (i) for the words “a joint tenant in the proceeds of sale of land held upon trust for sale” substitute “an equitable joint tenant in land”, and
    - (ii) for the words “those proceeds” substitute “the land”,
  - (b) in subsection (6)—
    - (i) for the words “a joint tenant in the proceeds of sale of land held upon trust for sale” substitute “an equitable joint tenant in land”,
    - (ii) for the words “proceeds is” substitute “land is”, and
    - (iii) for the words “interests in the proceeds” substitute “interests in the land”, and
  - (c) in subsection (8), for the words “an interest in the proceeds of sale of land” substitute “the interest of an equitable joint tenant in land”.

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*The Telecommunications Act 1984 (c.12)*

- 22 In paragraph 4(10) of Schedule 2 to the Telecommunications Act 1984, for the words “trusts for sale” substitute “ trusts of land ”.

*The Insolvency Act 1986 (c.45)*

- 23 At the beginning of Chapter V of Part IX of the Insolvency Act 1986 insert—

*“ Rights under trusts of land*

**Rights under trusts of land.**

- 335A(1) Any application by a trustee of a bankrupt’s estate under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (powers of court in relation to trusts of land) for an order under that section for the sale of land shall be made to the court having jurisdiction in relation to the bankruptcy.
- (2) On such an application the court shall make such order as it thinks just and reasonable having regard to—
- (a) the interests of the bankrupt’s creditors;
  - (b) where the application is made in respect of land which includes a dwelling house which is or has been the home of the bankrupt or the bankrupt’s spouse or former spouse—
    - (i) the conduct of the spouse or former spouse, so far as contributing to the bankruptcy,
    - (ii) the needs and financial resources of the spouse or former spouse, and
    - (iii) the needs of any children; and
  - (c) all the circumstances of the case other than the needs of the bankrupt.
- (3) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt’s estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt’s creditors outweigh all other considerations.
- (4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this section.”

*The Patronage (Benifices) Measure 1986 (No.3)*

- 24 In section 33 of the Patronage (Benifices) Measure 1986—
- (a) in subsection (1), for the words from “held by any trustee” to “capable of sale” substitute “ subject to a trust of land ”, and
  - (b) in subsection (2), for the words “section 26(1) and (2) of the <sup>M27</sup>Law of Property Act 1925 (consents to the execution of a trust for sale)” substitute “ section 10 of the Trusts of Land and Appointment of Trustees Act 1996 (consents) ”.

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### Marginal Citations

**M27** 1925 c. 20.

### *The Family Law Reform Act 1987 (c.42)*

- 25 In section 19(2) of the Family Law Reform Act 1987, for the words “which is used to create” substitute “purporting to create”.

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

- <sup>F23</sup>26 .....

### Textual Amendments

**F23** Sch. 3 para. 26 repealed (14.3.2012) by [Charities Act 2011 \(c. 25\)](#), s. 355, [Sch. 10](#) (with s. 20(2), [Sch. 8](#))

### *The Leasehold Reform, Housing and Urban Development Act 1993 (c.28)*

- 27 (1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows.
- (2) In Schedule 2—
- (a) in paragraph 5(1) and (2), for the words “held on trust for sale” substitute “subject to a trust of land” (and, accordingly, in the heading immediately preceding paragraph 5 for the words “on trust for sale” substitute “in trust”),
  - (b) in paragraph 6, for the words “as mentioned in paragraph 5(2)(b) above” substitute “by the landlord on the termination of a new lease granted under Chapter II or section 93(4) (whether the payment is made in pursuance of an order under section 61 or in pursuance of an agreement made in conformity with paragraph 5 of Schedule 14 without an application having been made under that section)”, and
  - (c) in paragraphs 7(2)(b) and 8(3)(b) and (4)(c), for “5(2)(b)” substitute “6”.
- (3) In Schedule 14—
- (a) in paragraph 7(1), for the words “disposition on trust for sale” substitute “trust of land”, and
  - (b) in paragraph 9(a), for the words “held on trust for sale” substitute “subject to a trust of land”.

## SCHEDULE 4

Section 25(2).

## REPEALS

### Extent Information

**E2** All repeals in Sch. 4 extend to England and Wales only except as mentioned in s. 27(4)

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| Chapter                   | Short title                        | Extent of repeal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 & 4 Will.4 c. 74.       | The Fines and Recoveries Act 1833. | In section 1, the words “, and any undivided share thereof”, in both places.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 7 Will.4 & 1 Vict. c. 26. | The Wills Act 1837.                | In section 1, the words “and to any undivided share thereof,”.<br>Section 32.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 53 & 54 Vict. c. 39.      | The Partnership Act 1890.          | Section 22.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 12 & 13 Geo.5 c. 16.      | The Law of Property Act 1922.      | In section 188—<br>in subsection (1), the words “but not an undivided share in land;” and the words “but not an undivided share thereof”, and<br>subsection (30).                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 15 & 16 Geo.5 c. 18.      | The Settled Land Act 1925.         | Section 27.<br>Section 29.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 15 & 16 Geo.5 c. 19.      | The Trustee Act 1925.              | In section 10(2)—<br>in the first paragraph, the words “by trustees or” and the words “the trustees, or”, and<br>in the second paragraph, the words from the beginning to “mortgage; and”.<br>In section 19(1), the words “building or”, in the second place.<br>In section 68—<br>in subsection (6), the words “, but not an undivided share in land” and the words “, but not an undivided share thereof”, and<br>in subsection (19), the word “binding”, the words “, and with or without power at discretion to postpone the sale” and the definition of “trustees for sale”. |
| 15 & 16 Geo.5 c. 20.      | The Law of Property Act 1925.      | In section 3—<br>subsections (1)(b) and (2), and<br>in subsection (5), the words “trustees for sale or other”.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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In section 7(3), the second paragraph.

In section 18—  
in subsection (1), the words from “, and personal estate” to “payable”, in the second place, and the words “or is capable of being”, and  
in subsection (2), the words “of the settlement or the trustees for sale”, in both places.

Section 19.

Section 23 (and the heading immediately preceding it).

Sections 25 and 26.

Sections 28 to 30.

Section 31(3).

Section 32.

In section 34—  
in subsection (3), the words from “the trustees (if any)” to “then to” and the words “in each case”, and  
subsection (4).

Section 35.

Section 42(6).

In section 60, paragraphs (b) and (c) of the proviso to subsection (4).

In section 130, subsections (1) to (3) and (6) (and the words “Creation of” in the sidenote).

Section 201(3).

In section 205(1)—  
in paragraph (ix), the words “but not an undivided share in land;” and the words “but not an undivided share thereof”,  
in paragraph (x), the words “or in the proceeds of sale thereof”, and  
in paragraph (xxix), the word “binding”, the words “, and



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|                      |                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      |                                                | with or without a power at discretion to postpone the sale” and the words “and “power”” onwards.                                                                                                                                                                                                                                                                                                                                     |
| 15 & 16 Geo.5 c. 21. | The Land Registration Act 1925.                | In section 3—<br>in paragraph (viii), the words “but not an undivided share in land;”,<br>in paragraph (xi), the words “or in the proceeds of sale thereof”,<br>in paragraph (xiv), the words “, but not an undivided share thereof”, and<br>paragraphs (xxviii) and (xxix).                                                                                                                                                         |
| 15 & 16 Geo.5 c. 23. | The Administration of Estates Act 1925.        | In section 3(1)(ii), the words “money to arise under a trust for sale of land, nor”.<br><br>In section 39(1)(i), the words from “, and such power” to “legal mortgage”.<br><br>In section 51—<br>in subsection (3), the word “settled”, and<br>subsection (4).<br><br>In section 55(1)—<br>in paragraph (vii), the words “or in the proceeds of sale thereof”,<br>in paragraph (xxiv), the word “ “land””, and<br>paragraph (xxvii). |
| 15 & 16 Geo.5 c. 24. | The Universities and College Estates Act 1925. | In section 43(iv), the words “, but not an undivided share in land”.                                                                                                                                                                                                                                                                                                                                                                 |
| 16 & 17 Geo.5 c. 11. | The Law of Property (Amendment) Act 1926.      | In the Schedule, the entries relating to section 3 of the Settled Land Act 1925 and sections 26, 28 and 35 of the Law of Property Act 1925.                                                                                                                                                                                                                                                                                          |
| 17 & 18 Geo.5 c. 36. | The Landlord and Tenant Act 1927.              | In section 13—<br>in subsection (1), the words from “(either” to “Property Act, 1925)”,<br>in subsection (2), the words “, trustee for sale, or personal representative”, and                                                                                                                                                                                                                                                        |

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|                      |                                                         | in subsection (3), the words “, and “settled land”” onwards.                                                                                                                                                                                         |
| 22 & 23 Geo.5 c. 27. | The Law of Property (Entailed Interests) Act 1932.      | Section 1.                                                                                                                                                                                                                                           |
| 2 & 3 Geo.6 c. 72.   | The Landlord and Tenant (War Damage) Act 1939.          | Section 3(c).                                                                                                                                                                                                                                        |
| 9 & 10 Geo.6 c. 73.  | The Hill Farming Act 1946.                              | Section 11(2).                                                                                                                                                                                                                                       |
| 12 & 13 Geo.6 c. 74. | The Coast Protection Act 1949.                          | In section 11(2)(a)—<br>the words “, by that section as applied by section twenty-eight of the Law of Property Act, 1925, in relation to trusts for sale,” and<br>the words “, by that section as applied as aforesaid,”.                            |
| 2 & 3 Eliz.2 c. 56.  | The Landlord and Tenant Act 1954.                       | In the Second Schedule, in paragraph 6—<br>the words “, by that section as applied by section twenty-eight of the Law of Property Act, 1925, in relation to trusts for sale,” and<br>the words “, by that section as applied as aforesaid,”.         |
| 7 & 8 Eliz.2 c. 72.  | The Mental Health Act 1959.                             | In Schedule 7, in Part I, the entries relating to sections 26 and 28 of the Law of Property Act 1925.                                                                                                                                                |
| 1964 No. 2.          | The Incumbents and Churchwardens (Trusts) Measure 1964. | In section 1, in the definition of “land”, the words “nor an undivided share in land”.                                                                                                                                                               |
| 1967 c. 10.          | The Forestry Act 1967.                                  | In Schedule 2, paragraph 1(4).                                                                                                                                                                                                                       |
| 1967 c. 88.          | The Leasehold Reform Act 1967.                          | In section 6(5)—<br>the words “, or by that section as applied by section 28 of the Law of Property Act 1925 in relation to trusts for sale,”<br>the words “or by that section as applied as aforesaid”, and<br>the words “or by trustees for sale”. |
|                      |                                                         | In Schedule 2, in paragraph 9(1)—<br>the words “, or by that section as applied by section 28 of the Law of Property Act 1925                                                                                                                        |

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|             |                                            | in relation to trusts for sale”,<br>and<br>the words “or by that section<br>as applied as aforesaid”.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1969 c. 10. | The Mines and Quarries<br>(Tips) Act 1969. | In section 32(2)(a) and (b),<br>the words “, by that section as<br>applied by section 28 of the<br>Law of Property Act 1925 in<br>relation to trusts for sale”.                                                                                                                                                                                                                                                                                                                                                                                         |
| 1970 c. 40. | The Agriculture Act 1970.                  | In section 30—<br>in subsection (1), the words<br>“(including those provisions<br>as extended to trusts for sale<br>by section 28 of the Law of<br>Property Act 1925)”, and<br>in subsection (2), the words<br>“the words from “(including<br>those provisions” to “Law of<br>Property Act 1925)” and”.                                                                                                                                                                                                                                                 |
| 1972 c. 61. | The Land Charges Act 1972.                 | In section 17(1), the<br>definition of “trust for sale”.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 1976 c. 31. | The Legitimacy Act 1976.                   | Section 10(4).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 1976 c. 36. | The Adoption Act 1976.                     | Section 46(5).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 1977 c. 42. | The Rent Act 1977.                         | In Schedule 2, in Part I, in<br>paragraph 2(b), the words<br>“or, if it is held on trust for<br>sale, the proceeds of its sale<br>are”.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 1980 c. 58. | The Limitation Act 1980.                   | In section 18—<br>in subsection (1), the words<br>“, including interests in the<br>proceeds of the sale of land<br>held upon trust for sale,” and<br>in subsections (3) and (4), the<br>words “(including a trust for<br>sale)” and the words “or in<br>the proceeds of sale”.<br><br>In section 38(1)—<br>in the definition of “land”,<br>the words “, including an<br>interest in the proceeds of the<br>sale of land held upon trust<br>for sale,” and<br>the definition of “trust for<br>sale”.<br><br>In Schedule 1, in Part I, in<br>paragraph 9— |

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|             |                                                                            | the words “or in the proceeds of sale”,<br>the words “or the proceeds”,<br>and<br>the words “or the proceeds of sale”.                                                                                |
| 1981 c. 54. | The <sup>[F24]</sup> Senior Courts Act 1981].                              | In section 128, in the definition of “real estate”, in paragraph (b), the words “money to arise under a trust for sale of land, nor”.                                                                 |
| 1983 c. 41. | The Health and Social Services and Social Security Adjudications Act 1983. | Section 22(3).                                                                                                                                                                                        |
| 1984 c. 28. | The County Courts Act 1984.                                                | In Schedule 2, in Part II, in paragraph 2—<br>in sub-paragraph (1), the entry relating to section 30 of the Law of Property Act 1925,<br>sub-paragraph (2), and<br>in sub-paragraph (3),<br>“30(2),”. |
| 1984 c. 51. | The Inheritance Tax Act 1984.                                              | In section 237(3), the words “and undivided shares in land held on trust for sale, whether statutory or not,”.                                                                                        |
| 1986 c. 5.  | The Agricultural Holdings Act 1986.                                        | In section 89(1), the words “or the Law of Property Act 1925”.                                                                                                                                        |
| 1986 c. 45. | The Insolvency Act 1986.                                                   | In section 336—<br>subsection (3), and<br>in subsection (4), the words “or (3)” and the words “or section 30 of the Act of 1925”.                                                                     |
| 1988 c. 50. | The Housing Act 1988.                                                      | In Schedule 1, in Part III, in paragraph 18(1)(b), the words “or, if it is held on trust for sale, the proceeds of its sale are”.                                                                     |
| 1989 c. 34. | The Law of Property (Miscellaneous Provisions) Act 1989.                   | In sections 1(6) and 2(6), the words “or in or over the proceeds of sale of land”.                                                                                                                    |
| 1990 c. 8.  | The Town and Country Planning Act 1990.                                    | In section 328—<br>in subsection (1)(a), the words “and by that section as applied by section 28 of                                                                                                   |

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|             |                                                               |                                                                                                                                                                                                                                                |
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|             |                                                               | the Law of Property Act 1925 in relation to trusts for sale”, and<br>in subsection (2)(a), the words “and by that section as so applied”.                                                                                                      |
| 1991 c. 31. | The Finance Act 1991.                                         | Section 110(5)(b).                                                                                                                                                                                                                             |
| 1993 c. 10. | The Charities Act 1993.                                       | Section 37(6).<br>Section 39(5).                                                                                                                                                                                                               |
| 1993 c. 28. | The Leasehold Reform, Housing and Urban Development Act 1993. | In section 93A(4)—<br>the words “, or by that section as applied by section 28 of the Law of Property Act 1925 in relation to trusts for sale”,<br>the words “, or by that section as so applied,” and<br>the words “or by trustees for sale”. |
|             |                                                               | In Schedule 2, paragraph 5(2)(b) and the word “and” immediately preceding it.                                                                                                                                                                  |
| 1994 c. 36. | The Law of Property (Miscellaneous Provisions) Act 1994.      | In section 16—<br>subsection (2), and<br>in subsection (3), the words “; and subsection (2)”<br>onwards.                                                                                                                                       |
| 1995 c. 8.  | The Agricultural Tenancies Act 1995.                          | In section 33—<br>in subsections (1) and (2), the words from “(either” to “Property Act 1925)”, and<br>in subsection (4), the definition of “settled land” and the word “and” immediately preceding it.                                        |
| 1996 c. 53. | The Housing Grants, Construction and Regeneration Act 1996.   | Section 55(4)(b).<br><br>Section 73(3)(b).<br><br>In section 98(2)(a), the words “or to the proceeds of sale of the dwelling”.                                                                                                                 |

#### Textual Amendments

**F24** Words in Blanket Amendment substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, art. 2(d)

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**Changes and effects yet to be applied to :**

- Sch. 1 para. 4(2)(b) words substituted by [2022 c. 6 Sch. 2 para. 29](#)

## **APPENDIX 3**

### **DISCUSSION PAPER – SETTLED LAND ACT PUBLIC AND STAKEHOLDER SUBMISSIONS**

## DISCUSSION PAPER ON SETTLED LAND ACT – PUBLIC AND STAKEHOLDER SUBMISSIONS

|                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>Prof. Simon Cooper, Truman Bodden Law School</b> | <p>The settled land legislation in England and Cayman ensures that land remains marketable and capable of being sold, leased, mortgaged and improved, despite the attempts of landowners to tie up the land in fetters to prevent future generations doing exactly those things.</p> <p>Those statutory purposes are every bit as socially and economically desirable today as in 1882. The purposes of the settled land legislation are therefore just as relevant today. The difference is that, in 1882, the incidence of landowners tying up their land in fetters was higher. But that does not affect the desirability of the stated policy of releasing land from those fetters.</p> <p>The local context of the Cayman Islands makes no difference. It is still undesirable for land in the Cayman Islands to be tied up in fetters. It prevents future limited owners from selling when they need to raise capital or when moving overseas; it prevents future limited owners from mortgaging so as to release capital for carrying out important repairs or improvements to the land, and so on.</p> <p>Overall, the rationale for the settled land legislation continues today and is appropriate to the Cayman Islands. In fact the DP recognises this by proposing a regime modelled on TOLATA which would ensure that the land remains marketable through the trustees' comprehensive powers of sale, etc.</p> <p>The DP alludes to the problems of the settled land legislation being complex and carrying the risk of inadvertent settlements being created. Those are valid criticisms. They are, however, inherent in any scheme which undertakes the difficult task of converting a settlor's attempt to tie up land through successive interests into a legal outcome which unfetters the land.</p> <p>One other point which is not really dwelt upon in the DP is the practicality of integrating the current Settled Land Law scheme into the registration system under the Registered Land Law. I have proposed a method for doing so but it is inevitably complicated and would benefit from a legislative review: see Cooper "Lifetime Occupation Rights" (2009) 59 West Indian Law Journal 59. That fact could be used as a further justification for replacing the settled land system with a trusts scheme modelled on TOLATA which would integrate more happily into the existing trust provisions of the registration system.</p> |
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## DISCUSSION PAPER ON SETTLED LAND ACT – PUBLIC AND STAKEHOLDER SUBMISSIONS

The DP mentions conflict of interest and duty as a justification for the proposed reform. It should be noted that conflict of interest and duty is still likely to remain a significant issue even after the enactment of the proposed reforms. The reason for this is that TOLATA was specifically designed to allow the trustees to be able to delegate their functions to the beneficiary entitled in possession (s.9(1) TOLATA). It was envisaged that that beneficiary could have a powerful hand in the management of the land and the decision-making in respect of it. When doing so, the beneficiary would be exercising trustee functions and would be bound by a duty to act in the best interests of the beneficiaries as a whole (s.9(7) TOLATA), despite also having a conflicting interest of his own.

However, one advantage of TOLATA is that it prevents the conflict from becoming entrenched. That offers a more promising justification for the proposed reform. Under the Settled Land Law, a tenant for life automatically has the power to deal with the land because of his position as tenant for life, and that power can never be taken away, no matter how much it is abused. In contrast, under TOLATA, the beneficiary entitled in possession has the power to deal with the land under a power of attorney which may be taken away by revoking it. In that respect, TOLATA is superior insofar as it enables action to be taken if the decision-maker shows an improper preference for his own interests.

One of the leading concerns expressed by the DP was that there are currently two methods for establishing successive interests in land: the settlement under the Settled Land Law and the settlement by way of trust. The DP proposes that reform should lead to only a single method, that it should be the trust, and that it should follow the model of TOLATA.

It seems that the law reform commission must only be proposing to adopt those parts of TOLATA which deal with successive interests. That in turn suggests that the law reform commission must only be proposing to introduce reforms to create new style trusts of land where otherwise the Settled Land Law would have applied. It seems clear that the proposed reforms will not apply to all trusts, such as trusts of money or other assets. And perhaps they will not even apply to all trusts affecting land.

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|  | <p>That approach to reform will lead to two different regimes. It will create (a) a regime for trusts that cover successive interests in land, and (b) a regime for other trusts. It would swap the current dual regime for a different dual regime.</p> <p>The grant of land to a minor must be the commonest situation which engages the Settled Land Law today. However, adopting TOLATA is not the best approach to reform on the topic of land-holding by minors.</p> <p>First, TOLATA suffers insurmountable problems in the way that it treats the rights of minors by imposing a trust on the grantor. Schedule 1, para. 1, TOLATA states:</p> <p style="padding-left: 40px;">'1(1) Where after the commencement of this Act a person purports to convey a legal estate in land to a minor, or two or more minors, alone, the conveyance—</p> <p style="padding-left: 40px;">(a) is not effective to pass the legal estate, but</p> <p style="padding-left: 40px;">(b) operates as a declaration that the land is held in trust for the minor or minors (or if he purports to convey it to the minor or minors in trust for any persons, for those persons).'</p> <p>That rule causes practical problems wherever the grantor reserves rights. For example, if the owner grants a lease to a seventeen year old, the effect of TOLATA is that the owner holds the lease on trust for the tenant. This causes insurmountable problems where the duties of trusteeship prevent the owner from exercising his rights in his own interests. For example, the tenant might breach a covenant and the owner might want to terminate the lease. As trustee, it appears that the owner may not terminate the lease, and thereby destroy the sole trust asset, since it would be an obvious breach of trust.</p> <p>The TOLATA rules also causes conceptual problems by its reference to the item that the grantor holds on trust. TOLATA states that the 'land' is held on trust for the minor. That is meaningful only if 'land' is understood not to mean the physical thing but the relevant legal interest. However, it is unclear what that legal interest should be in the case of a grant of a lease. Is it the ownership held by the grantor? That would make no sense, as the grantor never intended to give the ownership to the minor. Is it instead the lease which the grantor attempted to create? That makes no sense either, as there is no lease: it fails because of</p> |
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the TOLATA rule prohibiting it. Even if there were some sort of 'deemed lease' being held on trust, that would not work either, because the grantor cannot be both landlord and tenant.

The second reason why the TOLATA solution is not ideal as the reform model in Cayman is that the TOLATA regime would be more complex than the existing regime for minors who hold land. The Registered Land Law already has adequate provision for them.

In Cayman, a minor may hold a legal estate in land, unlike in England where it is prohibited by s.1(6) Law of Property Act 1925. In Cayman, s.110(1) Registered Land Law allows the minor to become registered as proprietor. The only restriction occurs when it comes to dealings with the minor's interest. S.111(3) Registered Land Law allows the minor's guardian to carry out the dealing on the minor's behalf. The section also allows any other person appointed under a written law to carry out the dealing. S.2 Registered Land Law expands the definition of 'guardian' to include any person responsible for protecting the interests of the minor. This provides a workable legal structure for minor's land which is easily understood.

I recommend that grants to minors should continue to operate as currently under the Registered Land Law and they should be altogether excluded from any new reforms modelled on TOLATA.

Lifetime occupation rights have often been created by home-made wills in England and Ireland and it would come as no surprise if they were also common in the Cayman Islands. If the Settled Land Law is repealed, then it is essential to consider what will happen to lifetime occupation rights, since they will no longer be governed by the Settled Land Law.

One option would be to include them within the replacement law which will allow successive interests to be created under a trust. That did not happen in England under TOLATA, as TOLATA applies only to interests and not to mere occupation rights.

An alternative option would be to leave the lifetime occupation right to be dealt with by common law, as currently happens under English law. The result would be that the lifetime occupation right would constitute a licence and would not amount to a proprietary interest. That would leave the occupier in a vulnerable position. It would also leave open all manner of questions over what the owner could and could not do with

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the land. Those questions are currently answered by Settled Land Law. If the Settled Land Law is to be repealed, then it will create a legislative gap for lifetime occupation rights.

To deal with lifetime occupation rights, I recommend that the law reform commission should create express provision to deal with them, making it clear whether they fall inside or outside the new regime for successive interests. If they are to fall outside that regime, then there should be a specific provision explaining their status and whether they are capable of being entered on the land register.

I take the view that entails did form part of the received law of the Cayman Islands, being a common law concept, confirmed by statute (the Statute of Westminster the Second 1285 (13 Edw. 1, c.1) known as '*De Donis Conditionalibus*') that was in place long before the Cayman Islands were settled. Certainly entails were part of the received law in other Caribbean islands as they are mentioned in the historical documents of the eighteenth century.

However, entails are certainly not a common feature of landholding in the Cayman Islands today. It is probable that none at all exist currently, and possibly none have ever existed here. There was no specific facility for registering them at the cadastral adjudication and it seems unlikely that anyone has deliberately created any since then.

I have never encountered any evidence of any social aspiration amongst Caymanian landowners to preserve particular landed estates in a family dynasty. It is possible that there are families based overseas who hold their overseas land in entail and would like their Cayman land to follow the same succession, but this seems unlikely given the limited appeal of entails (and, in the UK at least, the punitive taxation that is imposed on them). In the light of those factors, I recommend that entails of land should be abolished prospectively. In England, Schedule 1, para 5, TOLATA effectively abolishes them, and it could function as a suitable model for reform.

There remains the problem of transitional provisions to deal with the risk that an entail of land might exist today in Cayman. That risk appears low to me. However, the Law Commission of England and Wales in preparing the reforms that led to TOLATA expected that restricted dynastic successions were no longer used and were astonished to find an English law firm that continued to recommend and implement them. Express

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|  | <p>provisions might therefore be prudent to deal with any existing entails of land. They could be simply preserved (as under TOLATA) or converted into full ownership.</p> <p>Before leaving the topic of entails, it is worth drawing attention to s.35 Succession Law, which creates a deemed entail for the purpose of inheritance of the property of an unmarried minor. If the entail is to be abolished, this section might sensibly be amended to remove the reference to the entail. A reformed provision could simply state the desired consequences in full, namely that the land should be capable of being inherited only by the minor's issue and no others.</p> <p>Currently, s.44 Registered Land Law provides for the recognition of a lease for life. If an owner grants another person the right to exclusive possession of the property for the lifetime of the grantor or the grantee, then presumably this will create a lease under s.44.</p> <p>If the proposed reforms are to be based on TOLATA, however, then it will be possible to create a trust under which the beneficiary may have a right to exclusive possession of the property for the lifetime of the settlor or the beneficiary. That would give the property owner the choice of creating the same arrangement either as a direct grant (s.44) or by way of a trust (TOLATA model). The issue rarely arises in England because most leases for life are converted to fixed term leases outside of TOLATA by s.140(6) Law of Property Act 1925.</p> <p>There is an important choice to be made here as to reform strategy. The law reform commission must consider whether the tidiness of moving to a single system based only on trusts would be worth the price of preventing future attempts to create a s.44 lease for life directly. The s.44 lease for life is a convenient and easily understandable method for people to create arrangements and I recommend that it should be preserved despite the general move to the trust as the main basis for successive interests. I recommend that it should be carved out of the scope of the reforms based on TOLATA, otherwise the lease for life will be encumbered by a trust and all the paraphernalia of trusteeship that is likely to be baffling to the public and introduces great complexity to a simple arrangement.</p> <p>If the law reform commission insists on including the grant of exclusive possession for life within the proposed reforms based on TOLATA, then I recommend that the reform should also expressly state whether</p> |
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it is or is not still possible to create a lease for life under s.44 Registered Land Law; in those circumstances, I would recommend abolishing the s.44 lease for life in order to avoid a dual system.

The DP at para. 6.2.5 puts forward Option 2, which is this:

'The Cayman Islands SLA would be repealed. A transitional period of 1 year would be provided for any existing settlements to be converted into a trust of land, which would be governed by the new provisions of the Trusts Act (2021 Revision).'

It would be helpful to have clarification on how this 'conversion' would occur. If the conversion is expected to happen automatically, without action by anyone interested under the settlement, then there seems no reason to delay it for a year. It could immediate.

On the other hand, if the conversion is expected to require some action by a person interested under the settlement, there will be practical problems. First, there will be the difficulty of communication. How will the need to convert be publicised, bearing in mind that interested persons may be overseas? How will it be possible to explain in layperson's language what are the exact arrangements which trigger the need to convert? How will the conversion duty apply where the interested persons are minor or unborn?

Second, what will be the legal consequence of failure to convert? Will the persons interested under the settlement lose their entitlements? That would give rise to constitutional rights claims for failure to protect property rights, especially if coupled with the above concerns about communicating with the public which will impact due process, and especially if the reforms are essentially motivated by tidying up the law rather than some critical social or economic interest.

Third, property law reform schemes which require mandatory action within a finite period on pain of loss have had a very poor record in the Caribbean. There are examples of total failure of such reform schemes. This is typically due to the public uptake being negligible. Governments have then been faced with either repealing the rule, extending the deadline time and time again, or undertaking massive enforcement campaigns which produce a public backlash.

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|  | <p>For those reasons, I strongly recommend against Option B if it expected to require mandatory action by property owners on pain of losing their property rights.</p> <p>The DP at para. 6.2.6 proposes that s.123(1) Registered Land Law should be repealed. One legal effect of doing so is stated as follows:</p> <p style="padding-left: 40px;">'The tenant for life would still have the power to convey the land under section 23 of the Cayman Islands SLA.'</p> <p>That conclusion is challengeable. If s.123 is repealed, then the law about settled land is not in any other way imported into, or even recognised by, the Registered Land Law.</p> <p>The Registered Land Law purports to make itself a self-enclosed code. According to s.3 Registered Land Law:</p> <p style="padding-left: 40px;">'Except as otherwise provided in this Law, no other law and no practice or procedure relating to land shall apply to land registered under this Law so far as it is inconsistent with this Law: Provided that, except where a contrary intention appears, nothing in this Law shall be construed as permitting any dealing which is forbidden by express provisions of any other law or as overriding any other law requiring the consent or approval of any authority to any dealing.'</p> <p>The effect of that clause is that any other law, such as the Settled Land Law, cannot apply if it is inconsistent with the Registered Land Law.</p> <p>If s.132 is repealed, then the Settled Land Law will cease to be consistent with the Registered Land Law. It will be disapplied insofar as it allows dealings which are not allowed by the terms of the Registered Land Law. That will extend to all the provisions about the statutory powers of the tenant for life. As a result, the tenant for life would cease to have the statutory power to convey the land.</p> <p>If the law reform commission intends to preserve the Settled Land Law as a transitional measure, it is recommended that express legislative provision should be created to ensure that the statutory powers under the Settled Land Law continue to be capable of being exercised and are not abolished by s.3 Registered Land Law when s.123 is repealed.</p> |
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## DISCUSSION PAPER ON SETTLED LAND ACT – PUBLIC AND STAKEHOLDER SUBMISSIONS

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|  | <p>If the law reform commission intends to preserve the Settled Land Law as a transitional measure, and s.123(1) is repealed as proposed in para. 6.2.6, then there needs to be some practical mechanism to allow any transitional settlements to fit into the registration system. I recommend that reform should include a statutory statement of the mechanism for incorporating the transitional settlements into the registration system.</p> <p>Doing so raises a set of complicated practical questions. I have explained the issues and proposed solutions in two papers: first, Cooper “Lifetime Occupation Rights” (2009) 34 West Indian Law Journal 59 (under the subheading 'Reforming the land registry practice'); and second Cooper, "Report on Registry Practice and Legislative Reform" (5 Dec 2008), p.7. They relate to lifetime occupation rights, but the same mechanisms can be extrapolated to other forms of settlement. I invite the law reform commission to consider them.</p> |
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