

SCHEDULES

SCHEDULE 1

Section 2

APPLICATION OF DUTY OF CARE

Investment

1. The duty of care applies to a trustee—
 - (a) when exercising the general power of investment or any other power of investment, however conferred;
 - (b) when carrying out a duty to which he is subject under section 4 or 5 (duties relating to the exercise of a power of investment or to the review of investments).

Acquisition of land

2. The duty of care applies to a trustee—
 - (a) when exercising the power under section 8 to acquire land;
 - (b) when exercising any other power to acquire land, however conferred;
 - (c) when exercising any power in relation to land acquired under a power mentioned in sub-paragraph (a) or (b).

Agents, nominees and custodians

- 3.—(1) The duty of care applies to a trustee—
 - (a) when entering into arrangements under which a person is authorised under section 11 to exercise functions as an agent;
 - (b) when entering into arrangements under which a person is appointed under section 16 to act as a nominee;
 - (c) when entering into arrangements under which a person is appointed under section 17 or 18 to act as a custodian;
 - (d) when entering into arrangements under which, under any other power, however conferred, a person is authorised to exercise functions as an agent or is appointed to act as a nominee or custodian;
 - (e) when carrying out his duties under section 22 (review of agent, nominee or custodian, etc.).

(2) For the purposes of sub-paragraph (1), entering into arrangements under which a person is authorised to exercise functions or is appointed to act as a nominee or custodian includes, in particular—

- (a) selecting the person who is to act,
- (b) determining any terms on which he is to act, and
- (c) if the person is being authorised to exercise asset management functions, the preparation of a policy statement under section 15.

Compounding of liabilities

- 4. The duty of care applies to a trustee—
 - (a) when exercising the power under section 15 of the Trustee Act (Northern Ireland) 1958 (c. 23) to do any of the things referred to in that section;
 - (b) when exercising any corresponding power, however conferred.

Insurance

- 5. The duty of care applies to a trustee—
 - (a) when exercising the power under section 19 of the Trustee Act (Northern Ireland) 1958 to insure property;
 - (b) when exercising any corresponding power, however conferred.

Reversionary interests, valuations and audit

- 6. The duty of care applies to a trustee—
 - (a) when exercising the power under section 23(1) or (3) of the Trustee Act (Northern Ireland) 1958 to do any of the things referred to there;
 - (b) when exercising any corresponding power, however conferred.

Exclusion of duty of care

7. The duty of care does not apply if or in so far as it appears from the trust instrument that the duty is not meant to apply.

SCHEDULE 2

Section 44

MINOR AND CONSEQUENTIAL AMENDMENTS

The Settled Land Act 1882 (c. 38)

1. In section 21 (investment or application of capital money), for paragraph (i) substitute—

“(i) In investment in securities either under the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 or under a power to invest conferred on the trustees of the settlement by the settlement;”

2.—(1) In section 22 (regulations respecting investment, devolution and income of securities etc.), for subsection (2) substitute—

“(2) Subject to Part IV of the Trustee Act (Northern Ireland) 2001, to section 22A 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.”

(2) For subsection (4) of that section substitute—

“(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.

(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.

(4B) The trustees may not under section 11 of the Trustee Act (Northern Ireland) 2001 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.

(4C) A person who is authorised under section 11 of the Trustee Act (Northern Ireland) 2001 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.”

(3) Nothing in this paragraph affects the operation of section 22 in relation to directions of the tenant for life given, but not acted upon by the trustees, before the commencement of this paragraph.

3. After section 22 insert—

“22A Power to accept charge as security for part payment for land sold

(1) Where—

(a) land subject to the settlement is sold by the trustees or the tenant for life for an estate in fee simple or a term having at least two hundred years to run, and

(b) the proceeds of sale are liable to be invested,

the trustees, or the tenant for life on behalf of the trustees, may contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a 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 mortgage, the mortgage 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—

(a) is not required to comply with section 5 of the Trustee Act (Northern Ireland) 2001, 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.”

4. Omit section 41 (protection of each trustee individually).

5. Omit section 43 (trustees' reimbursements).

6. Renumber section 53 (tenant for life deemed to be in the position and to have the duties and liabilities of a trustee, etc.) as subsection (1) of that section and after that subsection insert—

“(1A) The following provisions apply to the tenant for life as they apply to the trustees of the settlement—

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

- (a) sections 11, 13 to 15 and 21 to 23 of the Trustee Act (Northern Ireland) 2001 (power to employ agents subject to certain restrictions),
- (b) section 32 of that Act (remuneration and expenses of agents etc.),
- (c) section 19 of the Trustee Act (Northern Ireland) 1958 (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 (Northern Ireland) 2001 (the duty of care).”

The Trustee Act (Northern Ireland) 1958 (c. 23)

- 7. Omit Part I (investments).
- 8. In section 14 (power of trustees to give receipts) in subsection (1) after “securities” insert “investments”.
- 9. In section 15 (power to compound liabilities) in subsection (1) for “in good faith” substitute “if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001”.
- 10. Omit section 22 (deposit of documents for safe keeping).
- 11. In section 23 (reversionary interests, valuations, and audit)—
 - (a) in subsection (1) for “in good faith” substitute “if they have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001”; and
 - (b) in subsection (3) omit “in good faith” and at the end insert “if the trustees have discharged the duty of care set out in section 1(1) of the Trustee Act (Northern Ireland) 2001”.
- 12. Omit section 24 (power to employ agents).
- 13. Omit section 31 (implied indemnity of trustees).
- 14. In section 32(3) (power to invest income during minority) for “in the way of compound interest by investing the same and the resulting income thereof” substitute “by investing it, and any profits from so investing it”.
- 15. In section 35(6) for the words before paragraph (a) substitute—
 - “(6) Where, in the case of any trust, there are not more than three trustees—”.
- 16. In sections 36(1)(c) and 38(1) for “individuals” substitute “persons”.
- 17. In section 39(2) for “the statutory power” substitute “section 38 or section 34 of the Trustee Act (Northern Ireland) 2001”.

18. Section 57 shall (notwithstanding the repeal by this Act of the Trustee (Amendment) Act (Northern Ireland) 1962 (c. 10)) continue to have effect—

- (a) with the substitution for the words “on trusts” of the words “on any trusts or settlements”; and
- (b) with the insertion after the words “the trusts” (wherever occurring) of the words “or settlements”.

19. In section 67 for the definition of “banker” substitute—

““bank” means—

- (a) an institution authorised under the Banking Act 1987 or a municipal bank within the meaning of that Act;
- (b) a European deposit-taker (within the meaning of Article 82(3) of the Banking Coordination (Second Council Directive) Regulations 1992);
- (c) the National Savings Bank;”.

The Trustee Investments Act 1961 (c. 62)

20. In section 17 for subsection (2) substitute—

“(2) Section 11 of this Act extends to Northern Ireland, but, except as aforesaid and except so far as any other provisions of this Act apply by virtue of Northern Ireland legislation to trusts the execution of which is governed by the law of Northern Ireland, this Act does not apply to such trusts.”.

The Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24)

21. In section 31 for paragraph (c) substitute—

- “(c) in any investments in which trustees may invest under—
 - (i) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
 - (ii) section 8(1)(a) of that Act (land);”.

The Local Government Act (Northern Ireland) 1972 (c. 9)

22.—(1) In section 56(3) for the words from “in a security or securities” to the end substitute “—

- (a) if regulations so provide, in such manner as may be prescribed;
- (b) in any other case, in any investments in which trustees may invest under—

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- (i) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
 - (ii) section 8(1)(a) of that Act (land).”.
- (2) After section 56(3) insert—
- “(3A) Any money invested in accordance with subsection (3)(b) immediately before the coming into operation of regulations under subsection (3)(a) shall, for the period of 6 months from the coming into operation of those regulations, be taken to have been invested in accordance with those regulations.”.

The Solicitors (Northern Ireland) Order 1976 (NI 12)

- 23.** In Article 3(3) for the definition of “trustee securities” substitute—
- ““trustee investments” means investments in which trustees may invest under—
- (i) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
 - (ii) section 8(1)(a) of that Act (land).”.
- 24.** In Article 33(1)(c) for “securities” substitute “investments”.
- 25.** In Schedule 2, in paragraph 3 for “securities” substitute “investments”.

The Housing (Northern Ireland) Order 1981 (NI 3)

- 26.** In Article 21(9) for the words from “in any investment” to the end substitute “in any investments in which trustees may invest under—
- (a) the general power of investment in section 3 of the Trustee Act (Northern Ireland) 2001 (as restricted by sections 4 and 5 of that Act); or
 - (b) section 8(1)(a) of that Act (land).”.

The Agricultural Marketing (Northern Ireland) Order 1982 (NI 12)

- 27.** In Article 18, omit paragraph (a).

The Credit Unions (Northern Ireland) Order 1985 (NI 12)

- 28.** In Article 26(2) for the words from “Part I or Part II” to the end substitute “regulations under Article 33(1)”.
- 29.** In Article 33(5), omit sub-paragraph (b).

SCHEDULE 3

Section 44.

TRANSITIONAL PROVISIONS AND SAVINGS

Part II of this Act

1. Nothing in Part II affects any power of a court to enlarge the investment powers of trustees.

Part IV of this Act

2.—(1) Sub-paragraph (2) applies if, immediately before the day on which Part IV of this Act comes into operation, a bank holds any bearer securities deposited with it under section 7(1) of the 1958 Act (investment in bearer securities).

(2) On and after the day on which Part IV comes into operation, the bank shall be treated as if it had been appointed as custodian of the securities under section 18.

3. The repeal of section 8 of the 1958 Act (loans and investments by trustees not chargeable as breaches of trust) does not affect the operation of that section in relation to loans or investments made before the coming into operation of that repeal.

4. The repeal of section 9 of the 1958 Act (liability for loss by reason of improper investment) does not affect the operation of that section in relation to any advance of trust money made before the coming into operation of that repeal.

5.—(1) Sub-paragraph (2) applies if, immediately before the day on which Part IV of this Act comes into operation, a bank holds any documents deposited with it under section 22 of the 1958 Act (deposit of documents for safe custody).

(2) On and after the day on which Part IV comes into operation, the bank shall be treated as if it had been appointed as custodian of the documents under section 17.

6.—(1) Sub-paragraph (2) applies if, immediately before the day on which Part IV of this Act comes into operation, a person has been appointed to act as or be an agent under section 24(1) or (3) of the 1958 Act (general power to employ agents).

(2) On and after the day on which Part IV comes into operation, the agent shall be treated as if he had been authorised to exercise functions as an agent under section 11 (and, if appropriate, as if he had also been appointed under that Part to act as a custodian or nominee).

7. The repeal of section 24(2) of the 1958 Act (power to employ agents in respect of property outside the United Kingdom) does not affect the operation after the commencement of the repeal of an appointment made before that commencement.

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

General

8. A provision of this Act does not affect the validity or legality of anything done before it comes into operation.

9. In this Schedule “the 1958 Act” means the Trustee Act (Northern Ireland) 1958 (c. 23).

SCHEDULE 4

Section 44.

REPEALS

Short Title	Extent of repeal
The Settled Land Act 1882 (c. 38)	Section 41. Section 43.
The Administration of Estates Act (Northern Ireland) 1955 (c. 24)	In section 38(2) the words from “which may be retained” to the end.
The Trustee Act (Northern Ireland) 1958 (c. 23)	Part I. In section 20(1) the words “whether by fire or otherwise”. Section 22. In section 23 (3) the words “in good faith” Section 24. Section 31.
The Trustee (Amendment) Act (Northern Ireland) 1962 (c. 10)	The whole Act.
The Agricultural Marketing (Northern Ireland) Order 1982 (NI 12)	Article 18(a).
The Credit Unions (Northern Ireland) Order 1985 (NI 12)	In Article 33(5), sub-paragraph (b) and the word “or” immediately before it.
The Electricity (Northern Ireland) Order 1992 (NI 1)	Article 85.
The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995 (NI 5)	Article 1(3). Article 5.